

CODE OF ORDINANCES
CITY OF
HANKINSON, NORTH DAKOTA

Published in 2026 by Order of the City Council



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PREFACE

This Code constitutes a recodification of the general and permanent ordinances of the City of Hankinson, North Dakota.

Source materials used in the preparation of the Code were the 2002 Code, and ordinances subsequently adopted by the city. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the 2002 Code, as supplemented, and any subsequent ordinance included herein.

Acknowledgments

This publication was under the direct supervision of Roger D. Merriam, Senior Code Attorney, and Howard George, Editor, of CivicPlus, LLC, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to Ms. Brittany Hatting, City Attorney, Ms. Kristi Kelley, City Auditor, and Ms. Angie Evans, Community Center Manager/Deputy City Auditor/City Assessor, for their cooperation and assistance during the progress of the work on this publication. It is hoped that their efforts and those of the publisher have resulted in a Code of Ordinances which will make the active law of the city readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the city's affairs.

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PART I

CHARTER*

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Sec. 1.806. Pending actions and proceedings.

***Editor's note**—Printed herein is the city Charter. Amendments are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of capitalization and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

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- Sec. 1.807. Ordinances to remain in force.
- Sec. 1.808. Concurrent referendums.
- Sec. 1.809. Inauguration of government under this Charter.

Article 9. Changing the Form of Government

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Article 10. Construction

- Sec. 1.1001. Construction.

Article 11. Method of Amendment and Repeal

- Sec. 1.1101. Amendment and repeal.

ARTICLE 1. INCORPORATION**Sec. 1.101. Incorporation.**

The inhabitants of the City of Hankinson, within the corporate limits as now established or as hereafter established in the manner provided by law, shall continue to be a municipal body politic and corporate in perpetuity, under the name of the "City of Hankinson."

ARTICLE 2. GOVERNING BODY TO EXERCISE POWERS**Sec. 1.201. Exercising of powers.**

Subject to the limitations imposed by the state constitution, state law, and this Charter, all powers of the city shall be vested in the elected governing body. The elected governing body shall enact local legislation, adopt budgets, determine policies, and prescribe the functions of government to be performed under this Charter by the city. All powers of the city shall be exercised in the manner prescribed by this Charter or, if the manner be not prescribed, then in such manner as may be prescribed by ordinance.

ARTICLE 3. POWERS OF CITY**Sec. 1.301. General powers.**

The city shall have all powers granted to municipal corporations by the constitution and laws of the state and by this Charter, together with all the implied powers necessary or appropriate to carry into execution all powers granted. It is the intention of this Charter, pursuant to state law, to grant the confirm to the people the full right of self-government in both local and city matters within the powers enumerated in this Charter. All powers heretofore granted the city by general law are hereby preserved and the powers so conferred are hereby granted. This Charter shall be the organic law of the city and extend to all local and city matters.

Sec. 1.302. Enumeration of powers.

Among its enumerated powers, which may be implemented by ordinance subject to the limitations specified in this Charter, shall be the following:

1. To acquire, hold, operate, and dispose of property within or without the corporate limits, and exercise the right of eminent domain for such purposes.
2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to levy and collect taxes, excises, fees, charges and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings and improvements; to contract debts, borrow money, issue bonds, warrants, and other evidence of indebtedness; to establish charges for any city or other services, and to establish debt and mill levy

limitations, provided that the mill levies ordered imposed by the governing body on taxable property subject to ad valorem taxation shall not exceed in total the sum of levies authorized by state statutes and the constitution for cities of similar classification to that of the City of Hankinson; however, the governing body shall be permitted to promulgate the city budget without regard to the specific dedications of mill levies to specific purposes.

3. To establish registration fees on motor vehicles, or sales and use taxes in addition to any other taxes imposed by law. The powers contained in this subsection shall only be exercised by initiative as provided for in article 4 or after a referendum as provided for in article 5.
4. To levy and collect franchise and license tax for revenue purposes.
5. To fix the fees, numbers, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.
6. To provide for city officers, agencies, and employees, their qualifications, selection, terms, powers, duties, and compensation. To provide for change, selection, or creation of its form and structure of government including its sovereign body, executive officer, and city officers.
7. To provide for city courts, their jurisdiction and powers over ordinance violations, duties, administration, and the selection, qualifications, and compensation of their officers; however, the right of appeal from judgment of such courts shall not be in any way affected.
8. To provide for all matters pertaining to city elections, except to qualifications of electors.
9. To provide for the adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.
10. To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation, and regulations thereof.
11. To define offenses against private persons and property and the public health, safety, morals, and welfare and provide penalties for violations thereof.
12. To engage in any utility, business, or enterprise permitted by the constitution or not prohibited by statute or to grant and regulate franchises therefor to a private person, firm, or corporation.
13. To provide for zoning, planning, and subdivision of public or private property within the city limits; to provide for such zoning, planning, and subdivision of public or private property outside the city limits as may be permitted by state law.
14. To exercise in the conduct of its affairs all powers usually exercised by a corporation.

15. To fix the boundary limits of said city and the annexation and de-annexation of territory adjacent to said city except that such power shall be subject to, and shall form with the state law made and provided.
16. To contract with and receive grants from any other governmental entity or agency, with respect to any local, state or federal program, project or works.

The enumeration of particular powers by this Charter shall not be deemed to be exclusive and, in addition to the powers enumerated herein or implied hereby, or appropriate to the exercise of such powers, it is intended that the city shall have and may exercise all powers which under the constitution and laws of the state, it would be competent for this Charter specifically to enumerate.

The statutes of the State of North Dakota, so far as applicable, shall continue to apply except insofar as superseded by this Charter or by ordinance passed pursuant to this Charter. This Charter and the ordinances made pursuant thereto in local and city matters shall supersede within the territorial limits and other jurisdiction of the city any law of the state in conflict therewith and shall be liberally construed for such purposes.

ARTICLE 4. INITIATIVE AND REFERRAL OF ORDINANCES

The citizens of Hankinson shall have the right to initiate and refer ordinances. This article is self-executing and all provisions are mandatory. Ordinances may be enacted to facilitate and safeguard, but not to hamper, restrict, or impair these powers.

Sec. 1.401. Initiative.

A petition to initiate an ordinance shall be presented to the city auditor for approval as to form prior to circulation. Each petition shall have printed thereon: "Initiation of City Ordinance providing for _____" and shall accurately identify and summarize the true nature of the initiated ordinance and set forth the text of the ordinance. A request for approval shall be presented over the names and signatures of three or more qualified electors who shall constitute the "committee for the petitioners" and who shall represent and act for the petitioners. Within ten days after receipt of the petition, the city auditor shall either approve the petition for circulation if it is in proper form and contains the full text of the measure or if the city auditor does not approve the petition, he or she shall give written notice to the committee of the petitioners of his or her reason for not approving their petition.

Any proposed ordinance may be submitted to the governing body of the municipality by a petition signed by qualified electors thereof at least equal in number to 15 percent of the number of electors voting in the city of the office of governor at the last election. The petition shall be filed in the city auditor's office and shall contain a request that the ordinance set out in the petition be submitted to a vote of the qualified electors of the city if it is not passed by the governing body of the municipality.

After receiving the petition for the initiation of a proposed ordinance, the governing body of the municipality shall:

1. Pass the ordinance without alteration within 20 days after the attachment of the auditor's certificate to the accompanying petition that it appears in order; or
2. Call a special election within 90 days after the filing of the petition and submit to the vote of the electors of the municipality the initiated ordinance without alteration. However, if a general city election is fixed not earlier than 15 days nor later than 90 days after the date of filing said petition, the unaltered initiated ordinance shall be placed upon the ballot for voter consideration at said general election.

If a majority of the qualified electors voting on an initiated ordinance vote in favor thereof, it shall become a valid and binding ordinance of the city. The governing body may not repeal or make any material amendment to an initiated ordinance except by a three-fourths vote of the members thereof for a period of six years after the date of election adopting such ordinance, thereafter such ordinance may be repealed or amended the same as any ordinance. An initiated ordinance may be referred as provided in 1.402.

Sec. 1.402. Referendum.

The citizens of Hankinson shall have the right to refer ordinances, except those ordinances implementing public projects upon which an election or a referendum has already been held pursuant to law or this Charter, or which provide for meeting obligations of bonded indebtedness incurred by a prior ordinance or a prior election or referendum and except for the annual budget and appropriation. Qualified city electors at least equal in number to 15 percent of the number of electors voting in the city for the office of governor in the last election may, by referendum petition, suspend the operation of any ordinance enacted by the governing body, except emergency ordinances approved by at least three-fourths of all members of the governing body. An emergency ordinance shall contain a clause declaring an emergency. The filing of referendum petitions against one or more items, sections or parts of any ordinance, shall not prevent the remainder from going into effect. Referendum petitions shall be filed with the city auditor not later than 30 days before and 4:00 p.m. on the 30th day after adoption of the ordinance.

Each petition shall have printed thereon: "Referral of City Ordinance Providing for _____"; and shall accurately identify and summarize the true nature of the referral and set forth the text of the ordinance. A petition to refer an ordinance shall be presented to the city auditor for approval as to form prior to circulation. A request for approval shall be presented over the names and signatures of three or more qualified electors who shall constitute the "committee for the petitioners." Within ten days after receipt of the petition, the city auditor shall either approve the petition for circulation if it is in proper form and contains the full text of the measure proposed to be referred or if the city auditor does not approve the petition, he or she shall give written notice to the committee for the petitioners of his or her reason for not approving their petition.

Each ordinance referred to the electors shall be placed upon the ballot by the city auditor at the next municipal election occurring after 30 days following the filing of sufficient petitions, or at a special election called by the governing body, whichever shall occur first. In the event the referendum petition refers an emergency ordinance, the election shall be held within 60 days from the date of filing.

An ordinance shall not go into effect or become operative unless a majority of the qualified electors voting on the same shall vote in favor thereof, except if said ordinance is an emergency ordinance. An ordinance referred, except an emergency ordinance, shall be suspended upon submission of the auditor's certificate to the governing body as provided in section 3 of this article.

If a referendum petition is filed against an emergency ordinance such ordinance shall be in effect until voted upon by the electors. If the ordinance is then rejected by a majority of the votes cast thereon, it shall be thereby repealed as of the tenth day after the election.

Sec. 1.403. Petition, certification, publication, and limitation.

Each petition to initiate or refer, in addition to the signatures of the petitioners, shall contain the residence address of each petitioner. At the bottom of each petition, the circulator of that particular petition shall sign an affidavit affirming that the signors thereto are known to him or her to be qualified electors of the city at the time of signing and also setting forth the number of signors upon the petition at the time when the affidavit was made.

No ordinance shall be enacted limiting the number of copies of petitions. Copies of petitions shall become part of the original petition when filed.

All decisions of the city auditor in passing upon any petition to initiate or refer is subject to review by the District Court, Southeast Judicial District, Richland County, North Dakota.

The burden is on the party challenging the petition if proceedings are brought against any petition upon any ground.

Within ten days after the filing of a petition to initiate or refer an ordinance, the city auditor shall examine the petition and ascertain whether or not the petition is signed by the requisite number of qualified electors. The city auditor shall attach to the petition his or her certificate showing the results of the examination and if the petition is insufficient, he or she shall state in his or her certificate the reasons therefor. If the city auditor's certificate shows the petition to be insufficient, it may be corrected or amended within ten days from the date of the certificate. Within ten days after such amendment, the city auditor shall make an examination of the amended petition, and if the certificate attached thereto shall show the amended petition to be insufficient, it shall be returned to the person filing the same without prejudice to the filing of a new petition to the same effect. If the petition is sufficient, the city auditor shall so certify and submit it to the governing body of the municipality without delay.

The city auditor shall cause any initiated or referred ordinance to be submitted to the qualified electors under this Charter to be published once in a newspaper published in the municipality. The publication shall be made not more than 20 days nor less than five days before the submission of the initiated or referred ordinance to a vote.

Any number of proposed or referred ordinances may be voted on at the same election in accordance with the provision of this Charter. There shall be not more than one special election in any period of six months for such purposes.

If conflicting initiated or referred measures are approved by vote of the people, the one receiving the highest number of affirmative votes shall be law.

ARTICLE 5. REFERENDUM BY GOVERNING BODY

Sec. 1.501. Referendum by governing body.

Before adopting ordinances, the governing body may, on its own motion, submit questions to the electorate for an advisory vote of the people at any city wide election specified by the governing body. If a question is submitted in the form of a proposed ordinance and it is approved by a majority of the votes cast thereon, and the governing body thereafter adopts the ordinance within six months of such vote, such ordinance shall not be subject to referral by petition.

ARTICLE 6. SEPARABILITY CLAUSE

Sec. 1.601. Separability clause.

If any section or part of section of this Charter shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this Charter, except to the extent that an entire section or part of section may be inseparably connected in meaning and effect with the section or part of section to which such holding shall directly apply.

ARTICLE 7. PLENARY AND IMPLIED POWERS OF THE GOVERNING BODY

Sec. 1.701. Powers.

The governing body shall have plenary power to enact and make all appropriate, proper, and necessary ordinances, resolutions and orders to carry out and give effect to the express and implied powers granted in this Charter to the end that a complete, harmonious and effective municipal government may be initiated, installed, operated and maintained in the City, and thereby protect and safeguard the rights, interests, safety, morality, health and welfare of the City and its inhabitants.

ARTICLE 8. SUCCESSION IN GOVERNMENT**Sec. 1.801. Right of officers and employees preserved.**

Nothing in this Charter, except as specifically provided, shall affect or impair the rights or privileges of officers or employees of the city or of any office, department or agency existing at the time when this Charter shall take effect, or any provision of law in force at the time when this Charter shall take effect and not inconsistent with the provisions of this Charter, in relation to the personnel, appointment, removal, pension and retirement rights, civil rights or any other rights or privileges of officers or employees of the city or any office, department or agency.

Sec. 1.802. Continuance of present officers.

All persons holding executive and administrative office at the time this Charter takes effect shall continue in office and shall continue the performance of their duties until provisions shall have been made by the governing body for the performance of such duties in some other manner of the discontinuance of such office.

Sec. 1.803. Continuance of present offices, departments, or agencies.

Any office, department, or agency, heretofore existing, shall continue to exercise powers and duties the same as were heretofore exercised and shall have the power to continue any business proceedings or other matters within the scope of its regular powers and duties until such office, department or agency shall be changed or abolished by the governing body.

The powers conferred and the duties imposed upon any office, department or agency of the city by the laws of the state shall, if such office, department or agency be abolished by this Charter or under its authority, be thereafter exercised and discharged by the office, department or agency designated by the governing body.

Sec. 1.804. Continuance of appointive boards and commissions.

All appointive boards and commissions hereafter existing, shall continue and shall exercise such powers and duties as were granted them until such boards and commission shall be changed or abolished by the governing body.

Sec. 1.805. Continuance of contracts and franchises.

All contracts and franchises entered into by the city, or for its benefit, prior to the taking effect of this Charter, shall continue in full force and effect.

Sec. 1.806. Pending actions and proceedings.

The adoption of this Charter or any amendment shall not abate or otherwise affect any action or proceeding civil or criminal, pending when it takes full effect, brought by or against the city or any officer, department, agency or officer thereof.

Sec. 1.807. Ordinances to remain in force.

All ordinances, resolutions and regulations of the city in force at the time this Charter takes effect, and not inconsistent with the provisions thereof, are hereby continued in force until the same shall be duly amended or repealed.

The adoption of this Charter or any amendment thereof shall never be construed to destroy any property, action, claims for relief, claims and demands of any nature or kind whatever vested in the city under and by virtue of this Charter theretofore existing or otherwise accruing to the city, but all such claims for relief, claims or demands vest in and inure to the city and to any persons asserting any such claims against the city as fully and completely as though the said Charter or amendment had not been adopted hereunder.

The adoption of this Charter or any amendment shall never be construed to affect the right of the city to collect by special assessment any special assessment theretofore levied under any law or charter for the purpose of public improvements, not affect any right of any contract or obligation existing between the city and any person, firm, or corporation for the making of any such improvements and for the purpose of collecting any such special assessments and carrying out of any such contract.

Sec. 1.808. Concurrent referendums.

All ordinances submitted as questions to the electorate for an advisory vote of the people as provided for in article 5 hereof concurrent with the vote on this Charter shall be given the same full force and effect as if such referendum were held subsequent to the adoption and ratification of this Charter.

Sec. 1.809. Inauguration of government under this Charter.

If a majority of the qualified electors of the city voting on the question, vote to ratify this Charter, the provisions of this Charter shall go into effect upon the filing of the Charter by the governing body with the secretary of state, the clerk of the district court for Richland County, and the office of the city auditor, within 90 days.

ARTICLE 9. CHANGING THE FORM OF GOVERNMENT**Sec. 1.901. Changing form of government.**

Changes in the form of government may be proposed on motion of the governing body or may be proposed by petitions bearing the signatures of qualified city electors equal to 15 percent of those voting for the office of governor in the last election. Proposals for changing the form of government shall be voted upon at a special election called by the governing body or at the next regular municipal election, whichever shall occur first, provided that at least 30 days have passed after the motion of the governing board or the filing of petitions with the

city auditor. The form and procedures concerning any petition hereunder shall be in all respects in accordance with the provision for initiated and referred measures as set forth in article 4 herein.

ARTICLE 10. CONSTRUCTION

Sec. 1.1001. Construction.

The powers of the city under this Charter shall be construed liberally in favor of the city, and specific mention of particular powers in the Charter shall not be construed as limiting in any way the general power in this Charter.

ARTICLE 11. METHOD OF AMENDMENT AND REPEAL

Sec. 1.1101. Amendment and repeal.

This Charter may be amended or repealed by proposals submitted to and ratified by the qualified electors of the city in the same general manner as provided in article 4. Amendments may be proposed by the governing body or by petition of the number of electors as provided in article 4 and submitted to the voters at the same election. The voters may at their option accept or reject any or all of such amendments by a majority vote of electors voting at the election. A proposal to repeal this Charter shall likewise be submitted to the electors of the city in the same manner as set forth in this article, article 4 and article 5.

CHARTER COMPARATIVE TABLE

This table shows the location of the amendments to the Charter.

Legislation	Date	Section	Charter Section
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PART II
CODE OF ORDINANCES

Chapter 1

GENERAL PROVISIONS

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|------------|--|
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| Sec. 1-2. | Definitions and rules of construction. |
| Sec. 1-3. | Headings of sections; effect of history notes; and references in Code. |
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Sec. 1-1. Designation and citation of Code; references in forms, signs, etc.

(a) The ordinances embraced in this and the following chapters and sections shall constitute and be designated the "Code of Ordinances, City of Hankinson, North Dakota," and may be so cited. Such Code may also be cited as the "Hankinson Code."

(b) All references to the 2002 Code or to ordinances in all forms, notices, and signs promulgated by the city shall be deemed to reference successive provisions in this Code.

Sec. 1-2. Definitions and rules of construction.

The following definitions and rules of construction shall apply to this Code and to all ordinances and resolutions unless the context requires otherwise:

Generally. All provisions shall be liberally construed. When provisions conflict, the specific shall prevail over the general. All provisions shall be liberally construed so that the intent of the city council may be effectuated. Words and phrases shall be construed according to the common and approved usage of the language, but technical words, technical phrases and words and phrases that have acquired peculiar and appropriate meanings in law shall be construed according to such meanings. Provisions shall be interpreted and applied so as to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. In the event of conflicts between provisions, the more stringent provision controls.

Acts by agents. When an act is required by an ordinance, the same being such that it may be done as well by an agent as by the principal, such requirement shall be construed to include all such acts performed by an authorized agent.

Boulevard. The term "boulevard" means that strip of land abutting on either side of the streets of the city lying between the outside edge of the sidewalks and the curb along such streets or that area between the inside edge of sidewalks and the lot lines in areas having curb sidewalks.

City. The term "city" means the City of Hankinson, Richland County, North Dakota.

City council. The term "city council" or "council" means the city council of the city.

Code. The term "Code" means the "Code of Ordinances, City of Hankinson, North Dakota," as designated in section 1-1.

Computation of time. The time in which any act is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded. The time in which any act is to be done is computed by excluding the first day and including the last, unless the last is a holiday, and then it also is excluded. If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

State law reference—Similar provisions, N.D.C.C. § 1-02-15.

Conjunctions. In a provision involving two or more items, conditions, provisions or events, which items, conditions, provisions or events are connected by the conjunction "and," "or" or "either ... or," the conjunction shall be interpreted as follows, except that in appropriate circumstances the terms "and" and "or" are interchangeable.

- (1) "And" indicates that all the connected terms, conditions, provisions or events apply.
- (2) "Or" indicates that the connected terms, conditions, provisions or events apply singly or in any combination.
- (3) "Either ... or" indicates that the connected terms, conditions, provisions or events apply singly but not in combination.

County. The term "county" means Richland County, North Dakota.

Day. The term "day" means the period of time between any 12:00 midnight and the 12:00 midnight following.

Daytime, nighttime. The term "daytime" means the period between sunrise and sunset. The term "nighttime" means the period of time between sunset and sunrise.

Delegation of authority. Any provision requiring a city officer or a city employee to do some act is to be construed to authorize the officer or employee to designate, delegate and authorize subordinates to perform the required act.

Departments, boards, officers, etc. References to a department, board, commission, office, officer or employee are to a city department, city board, city commission, city office, city officer or city employee.

Gender. Words of gender include all genders.

In the city. The term "in the city" means all territory over which the city now has or shall hereafter acquire jurisdiction for the exercise of its police powers or other regulatory powers.

Includes. The term "includes" does not limit a term to a specified example.

Joint authority. All words purporting to give a joint authority to three or more city officers or other persons shall be construed as giving such authority to a majority of such officers or other persons.

May. The term "may" is to be construed as being permissive.

May not. The term "may not" states a prohibition.

Month. The term "month" means a calendar month.

Must. The term "must" is to be construed as being mandatory.

Number. Words used in the singular include the plural. Words in the plural include the singular.

Oath. The term "oath" includes an affirmation in cases in which, by law, an affirmation may be substituted for an oath. In such cases, the terms "swear" and "sworn" are equivalent to the terms "affirm" and "affirmed."

Owner. The term "owner," as applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety of the whole or a part of such building or land.

Person. The term "person" includes the state, the county, a political subdivision of the state, other governmental entities, a corporation, firm, partnership, association, limited liability company, organization and any other group acting as a unit, as well as an individual.

Personal property. The term "personal property" includes money, goods, chattels, things in action, and evidences of debt.

Preceding, following. The terms "preceding" and "following" mean next before and next after, respectively.

Property. The term "property" includes real and personal property.

Real property. The term "real property" includes lands, tenements, and hereditaments.

Several. The term "several," in relation to number, means two or more.

Shall. The term "shall" is to be construed as being mandatory.

Sidewalk. The term "sidewalk" means that portion of a street between the curblines or the lateral lines of a roadway and the adjacent property lines intended for the use of pedestrians.

Signature or subscription. The term "signature" or "subscription" includes a mark, when a person cannot write, with his name written near it and witnessed by a person who writes his own name as witness.

State. The term "state" means the State of North Dakota.

State statutes. All references to the North Dakota Century Code are to such code as now or hereafter amended. The abbreviation "N.D.C.C." refers to the North Dakota Century Code.

Street. The entire width between property lines of every way or place of whatsoever nature when any part thereof is open to the use of the public as a matter of right-of-way for purposes of vehicular traffic.

Tenant or occupant. The term "tenant" or "occupant," as applied to a building or land, includes any person holding a written or an oral lease of or who occupies the whole or part of such building or land, either alone or with others.

Tense. The present tense includes the past and future tenses, and the future includes the present.

Usual and customary. The term "usual and customary" means according to usage.

Week. The term "week" consists of seven consecutive days.

Writing and written. The terms "writing" and "written" shall include typewriting and typewritten and printing and printed, except in the case of signatures and when the words are used by way of contrast to typewriting and printing. Writing may be made in any manner, except that, when a person entitled to require the execution of a writing demands that it be made with ink, it must be so made.

Year. The term "year" means a calendar year.

Sec. 1-3. Headings of sections; effect of history notes; and references in Code.

(a) The headings of the several sections of this Code are intended as mere catchwords to indicate the contents of the sections and are not titles of such sections, nor any part of such sections, nor, unless expressly so provided, are they to be so deemed when any of such sections, including the headings, are amended or reenacted.

(b) The history or source notes appearing in parentheses after sections in this Code are not intended to have any legal effect but are merely intended to indicate the source of matter contained in the section. State law references and editor's notes that appear after sections or subsections of this Code or which otherwise appear in footnote form are provided for the convenience of the user of this Code and have no legal effect.

(c) All references to chapters, articles, divisions, subdivisions or sections are to the chapters, articles, divisions, subdivisions or sections of this Code, as amended, unless otherwise specified.

Sec. 1-4. Code exercise of home rule powers.

This Code is an exercise of home rule powers granted by the state constitution.

Sec. 1-5. Effect of repeal of ordinance.

(a) The repeal of an ordinance does not revive any ordinance previously repealed.

(b) The repeal of an ordinance does not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution, or proceeding pending at the time of the repeal for an offense committed under the repealed ordinance.

Sec. 1-6. Amendments to Code; effect of new ordinances; amendatory language.

(a) All ordinances adopted subsequent to this Code that amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of the Code and printed for inclusion in the Code.

(b) Amendments to provisions of this Code may be made with the following language: "Section ____ (chapter, article, division or subdivision, as appropriate) of the Code of Ordinances, City of Hankinson, North Dakota is hereby amended to read as follows:" The section (chapter, article, division, or subdivision) should be set out in full.

(c) If a new section, subdivision, division, article or chapter is to be added to the Code, the following language may be used: "Section ____ (chapter, article, division or subdivision, as appropriate) of the Code of Ordinances, City of Hankinson, North Dakota, is hereby created to read as follows:" The section (chapter, article, division, or subdivision) should be set out in full.

(d) All provisions desired for repeal should be repealed specifically by section, subdivision, division, article or chapter number, as appropriate, or by setting out the repealed provisions in full in the repealing ordinance.

Sec. 1-7. Supplementation of Code.

(a) By contract or by city personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the city council. A supplement to the Code shall include all substantive permanent and general parts of ordinances passed by the city council during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code that have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the person authorized to prepare the supplement may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the person may:

- (1) Organize the ordinance material into appropriate organizational units;
- (2) Provide appropriate catchlines, headings and titles for sections and other organizational units of the Code printed in the supplement, and make changes in such catchlines, headings and titles;
- (3) Assign appropriate numbers to sections and other organizational units to be inserted in the Code and, where necessary to accommodate new material, change existing section or other organizational unit numbers;
- (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections ____ to ____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and
- (5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code; but in no case shall changes be made in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Sec. 1-8. General penalty; continuing violations.

(a) In this section, the term "violation of this Code" means any of the following:

- (1) Doing an act that is prohibited or made or declared to be unlawful, an offense, an infraction, or a misdemeanor, or a Class B misdemeanor by ordinance or by rule or regulation authorized by ordinance;
- (2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance;
- (3) Failure to perform an act if the failure is declared to be a misdemeanor, a Class B misdemeanor, an offense, an infraction, or unlawful by ordinance or by rule or regulation authorized by ordinance.

(b) In this section, the term "violation of this Code" does not include the failure of a city officer or city employee to perform an official duty unless it is provided that failure to perform the duty is to be punished as provided in this section.

(c) All violations of this Code are either a misdemeanor or an infraction. All violations of this Code are a misdemeanor unless stated otherwise. Except as otherwise provided:

- (1) A person convicted of a violation of this Code that is a misdemeanor (including a Class B misdemeanor) shall be punished by a fine not exceeding \$1,500.00 and imprisonment not to exceed 30 days, or by both such fine and imprisonment.
- (2) A person convicted of a violation of this Code that is an infraction shall be punished by a fine not exceeding \$1,000.00. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which he was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a misdemeanor. If the prosecution contends that the infraction is punishable as a misdemeanor, the complaint shall specify that the offense is a misdemeanor.
- (3) With respect to violations of this Code that are continuous with respect to time, each day the violation continues is a separate offense.
- (4) As to other violations, each act is a separate offense.

(d) Violations of this Code that are continuous with respect to time may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent equitable relief or revocation of a license or permit.

(e) This section does not prohibit the use of the sentencing alternatives, other than a fine or imprisonment, provided by N.D.C.C. § 12.1-32-02 for the violation of this Code, nor does this section limit the use of deferred or suspended sentences under N.D.C.C. § 12.1-32-02(3) and (4).

Sec. 1-9. Severability of parts of Code.

If any section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Code. The city council declares that it would have passed this Code, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases have been declared invalid or unconstitutional. If any court of competent jurisdiction shall adjudge invalid the application of any provision of this title to a particular property, building or other structure, such judgment shall not affect the application of said provision to any other property, building or structure not specifically included in said judgment.

Sec. 1-10. Provisions deemed continuation of existing ordinances.

The provisions of this Code, insofar as they are substantially the same as legislation previously adopted by the city relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments.

Sec. 1-11. Code does not affect prior offenses or rights.

(a) Nothing in this Code or the ordinance adopting this Code affects any offense or act committed or done, any penalty or forfeiture incurred, or any contract or right established before the effective date of this Code.

(b) The adoption of this Code does not authorize any use or the continuation of any use of a structure or premises in violation of any city ordinance on the effective date of this Code.

Sec. 1-12. Certain ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code affects the validity of the following ordinances or portion of ordinances that are not codified in this Code. Such ordinances or portions of ordinance continue in full force and effect to the same extent as if published at length in this Code.

- (1) Annexing property into the city.
- (2) Deannexing property or excluding property from the city.
- (3) Describing the boundaries of the city.
- (4) Establishing or modifying council districts.
- (5) Promising or guaranteeing the payment of money or authorizing the issuance, sale or security of bonds or other instruments of indebtedness.
- (6) Authorizing or approving any contract, deed, or agreement.
- (7) Making or approving any appropriation or budget.

- (8) Providing for salaries, benefits, or terms or conditions of employment of city officers or employees not codified in this Code, or creating or amending any department, division or other agency of city government, or any employment classification or position, whether elected or appointed.
- (9) Granting any right or franchise.
- (10) Adopting or amending the comprehensive plan.
- (11) Providing for local improvements or levying or imposing any special assessment.
- (12) Creating any special improvement district.
- (13) Dedicating, establishing, naming, locating, relocating, opening, paving, widening, repairing or vacating any street.
- (14) Establishing the grade or any street or sidewalk.
- (15) Dedicating, accepting or vacating any plat or subdivision.
- (16) Levying or imposing taxes not codified in this Code.
- (17) Rezoning specific property.
- (18) That is temporary, although general in effect.
- (19) That is special, although permanent in effect.
- (20) The purpose of which has been accomplished.

Chapter 2

ADMINISTRATION

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ARTICLE I. IN GENERAL**Sec. 2-1. Adoption of policy.**

The management of records in the city shall meet with the provisions of the city records management manual published by the records management division of the state information technology department, a copy of which is on file with the city auditor. That publication is hereby made a part of this chapter by reference with the exceptions of the sections hereinafter set forth affecting local conditions in the city, which are amended, deleted or added to, for use and application in the city, and the city hereby adopts said manual as so modified.

(Code 2002, § 1.901)

Secs. 2-2—2-20. Reserved.**ARTICLE II. CITY COUNCIL****DIVISION 1. GENERALLY****Sec. 2-21. Compensation of mayor and councilmembers.**

The mayor and councilmembers must be in attendance at a regular meeting for at least one hour to be paid for the meeting unless otherwise approved by the council.

(Code 2002, §§ 1.314, 1.315; Ord. No. 2023-02, 5-1-2023; Ord. No. 2023-04, 6-5-2023)

Sec. 2-22. Committees.

(a) At the organizational meeting of the city council held in June of each even-numbered year, the mayor shall appoint three city councilmembers to each of the following committees:

- (1) Law enforcement, ordinances, elections and printing.
- (2) Water and sewer, streets, lighting.
- (3) Renaissance zone, city buildings, public improvements.
- (4) Finance and appropriations, human resources, board of health.

(b) The mayor shall select one of the three appointed as chairperson of the committee. Each city councilmember shall serve on only two of such committees. The committees have the authority to make decisions to rectify emergency situations that might incur expenses for the city without consulting of the entire council.

(c) The mayor will be the representative to the drain board with Brightwood Township. The mayor shall appoint a representative from the council to the district fire board.

(Code 2002, § 1.501)

Secs. 2-23—2-49. Reserved.

DIVISION 2. MEETINGS

Sec. 2-50. Regular meetings.

The city council shall meet regularly at the city hall on the first Monday of each month at the hour of 6:00 p.m., unless some other time and place shall be specifically fixed by the council.

(Code 2002, § 1.201)

Sec. 2-51. Special meetings.

Special meetings may be called at any time by the mayor or any three members of the city council to consider matters mentioned in the call of such meetings. Notice of any special meeting shall be given to each member of the city council at least three hours before the time of the meeting.

(Code 2002, § 1.202)

Sec. 2-52. Rules and order of business.

Rules and order of business for the parliamentary government of the city council shall be governed by Robert's Rules of Order, Newly Revised (2020).

(Code 2002, § 1.206)

Secs. 2-53—2-77. Reserved.

DIVISION 3. ORDINANCES

Sec. 2-78. Publication of ordinances.

The title and penalty clause of every ordinance imposing any penalty, fine, imprisonment or forfeiture for violation of its provisions after the final adoption of such ordinance, shall be published in one issue of the official paper of the city. (Source: N.D.C.C. § 40-11-06)

(Code 2002, § 2.105)

Sec. 2-79. Effective date of ordinances.

Ordinances finally approved by the governing body of a municipality and which require publication shall take effect and be in force from and after the publication thereof, unless otherwise expressly provided in the ordinance. Ordinances which do not require publication shall take effect and be in force from and after the final approval thereof unless otherwise expressly provided therein. (Source: N.D.C.C. § 40-11-07)

(Code 2002, § 2.106)

Sec. 2-80. Judgment of conviction.

In all trials for offenses under the ordinances of the city, if the defendant is found guilty, the municipal judge shall render judgment accordingly. It shall be a part of the judgment

that the defendant stands committed until such judgment is complied with, and, at the discretion of the municipal court, he may be required to work for the city at such labor as the defendant's strength and health will permit under the provisions of N.D.C.C. § 40-18-12. (Code 2002, § 2.113)

Sec. 2-81. Refusal to work.

Any person refusing to perform manual labor in accordance with the sentence of the court shall be deemed in contempt of court and shall be punished accordingly. No credit shall be allowed such person on account such fines and costs for the date or days that such person refuses to perform manual labor, in accordance with the sentence of the court. (Code 2002, § 2.114)

Secs. 2-82—2-105. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES

Sec. 2-106. General duties of the city auditor.

It shall be the duty of the city auditor to issue the calls for all special meetings of the city council when requested to do so by the mayor or any three members of the city council. He shall also keep a full and complete record of all meetings of the city council and shall keep a book titled as the "ordinance book" and shall record therein at length all ordinances of the city. He shall also keep a book titled as the "special assessment book" in which he shall keep all records of special assessments. All such books shall have full and complete indexes of the contents thereof. He shall report to the city council at the end of every month a list of all warrants, interest coupons, bonds or other evidence of indebtedness which may have been redeemed or paid by him during the month and he shall duly give to the council a copy of his receipt therefor. He shall further handle all correspondence, permits and licenses and shall do and perform each, every and all duties and things prescribed for him to do by statutes of the state, or by an ordinance, resolution or proper instruction of the city council. (Code 2002, § 1.504)

Sec. 2-107. General duties of city attorney.

The city attorney shall conduct all the law business of the city and of the department thereof, and all law business in which the city shall be interested; he shall, when requested, furnish written opinions upon the subjects submitted to him by the city council, or any other department. It shall also be his duty to draft all ordinances, bonds, contracts, leases, conveyances and such other instruments as may be required by the officers of the city; to examine and inspect tax and assessment rolls and all other proceedings in reference to the levying and collection of taxes and to perform each and every and all duties and things prescribed by him to do by statutes of the state, or by an ordinance, resolution or proper instruction of the city council. (Code 2002, § 1.506)

Sec. 2-108. General duties of other appointive officers.

All other appointive officers shall perform such duties as directed by the city council, directed by these ordinances or directed or authorized by the laws of the state.

(Code 2002, § 1.507)

Sec. 2-109. Meals and lodging; amount allowed.

(a) Each elective or appointive officer, employee, representative, or agent of the city, or of any of its subdivisions, boards or commissions may make claim and shall, upon approval of such claim, be paid as an allowance for meals and lodging while engaged within the state, in the discharge of a public duty away from their normal working and living residence for all or any part of any quarter of a day at the rates specified by state law.

(b) Verifications of claims shall not be required for the first three quarters listed above and only a lodging receipt shall be required for the fourth quarter.

(c) Such persons engaged in travel outside of the state shall not claim a sum in excess of that allowed by state law a day for meals and in addition thereto actual lodging expenses. Verification by receipt for such out-of-state travel expense shall be required only for lodging expense claimed. Verification of any other type of expenses not prescribed by this section shall be by receipt.

(d) Any person filing a false claim with the city for mileage or expenses as herein permitted is guilty of an infraction.

(Code 2002, § 1.604)

Sec. 2-110. Retiring officer to turn over books.

Any person having been an officer of the city shall, within five days after notification and request, deliver to his successor in office, all property, books and effects of every description in his possession belonging to the city or appertaining to his office; and upon his refusal to do so, shall be liable for all damages caused thereby, and guilty of an infraction.

(Code 2002, § 1.606)

Sec. 2-111. Administrative policy and procedure.

Each officer shall:

- (1) Perform all duties required of his office by law or ordinance and such other duties not in conflict as may be required by the city council.
- (2) Be immediately responsible to the city council for the effective administration of their departments and all activities assigned thereto.
- (3) Keep informed as to the latest practices in their particular field and shall inaugurate with approval of the city council such new practices as appear to be of benefit to the service and to the public.

- (4) Submit such reports of activities of their departments as the governing board may request.
 - (5) Be responsible for the proper maintenance of all city property and equipment used in their departments.
 - (6) Establish and maintain records in sufficient detail to furnish all information needed for proper activities and to form a basis for reports to the governing board.
 - (7) Cooperate with other officers, departments and employees.
 - (8) Have power to direct and supervise all department subordinates.
 - (9) Be available during the hours designated by the city council.
- (Code 2002, § 1.607)

Sec. 2-112. Adoption of personnel policies and procedures.

The personnel policies and procedures of the city shall be as set out in the city policy manual and shall include any future amendments as adopted by the council. A copy of the manual shall be on file with the city auditor.

(Code 2002, § 17.101)

Secs. 2-113—2-137. Reserved.

ARTICLE IV. FINANCE

Sec. 2-138. Enterprise funding.

The city will provide enterprise funding to the housing authority of the city to help finance renovation, remodeling and/or moving housing into the city limits.

(Code 2002, ch. 1, art. 10)

Secs. 2-139—2-159. Reserved.

ARTICLE V. PROCUREMENT

Sec. 2-160. Competitive bidding requirements.

Prior to August 1, 2019, when the estimated costs for the construction of a public improvement is in excess of \$150,000.00, competitive bidding is required. Beginning August 1, 2019, when the estimated costs for the construction of a public improvement is in excess of \$200,000.00, competitive bidding is required. All provisions and further amendments to N.D.C.C. § 48-01.2-02.1 are hereby incorporated herein by reference.

(Code 2002, § 1.701; Ord. No. 2019-03, § 1.701, 11-4-2019)

Sec. 2-161. Procedure.

Except as otherwise provided in this chapter, if the estimated cost for the construction of a public improvement is in excess of the threshold established under N.D.C.C. § 48-01.2-02.1, the city council shall advertise for bids by publishing for three consecutive weeks. The first publication of the advertisement must be at least 21 days before the date of the opening of bids. The advertisement must be published in the official newspaper of the political subdivision in which the public improvement is or will be located, in a daily newspaper having a general circulation in the area where the project is located, and in a trade publication, electronic plan service, builders exchange, or other industry-recognized method of general circulation among the contractors, building manufacturers, and dealers in the state, except the advertisement for a public improvement financed by special assessments need be published only once each week for two weeks in the official newspaper with the first publication being at least 14 days before the bid opening.

(Code 2002, § 1.702; Ord. No. 2019-03, § 1.702, 11-4-2019)

Sec. 2-162. Open market purchases; emergency.

When the city council decides by unanimous vote that an emergency requires the immediate purchase of supplies or contractual services, the purchases may be made in the open market without competitive bidding.

(Code 2002, § 1.703)

Sec. 2-163. Accounts against city to be in writing.

Accounts, claims and demands against the city for any property or services for which the city shall be liable, shall be made in writing and shall include an itemized statement of the property or services provided.

(Code 2002, § 1.704)

Sec. 2-164. Further verification may be required.

It is hereby provided that any officer of the city council before whom any bill, claim, account or demand against the city shall come for audit and approval may require to be furnished a statement made under oath, containing such other information as is deemed necessary for the further verification of any bill, claim, account or demand against the city, or any of its undertakings.

(Code 2002, § 1.705)

Sec. 2-165. Conveyance, sale, lease or disposal of property.

(a) Real property belonging to the city shall be conveyed, sold, leased, or disposed of only as approved of by a two-thirds vote of all members of the city council. Instruments affecting such conveyance, sale, lease or disposal shall be valid only when duly executed by the mayor and attested by the city auditor. Personal property shall be conveyed by a majority vote of all members of the city council.

(b) When the property to be disposed of, whether real property or personal property, is estimated by the city council to be of a value of less than \$50,000.00, such property may be sold at private sale upon the proper resolution of the city council. Real property of any value may be sold at private sale to a nonprofit development corporation for the purposes of residential development within the city if two-thirds of the members of the city council determine that such a private sale will benefit the future development and growth of the city. In all other cases, such property may be sold only at public sale or as provided under N.D.C.C. § 40-11-04.2 (Source: N.D.C.C. § 40-11-04). Bids for the purchase or lease of real property belonging to the city, whether or not advertisement therefor has been made, shall be made directly to the city council and submitted to the city auditor, who shall present any and all such bids to the city council at its next regularly scheduled meeting. When specific statutory provisions contained in the North Dakota Century Code provided for a procedure which is in conflict with this section, governing the conveyance, sale, lease or disposal of real property, this section shall supersede insofar as it is in conflict with such state law. Said statutory procedures include the following:

- (1) Lease of airports or landing fields, or portions thereof shall be under authority granted in N.D.C.C. § 2-02-15. Said lease shall further be in compliance with regulations and directives appropriate federal agencies.
 - (2) Conveyance of right-of-way for any state highway shall be as provided in N.D.C.C. § 24-01-46.
 - (3) Leasing of oil and gas lands shall be as provided in N.D.C.C. §§ 38-09-02 through 38-09-04 and §§ 38-09-14 through 38-09-20.
 - (4) Conveyance of property to a municipal parking authority shall be as provided in N.D.C.C. § 40-61-05.
 - (5) Lease of public buildings or portions thereof shall be as provided in N.D.C.C. ch. 48-08.
 - (6) Granting of concessions for cafes, restaurants and confectioneries in public buildings or on public grounds shall be as provided in N.D.C.C. ch. 49-09.
 - (7) Granting of right-of-way for a railway, telephone lines, electric light system or a gas or oil pipeline system shall be as provided in N.D.C.C. § 49-09-12.
- (Code 2002, § 1.706; Ord. No. 2021-03, § 1.706, 6-7-2021)

Sec. 2-166. Real property transfer requirements.

Except as explicitly provided for in section 2-165, the provisions of N.D.C.C. §§ 40-11-04.01 and 40-11-04.2 and all subsequent amendments shall be and are hereby incorporated by reference in this article.
(Code 2002, § 1.707)

Secs. 2-167—2-185. Reserved.

ARTICLE VI. BOARD AND COMMISSIONS

DIVISION 1. GENERALLY

Secs. 2-186—2-208. Reserved.

DIVISION 2. HOUSING AUTHORITY

Sec. 2-209. Mayor authorized to appoint members to city housing authority.

(a) The commissioners of the authority shall be appointed by the mayor as authorized by N.D.C.C. ch. 23-11.

(b) In the mayor's discretion, a city councilmember may serve on the city housing authority.

(Ord. No. 2023-03, art. 11, 5-1-2023)

Secs. 2-210—2-226. Reserved.

DIVISION 3. PLANNING COMMISSION

Sec. 2-227. Planning commission created.

The city council also acts as the planning commission for the city. The city engineer and the city attorney shall be ex officio members thereof.

(Code 2002, § 6.101)

Sec. 2-228. Terms, compensation, meetings, terms, compensation, meetings.

The terms of the members, their compensation, and meetings shall be as provided by N.D.C.C. ch. 40-48.

(Code 2002, § 6.102)

Sec. 2-229. Ex officio zoning commission.

The planning commission shall also serve as the zoning commission of the city to hold hearings, make reports and recommendations as to the boundaries of the various original districts and appropriate regulations to be enforced therein, and for changes in or supplements thereto. (Source: N.D.C.C. § 4-47-06)

(Code 2002, § 6.103)

Chapter 3

RESERVED

Chapter 4

ALCOHOLIC BEVERAGES

Article I. In General

- Sec. 4-1. Definitions.
- Sec. 4-2. Exceptions.
- Sec. 4-3. Special permit.
- Sec. 4-4. Sale of alcoholic beverages in gas stations, grocery stores and convenience stores.
- Sec. 4-5. Bottle clubs prohibited.
- Sec. 4-6. Equipment required for on-sale premises.
- Sec. 4-7. Closed or screened areas.
- Sec. 4-8. Toilets required.
- Sec. 4-9. Purchase from licensed wholesaler.
- Sec. 4-10. Deliveries off licensed premises.
- Sec. 4-11. Signs for bar exits and entrances regarding no carrying out of alcoholic beverages.
- Sec. 4-12. Sales to underage or intoxicated persons.
- Sec. 4-13. Underage persons in licensed premises.
- Sec. 4-14. Age identification.
- Sec. 4-15. Possession, purchasing, etc., by persons under 21 years of age.
- Sec. 4-16. Gambling prohibited; exceptions.
- Sec. 4-17. Prohibited forms of entertainment.
- Sec. 4-18. Street sales and consumption prohibited.
- Sec. 4-19. Hours and time of sale.
- Secs. 4-20—4-41. Reserved.

Article II. Licenses

- Sec. 4-42. Required.
- Sec. 4-43. Licenses, classes of; fees.
- Sec. 4-44. Fees, disposition of.
- Sec. 4-45. Application for liquor license.
- Sec. 4-46. Qualification for.
- Sec. 4-47. Location.
- Sec. 4-48. Application investigation.
- Sec. 4-49. Limit to one per applicant.
- Sec. 4-50. Granting.
- Sec. 4-51. Licensee's responsibility.
- Sec. 4-52. Terms.
- Sec. 4-53. Transfer.
- Sec. 4-54. Posting.
- Sec. 4-55. Termination or revocation.

ARTICLE I. IN GENERAL**Sec. 4-1. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alcoholic beverages means as provided in N.D.C.C. § 5-01-01.

Beer means as provided in N.D.C.C. § 5-01-01.

Club or lodge includes any corporation or association organized for civic, fraternal, social or business purpose or the promotion of sports, which has at least 200 members at the time of application for license.

Licensee means any person, firm, corporation, association or club which shall have secured a license pursuant to provisions of this chapter or their agent or employee.

Liquor means any alcoholic beverage except beer.

Off-sale means the sale of alcoholic beverages in original packages for consumption off or away from the premises where sold, and an off-sale license shall authorize the person named therein to conduct such off-sales only at the place designated in such license and not elsewhere, and shall not permit the opening of the package sold on the premises where sold. Such sale must in each case be completed by delivery of the liquor sold to the actual purchaser thereof on the licensed premises.

On-sale means the sale of alcoholic beverages for consumption only on the premises where sold, and an on-sale license shall authorize the licensee to conduct such on-sales only at the place designated in such license and not elsewhere.

Package or original package means and includes any container or receptacle containing an alcoholic beverage, which container or receptacle is corked or sealed by the manufacturer thereof and which cork or seal has not been removed or broken prior to the sale of such package to the purchaser.

Retail sale means the sale of alcoholic beverages for use or consumption and not for resale.

Sale or sell means all manner or means of furnishing alcoholic beverages, including the selling, exchange, barter, disposition of and keeping for sale of such alcoholic beverages.

Wine means as provided in N.D.C.C. § 5-01-01.
(Code 2002, § 8.601)

Sec. 4-2. Exceptions.

(a) This chapter shall not apply to wines delivered to priests, rabbis and ministers for sacramental use.

(b) This chapter shall not be construed to apply to the following articles, when they are unfit for beverage purposes:

- (1) Denatured alcohol produced and used pursuant to acts of Congress and the regulations thereunder.
- (2) Patent, proprietary, medical, pharmaceutical, antiseptic and toilet preparations.
- (3) Flavoring extracts, syrups and food products.
- (4) Scientific, chemical and industrial products; not to the manufacturer or sale of said articles containing alcohol.

(Code 2002, § 8.602)

Sec. 4-3. Special permit.

(a) In accordance with N.D.C.C. § 5-02-01.1, the city council may issue special permits to qualified alcoholic beverage licensees authorizing the sale of alcoholic beverages at special events designated by the permit. The term "qualified alcoholic beverage licensee" means an alcoholic beverage license holder of a license granted by the city, who is continuously paying the city sales and use tax.

(b) The permit may not be valid for a period of greater than two days and may include Sundays. The permit holder may only sell such beverages as allowed by the class of license held by the licensee. The permit may be issued for a location other than the primary place of business of the license holder. An application for a special permit shall include the name of the applicant, the time or period for which the permit is desired, the place where such specific event is to be conducted or held, whether the permit is requested for the sale of all alcoholic beverages, beer, wine or any combination thereof, and the hours during which sales will take place. Applications shall be submitted 30 days in advance of the first date for which the special permit is requested, however, the city council may, in its discretion, waive the 30-day period. The city council may, in its discretion, establish such conditions as it deems appropriate for the issuance of a special permit.

(c) The fee for a special permit shall be in the amount established by resolution.
(Code 2002, § 8.616.2)

Sec. 4-4. Sale of alcoholic beverages in gas stations, grocery stores and convenience stores.

Before a city retail off-sale alcoholic beverage license may be issued to a person whose business to be licensed is located in a building that is primarily a gas station, grocery store, or convenience store, the licensed premises must fully comply with N.D.C.C. § 5-02-02.1.
(Code 2002, § 8.616.3)

Sec. 4-5. Bottle clubs prohibited.

Any person operating an establishment whereby persons are allowed to bring their own alcoholic beverages on the premises where the proprietor sells soft drinks, mix, ice, or charges for bringing such beverages on the premises, are guilty of an offense.

(Code 2002, § 13.411)

Sec. 4-6. Equipment required for on-sale premises.

Premises licensed hereunder for on-sale alcoholic beverages shall be equipped with tables, chairs, booths and stools in a sufficient number to accommodate reasonably the patrons.

(Code 2002, § 8.623)

Sec. 4-7. Closed or screened areas.

No premises licensed for on-sale alcoholic beverages shall contain any side rooms, closed booths or other screened enclosures nor shall any screen, partition, curtain, blind or obstruction of any kind prevent a clear view at all times of all parts of the interior of the premises licensed. All booths located in such premises shall open directly into the main part of said premises and shall be accessible from the aisles therein.

(Code 2002, § 8.624)

Sec. 4-8. Toilets required.

Premises where an on-sale license is granted must be equipped with adequate and sufficient lavatories and toilets, separately maintained for men and women, and kept in a clean and sanitary condition. The on-sale license may be revoked when the foregoing requirements, or any other health ordinance or regulation, are not at all times strictly observed.

(Code 2002, § 8.626)

Sec. 4-9. Purchase from licensed wholesaler.

No licensee hereunder shall purchase, have or possess any alcoholic beverages other than those purchased from a wholesaler duly licensed by the state pursuant to the provisions of N.D.C.C. title 5. Each licensee hereunder shall keep on file all invoices covering purchases by him of such alcoholic beverages showing the name and license number of the wholesaler. Such record shall be retained in the possession of the licensee and shall be at all times open to inspection by any police officer or peace officer of the state.

(Code 2002, § 8.625)

Sec. 4-10. Deliveries off licensed premises.

(a) It shall be unlawful for any person, firm or corporation engaged in the retail sale of liquor, beer or alcoholic beverages to make, or cause to be made any deliveries outside of the licensed place of business of beer, liquor or other alcoholic beverages to any purchaser or prospective purchaser.

(b) It shall be unlawful for any person, firm or corporation to deliver by foot, carrier or motor carrier, any beer, liquor or alcoholic beverage to any person within the city limits; provided, however, that this section shall not apply to deliveries made by a licensed wholesaler dealer to a licensed retail dealer.

(Code 2002, § 8.627)

Sec. 4-11. Signs for bar exits and entrances regarding no carrying out of alcoholic beverages.

(a) Bars within the city shall post a conspicuous sign on entrances and exits stating that no person shall leave the premises with an open container of alcoholic beverages. Such sign must include the words "open alcoholic beverage containers are not permitted to be removed from premises by order of section 4-18 of the Harkinson Code of Ordinances" in letters at minimum one-half inch tall, printed on white metal sign 12 inches by 18 inches or larger, and the word "warning" printed in bold black letters at minimum 1½ inches tall on red background or bold red letters on white background, and be posted conspicuously on entrance and exit doors of each establishment with liquor license no less than four feet from bottom of door and no higher than seven feet from bottom of door.

(b) The city will provide the signs which are the responsibility of liquor license holders to attach to entrance and exit doors upon receipt of signs.

(Code 2002, ch. 8, art. 6, att.; Ord. No. 2009-02, 5-4-2009)

Sec. 4-12. Sales to underage or intoxicated persons.

(a) Any individual knowingly delivering alcoholic beverages to an individual under 21 years of age, except as allowed under N.D.C.C. § 5-02-06, or to an incompetent or an obviously intoxicated individual is guilty of a misdemeanor, subject to N.D.C.C. §§ 5-01-08, 5-01-08.1, and 5-01-08.2.

(b) An individual under 21 years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under 21 years of age was in need of medical assistance due to alcohol consumption, provided assistance to the individual in need of medical assistance until assistance arrived and remained on the scene and cooperated with medical assistance and law enforcement personnel on the scene, or was the individual in need of medical assistance. The maximum number of individuals that may be immune for any one occurrence is five individuals.

(c) If an individual is convicted of this section for delivering alcoholic beverages to an individual under 21 years of age, the court shall consider the following in mitigation:

- (1) After consuming the alcohol, the underage individual was in need of medical assistance as a result of consuming alcohol; and

- (2) Within 12 hours after the underage individual consumed the alcohol, the defendant contacted law enforcement or emergency medical personnel to report that the underage individual was in need of medical assistance as a result of consuming alcohol.

(Code 2002, § 8.619)

Sec. 4-13. Underage persons in licensed premises.

(a) Except as permitted in this section, a licensee who dispenses alcoholic beverages to an individual under 21 years of age, or who permits an individual under 21 years of age to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of a misdemeanor, subject to N.D.C.C. §§ 5-01-08, 5-01-08.1, and 5-01-08.2.

(b) An individual under 21 years of age may enter and remain on a licensed premises while alcohol is being sold or displayed, at the discretion of the owner of the licensed premises, if:

- (1) The individual is accompanied by a parent or guardian who is 21 years of age or older. For purposes of this section, the term "guardian" means an individual who has the legal responsibility for the health and well-being of the individual under 21 years of age;
 - (2) The individual is on the premises to consume a meal or in an emergency situation;
 - (3) The premises serves at a tabletop food that is prepared in a kitchen with at least an indoor grill;
 - (4) The individual is not on the licensed premises after 10:00 p.m.; and
 - (5) The owner of the licensed premises receives permission of the city council for individuals to be on the premises as allowed under this section.
- (c) (1) At the discretion of the owner of the licensed premises, an individual under 21 years of age may be permitted to enter and remain in a restaurant where alcoholic beverages are being sold and in the area of the restaurant designated for the opening or mixing of alcoholic beverages if the individual:
- a. Is accompanied by a parent or guardian;
 - b. Is not seated at or within three feet of the bar counter; and
 - c. Does not enter or remain in the designated area after 10:00 p.m.
- (2) At the discretion of the owner of a brewer taproom licensed under N.D.C.C. § 5-01-21, an individual under 21 years of age may be permitted to enter and remain in the brewer taproom if:
- a. The brewer taproom is connected to or contracts with an establishment, including a mobile food unit, at which food is prepared and available for purchase to be consumed in the brewer taproom and which is connected to or located at the brewer taproom and receives the majority of its gross sales from the sale of food; and

b. The individual:

1. Is accompanied by the individual's parent or guardian;
2. Is not seated at or within three feet of the bar counter; and
3. Does not enter or remain in the brewer taproom after 10:00 p.m. or during any time that food is not available for consumption as provided in subsection (c)(2)a of this section.

(3) An individual under 21 years of age may be permitted to remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the designated area in which alcoholic beverages are opened or mixed and gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area, or if the individual is employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of an individual 21 years of age or older and is not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages.

(4) For purposes of this subsection (c), the term "mobile food unit" means a vehicle-mounted food service establishment designed to be readily movable from which a vendor prepares, cooks, sells, or serves food or beverages for immediate consumption.

(d) An individual under 21 years of age may enter and remain on the licensed premises if the individual is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages; if the individual is a law enforcement officer or other public official who enters the premises in the performance of official duty; or if the individual enters the licensed premises for training, education, or research purposes under the supervision of an individual 21 or more years of age with prior notification of the local licensing authority.

(e) An individual under 21 years of age may attend an event where alcoholic beverages are sold in accordance with the conditions of an event permit issued pursuant to N.D.C.C. § 5-02-01.1.

(f) A restaurant may employ an individual who is 18 years of age or older but under 21 years of age as provided in subsection (c) of this section to serve and collect money for alcoholic beverages, if the individual is under the direct supervision of an individual 21 or more years of age, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages. Any establishment that sells alcoholic beverages may employ an individual from 18 to 21 years of age to work on the premises as a musician, disc jockey, or entertainer, or to perform duties directly related to working as a musician, disc jockey, or entertainer if the individual is under the direct supervision of an individual 21 or more years of age.

(g) For purposes of this section, an individual is not 21 years of age until 8:00 a.m. on that individual's 21st birthday.

(h) If an individual is convicted of this section, the court shall consider the following in mitigation:

- (1) After consuming the alcohol, the underage individual was in need of medical assistance as a result of consuming alcohol; and
- (2) Within 12 hours after the underage individual consumed the alcohol, the defendant contacted law enforcement or emergency medical personnel to report that the underage individual was in need of medical assistance as a result of consuming alcohol.

(Code 2002, § 8.620)

Sec. 4-14. Age identification.

Any person who shall misrepresent or misstate his age or the age of any other person, or shall misrepresent his age through presentation of any document purporting to show that person to be of legal age to purchase alcoholic beverages is guilty of an offense. Before selling alcoholic beverages to any person, or before determining whether any person shall remain upon the licensed premises a licensee, his agent or employee may require a statement in writing and signed by said person of such person's ages. Any licensee may keep a book and may require anyone who has shown documentary proof of his age, which substantiates his age to allow the purchase of alcoholic beverages, to sign the book if the age of that person is in question. The book must show the date of the purchase, the identification used in making the purchase and the appropriate numbers of such identification, the address of the purchaser, and the purchaser's signature. Any person who makes a false statement as to his or her age, or signs a name other than his own or her own to any such statement, shall be guilty of a violation of this chapter.

(Code 2002, §§ 8.621, 13.410)

Sec. 4-15. Possession, purchasing, etc., by persons under 21 years of age.

Any person under 21 years of age manufacturing or attempting to manufacture alcoholic beverages, purchasing or attempting alcoholic beverages, consuming or having recently consumed alcoholic beverages other than during a religious service, being under the influence of alcoholic beverages, or being in possession of alcoholic beverages, or furnishing money to any person for such purchase, or entering any licensed premises where alcoholic beverages are being sold or displayed is guilty of an offense. The court may, under this section, refer the person to an outpatient addiction facility licensed by the state department of human services for evaluation and appropriate counseling or treatment. The offense of consumption occurs where consumption takes place or where the offender is arrested. For purposes of this section, possession means the power and capability to exercise dominion and control over the alcoholic beverage.

(Code 2002, § 13.409)

Sec. 4-16. Gambling prohibited; exceptions.

No licensee hereunder shall be permitted to have or maintain on the licensed premises any gambling device, slot machine, punch board or any other machine or device of similar nature, nor shall gambling whether by cards, dice or otherwise, of any nature, be permitted upon the licensed premises. Any violation of this section shall be sufficient cause for the revocation of the license issued hereunder, and such license shall be revoked upon conviction of any such violation. This section shall not apply to gambling or games of chance conducted by a licensee under the authority of a valid and subsisting permit issued by the city council or license issued by the state.

(Code 2002, § 8.617)

Sec. 4-17. Prohibited forms of entertainment.

Regardless of class of liquor license, no liquor license holder within the city shall feature or permit entertainment which contains:

- (1) The performance of acts, demonstrations, dance or exhibition or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law, whether by an entertainer or by any patron.
- (2) The depiction or display of human genitals or pubic region, buttocks, or the nipple or any portion of the female breast at or below the nipple or areola.
- (3) No person shall disrobe, undress, dress or change his or her clothes in public view.
- (4) The depiction or display of any device, costume or covering which gives the appearance of or simulates genitals, pubic hair, buttocks, anal region or the female breast at or below the areola thereof.

(Code 2002, § 8.617.1)

Sec. 4-18. Street sales and consumption prohibited.

The sale or consumption of any alcoholic beverages upon or across any sidewalk, street, alley or public way is prohibited unless a special permit has been obtained therefor from the city council.

(Code 2002, § 8.622)

Sec. 4-19. Hours and time of sale.

Anyone who dispenses or permits the consumption of alcoholic beverages on a licensed premises after 1:00 a.m. on Sundays, before 8:00 a.m. on Mondays or between the hours of 1:00 a.m. and 8:00 a.m. on all other days of the week or who dispenses or permits such consumption after 1:00 a.m. on Christmas Day, or after 6:00 p.m. on Christmas Eve is guilty of an offense. In addition, a person may not provide off sale after 1:00 a.m. on Thanksgiving Day. Anyone licensed by the city council to sell alcoholic beverages may apply to the city council for a permit to sell alcoholic beverages under that license during the hours from

11:00 a.m. on Sundays to 1:00 a.m. on Mondays. The authority for issuing the permit rests solely with the city council. The fee for this permit shall be set by resolution of the city council. Any licensee wishing to dispense or permit the consumption of alcoholic beverages between the hours of 11:00 a.m. on Sunday and 1:00 a.m. on Monday may apply for a Sunday alcoholic beverage permit from the city council.

(Code 2002, § 8.615)

Secs. 4-20—4-41. Reserved.

ARTICLE II. LICENSES

Sec. 4-42. Required.

No person shall sell at retail within the city limits any alcoholic beverage without first having obtained a license therefor as herein provided. This section shall not apply to public carriers engaged in interstate commerce. This section does not apply to a nonprofit organization that sells an alcoholic beverage as part of a fundraising activity. As used in this section, the term "fundraising activity" includes an auction, raffle, or other prize contest for which consideration is given. If the alcoholic beverage is sold as part of a fundraising event, the sale may not be for consumption at that event.

(Code 2002, § 8.603)

Sec. 4-43. Licenses, classes of; fees.

(a) The fees for the following class of licenses shall be established by resolution adopted by the city council:

- (1) On and off sale liquor, beer, and wine license.
- (2) Off sale liquor, beer, and wine license.
- (3) Club or lodge on-sale liquor, beer, and wine license (Friday and Saturday only).
- (4) On and off sale beer and wine license.
- (5) On and off sale beer license.
- (6) On and off sale alcoholic beverages producers license.

(b) All fees due and payable for all any license under this article shall be paid at the time the application for the license is made.

(Ord. No. 2022-03, § 8.604, 12-5-2022; Ord. No. 2024-02, § 8.604, 6-3-2024)

Sec. 4-44. Fees, disposition of.

All license fees collected under this article shall be transferable to the city auditor and credited to the general fund of the city.

(Code 2002, § 8.614)

Sec. 4-45. Application for liquor license.

Any person desiring a license to sell alcoholic beverages at retail as hereinbefore described shall make and present a written verified application to the city council, filed with the city auditor, containing the following information:

- (1) The name and address of the applicant; if the applicant is a co-partnership, the name and address and place of residence of each member of said co-partnership; if the applicant is a corporation, the name and address of the officers of the corporation and the manager of the licensed premises.
- (2) Whether the applicant is a citizen of the United States, and if a naturalized citizen, the date and place of naturalization and place of residence of the applicant for a period of one year last preceding the date of application; if the applicant is a co-partnership, the same preceding information for each member of said co-partnership; and, if the applicant is a corporation, the date of incorporation, the state where incorporated, the purpose for which said corporation was incorporated and if such corporation is a subsidiary of any corporation, the name of the parent corporation.
- (3) The legal description and the address of the premises for which license is sought.
- (4) The date on which the applicant acquired title to the premises sought to be licensed, and, if the applicant does not have title to said premises, the name and address of the owner of the premises, together with a copy of the applicant's lease, if written, under which he holds possession of said premises.
- (5) Whether there are any delinquent taxes against the premises sought to be licensed.
- (6) Whether the applicant has ever engaged in the sale or distribution of alcoholic beverages prior to this application and, if so, the date and type of business and place where so engaged whether within or without the state, the date the applicant first began to operate.
- (7) Whether the applicant has ever had a license revoked or cancelled by a municipal, state or federal authority and, if so, the date of such cancellation, the place and authority canceling the same and the reason for such cancellation.
- (8) Whether the applicant has ever been convicted of the violation of any law of the United States or of any state, or of the violation of any local ordinance with regard to the manufacture, sale, distribution or possession of alcoholic beverages, and if so, the dates, names of place and courts in which said convictions were had.
- (9) Whether the applicant has ever had a license for the sale of alcoholic beverages revoked for any violation of state laws or local ordinances and, if so, the names of the bodies revoking such license, the dates of such revocation and the reasons assigned therefor.

- (10) Whether the applicant has ever been convicted of any other crime than stated in the subsections (8) and (9) of this section, in the state or any other state, or under any federal law and, if so, the date of such conviction, the name of the crime for which convicted, the amount and terms of sentence passed and the court in which convicted.
 - (11) The name and address and the place of residence for a period on one year prior to the date of application of any person who will have charge, management or control of the establishment for which license is sought.
 - (12) Whether any other person than the applicant has any right, title, estate or interest in the leasehold or in the furniture, fixtures or equipment in the premises for which license is sought and, if so, the name and address of such person together with a statement of the interest so held.
 - (13) Whether the applicant has any interest whatsoever directly or indirectly, in any other establishment dispensing alcoholic beverages, either at wholesale or retail, within or without the state and, if so, the names and addresses of such establishments. This provision is meant to include the holders of capital stock in any corporation dealing in alcoholic beverages, either at wholesale or retail, within the borders of the United States.
 - (14) The occupations that the applicant has followed during the past five years.
 - (15) The names and addresses of at least three business references.
 - (16) Whether the applicant is rated by any commercial agency and, if so, the name and address of said agency.
 - (17) Whether the applicant is engaged in any other business or intends to be engaged in any other business than the sale of alcoholic beverages under the license for which application is made and, if so, the type of business, and if an employee, the name and address of the employer.
 - (18) The classification of license applied for.
 - (19) If the applicant is a lodge or club, the date of organization, the number of members, the purpose for which organized and the purpose for which profits to be derived from the sale of alcoholic beverages are to be applied; and, whenever required by the city council, a list of the members belonging to such lodge or club.
 - (20) A statement by the applicant that he consents to entry and inspection of the premises for which license is sought or any part thereof at any time by any police officer, sheriff or any peace officer of the city or of the state.
- (Code 2002, § 8.607)

Sec. 4-46. Qualification for.

No retail license shall be issued to any person unless applicant shall file a sworn application, accompanied by the required fee, showing the following qualifications:

- (1) The applicant, other than an organization, must be a legal resident of the United States and be a person of good moral character.

(2) If the applicant is:

a. A corporation, then:

1. The manager of the licensed premises and the officers and directors must be legal residents of the United States and persons of good moral character; and
2. The shareholders:
 - (i) Who are individuals, must be legal residents of the United States and of good moral character; and
 - (ii) Which are organizations, must meet the requirements of this section for applicants which are organizations.

Corporate applicants must first be properly registered with the secretary of state.

b. A limited liability company, then:

1. The manager of the licensed premises and the managers and governors must be legal residents of the United States and of good moral character.
2. The members:
 - (i) Who are individuals, must be legal residents of the United States and of good moral character; and
 - (ii) Which are organizations, must meet the requirements of this section for applicants that are organizations.
3. The applicant must first be properly registered with the secretary of state.

c. A limited partnership, then:

1. The manager of the licensed premises must be a legal resident of the United States and of good moral character.
2. The general partners and limited partners:
 - (i) If individuals, must be legal residents of the United States and of good moral character; and
 - (ii) If organizations, must meet the requirements of this section for applicants that are organizations.
3. The applicant must first be properly registered with the secretary of state.

d. A general partnership, then:

1. The manager of the licensed premises must be a legal resident of the United States and of good moral character; and
2. The partners:
 - (i) Who are individuals, must be legal residents of the United States and of good moral character; and
 - (ii) Which are organizations, must meet the requirements of this section for applicants that are organizations.

e. A limited liability partnership, then:

1. The manager of the licensed premises must be a legal resident of the United States and of good moral character; and
2. The partners:
 - (i) Who are individuals, must be legal residents of the United States and of good moral character; and
 - (ii) Which are organizations, must meet the requirements of this section for applicants that are organizations.

Limited liability partnership applicants must first be properly registered with the secretary of state.

- (3) The applicant or manager must not have been convicted of an offense determined by the attorney general to have a direct bearing upon an applicant's or manager's ability to serve the public as an alcoholic beverage retailer, or, following conviction of any offense, is determined not to be sufficiently rehabilitated under N.D.C.C. § 12.1-33-02.1.
- (4) The building in which business is to be conducted must meet local and state requirements regarding the sanitation and safety.
- (5) The applicant for a state license must have first secured a local license.
- (6) The city council may require the applicant to set forth such other information in the application as necessary to enable it to determine if a license should be granted.
- (7) The applicant may not have any financial interest in any wholesale alcoholic beverage business.

(Code 2002, § 8.606)

Sec. 4-47. Location.

No license shall be issued or transferred to any person, firm or corporation to engage in the sale of beer or alcoholic beverages within the city without approval as to the location of said licensed business by the governing board. The application for approval shall be in writing and shall be filed with the board. At the time of hearing, the board shall, in its discretion, determine if said location is in harmony with the public interest and welfare of the community and shall consider among other things the following factors:

- (1) The convenience of police regulations.
- (2) Public health and sanitation.
- (3) Proximity of other licensed businesses.
- (4) Proximity of schools, churches, funeral homes, public buildings or buildings used by or for minors.
- (5) Any protest of neighboring property owners or occupants.
- (6) Zoning regulations.

- (7) Proposed on or off sale or both licensee.
 - (8) Interference with or proximity to residential property.
 - (9) Interference with neighboring property.
 - (10) Suitability of premises for sale of beer, liquor or alcoholic beverages.
 - (11) Public convenience and necessity.
- (Code 2002, § 8.609)

Sec. 4-48. Application investigation.

The chief of police or such other person or officer as may be designated by the city council shall, upon the filing of an application, investigate the facts as stated in the application and the character, reputation and fitness of the applicant and shall report on said matters to the city council.

(Code 2002, § 8.608)

Sec. 4-49. Limit to one per applicant.

Not more than one license of each classification shall be issued or granted to any applicant; and each license shall be valid only for the specific premises licensed.

(Code 2002, § 8.611)

Sec. 4-50. Granting.

After the city council has received the application as provided herein, they shall meet and consider the same. If they find that the applicant meets the qualifications for a license and are satisfied as to the completeness and the accuracy of the information contained in the application, they may grant the license. If they find that the applicant does not meet with the qualifications or they are not satisfied as to the completeness or accuracy of the information, they may request that the applicant supply more verified information to the city council or they may reject the application.

(Code 2002, § 8.610)

Sec. 4-51. Licensee's responsibility.

Every licensee is hereby made responsible for the conduct of his place of business and is required to maintain order and sobriety in such place of business, permitting no disorderly conduct on the premises. Alcoholic beverages shall not be served to any intoxicated person nor shall any intoxicated person be permitted to remain upon the premises.

(Code 2002, § 8.616)

Sec. 4-52. Terms.

(a) All licenses issued hereunder shall be for a period of not more than one year and shall expire on June 30 in each year. Where a license is granted for a period less than one year, any subsequent renewal thereof must be made for the full annual term.

(b) If an application is made for license hereunder during the license year for the unexpired portion of such year, the fees for said license shall be proportional to represent the number of whole months in which said license will be in effect.

(Code 2002, § 8.605)

Sec. 4-53. Transfer.

No license under the provisions of this article shall be transferable and any attempt to do so shall constitute a violation of the provisions of this article.

(Code 2002, § 8.613)

Sec. 4-54. Posting.

License issued hereunder shall be posted in a conspicuous place in the premises for which the license has been issued.

(Code 2002, § 8.612)

Sec. 4-55. Termination or revocation.

(a) Licenses issued pursuant to this article shall be deemed cancelled and revoked and terminated upon the happening of any one or more of the following contingencies:

- (1) The death of the licensee, unless, upon application to the city council by personal representative of the decedent, the city council shall consent to the carrying on of the business by the personal representative.
- (2) When the licensee ceases business at the location licensed, unless a new location has been approved.
- (3) When the licensee is adjudged bankrupt.
- (4) When the licensee has been convicted of the violation of any provision of this article, or of the laws of the state pertaining to alcoholic beverages or of a felony under the laws of the United States, the state or of any other state of the United States.
- (5) When the licensee ceases to possess the qualifications required of an applicant for a license as set out in this article.
- (6) When the license or permit of the licensee from the United States government or the state to sell alcoholic beverages at the location licensed has been terminated or been revoked.
- (7) When the licensee ceases to be a legal bona fide resident and citizen of the state.

(b) License issued pursuant to this article may, in the discretion of the city council, be either revoked or suspended for such period of time as deemed appropriate, upon the following grounds:

- (1) When the licensee has been convicted of violating any of the provisions of this article.

- (2) When the business of the licensee at the location licensed shall be conducted in violation of health or sanitary regulations or other ordinances of the city.
- (3) When the licensee, if an individual, or one of the partners, if the licensee is a partnership, or one of the officers or the manager, if the licensee is a corporation, is convicted in the municipal court of the city of drunkenness or disorderly conduct, or if any appeal is taken from such conviction when such conviction is sustained by the higher court.

(c) Such causes as are hereinbefore detailed shall not be deemed to be exclusive and such license may also be cancelled and revoked or suspended at any time by the city council for any cause deemed by the city council to be sufficient cause and justified by reason of public health or public morals. Such termination shall be subject only to review by the courts of the state.

(d) When any license is terminated or revoked for cause, or the licensee voluntarily ceases his business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through him.

(Code 2002, § 8.628)

Chapter 5

RESERVED

Chapter 6

ANIMALS

- Sec. 6-1. Purpose.
- Sec. 6-2. Definitions.
- Sec. 6-3. General provisions.
- Sec. 6-4. Inspection.
- Sec. 6-5. Keeping animals in an unhealthy/unsanitary manner.
- Sec. 6-6. License and registration required; limitation of total cats and dogs allowed.
- Sec. 6-7. Time to license dogs or cats.
- Sec. 6-8. Animal must have collar with rabies tag and license tag attached.
- Sec. 6-9. Register or list to be kept by city auditor.
- Sec. 6-10. Unlicensed dogs and cats procedure.
- Sec. 6-11. Running at large prohibited; vicious animals; rabies.
- Sec. 6-12. Public nuisance.
- Sec. 6-13. Impounded animals—Procedure for impounding unlicensed dog or cat.
- Sec. 6-14. Impounded animals—Notice to owner and redemption.
- Sec. 6-15. Impounded animals—Disposition of unclaimed or infected dogs and cats.
- Sec. 6-16. Muzzling.
- Sec. 6-17. Rabies; notice to police required.
- Sec. 6-18. Trespassing dogs or cats may be taken up by owner or occupant of property.
- Sec. 6-19. Setting dogs or cats at large.
- Sec. 6-20. Accumulation of animal excrement.
- Sec. 6-21. Cruelty to animals.
- Sec. 6-22. Keeping of certain animals prohibited.
- Sec. 6-23. Strays.
- Sec. 6-24. Prohibited barking and annoying dogs or cats.
- Sec. 6-25. Procedure of person receiving citations on any violations involving animals to include dogs or cats.
- Sec. 6-26. Alternative actions available; violation an infraction; continuing violations a misdemeanor.

Sec. 6-1. Purpose.

It is the purpose of this chapter to promote the public health, safety, comfort and general welfare of the city through the proper control and care of animals by their owners; and to encourage animal owners to have their pets neutered or spayed in order to minimize the unwanted pet population.

(Code 2002, § 11.101)

Sec. 6-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Altered animal means any animal that has been operated on to prevent it from procreating.

Animal includes every living animal except the human race.

Dangerous animal includes any animal that:

- (1) When unprovoked, inflicts bites on a human or a domestic animal either on public or private property;
- (2) Has a history, documented with a public agency of biting or attacking humans or domestic animals;
- (3) Has known propensity, tendency or disposition to attack, to cause injury, or otherwise threaten or endanger the safety of humans or domestic animals; or
- (4) Is not properly vaccinated for rabies.

Kennel means any person, group of persons, partnerships or corporation engaged in breeding animals.

Owner means a person having the right of property or custody of an animal, who keeps or harbors an animal or knowingly permits an animal to remain on or about any premises occupied by that person.

Public nuisance includes the following:

- (1) Any animal which interferes with a passerby or a passing vehicle.
- (2) Any animal which attacks another animal or person.
- (3) Any animal which trespasses on school grounds.
- (4) Any animal which runs at large or unrestrained.
- (5) Any animal which damages private or public property.
- (6) Any animal which barks, whines, howls or makes other sounds common to its species in an excessive or continuous manner.

(7) Any foul or obnoxious odors resulting from the accumulation of excrement or other waste materials from an animal and which is offensive to surrounding residents.
(Code 2002, § 11.102)

Sec. 6-3. General provisions.

(a) Any person within the boundaries of the city owning, keeping, harboring, or having custody of a dangerous animal, as defined in this chapter, will confine the animal within a building or secure enclosure and shall not take such animal out of such building or secure enclosure unless such animal is restrained.

(b) Duly authorized members of a law enforcement agency, including, but not limited to, sheriffs, deputy sheriffs, police officers, high patrol officers, game wardens, conservation officers and other law enforcement officers while on official duty, shall be exempt from the provisions of this section for any working animal utilized in the performance of their official duties.

(c) When, in the judgment of any court, an animal should be destroyed for humane reasons, such animal may not be redeemed.
(Code 2002, § 11.103)

Sec. 6-4. Inspection.

(a) Whenever it is necessary to make an inspection to enforce any of the provisions of or perform any duty imposed by this chapter or when there is reasonable cause to believe that there exists in any building or upon any premises any violation of this chapter or the North Dakota Century Code, the sheriff or any other law enforcement agency is authorized at all reasonable times to inspect the same for compliance with the provisions of this chapter, or any state law, provided that:

- (1) If the property is occupied, the law enforcement officer shall first present proper credentials to the occupant and request entry explaining the reasons therefor.
- (2) If entry is refused by the owner or other persons having control of the property, the law enforcement officer shall secure a search warrant to inspect said premises.

(b) If the property is unoccupied, the law enforcement officer shall make a reasonable effort to locate the owner or other persons having control of the property and request entry explaining the reasons therefor.

- (1) If the owner or other persons having control of the property cannot be located, the law enforcement officer may enter any out building except the residence without a search warrant for purposes of inspecting the same for compliance with the provisions of this chapter, or any state law regarding the animals.
- (2) The law enforcement officer shall secure a search warrant to inspect said residence unless the law enforcement officer has reasonable cause to believe that the keeping or maintaining of an animal is so hazardous, unsafe or dangerous as to require immediate inspection to safeguard the animal, public health or safety. In such cases,

the law enforcement officer may exercise such reasonable force as to gain access to the property for the purpose of inspecting same for compliance with the provisions of this chapter, or any state law regarding animals.

(Code 2002, § 11.104)

Sec. 6-5. Keeping animals in an unhealthy/unsanitary manner.

It is a public nuisance, for any owner to keep any animal in a manner that is unsanitary or unhealthful. Where the law enforcement officer finds probable cause to believe that a situation is occurring where an owner is keeping any animal in an unsanitary or unhealthful manner, it may do any or all of the following:

- (1) Secure a search warrant to inspect premises to determine if unsanitary or unhealthful situation exists.
- (2) Order the owner in writing to immediately abate any unsanitary or unhealthful situation by:
 - a. Removing any and all diseased or dead animals for treatment or disposal, as appropriate;
 - b. Cleaning up and removing any and all urine, feces or other material of an unsanitary nature; or
 - c. Taking any and all additional steps necessary to ensure the complete abatement of the unsanitary and unhealthful situation.
- (3) In the event the owner fails to comply with the written order to abate for this section, the law enforcement officer may do any of the following:
 - a. Issue a citation or summons;
 - b. File a complaint charging the owner with a violation of this chapter; or
 - c. Institute legal action through the state's attorney for injunctive and/or other appropriate relief to forthwith abate the public nuisance.

(Code 2002, § 11.105)

Sec. 6-6. License and registration required; limitation of total cats and dogs allowed.

(a) All dogs and cats over the age of 90 days, male or female, not vicious or dangerous, kept or maintained by their owners in the city shall be licensed on or before March 1 of each calendar year. Dog and cat licenses shall be issued by the collecting authority upon payment of an annual license fee. The city council may designate (and modify) the collecting authority and annual license fee by resolution. The owner shall state at the time application is made for such license his name and address and the breed, color, sex of the animal, date of rabies inoculation of the animal, and whether or not the animal is neutered, spayed or de-sexed. A license shall not be issued unless proof is presented that the dog or cat has been inoculated against rabies within 24 months preceding the application. The licensing provision of the section shall not apply to dogs or cats brought into the city for the purpose of participation

in any dog or cat show, nor to assistance dogs properly trained to assist blind persons when such dogs are actually kept for use by blind persons for the purpose of aiding them in going from place to place, nor to dogs owned by the city or any other political subdivision and used for law enforcement purposes.

(b) The number of cats and dogs allowed by an owner shall be six of which there shall be a maximum of four dogs.

(Code 2002, § 11.106)

Sec. 6-7. Time to license dogs or cats.

Dog and cat license shall be secured immediately after January 1 of each year and shall be in force from and after the date of procurement until January 1 thereafter, when a new license must be paid for and secured. Said license shall be canceled unless the records of the city auditor contain written evidence that a dog or cat has been inoculated against rabies at least once every two years. If license is not obtained by March 1 of each year, a late penalty fee, as set by resolution by the city council, will be added to the license fee. An owner who fails to comply will be issued a warning citation by law enforcement officer and be guilty of an infraction.

(Code 2002, § 11.107)

Sec. 6-8. Animal must have collar with rabies tag and license tag attached.

Upon payment of the license fee, there shall be issued to the owner a metallic tag for each dog so licensed and a receipt. The tag shall be numbered from one up, consecutively, and shall have stamped thereon the year it was issued and shall be valid for calendar year January 1 through December 31 regardless of date of issuance. Each owner shall be required to provide each dog or cat with a collar to which the license tag must be affixed. Collars and tags must be constantly worn. In case a tag is lost or destroyed, a duplicate will be issued upon presentation of a receipt showing the payment of the license fee for the current year and the payment of a receipt showing the payment of a fee for such duplicate said fee to be set by the city council by resolution. Tags shall not be transferable from one animal to another, and no refunds shall be made on any license fee because of death of the animal or the owner's leaving the city before expiration of the license period. The metal rabies inoculation tag shall also be kept affixed to the collar of dogs and cats at all times. The provisions of this section shall not apply to dogs owned by the city or any other political subdivision and used for law enforcement purposes.

(Code 2002, § 11.108)

Sec. 6-9. Register or list to be kept by city auditor.

It is hereby made the duty of any person who may be designated by the city auditor of said city to list in a listing book to be prepared at the expense of the city and furnished to the law enforcement agent in which such person shall enter the name of the owner or keepers of all dogs and cats in the city, the number of the house and street where owned or kept, the sex

thereof and the amount of license thereon, as hereinbefore provided, and also the color of all such dogs and cats and such other descriptions identifying such dogs and cats as may be convenient.

(Code 2002, § 11.109)

Sec. 6-10. Unlicensed dogs and cats procedure.

Any unlicensed dog or cat running at large within the city, or found upon any of the public grounds or streets of the city will be picked up by the county sheriff's department and transported to the veterinary clinic as contracted with the city. Costs incurred will be charged to the owner of the dog or cat and shall include costs for any and all shots, boarding, licensing and fines before an animal is released to the owner. If the owner is not known, the city will be responsible for boarding expenses. Law enforcement officers shall make known to the city information on any and all animals at large captured and transported to veterinary clinic whether the owner is known or not.

(Code 2002, § 11.110)

Sec. 6-11. Running at large prohibited; vicious animals; rabies.

(a) Every person having the custody or control of any dog or cat shall prevent said animal from leaving the property limits of its owner or keeper without being effectively restrained by a chain or leash not exceeding six feet in length or within a vehicle being driven or parked on the street. In the event any such dog or cat is found at large, the owner, custodian or keeper of such animal shall be guilty of a violation of this section.

(b) Every person having custody or control of a leashed animal on property other than his own shall collect said animal's solid waste when eliminated.

(c) Every female dog or cat in heat shall be kept confined in a building or secure enclosure or in a veterinary hospital or boarding kennel in such manner that such dog or cat cannot come in contact with another dog or cat except for breeding purposes.

(d) Every person having custody or control of a dog shall prevent said dog, whether or not on the property of its owner or custodian, from, without provocation, molesting, attacking, or otherwise interfering with the freedom of movement of persons in a public right-of-way.

(e) Any dog or cat that is determined by the law enforcement officer to be fierce, dangerous, or vicious; any dog which interferes with the freedom of movement of persons in a public right-of-way as prohibited in subsection (d) of this section; or any dog or cat that is determined by a law enforcement officer to be habitually at large is declared to be a public nuisance. The owner, custodian or keeper of any such animal shall be notified of said determination in writing and, upon request of the law enforcement officer, shall surrender such animal for purposes of placement or destruction; provided, however, any said owner,

custodian or keeper of any such animal shall have ten days from the receipt of notification to appeal to the city municipal court and a hearing shall be held. In the event that the court affirms the determination of the law enforcement officer, the court shall:

- (1) Order the surrender of such animal to the law enforcement officer to be impounded for purposes of placement outside the city or destruction; or
- (2) Order that the owner, custodian or keeper of such animal shall arrange for placement outside the city or destruction of the animal within a set number of days.

(f) The owner, custodian or keeper of any animal which has bitten or scratched a human being or other animal, or which is reasonably suspected by the law enforcement officer or other appropriate city official, of having bitten or scratched a human being or other animal, or of having rabies, shall:

- (1) At the request of such official, confine any said animal for ten days in a suitable secure enclosure or, if deemed necessary by said official, in the animal pound;
- (2) Immediately notify the law enforcement officer if any said animal escapes during the above-mentioned ten-day period;
- (3) Make any and all reports requested in reference to the general health and medical history of said animal; and
- (4) Surrender any said animal for such medical tests as are deemed necessary and submit said animal to treatment, or in the alternative, for destruction. The owner of the animal shall be responsible for any and all expenses, fees, legal bills, fines and other pertinent costs.

(g) The provisions of this section shall not apply to any dogs owned by the city or any other political subdivision and used for law enforcement purposes.

(h) Any owner/keeper violating any of the above terms pertaining to animals running at large will be handled as follows:

- (1) First offense: notice of the owner/keeper by the city police officer or other peace officer about the incident of the animal running at large.
- (2) Second offense: issuance of citation by the city police officer or other peace officer to the owner/keeper of the animal running at large. The penalty is \$25.00, to be paid to the city.
- (3) Third offense: If caught, the animal at large will be taken to the appropriate veterinary clinic by the city police officer or other peace officer. All expenses incurred will be the responsibility of the owner/keeper. Issuance of citation by the police officer or other peace officer to the owner/keeper of the animal running at large. The penalty is \$100.00, to be paid to the city.
- (4) Any future offenses: If caught, the animal at large will be taken to the appropriate veterinary clinic by the city police officer or other peace officer. All expenses incurred will be the responsibility of the owner/keeper. Issuance of citation by the city police

officer or other peace officer to the owner/keeper of the animal running at large. The penalty is \$100.00, to be paid to the city. Hearing set by the city council to discuss future reprimands or actions to be taken if the animal continues similar activities. The owner/keeper will be notified by the city council of the hearing date and will be encouraged to attend.

(Code 2002, § 11.111)

Sec. 6-12. Public nuisance.

No person shall own or harbor within the boundaries of the city a public nuisance as defined in this chapter. Violator of this section shall be fined in accordance with the penalties section.

(Code 2002, § 11.112)

Sec. 6-13. Impounded animals—Procedure for impounding unlicensed dog or cat.

It shall be the duty of every law enforcement officer or any other person designated by the chief of police to apprehend any unlicensed dog or cat found running at large contrary to the provisions of this chapter and to impound such dog or cat in the veterinary clinic as contracted with the city, or other suitable place selected by the law enforcement officer for the impounding of animals. The pound master, upon receiving any dog or cat, shall make a complete registry, entering the breed, color and sex of such dog or cat and whether licensed for the current year.

(Code 2002, § 11.113)

Sec. 6-14. Impounded animals—Notice to owner and redemption.

Not later than two days after the impounding of any dog or cat, the owner, if known, shall be notified, and a description of any dog or cat for which the owner is unknown shall be posted in the entryway or lobby of the impoundment facility. Verbal notice to the owner, a member of his family, or any individual in whose car and custody the owner has left such animal shall be sufficient. The owner of any dog or cat so impounded may reclaim such animal upon payment of the license fee, if unpaid, the costs of impoundment and maintenance, and all costs incurred in giving any needed rabies inoculations or any other medical fees occurred in the giving of any medical care or treatment which the pound facility determines to be reasonably necessary.

(Code 2002, § 11.114)

Sec. 6-15. Impounded animals—Disposition of unclaimed or infected dogs and cats.

If at the expiration of three days from the date of notice to the owner, or the posting of the description for animals of which the owner is unknown, such dog or cat shall not have been

redeemed, it may be destroyed or placed with another individual willing to pay the required fees and costs. Any dog or cat which appears to be suffering from rabies or to be affected with another dangerous disease shall not be released but may be forthwith destroyed.

(Code 2002, § 11.115)

Sec. 6-16. Muzzling.

Whenever it becomes necessary to safeguard the public from the dangers of rabies, the law enforcement officer shall request the mayor to issue a proclamation ordering every person owning or keeping a dog or cat to confine it secretly on his premises unless such dog or cat shall have a muzzle of sufficient strength to prevent its biting any person. Any unmuzzled dog or cat running at large during the time of the proclamation shall be seized and impounded, unless noticeably infected with rabies. All dogs and cats so noticeably infected with rabies and displaying vicious propensities shall be killed by the law enforcement officer without notice to the owner. If not noticeably infected with rabies, such unmuzzled dogs or cats shall be impounded for at least two weeks, after which time they may be released to the owner upon payment of fees. Any dog or cat found to be infected with rabies during the impoundment shall be destroyed. If unclaimed after two weeks and found not to be infected by rabies, such dogs or cats may be summarily destroyed or placed with another individual. Nothing in this section shall be construed to require impounding of a dog or cat whose owner is unknown for a period longer than provided for in this section.

(Code 2002, § 11.116)

Sec. 6-17. Rabies; notice to police required.

(a) If a dog or cat is believed to have rabies or has been bitten by a dog or cat suspected of having rabies, such animal shall be placed under the observation of a veterinarian, at the expense of the owner, for a period of two weeks. The owner shall notify the law enforcement officer of the fact that his dog or cat has been exposed to rabies and at his discretion to the law enforcement officer is empowered to have such animal removed from the owner's premises to a veterinary hospital and there place under observation for a period of two weeks at the expense of the owner.

(b) It shall be unlawful for any person knowing or suspecting that a dog or cat has rabies to allow such dog or cat to be taken off his premises or beyond the limits of the city without the written permission of the law enforcement officer. Every owner, or other person, upon ascertaining that a dog or cat is rabid shall immediately notify the pound master or law enforcement officer who shall either remove the animal to the pound or summarily destroy it. Nothing in this section shall be construed to require impounding of a dog or cat whose owner is unknown for a period longer than provided for in this article.

(Code 2002, § 11.117)

Sec. 6-18. Trespassing dogs or cats may be taken up by owner or occupant of property.

Any dog or cat which shall at any time be found trespassing upon any private property within the limits of the city shall be liable to be taken up and restrained by the owner or occupant of such property or his child, servant, or agent, turned over to the law enforcement officer and dealt with pursuant to this chapter.

(Code 2002, § 11.118)

Sec. 6-19. Setting dogs or cats at large.

(a) All persons except the owners or keepers are hereby prohibited from opening any door or gate of any private premises for the purpose of setting any dogs or cats at large, or unhooking any leash or chain or otherwise enticing or enabling any dog or cat to leave any private premises within which the same may be, for the purpose of setting such dogs or cats at large.

(b) Any owner/keeper violating any of the above terms pertaining to animals running at large will be handled as follows:

- (1) First offense: notice of the owner/keeper by the city police officer or other peace officer about the incident of the animal running at large.
- (2) Second offense: issuance of citation by the city police officer or other peace officer to the owner/keeper of the animal running at large. Penalty is \$25.00 to be paid to the city.
- (3) Third offense: If caught, the animal at large will be taken to the appropriate veterinary clinic by the city police officer or other peace officer. All expenses incurred will be the responsibility of the owner/keeper. Issuance of citation by the police officer or other peace officer to the owner/keeper of the animal running at large. Penalty is \$100.00 to be paid to the city.
- (4) Any future offenses: If caught, the animal at large will be taken to the appropriate veterinary clinic by the city police officer or other peace officer. All expenses incurred will be the responsibility of the owner/keeper. Issuance of citation by the city police officer or other peace officer to the owner/keeper of the animal running at large. Penalty is \$100.00 to be paid to the city. Hearing set by the city council to discuss future reprimands or actions to be taken if the animal continues similar activities. The owner/keeper will be notified by the city council of the hearing date and will be encouraged to attend.

(Code 2002, § 11.119)

Sec. 6-20. Accumulation of animal excrement.

No person occupying any premises within the city shall permit the accumulation of animal excrement on the premises, or on any other premises. Violation of this section shall result in fines and penalties as described in section 6-19.

(Code 2002, § 11.120)

Sec. 6-21. Cruelty to animals.

No person shall willfully:

- (1) Torment, torture, abuse, cruelly kill or otherwise inflict cruelty upon any animal or bird.
- (2) Fail to provide any domesticated animal or bird with proper food, drink, shelter or protection from weather.
- (3) Confine or leave any animal in a vehicle or other enclosure without adequate ventilation.
- (4) Abandon any diseased, maimed, hopelessly sick, infirm or disabled animal or bird any place in the city.

(Code 2002, § 11.121)

Sec. 6-22. Keeping of certain animals prohibited.

It shall be unlawful to keep any live sheep, swine or pigs, horses, cattle, chickens, geese, ducks or poultry, or goats in the city. It shall be unlawful to keep any exotic animals in the city. This section shall not apply to any person, partnership or corporation keeping or handling such animals under consignment in the course of regular business or to a license auction market.

(Code 2002, § 11.122)

Sec. 6-23. Strays.

It shall be unlawful to permit any cattle, horses, sheep, swine, goats or poultry to run at large in the city; and any such animal running at large in any public place in the city shall be impounded. It shall further be unlawful to picket or tie any such animal in any of the streets of the city for the purpose of grazing or feeding.

(Code 2002, § 11.123)

Sec. 6-24. Prohibited barking and annoying dogs or cats.

(a) It is unlawful for any person, owner or keeper of any dog or cat to harbor or maintain at any time within the city any dog or cat which shall run out and bark at any person or other passing object upon or along any street, highway or public grounds within the city limits, or which by its barking, howling, whining or other disagreeable noises by it or them during daytime or nighttime, disturb reasonable people of ordinary sensibilities in the locality where owned, kept or maintained.

(b) Any person, owner or keeper violating any of the above terms pertaining to barking or annoying dogs or cats will be handled as follows:

- (1) First offense: notification of the person, owner or keeper about the incident of the dogs or cats barking or annoying activity by the city police officer or other peace officer.

- (2) Second offense: issuance of citation by the city police officer or other peace officer to the owner or keeper of the dog or cat that is barking or annoying. Penalty is \$25.00 to be paid to the city.
 - (3) Third offense: issuance of citation by the city police officer or other peace officer to the owner or keeper of the dog or cat that is barking or annoying. Penalty is \$100.00 to be paid to the city. Hearing set by city council to discuss future reprimands or actions to be taken if dog continues similar activities. The owner or keeper will be notified by the city council of this hearing and will be encouraged to attend.
 - (4) Any future offenses: issuance of citation by the city police officer or other peace officer to the person, owner or keeper of the dog or cat that is barking or annoying. Penalty is \$100.00 to be paid to the city. A hearing shall be set by city council to discuss future reprimands or actions to be taken if dog continues similar activities. A person, owner or keeper will be notified by the city council of this hearing and will be encouraged to attend.
- (Code 2002, § 11.124)

Sec. 6-25. Procedure of person receiving citations on any violations involving animals to include dogs or cats.

(a) Citations will be issued by the city police officer or other peace officer to any person, owner or keeper of animals to include dogs that violate the animal running at large or barking and annoying dogs or cat section of the city ordinances. Such citations will be issued on second or subsequent violations.

(b) When receiving a citation involving the above-mentioned violations, a person shall have the option to:

- (1) Pay the appropriate fee to the city by sending it via mail to P.O. Box 478, Hankinson, ND 58041-0478, or delivering it in person to 319 Main Ave. S. The appropriate fee must be received by the city within 14 days of receiving the citation.
- (2) Request a hearing on the citation. This will be done by notifying the judge of your request for hearing by mail, phone or person within 14 days of receiving the citation. The judge will notify person requesting the hearing of the date and time of the hearing.

(c) Failure to use either of the procedures in subsection (b) of this section could result in a warrant being issued for the person receiving the citation.

(Code 2002, § 11.125)

Sec. 6-26. Alternative actions available; violation an infraction; continuing violations a misdemeanor.

Nothing in this chapter shall be deemed to prevent the city council from ordering the commencement of a civil proceeding to abate a public nuisance, any animal known to be in violation of this chapter or from pursuing any other remedy available under applicable law.

Except as otherwise specifically provided for, violation of the provisions of this chapter constitutes an infraction, for which a fee of up to \$100.00 may be assessed per each day the violation continues. Violations which constitute infractions which occur for more than three days shall constitute a misdemeanor with a penalty or fine of up to \$1,000.00 and/or jail sentence of up to 30 days for each violation exceeding the three infractions.

(Code 2002, § 11.201)

Chapter 7

RESERVED

Chapter 8

BUILDINGS AND BUILDING REGULATIONS

Article I. In General

- Sec. 8-1. Demolition of property, removal of foundation, city council approval, capping water and sewer lines.
- Sec. 8-2. Parking, storage, use of recreational equipment; use as a residence within the city prohibited.
- Secs. 8-3—8-22. Reserved.

Article II. Building Code

- Sec. 8-23. Adoption.
- Sec. 8-24. Clarification of code.
- Sec. 8-25. Permits.
- Secs. 8-26—8-53. Reserved.

Article III. Electrical Code

- Sec. 8-54. Adoption.
- Secs. 8-55—8-81. Reserved.

Article IV. Plumbing Code

- Sec. 8-82. Adoption.
- Sec. 8-83. Enforcement of provisions.
- Sec. 8-84. Changes in existing installations.
- Sec. 8-85. New installations.
- Secs. 8-86—8-113. Reserved.

Article V. Property Maintenance Code

- Sec. 8-114. International Property Maintenance Code.
- Secs. 8-115—8-141. Reserved.

Article VI. Fencing and Screening Requirements

- Sec. 8-142. Definitions.
- Sec. 8-143. Compliance.
- Sec. 8-144. Permit.
- Sec. 8-145. General fencing and screen construction guidelines for residential districts.
- Sec. 8-146. General fencing and screen construction guidelines for commercial, agricultural and industrial districts.
- Sec. 8-147. Temporary fences.
- Sec. 8-148. Required inspections.
- Sec. 8-149. Permit holder responsibility.
- Sec. 8-150. Maintenance of nuisances.
- Secs. 8-151—8-168. Reserved.

HANKINSON CODE

Article VII. Building Numbering

- Sec. 8-169. House numbering required.
- Sec. 8-170. Numbers on houses.

ARTICLE I. IN GENERAL**Sec. 8-1. Demolition of property, removal of foundation, city council approval, capping water and sewer lines.**

(a) Building permits for property to be demolished within the city limits shall require that foundations be removed. In addition, no permit shall be issued until water and sewer supervisor has inspected the property to cap water and sewer lines. Upon completion of capping of water and sewer lines, water and sewer supervisor shall notify city auditor to proceed with issuance of building permit. Property owner shall not backfill property until either a qualified city employee and/or member of the city council shall inspect the premises to ensure that the foundation has been removed.

(b) Failure to obtain proper building permit for demolition of property shall be subject to fines as indicated in section 1-8.

(Code 2002, ch. 15, art. 3)

Sec. 8-2. Parking, storage, use of recreational equipment; use as a residence within the city prohibited.

(a) For purposes of this chapter, the term "recreational equipment" includes campers in any form, boats, boat trailers, travel trailers, pickup campers or coaches designed to be mounted on automobile vehicles, motorized dwellings, tent trailers, and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not, or any other form of non-permanent structure or container. No recreational equipment shall be parked on any public street, alley, or other public right-of-way for a period exceeding 48 hours. Recreational equipment may not be occupied or used for human habitation in any location not approved for such use by the city. Recreational equipment may be parked upon private premises, if vacant and not used for human habitation.

(b) Violations of this section shall constitute an unlawful property nuisance and shall be treated as such under chapter 26.

(Ord. No. 2021-05, 7-7-2021)

Secs. 8-3—8-22. Reserved.**ARTICLE II. BUILDING CODE****Sec. 8-23. Adoption.**

The erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, uses, height, area and maintenance of buildings or structures in the city shall meet with the provisions of the rules and regulations of the state

building code and any future updates and amendments to that code, a copy of which is on file with the city auditor. That code is hereby adopted and made a part of this chapter by reference with the exception of the following sections affecting local conditions in the city. (Code 2002, § 15.101)

Sec. 8-24. Clarification of code.

For the purpose of clarifying the building code adopted in section 8-23:

- (1) Inspections by the city's building inspector shall only be conducted on and required of new residences, new commercial buildings, and additions to residences and commercial buildings, which include new foundations to either a residence or a commercial building.
- (2) The water and sewer supervisor shall inspect residential and commercial buildings for any defects in water and sewer system as described in the International Property Maintenance Code in effect at time of inspection with authorization from section 40-127.
- (3) The building official, as appointed by the city, shall inspect residential and commercial buildings for any defects and dilapidation as described in International Property Maintenance Code in effect at time of inspection.

(Code 2002, § 15.102)

Sec. 8-25. Permits.

(a) No structure or land used for any purposes, including accessories thereto, shall hereafter be built, altered or removed until a permit has been obtained from the city auditor. A permit shall be required when a structure is greater than 100 square feet and/or if the project cost, including labor and materials, is greater than \$2,000.00 during the calendar year and shall exclude shingling and siding projects.

(b) Fees under the building code shall be as established by resolution and adopted by the city council.

(Code 2002, § 16-06-02)

Secs. 8-26—8-53. Reserved.

ARTICLE III. ELECTRICAL CODE

Sec. 8-54. Adoption.

There is hereby adopted the laws and regulations and wiring standards of the state adopted by the state electrical board and the whole thereof of which not less than one copy shall be on file in the office of the city auditor of the city, and the same is hereby adopted as fully as if it were set out at length herein.

(Code 2002, § 4.601)

Secs. 8-55—8-81. Reserved.

ARTICLE IV. PLUMBING CODE

Sec. 8-82. Adoption.

To promote and protect the public health there is hereby adopted the state plumbing code, which has been adopted by the state plumbing board and approved by the state health department, consisting of rules and regulations governing plumbing work, and the whole thereof, of which not less than one copy is on file in the office of the city auditor, and the same is hereby adopted as fully as if set out at length herein and all plumbing work in the city shall comply with said code.

(Code 2002, § 7.501)

Sec. 8-83. Enforcement of provisions.

All plumbing work and all private sanitary drains and cesspools now existing, or hereafter to be installed, altered or repaired in any building or in or under any private property within the corporate limits shall be under the supervision and regulation of the superintendent of the water and sewer department, whose duty it shall be to enforce all the provisions of this code relating thereto and from time to time to make such rules and regulations as may be appropriate for the execution of the same.

(Code 2002, § 7.502)

Sec. 8-84. Changes in existing installations.

The supervisor of the water and sewer department is hereby given authority to order the repair, alteration or removal of any sanitary sewer connection or plumbing, any connection to stormwater sewer, or any private sanitary drain, cesspool or privy, which, in his judgment, is so installed or is in such condition as to be unsanitary, or to constitute a public nuisance or menace to health. In case of such repair, alteration or removal, if the plumbing code is not observed and connections not properly executed by the owners thereof, in accordance with his directions, he may cause the same to be discontinued from any source of water supply. It shall thereafter be unlawful for any person in any manner to use any such installation, or to supply water thereto, until the same shall have been put in a safe and sanitary condition according to his direction.

(Code 2002, § 7.503)

Sec. 8-85. New installations.

All plumbing work and all excavations in the public streets or alleys, the cutting and replacing of pavement, laying of water and sewer connections and connections to stormwater sewers and all construction of private sanitary drains and cesspools within the corporate limits shall be undertaken and executed only by a master plumber or other persons as have

obtained a general license for such work together with a permit for each separate job, provided that the tapping of water mains and the placing of corporate cocks therein shall be done only under the direction of city employees.

(Code 2002, § 7.504)

Secs. 8-86—8-113. Reserved.

ARTICLE V. PROPERTY MAINTENANCE CODE

Sec. 8-114. International Property Maintenance Code.

The International Property Maintenance Code, most recent edition, as published by the International Code Council is hereby adopted by reference. The following sections are hereby revised:

- (1) Section 101.1. Insert: City of Hankinson.
- (2) Section 112.4. Insert: not more than \$500.00.
- (3) Section 302.4. Insert: Six inches.

(Code 2002, § 10.401)

Secs. 8-115—8-141. Reserved.

ARTICLE VI. FENCING AND SCREENING REQUIREMENTS

Sec. 8-142. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Fence means any permanent partition, structure, gate or any artificially constructed structure of any material or combination of material erected as a dividing marker, barrier or enclosure, including hedges or living bushes or shrubs, encircling either wholly or any portion of any area.

Height means the average distance between the top element in the fence and the adjacent grade over a straight section of fence with no corners.

Protective measures fence means a fence erected for the express purpose of protecting an enclosed area and the property therein, or a fence intended to deny access to a dangerous property or location.

(Code 2002, § 15.401)

Sec. 8-143. Compliance.

It shall be unlawful for any person, firm or corporation to construct or cause to have constructed any fence upon any property within the corporate limits of the city, except in accordance with the requirements and restrictions herein provided.

(Code 2002, § 15.402)

Sec. 8-144. Permit.

Any person desiring to build or cause to be built a fence upon property within the corporate limits of the city shall first apply to the city auditor for a permit to do so. Application for such permit shall contain any and all information, including drawings, required and necessary for the determination of whether the erection of such fence would be contrary to the provisions of this article or the laws of the state. Any permit issued under the provisions of this article in which construction has not been completed within six months from the date of issuance, shall expire. Permit extensions may be granted by the city auditor not to exceed one six-month extension. Permit fees shall be set by the city council by resolution.

(Code 2002, § 15.403)

Sec. 8-145. General fencing and screen construction guidelines for residential districts.

The following requirements are for residential R-1 and R-2 zoning:

- (1) Fences are permitted in the buildable area and in any required yard. Fences must adhere to surveyed property lines and shall not be constructed on street or alley rights-of-way.
- (2) Fences along the sides and front edge of any required front yard shall be a maximum of two feet six inches in height, except for open fences such as split rail or chain link without privacy slats, which permit a direct vision through at least 75 percent of the fence surface area, shall be allowed a maximum height of four feet.
- (3) Fences along sides and rear edges of the required side and rear yards shall be allowed a maximum height of six feet.
- (4) All fencing and screening shall meet visibility requirements for intersections by not impeding vision between a height of two feet six inches and ten feet within 30 feet from the intersection curblines, or within 20 feet from the intersecting property lines if there is no curb.
- (5) Fences are allowed to be constructed up to the property line. Be advised the owner of the fence must maintain and keep the fence in good condition without encroaching onto the neighboring property. Also, if the fence is set back away from the property line, the area between the property line and fence must be maintained.

- (6) No fence shall be constructed or maintained with electrified wire, barbed wire, or other spiked or sharp-edged materials which may pose injurious to public health and safety.
 - (7) Posts and other supporting structure used in the construction of the fence shall be faced inward toward the fence owner's property being fenced.
 - (8) It shall be the responsibility of the property owner to locate property corner pins prior to installing fences. If the property corner pins cannot be located, then the owner shall have the property surveyed by a registered professional surveyor.
- (Code 2002, § 15.404)

Sec. 8-146. General fencing and screen construction guidelines for commercial, agricultural and industrial districts.

(a) The following requirements are for commercial C-1, C-2, agricultural, and industrial zoning.

(b) Fences in light commercial areas shall conform to the provisions of the residential fences. Fences in industrial or agricultural districts shall conform to the provisions attached to residential fences except where the zoning authority determines it would be in the public welfare to add to fence height or to add security materials onto the fence. In such cases, fences shall not exceed ten feet in height.

(Code 2002, § 15.405)

Sec. 8-147. Temporary fences.

Temporary fences needed to enclose sites, such as construction sites, do not require fencing permits.

(Code 2002, § 15.406)

Sec. 8-148. Required inspections.

The following provisions relate to inspections required by the city:

- (1) Site inspection: prior to construction and after the property corner pins have been located and exposed.
 - (2) Final: when fence is completed.
- (Code 2002, § 15.407)

Sec. 8-149. Permit holder responsibility.

It shall be the responsibility of the permit holder to notify the city auditor's office when work is ready to be inspected. No work shall commence until the inspection is complete and approved.

(Code 2002, § 15.408)

Sec. 8-150. Maintenance of nuisances.

Fences must be maintained so as not to endanger life or property. Any fence which, through lack of repair, type of construction, or otherwise imperils life or property, shall be deemed a nuisance. The city auditor shall notify the owner of the property on which such a fence is located of the existence of such a nuisance. The owner must then abate said nuisance within six days after receiving such notice. In the case of immediate danger to life or property, the city auditor may require immediate abatement.

(Code 2002, § 15.409)

Secs. 8-151—8-168. Reserved.**ARTICLE VII. BUILDING NUMBERING****Sec. 8-169. House numbering required.**

All houses in the city limits shall be numbered. Numbers must be placed next to the front entrance and will face the street or avenue. Roads running north and south will be avenues, and roads running east and west will be streets.

(Code 2002, § 3.401)

Sec. 8-170. Numbers on houses.

It shall be the duty of the owner and occupants of every house in the city to have placed thereon, in a place visible from the street, figures at least 2½ inches high, showing the number of the house.

(Code 2002, § 3.402)

Chapter 9

RESERVED

Chapter 10

ELECTIONS

Sec. 10-1. Division of city into wards.

Sec. 10-1. Division of city into wards.

(a) Ward boundaries. The city from and after July 1, 2008, shall consist of and be comprised of one ward to be known as the City of Hankinson Ward.

(b) City elections. Every resident who is qualified to vote therein may vote at all municipal elections held with all persons voting in the City of Hankinson Ward.

(c) The mayor and all city councilmembers shall be elected at large at all regular and special city elections and may be appointed at large to fill all vacancies after July 1, 2008.

(d) Except as otherwise provided by city ordinance, the city elections will be conducted in accordance with the laws of the state governing the same as amended.

(Code 2002, § 1.103)

Chapter 11

RESERVED

Chapter 12

ENVIRONMENT AND NATURAL RESOURCES

Article I. In General

Secs. 12-1—12-18. Reserved.

Article II. Trees

- Sec. 12-19. Definitions.
- Sec. 12-20. Establishment of a city forester; terms; compensation.
- Sec. 12-21. Operation and duties of the city forester.
- Sec. 12-22. Tree care; tree topping.
- Sec. 12-23. Abatement.
- Sec. 12-24. Inspection and investigation.
- Sec. 12-25. Abatement of nuisance; duty of forester.
- Sec. 12-26. Costs.
- Sec. 12-27. Placement of trees.
- Sec. 12-28. Acceptable boulevard trees.
- Sec. 12-29. Prohibited acts.

ARTICLE I. IN GENERAL

Secs. 12-1—12-18. Reserved.

ARTICLE II. TREES

Sec. 12-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Nuisance tree.

- (1) The term "nuisance tree" means:
 - a. Any tree, shrub or hedge, or part thereof, growing upon public or private property which interferes with the use of any public walk, street, highway, alley, right-of-way, utility easement, park, public place or private property which, in the opinion of the city forester, endangers the life, health, welfare, safety or property of the public or any person or property or which poses a real or potential health hazard to other trees, shrubs or foliage.
 - b. Any trees lying within the city limits rather than on private or public property in which 50 percent or more of its limbs have been damaged or stripped, have dry rot, or are deemed to be dead, such tree will be deemed to be a public nuisance and must be removed.
- (2) The following trees are deemed nuisance trees and are banned from planting within the city: cottonwood, Dutch elm, box elder and green ash.
- (3) All box elder trees currently growing within the city are deemed a nuisance and must be removed.
- (4) The following are deemed nuisance boulevard trees and are not allowed to be planted on any city boulevard: hedges, shrubs, willows, pines, firs, evergreens, bushes of any variety or any tree with low heavy foliage.

Park trees means trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the city, or to which the public has free access as a park.

Street trees means trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of all streets, avenues or ways within the city.

(Code 2002, § 3.501)

Sec. 12-20. Establishment of a city forester; terms; compensation.

There is hereby established a city forester for the city, who shall be appointed by the mayor with the approval of the city council.

(Code 2002, § 3.502)

Sec. 12-21. Operation and duties of the city forester.

The city forester shall keep a journal of its proceedings. It shall be the responsibility of the forester to study, develop, update and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan shall be presented annually to the city council and upon their acceptance and approval shall constitute the comprehensive tree plan for the city.

(Code 2002, § 3.503)

Sec. 12-22. Tree care; tree topping.

The city shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds. The city forester may remove or cause or order to be removed any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest. It shall be unlawful as a normal practice to top any street tree, part tree or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged or certain trees under utility wires or obstructions where other pruning practices are impractical may be exempted from this section at the determination of the city forester.

(Code 2002, § 3.504)

Sec. 12-23. Abatement.

It is unlawful for any person to permit any public nuisance described in the definition of the term "nuisance tree" in section 12-19 to remain on any premises owned or controlled or occupied by said person. Such nuisance shall be abated in the manner prescribed by this article.

(Code 2002, § 3.505)

Sec. 12-24. Inspection and investigation.

(a) The city forester, or employees or agents of the city forester shall inspect all premises and places as often as practicable to determine whether any condition described in the definition of the term "nuisance tree" in section 12-19 exists therein.

(b) Whenever necessary to determine the existence of a public nuisance or potential vectors of such a nuisance in any tree, shrub or foliage, the person inspecting such tree may remove or cut specimens from the plant or part thereof in question in such manner as to avoid permanent injury thereto and deliver such specimens to the forester who may forward them to an official diagnostic laboratory for analysis to determine the presence of such nuisances. The city forester, or agents or employees of the city forester, shall be authorized to remove or cut specimens to determine the existence of any public nuisance or potential vectors. Action to remove suspect trees or wood or foliage may be taken even though no positive diagnosis of the disease has been made.

(c) The forester and the forester's agents or employees shall have authority to enter upon private premises at reasonable times for the purpose of carrying out any of the provisions of this article.

(Code 2002, § 3.506)

Sec. 12-25. Abatement of nuisance; duty of forester.

(a) The forester shall order, direct, supervise and control the abatement of public nuisances specified in this article by whatever means the forester determines to be necessary to abate the nuisance.

(b) Whenever the forester, after inspection or examination, shall determine that a public nuisance, as herein defined, exists on public property, the forester shall immediately abate or cause the abatement of such nuisance.

(c) When the forester shall determine, with reasonable certainty that a public nuisance exists upon private premises or upon the terrace strip between the lot line and the curb, or upon or concerning any street, alley, utility easement, boulevard or other public way adjoining private property, the forester shall immediately serve or cause to be served written notice to the owner or person in control of or person occupying such property on which or adjoining which the nuisance is found. Such notice shall describe the nuisance and procedures for its abatement. If the owner or person controlling the property or the person occupying the property cannot be found, a copy of said notice shall be posted upon the nuisance or upon any structure on the affected property. The owner or person in control or the person occupying the property shall abate the nuisance in the manner specified in the notice. The duty to abate shall be a duty of the owner of the property, controller of the property and the occupier of the property, jointly and severally. If said nuisance is not abated within five days after written notice is given, the forester shall cause the abatement thereof at the expense of the property served or abutting property. If the forester determines that reasonable cause has been shown, the forester may extend the time allowed the property owner, property controller or property occupier for abatement work but not to exceed ten additional days.

(Code 2002, § 3.507)

Sec. 12-26. Costs.

(a) For abatement of a public nuisance, as previously defined, and with the nuisance on public lands, park district lands and Hankinson School District lands, the cost will be paid out of the city general funds or as arranged between the city and the park board, school board or other political subdivision.

(b) For abatement of public nuisance, as previously defined, with the nuisance occurring on private land or on any street, alley, boulevard, right-of-way, sidewalk, utility easement, or the terrace strip between the lot line and the curb or improved portion of any public way, or other public way, or public place adjoining the private property, the cost shall be borne by the private owner, property controller, or property occupier, said persons to be jointly and severally liable.

(c) If the owner, property controller, or property occupier cannot or will not pay for the abatement of said nuisance, the costs of abatement may be assessed against the property taxes of the property on which or adjoining which the nuisance is found, over a period not to exceed five years or said costs may be recovered by a suit at law.

(Code 2002, § 3.508)

Sec. 12-27. Placement of trees.

(a) Any property owner or person shall have the right to plant trees on the boulevard between the curblane and the property line. Such trees shall be placed 3½ feet from the curblane, and shall be spaced 20 feet apart. The trees placed upon the intersection of the streets shall be placed 20 feet from the corner of any intersection and shall be so placed as to line up all four ways, with the trees set according to this regulation in the same block and adjoining block, provided that, in cases where streets deflect or there is a jog, special provisions shall be made by the city forester or public works supervisor. The city forester or public works supervisor may vary the distance between trees in long or short blocks by keeping the trees equally spaced in such block. The owner may choose his own trees, with the exception that in no case shall cottonwood trees be planted upon any boulevard within the city.

(b) The branches of any trees shall be kept clear from all sidewalks, boulevards and alleys above by at least seven feet and 12 feet above any street.

(c) The owner may choose his own trees from a list provided by the city forester.

(Code 2002, § 3.509)

Sec. 12-28. Acceptable boulevard trees.

The following are acceptable boulevard trees:

	<i>Height</i>	<i>Spread</i>
Amur chokecherry	25—30 feet	15—20 feet
Crimson king maple acer	35—40 feet	30—40 feet

	<i>Height</i>	<i>Spread</i>
Dakota pinnacle birch	30—35 feet	8—10 feet
Flame amur maple	15—20 feet	15—18 feet
Greenspire linden	40—50 feet	30—35 feet
Littleleaf linden	30—40 feet	30—40 feet
North acclaim honeylocust	35—45 feet	25—35 feet
Norway maple—columnar	30—50 feet	25—35 feet
Norway maple—veriegated	50—60 feet	40—50 feet
Redmond linden	40—60 feet	25—30 feet
Royal frost birch	30—40 feet	15—20 feet
Spring snow crab (fruitless)	25—30 feet	15 feet
Thornless honeylocust	30—50 feet	25—35 feet

(Code 2002, § 3.510)

Sec. 12-29. Prohibited acts.

No person shall:

- (1) Interfere with or prevent any acts of the forester or forester's agents or employees while they are engaged in the performance of any of the duties imposed by this article;
- (2) Refuse to permit the forester or the forester's duly authorized representative to enter upon said person's premises at reasonable times to exercise any of the duties imposed by this article;
- (3) Permit any nuisance to remain on any premises owned or controlled or occupied by said person when ordered by the forester to abate or to take appropriate measures to render such nuisance innocuous.

(Code 2002, § 3.511)

Chapter 13

RESERVED

Chapter 14

FIRE PREVENTION AND PROTECTION

Article I. In General

- Sec. 14-1. Smoking; setting fires.
- Sec. 14-2. Notice; smoking ordinance.
- Sec. 14-3. Bonfires prohibited; exception.
- Sec. 14-4. Hot ashes and other dangerous materials, depositing of.
- Sec. 14-5. Open burning prohibited.
- Sec. 14-6. Reports of hotel or apartment fires.
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- Sec. 14-8. Storage of flammable liquids.
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Article II. Fire Department

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Article III. Fireworks

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- Sec. 14-76. Discharge generally.
- Sec. 14-77. Use of fireworks limited (days, hours and sites).
- Sec. 14-78. Public displays.

ARTICLE I. IN GENERAL**Sec. 14-1. Smoking; setting fires.**

Any person who, by smoking or attempting to light or to smoke cigarettes, cigars, pipes or tobacco in any manner, in which lighters or matches are employed, who shall, in any careless, negligent or reckless manner whatsoever, whether willfully or wantonly or not, set fire to any furniture, curtains, drapes, household fittings or furnishings whatsoever in any hotel, public roominghouse, tenement house or any public building, so as to endanger life to property in any way or to any extent, shall be guilty of violating this chapter.

(Code 2002, § 4.301)

Sec. 14-2. Notice; smoking ordinance.

A plainly printed notice shall be posted in a conspicuous place in each sleeping room of all hotels, public roominghouses, lodginghouses and other places of public assemblage within the city advising tenants of the provisions of this chapter.

(Code 2002, § 4.302)

Sec. 14-3. Bonfires prohibited; exception.

No person shall kindle, maintain or assist in maintaining any bonfire or other exposed fire within the city except under the written permit of the city council under proper safeguards as they may direct. Permits may be granted only on condition that such permit carries an obligation on the part of the grantee to keep a sufficient safe control of said fire and to be responsible for all damages therefrom, and that all resultant embers shall be extinguished and the hot ashes removed or wet down at the close of said fire.

(Code 2002, § 4.303)

Sec. 14-4. Hot ashes and other dangerous materials, depositing of.

Ashes, smoldering coals or embers, greasy or oily substances and other matter liable to spontaneous ignition shall not be deposited or allowed to remain within ten feet of any combustible materials or construction made up of combustible materials, except in metal or other noncombustible receptacles. Such receptacles shall be placed on noncombustible stands, unless resting on a noncombustible floor or on the ground outside the building, and shall be kept at least two feet away from any combustible wall or partition.

(Code 2002, § 4.304)

Sec. 14-5. Open burning prohibited.

No person shall kindle, maintain or burn any garbage or other refuse either openly or in containers if such burning is prohibited by state law or proclamation.

(Code 2002, § 4.305)

Sec. 14-6. Reports of hotel or apartment fires.

Every fire of any kind, and from whatever source, occurring in or about any hotel, roominghouse, lodginghouse or apartment building in the city shall be reported immediately to the fire department.

(Code 2002, § 4.306)

Sec. 14-7. Fire pit regulations.

(a) Fire pits/rings may be up to 36 inches by 36 inches maximum, with a flame no more than three feet high, and may not be located closer than 30 feet from any structure unless a fire extinguisher is readily available or a garden hose with water is available to suppress any potential fire hazard.

(b) Penalty. A person violating this section will first be given a warning with subsequent offences a misdemeanor and subject to a fine not to exceed \$100.00.

(Code 2002, § 4.307)

Sec. 14-8. Storage of flammable liquids.

No new bulk plants or tanks for storage of flammable liquids shall be permitted within the limits of the city except in areas specifically zoned for this use.

(Code 2002, § 4.401)

Sec. 14-9. Storage of liquefied petroleum.

The limits or area for storage of liquefied petroleum shall comply with the limits established in section 14-8.

(Code 2002, § 4.402)

Sec. 14-10. Appeals from decisions of fire chief.

Whenever the chief of the fire department shall disapprove an application or refuse to grant a license or permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the chief of the fire department to the city council within 30 days from the date of the decision of the appeal.

(Code 2002, § 4.404)

Secs. 14-11—14-38. Reserved.

ARTICLE II. FIRE DEPARTMENT**Sec. 14-39. Taking fire equipment.**

No person shall take, receive, or attempt to receive or take from the possession and control of any member of the fire department, any of the apparatus, tools or property belonging to said department, without the written consent of the chief of the fire department.

(Code 2002, § 4.106)

Sec. 14-40. Entering fire department.

No person shall occupy any rooms in any building which are used by the fire department or enter such rooms or handle any apparatus used by the fire department without permission.

(Code 2002, § 4.107)

Secs. 14-41—14-68. Reserved.**ARTICLE III. FIREWORKS****Sec. 14-69. Fireworks defined.**

For the purpose of this article or any other chapter of this Code, the term "fireworks" means and includes any combustible or explosive composition, or any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include bland cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives other than toy paper caps are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, daygo bombs, sparklers, or other fireworks of like construction, any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance. Nothing in this article shall be construed as applying to toy paper caps containing not more than $\frac{25}{100}$ of a grain of explosive composition per cap.

(Code 2002, §§ 4.504, 8.801)

Sec. 14-70. Compliance and records.

Except as otherwise provided in this article, no person, firm, partnership, association, corporation or other entity shall offer for sale, expose for sale, sell at retail, bring into the city or cause to be brought into the city or use or explode any fireworks in the city. It is unlawful for any person not licensed as a wholesaler or retailer to bring any fireworks into the city, and it is unlawful for any retailer in the city to sell any fireworks which have not been purchased from a wholesaler licensed pursuant to this article and under N.D.C.C. ch. 23-15. Any person licensed under N.D.C.C. ch. 23-15 and under this article must keep available for inspection by the state fire marshal or any sheriff, police officer or local fire marshal a copy

of each invoice for fireworks purchased as long as any fireworks included on the invoice are held in the licensee's possession, which invoice must show the license number of the wholesaler from whom the purchase was made.

(Code 2002, § 8.804)

Sec. 14-71. Exceptions.

Nothing in this article shall be construed to prohibit the following:

- (1) Any resident wholesaler, dealer, or jobber selling at wholesale such fireworks as are not herein prohibited;
- (2) The sales of any kind of fireworks for shipment directly out of the state;
- (3) The use of fireworks by airplanes, railroads, or other transportation agencies for signal purposes or illuminations;
- (4) The sale or used of blank cartridges for a show or theater, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations.

(Code 2002, § 8.805)

Sec. 14-72. Retail sales license.

(a) No person, firm, partnership, association, or corporation or other entity shall offer for sale, or sell at retail, fireworks within the city unless he has received a license from the city.

(b) Applications for such license must be submitted by April 1 of each year hereafter and be accompanied by a license fee in the amount established by resolution. Each applicant must show in said application the following:

- (1) That the applicant is a bona fide retail merchant in said city on the date of the application.
- (2) That the applicant has no unpaid personal property taxes due in the county.
- (3) The business address of the applicant's retail establishment or the place where the fireworks are to be sold.
- (4) Each individual applicant shall be at least 18 years of age and, for any partnership, association, corporation, firm or other entity making application, shall be managed, controlled, and operated solely by persons at least 18 years of age or older.

(c) The applicant shall offer fireworks for sale only at the business address of his retail establishment or at such other address as the council shall approve. Separate licenses must be obtained for each site at which an applicant wishes to offer for sale or see fireworks.

(Code 2002, § 8.808)

Sec. 14-73. Wholesale sales license.

(a) No person, firm, partnership, association, or corporation or other entity shall offer for sale or sell fireworks at wholesale within the city unless he has received a license from the city.

(b) Applications for such license must be submitted by April 1 of each year hereafter, and be accompanied by a license fee in the amount established by resolution. Each applicant must show on said application the following:

- (1) That the application is for a site in an area zoned for commercial purposes within the city;
- (2) That the building thereon complies with and conforms to the building and fire codes of the city for storage of fireworks;
- (3) That the applicant agrees to comply with all provision of the city ordinances regarding fireworks or combustibles.

(c) No license issued to this article is or shall be transferable. In the event a license holder does not renew his license in a subsequent year, or submit his application by April 1 of that year, whichever first occurs, the city shall publish notice of availability of such license one time in the official city newspaper and accept applications for the same up to April 15 of that year.

(Code 2002, § 8.809)

Sec. 14-74. Seizure.

Any city police officer or other peace officer or local fire marshal or chief of the city volunteer fire department shall seize, take, remove or cause to be removed at the expense of the owner all fireworks or combustibles offered or exposed for sale, stored or held for use in violation of this article.

(Code 2002, § 8.807)

Sec. 14-75. Time of sale of and type of fireworks permitted.

(a) Any person, firm, partnership, association, or corporation or other entity having operated a retail business wherein merchandise was assessed by the local taxing authority, on April 1 immediately preceding thereto, and having a retail license as provided in N.D.C.C. § 23-15-04 and as provided in this article, may offer for sale and sell at retail, to persons of 12 years of age or more, only during the period beginning June 27 and ending July 5, both dates inclusive, the following items:

- (1) Star lights, with wood spike cemented in one end, total pyrotechnic composition not to exceed 20 grams each in weight (ten ball);
- (2) Helicopter type flyers, total pyrotechnic composition not to exceed 20 grams each in weight;

- (3) Cylindrical foundations, total pyrotechnic composition not to exceed 75 grams each in weight. The inside tube diameter shall not exceed three-fourths inch;
- (4) Cone fountains, total pyrotechnic composition not to exceed 50 grams each in weight;
- (5) Wheels, total pyrotechnic composition not to exceed 60 grams in weight, for each driver unit, but there may be any number of drivers on any one wheel. The inside bore of driver tubes shall not be over one-half inch;
- (6) Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed 100 grams each in weight;
- (7) Sparklers and dipped sticks, total pyrotechnic composition not to exceed 100 grams each in weight. Pyrotechnic composition containing any chlorate shall not exceed five grams;
- (8) Comets and shells, of which the mortar is an integral part, except those designed to produce an audible effect, total pyrotechnic composition not to exceed 40 grams each in weight;
- (9) Soft shell firecrackers not to exceed 1½ inches in length and one one-fourth inch in diameter; total pyrotechnic composition not to exceed 50 milligrams each in weight;
- (10) Whistles without report, total pyrotechnic composition not to exceed 40 grams each in weight.

(b) No sale of fireworks shall be allowed until the premises have been inspected by the building official of the city or his duly assigned agent and approval of the site, as to compliance with the zoning and building and fire codes or other ordinances has been issued by said official. The person, firm, partnership, association or corporation or other entity operating a retail business must apply for the license and operate the business of fireworks sale directly and no assignments of said operating rights shall be effective or permit an assignee within the city. After July 5 of any year, the person, firm or corporation shall file a written report with the fire department and the building official indicating the quantity and place of storage of any unsold fireworks. Any temporary trailers or structures used in the sale of fireworks and located within the city shall be allowed during the permitted time of sale (June 27 through July 5) and a reasonable time before and after such period only with the consent of the building official, presented to the operator in writing.

(c) Exempted from requirement to having operated a retail business wherein the merchandise was assessed by the local taxing authority on April 1 immediately preceding thereto are any persons who held a state sales tax permit and sold fireworks in 2002; all other licensing requirements applied to and shall be complied with by such persons.

(Code 2002, § 8.802)

Sec. 14-76. Discharge generally.

(a) The, use, firing or discharging of any rocket, firecracker, torpedoes, Roman candles or of any such 4th of July explosives whatsoever or fireworks within the city limits is expressly prohibited at any time whatsoever, except as provided by state statute.

(b) It shall be unlawful for any person to ignite or explode any fireworks within the city on any day of the year other than the period beginning June 27 and ending July 5 (both dates inclusive), then, during which fireworks may be ignited or exploded only between the hours of 9:00 a.m. and 12:00 midnight. It shall be unlawful for any person to ignite or explode fireworks within the park system in the city on any date, on any time or hour.

(c) Nothing in this article shall prohibit, however, the public display of fireworks within the city, provided that specific permission therefor is given by the city council, which permission shall be provided by a motion of the city council, duly carried.

(Code 2002, § 4.505)

Sec. 14-77. Use of fireworks limited (days, hours and sites).

(a) It shall be unlawful for any person to ignite or explode any fireworks within the city on any day of the year other than the period beginning June 27 and ending July 5 (both dates inclusive), during which fireworks may be ignited or exploded only between the hours of 9:00 a.m. and 11:00 p.m., except that on July 4, fireworks may be ignited or exploded only between the hours of 9:00 a.m. and 12:00 midnight.

(b) It shall be unlawful for any person to ignite or explode fireworks within the park system of the city on any date, at any time or hour.

(c) Nothing in this article shall prohibit, however, the public display of fireworks within the city, provided that specific permission therefor is given by the city council, which permission shall be provided for by motion of the city council, duly carried.

(Code 2002, § 8.810)

Sec. 14-78. Public displays.

This article shall not prohibit supervised public displays of fireworks by the city, fair associations, amusement parks, and other organizations. Except when such display is given by the city or fair association within its own limits, no display shall be given unless permit shall be made in writing to the city auditor at least 15 days in advance of the date of the display. The application shall promptly be referred to the city council which shall make an investigation to determine whether the operator of the display is competent and whether the display is of such character and is to be so located, discharged or fired that it will not be hazardous to property or endanger any person. The city council shall report the results of this investigation to the city auditor and if it reports that, in its opinion, the operator is competent and that the display as planned will conform to safety requirements, including the rules and regulations of the state fire marshal, such auditor shall issue a permit for the display when the applicant pays a permit fee which shall be established by resolution. Fireworks display licenses are waived for the Hankinson Commercial Club. After such permit shall have been granted, sales, possession, use and distribution of fireworks for such

display shall be lawful for that purpose only. No permit granted hereunder shall be transferable. The city council shall establish such regulations as it deems appropriate for purposes of this section.

(Code 2002, § 8.805)

Chapter 15

RESERVED

Chapter 16

FLOODS

Article I. In General

Secs. 16-1—16-18. Reserved.

Article II. Flood Damage Prevention

- Sec. 16-19. Definitions.
- Sec. 16-20. Findings of fact.
- Sec. 16-21. Statement of purpose.
- Sec. 16-22. Methods of reducing flood losses.
- Sec. 16-23. General provisions.
- Sec. 16-24. Administration.
- Sec. 16-25. Variance procedure.
- Sec. 16-26. Provisions for flood hazard reduction.
- Sec. 16-27. Manufactured homes.
- Sec. 16-28. Floodways.
- Sec. 16-29. Penalties for violations.

ARTICLE I. IN GENERAL

Secs. 16-1—16-18. Reserved.

ARTICLE II. FLOOD DAMAGE PREVENTION**Sec. 16-19. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Appeal means a request for a review of the building official's or designee's interpretation of any provision of this article or a request for a variance.

Base flood or *100-year flood* means the flood having a one percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) means the height of the base flood or 100-year flood usually in feet above mean sea level.

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Best available data (BAD) means water elevation information from any source used to estimate or determine a base flood elevation (i.e., high-water mark).

Conveyance or *hydraulic conveyance* means a geometric characteristic of a river or watercourse at a given point that determines the flow-carrying capacity at that point.

Development means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the special flood hazard area.

Flood or *flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters and/or from the unusual and rapid accumulation or runoff of surface waters from any source.

Flood insurance rate map (FIRM) means the official map issued by the Federal Emergency Management Agency where special flood hazard areas are designated as Zone A, AE, AO, AH, A1-A30 or A-99.

Flood insurance study (FIS) means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the flood insurance rate map, and the water surface elevation of the base flood.

Floodproofing (dry) means protection provided a structure, together with attendant utilities and sanitary facilities, which is watertight two feet above the base flood elevation with walls that are substantially impermeable to the passage of water.

Floodway or regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Lowest floor means the lowest floor of a structure including the basement.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a recreational vehicle, but does include mobile home.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

New construction means structures for which the start of construction commenced on or after the effective date of the ordinance from which this article is derived.

Reasonably safe from flooding means base floodwaters will not inundate the land or damage structures to be removed from the special flood hazard area, and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

Recreational vehicle means a vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck;
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use, including, but not limited to, travel trailers, trailers on wheels, park-model trailers, and other similar vehicles.

Special flood hazard area (SFHA) means an area of land that would be inundated by a flood having a one percent chance of being equaled or exceeded in any given year.

Start of construction means and includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Structure means a walled and roofed building, including manufactured homes and gas or liquid above-ground storage tanks.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the building to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement.

- (1) The term "substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:
 - a. Before the improvement or repair is started; or
 - b. If the structure has been damaged and is being restored, before the damage occurred. Substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.
- (2) The term "substantial improvement" does not, however, include either:
 - a. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to ensure safe living conditions; or
 - b. Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

Variance means a grant of relief from the requirements of this article which permits construction in a manner that would otherwise be prohibited by this article.

(Code 2002, ch. 19, § 6.1104)

Sec. 16-20. Findings of fact.

(a) The flood hazard areas of the city and its extraterritorial zoned areas are subject to periodic inundation which can endanger life, result in loss of property, create health and safety hazards, disrupt commerce and governmental services, cause extraordinary public expenditures for flood protection and relief, and impair the tax base, all of which adversely affect the public health, safety, and general welfare.

(b) Flood losses caused by the cumulative effect of obstructions in the special flood hazard areas cause increases in flood heights and velocities. Inadequately floodproofed, elevated or otherwise unprotected structures also contribute to the flood loss.

(Code 2002, ch. 19, § 6.1101)

Sec. 16-21. Statement of purpose.

It is the purpose of this article to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;

- (2) Minimize expenditure of public money for costly flood control projects;
 - (3) Minimize the need for rescue and relief efforts associated with flooding, and generally undertaken at the expense of the general public;
 - (4) Minimize prolonged business interruptions;
 - (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in special flood hazard areas;
 - (6) Help maintain a stable tax base by providing for the second use and development of special flood hazard areas so as to minimize future flood blight areas;
 - (7) Ensure that potential buyers are notified that property is in a special flood hazard area; and
 - (8) Ensure that those who occupy the special flood hazard areas assume responsibility for their actions.
- (Code 2002, ch. 19, § 6.1102)

Sec. 16-22. Methods of reducing flood losses.

In order to accomplish its purposes, this article includes methods and provisions for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
 - (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
 - (3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
 - (4) Controlling filling, grading, dredging, and other development which may increase flood damage; and
 - (5) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.
- (Code 2002, ch. 19, § 6.1103)

Sec. 16-23. General provisions.

(a) *Lands to which this article applies.* This article shall apply to all special flood hazard areas within the zoning jurisdiction of the city, including the extraterritorial zoning area.

(b) *Basis for establishing the special flood hazard areas.* The special flood hazard areas identified by the Federal Emergency Management Agency in a scientific and engineering report titled "The Flood Insurance Study for Richland County, North Dakota, and Incorporated

Areas" effective December 18, 2009, with an accompanying flood insurance rate map, is hereby adopted by reference and declared to be a part of this article. The flood insurance study is on file at 319 Main Avenue South, Hankinson, North Dakota 58041.

(c) *Compliance.* No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this article and other applicable regulations.

(d) *Greater restrictions.* This article is not intended to repeal, remedy, or impair any existing easements, covenants, or deed restrictions. However, where this article and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(e) *Interpretation.* In the interpretation and application of this article, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the city council; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(f) *Warning and disclaimer or liability.* The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This article does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the city, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

(Code 2002, ch. 19, § 6.1105)

Sec. 16-24. Administration.

(a) *Establishment of development permit.* A development permit shall be obtained before construction or development begins within any special flood hazard area established in section 16-23(b). Application for a development permit shall be made on forms furnished by the building official or designee thereof and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill storage materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- (1) Elevation in relation to mean sea level, of the lowest floor of all structures;
- (2) Elevation in relation to mean sea level to which any structure has been floodproofed;
- (3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in section 16-26(h); and

- (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(b) *Designation of the building official or designee.* The building official or designee is hereby appointed to administer and implement this article by granting or denying development permit applications in accordance with its provisions.

(c) *Duties and responsibilities of the building official or designee.* Duties of the building official or designee shall include, but not be limited to:

- (1) *Permit review.* The building official or designee shall:
- a. Review all development permits to determine that the permit requirements of this article have been satisfied.
 - b. Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.
 - c. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, ensure that the encroachment provisions of section 16-28(1) are met.
- (2) *Use of other base flood data.* When base flood elevation data has not been provided in accordance with section 16-23(b), the building official or designee shall obtain, review, and reasonably utilize any base flood elevation data and floodway data available (known as best available data) from a federal, state, or other source, as criteria for requiring that new construction, substantial improvements, or other development in the floodplain are administered in accordance with section 16-26(f).
- (3) *Information to be obtained and maintained.*
- a. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
 - b. For all new or substantially improved floodproofed structures:
 1. Obtain and record the actual elevation (in relation to mean sea level) to which the structure has been floodproofed;
 2. Maintain the floodproofing certifications required in subsection (a)(3) of this section.
 - c. Maintain for public inspection all records pertaining to the provisions of this article.
- (4) *Alteration of watercourses.* The responsible person shall:
- a. Notify nearby communities, water resource districts, and the state engineer, as necessary, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency;

- b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished; and
 - c. Notify the appropriate water resource district prior to removal or placement of fill within 200 feet of the bank of a body of water during normal flow or stage.
- (5) *Interpretation of flood insurance rate map (FIRM) boundaries.* Make interpretation, where needed, as to the exact location of the boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in section 16-25.
- (Code 2002, ch. 19, § 6.1106)

Sec. 16-25. Variance procedure.

(a) *Appeal board.*

- (1) The board of adjustment, as established by the city council, shall hear and decide appeals and requests for variances from the requirements of this article.
- (2) The board of adjustment shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the building official or designee in the enforcement or administration of this article.
- (3) Those aggrieved by the decision of the board of adjustment, or any taxpayer, may appeal such decision to the city council, as provided in N.D.C.C. § 40-47-11 and any decision of the city council on the appeal from a decision of the board of adjustment may be appealed to the district court in the manner provided in N.D.C.C. § 28-34-01.
- (4) In passing upon such applications, the board of adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this article; and:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location, where applicable;
 - f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - g. The compatibility of the proposed use with existing and anticipated development;

- h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (5) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre to less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in subsection (a)(4) of this section have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (6) Upon consideration of the factors of subsection (a)(4) of this section and the purposes of this article, the board of adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.
- (7) The building official or designee shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.
- (b) *Conditions for variances.*
- (1) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the state inventory of historic places, without regard to the procedures set forth in the remainder of this section.
- (2) Variances shall not be issued within the identified floodplain if any increase in flood levels during the base flood discharge would result.
- (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (4) Variances shall only be issued upon:
- a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, cause fraud on or victimization of the public as identified in subsection (a)(4) of this section, or conflict with existing local laws or ordinances.

- (5) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(Code 2002, ch. 19, § 6.1107)

Sec. 16-26. Provisions for flood hazard reduction.

In all special flood hazard areas the following standards are required:

(1) *Anchoring.*

- a. All new construction and substantial improvements, including additions, shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- b. All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(2) *Construction materials and methods.*

- a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- b. All new and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- c. All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(3) *Utilities.*

- a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and
- c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(4) *Subdivision proposals.*

- a. All subdivision proposals shall be consistent with the need to minimize flood damage;

- b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
 - c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and
 - d. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or five acres (whichever is less).
- (5) *Specific standards.* In all special flood hazard areas where base flood elevation data have been provided as set forth in section 16-23(b) or 16-24(c)(2), the following provisions are required:
- a. *Residential construction.* New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated on fill to at least one foot above the base flood elevation.
 - b. *Nonresidential construction.* Construction and substantial improvement of any nonresidential structure shall either have the lowest floor, including basement, elevated on fill to at least one foot above the base flood elevation or, together with attendant utility and sanitary facilities shall:
 - 1. Be floodproofed to at least two feet above the base flood elevation, so that below this elevation the structure is watertight with walls substantially impermeable to the passage of water.
 - 2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
 - 3. Be certified by a registered professional engineer or architect that the standards of this subsection b are satisfied. Such certification shall be provided to the official as set forth in section 16-24(c)(2).

(Code 2002, ch. 19, § 6.1108)

Sec. 16-27. Manufactured homes.

- (a) Manufactured homes shall be anchored in accordance with section 16-26.

(b) All manufactured homes or those to be substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated on fill to at least one foot above the base flood elevation and is securely anchored to an adequately anchored foundation system.

(Code 2002, ch. 19, § 6.1109)

Sec. 16-28. Floodways.

Located within the special flood hazard areas established in section 16-23(b) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- (1) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) If subsection (1) of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of section 16-26.

(Code 2002, ch. 19, § 6.1110)

Sec. 16-29. Penalties for violations.

(a) Violation of the provisions of this article or failure to comply with any of its requirements, including violations on conditions and safeguards established in connection with grants or variances or conditional uses, shall constitute a misdemeanor.

(b) Nothing herein contained shall prevent the city council from taking such other lawful action as is necessary to prevent or remedy any violation.

(Code 2002, ch. 19, § 6.1111)

Chapter 17

RESERVED

Chapter 18

FRANCHISES

Article I. In General

- Sec. 18-1. Compliance with applicable laws and ordinances.
- Sec. 18-2. Indemnification.
- Sec. 18-3. Insurance.
- Secs. 18-4—18-24. Reserved.

Article II. Cable Television

- Sec. 18-25. Short title and definitions.
- Sec. 18-26. Grant of authority and general provisions.
- Sec. 18-27. Application for new franchise.
- Sec. 18-28. Construction and operations standards; conditions and street use.
- Sec. 18-29. System provisions and public services.
- Sec. 18-30. Operation and administration provisions.
- Sec. 18-31. Revocation, abandonment, and sale or transfer.
- Sec. 18-32. Miscellaneous provisions.
- Sec. 18-33. Acceptance.

ARTICLE I. IN GENERAL**Sec. 18-1. Compliance with applicable laws and ordinances.**

The grantee of any franchise during the life of the franchise shall be subject to all lawful exercise of the police power of the city, and to such reasonable regulation, as the city shall be resolution or ordinance provide.

(Code 2002, § 14.102)

Sec. 18-2. Indemnification.

The grantee of any franchise shall indemnify and save the city and its agents and employees harmless from all and any claims for personal injury or property damages and any other claims, costs, including attorney's fees, expenses of investigation and litigation of claims and sits thereon which may result from the activities of the grantee of the franchise in the city.

(Code 2002, § 14.103)

Sec. 18-3. Insurance.

Any grantee of a franchise by the city shall carry and keep in force a public liability policy of insurance, insuring the grantee of the franchise and the city against any and all liability, of not less than \$250,000.00 for any one person, property damage, personal injury, or death, and \$500,000.00 for any one accident resulting in property damage, personal injury, or death. The city may demand proof of such insurance coverage in an insurance company licensed to do business in the state. (Source: N.D.C.C. § 32-12.1-03)

(Code 2002, § 14.104)

Secs. 18-4—18-24. Reserved.**ARTICLE II. CABLE TELEVISION****Sec. 18-25. Short title and definitions.**

(a) *Short title.* This article shall be known and cited as the "cable communications regulatory ordinance."

(b) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Basic cable services means any service tier which includes the lawful retransmission of local broadcast signals and any public, educational, and government access programming required by the franchise to be carried on the basic tier. The term "basic cable services" shall not be inconsistent with 47 USC 542(b)(7).

Cable programming service.

- (1) The term "cable programming service" means any video programming provided over a cable system regardless of service tier other than:
 - a. Video programming carried on the basic service tier;
 - b. Video programming offered on a pay-per-channel program basis; or
 - c. A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service:
 1. Consists of commonly identified video programming; and
 2. Is not bundled with any regulated tier of service.
- (2) The term "cable programming service" shall not be inconsistent with the definitions set forth in 47 USC 543(1) and (2) and 47 CFR 76.901(b)(1993).

Cable service means the one-way transmission to subscribers of video programming, or other programming services and subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

Cable system or *system* shall have the meaning described in federal law.

Franchise means the initial authorization or renewal thereof issued by a franchising authority, whether such authorization is designed as a franchise permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system or other MVPD facility.

Franchise area means the area within the legal boundaries of the grantor.

Grantee means the person which is granted a franchise in the city pursuant to this article, its agents and employees, lawful successors, transferees or assignees.

Grantor means the City of Hankinson.

Gross revenue means only the monthly revenue received from basic cable programming services and pay television directly by the grantee from the operation of its system within the franchise area. The term "gross revenue" shall not include any other revenue billed or received by the grantee including franchise fees, late fees, any fees itemized and passed through as a result of franchise imposed requirements or any taxes or fees on services furnished by the grantee imposed directly on any subscriber or users by any municipality, state or other governmental unit and collected by the grantee for such governmental unit.

Multichannel video program distributor or *MVPD* means a person such as, but not limited to, a cable operator, a multichannel, multipoint, distribution service, a direct broadcast satellite service, AM OVS provider, or a television receive only satellite program distributor, who makes available for purchase by subscribers or customers multichannel video programming.

Open video services or *OVS* means any video programming services provided to any person by a franchise certified by the FCC to operate as an open video system pursuant to section 47 USC 573, as may be amended, regardless of the facilities used.

Pay television means the delivery over the system of pay-per-channel of pay-per-program audio visual signals to subscribers for a fee or charge, in addition to the charge for basic cable service or cable programming services.

Standard installation means any residential installation which can be completed using a drop of 150 feet or less.

Street means the surface of, and the space above and below, any public street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, or drive, or any easement or right-of-way now or hereafter held by the grantor.

Subscriber means any person who lawfully receives cable service.

Video programming means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.
(Ord. No. 2015-02, § 1, 10-5-2015)

Sec. 18-26. Grant of authority and general provisions.

(a) *Franchised required.* It shall be unlawful for any person to construct, operate or maintain a cable system or MVPD facility or to provide cable service, video programming or other MVPD services including OVS, in the grantor, without a franchise authorizing the same unless applicable federal law or state law prohibits the grantor enforcement of such a requirement.

(b) *Grant of franchise.* Any franchise that is granted in city shall be subject to the terms and conditions contained herein.

(c) *Grant of nonexclusive authority.*

- (1) A grantee shall have the right and privileges to construct, operate and maintain in, upon, along, across, above and under the streets, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in franchise area, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in franchise area of a cable system.
- (2) A franchise shall be nonexclusive and the grantor reserves the right to grant a similar use of said streets to any MVPD at any time; provided, however, that all franchises shall contain the same terms and conditions as this franchise in order that one MVPD is not granted a competitive advantage over another. In the event a MVPD commences operation without a franchise or is granted a franchise to operate by the grantor, the terms and conditions of which do not comply with this article, other grantee shall have the right either to opt in to the competitors franchise by providing ten days prior written notice to the grantor, or to petition the grantor for

modifications to its franchise, in which case the grantor shall work in good faith with the affected grantee, to review and adopt accommodations which the grantee, deems necessary, review and approval by the grantor shall not be unreasonably denied.

- (3) Before granting an additional franchise, the grantor shall give written notice to all grantees of any new application, identifying the applicant for such additional franchise and providing at least 30 days prior notice of the date, time and place at which the grantor shall consider and/or determine whether such additional franchise should be granted.
- (4) Every franchise shall apply to the entire service area of the grantor, as it exists now or may later be configured.
- (5) In the event the grantor grants one or more additional franchises or one or more non-franchised MVPDs commences providing cable services in the grantor, a grantee shall have the right to terminate or reduce the term of this franchise at its sole discretion.
- (6) Neither the city nor the grantee may unilaterally alter the material rights and obligations set forth in this franchise. In the event of a conflict between any other ordinance and this franchise, the franchise shall control.

(d) *Franchise term.* A franchise shall be in effect for a period of up to 11 years from the date of acceptance by a grantee, unless renewed, revoked, or terminated sooner as herein provided.

(e) *Territory area involved.* A franchise shall be granted for the corporate boundaries of the grantor, as it exists from time to time. In the event of annexation by the grantor, or as development occurs, any new territory shall become part of the area covered; provided, however, that a grantee shall not be required to extend service beyond its present system boundaries unless there is a minimum of 25 homes per cable mile as measured from the last fiber node or terminating amplifier.

(f) *Written notice.* All notices, reports or demands required to be given in writing under this article shall be deemed to be given when delivered personally to any officer by the grantee to the grantor's administrator of this article as specified in a franchise.

(Ord. No. 2015-02, § 2, 10-5-2015)

Sec. 18-27. Application for new franchise.

(a) An application for an initial franchise to provide video programming shall be in writing on a form provided by the city which shall contain, where applicable:

- (1) Applicant name and business address of applicant.
- (2) A statement as to the proposed franchise area, and whether applicant holds and existing authorization to access the rights-of-way on the city and a map of the area where such authorization exists if for an area other than the entire city.

- (3) Resume of prior history of applicant, including the legal, technical, and financial expenses of applicant in the cable services field.
- (4) List of officers, directors, and managing employees of applicant and resumes of each.
- (5) A proposed construction schedule to provide cable service or video programming to subscribers.
- (6) A certificate of insurance consistent with the requirements of this article.
- (7) A description of the cable system the applicant intends to build, including its capacity, the types of equipment proposed for use and the cable services or video programming which will be offered.
- (8) A description of the financial qualifications of the applicant to construct and operate the system including a balance sheet, income statement, sources and uses of funds statement and pro forma projections for at least three years of operations subsequent to system completion.
- (9) A proposed plan for public, educational and government access channels, including funding, facilities, and equipment and capacity on the system to be dedicated for educational and governmental use.

(b) The initial franchise application may be evaluated according to the following criteria and approved within 180 days after the city deems the application complete. In the event applicant is already authorized to occupy the rights-of-way, the time for review and approval will be 90 days.

- (1) The evidence of legal, technical and financial ability required in the applicant proposal will be such as to ensure the ability to complete the entire system within a reasonable timeframe from the date the franchise is granted. The city will also consider the applicant's ability to operate the system and provide the necessary cable services or video programming in compliance with the terms of this article.
 - (2) The city administrator or designee shall prepare a report and make his or her recommendation respecting such application to the city council.
 - (3) A public hearing shall be set prior to any grant of a franchise at a time and date approved by the city council. Within 30 days after the close of the hearing, the city council shall make a decision based upon the evidence received at the hearing as to whether or not the franchise should be granted and, if granted, subject to what conditions.
 - (4) The city may consider any additional information that it deems applicable.
- (Ord. No. 2015-02, § 3, 10-5-2015)

Sec. 18-28. Construction and operations standards; conditions and street use.

(a) A grantee shall obtain all required permits from the grantor before commencing any construction upgrade or extension of the system.

(b) The grantor shall impose no permit fees upon a grantee.

(c) If, at any time during the period of this franchise, the grantor shall elect to alter, or change the grade or location of any street, alley or other public way, a grantee shall as its own expense, upon reasonable notice by the grantor, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the system. If the grantor reimburses other occupants of the street, a grantee shall be likewise reimbursed.

(d) A grantee shall, on request of any person holding a moving permit issued by the grantor, temporarily move its wires, or fixtures to permit the moving of buildings with the expenses of such temporary removal to be paid by the person requesting the same, and the grantee shall be given not less than ten days' advanced notice to arrange for such temporary changes.

(e) A grantee shall have the authority to trim any trees upon and overhanging the streets, alleys, sidewalks or public easements of the grantor so as to prevent the branches of such trees from coming in contact with wires and cables of the grantee.

(f) Nothing contained in this article shall relieve any person from liability arising from the failure to exercise reasonable care to avoid injuring the grantee's facilities.

(g) In areas where all other utility lines are placed underground, a grantee shall construct and install its cables, wires, and other facilities underground. In any area where one or more public utilities are aerial, a grantee may construct and install its cables, wires, and other facilities from the same pole with the consent of the owner of the pole.

(h) A grantee shall at all times construct and operate its system in accordance with applicable FCC technical specifications.

(i) In the event that the use of any part of the system is discontinued for any reason for a continuous period of 12 months, or in the event such systems or property has been installed in any street or the rights granted without complying with the requirements of this article, or the rights granted hereafter have been terminated, cancelled or have expired, the grantee shall, subject to the rights of the city to acquire the system as specified in subsection (j) of this section, promptly remove from the streets, or public places all such property and poles of such system other than any which the city may permit to be abandoned in place. In the event of such removal, the grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the city.

(j) Any property of a grantee to be abandoned in place shall be abandoned in such a manner as the city may prescribe. Upon permanent abandonment of the property of a grantee in place, it shall submit to the city an instrument to be approved by the city, transferring to the city ownership of such property.

(k) All cable and passive equipment for cable television reception service installed by a grantee at a subscriber's location shall remain the property of the grantee and the grantee shall have the right to remove said cable and equipment. Upon termination of service to any subscriber, the grantee shall promptly remove all its above-ground facilities and equipment from the premises of such subscriber upon request.

(l) No poles or wire-holding structures shall be erected by the grantee without prior approval of the designated representative of the city council with regard to locations, height, type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire-holding structure of the grantee shall be a vested interest and such poles or structures shall be removed or modified by the grantee at its own expense whenever the city council or its designated representative determine that the public convenience would be enhanced thereby.

(m) Where poles or other wire-holding structures already existing in use in serving the city are available for use by the grantee, but does not make arrangements for such use, the city council may require the grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.

(n) Where the city or a public utility serving the city desires to make use of poles or other wire-holding structures of the grantee but agreement therefor with the grantee cannot be reached, the city council may require the grantee to permit such use for such consideration as is just and reasonable and upon such terms as the council determines use would enhance the public convenience and would not unduly interfere with the grantee's operations.

(o) The grantee shall at all times maintain on file with the city auditor a schedule setting forth all the rates and charges to be made to subscribers for basic cable service, including installation charges.

(p) During the term hereof, the city may regulate rates only if authorized to do so by Federal Communications Commission regulation, and then such regulation shall only be in accordance with the provision of such regulations.

(Ord. No. 2015-02, § 4, 10-5-2015)

Sec. 18-29. System provisions and public services.

(a) *Operation and maintenance of system.* A grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

(b) *Service to schools and city.* A grantee shall subject to the extension requirements of section 18-26(e), provide one drop and one outlet of basic cable service at no cost to public and parochial elementary and secondary schools in city, and one city building to me mutually agreed upon by the city and the grantee.

(c) *PEG channel.* The grantee shall allocate one channel to the city as a public, educational and governmental access channel. Until such time as the city files written request with the grantee for full-time use of the channel. A grantee shall have the right to use that portion of the channel capacity that is not being used by the city. A grantee shall have a reasonable period of time after notification to vacate its use of the channel. A grantee shall assist the city in obtaining the necessary licenses and frequency to clearance to enable the city to use said channel.

(d) *Emergency use.* In the case of any emergency or disaster, a grantee shall, upon request of the city council, make available its facilities to the city for emergency use. A grantee shall comply with the emergency alert requirements of the federal law.

(e) *Lockout device.* Upon request of a subscriber, a grantee shall provide by sale or lease a lockout device.

(Ord. No. 2015-02, § 5, 10-5-2015)

Sec. 18-30. Operation and administration provisions.

(a) *Indemnification of grantor.*

- (1) A grantee shall indemnify, defend and hold blameless the grantor, its officers, boards, committees, commissioners, elected officials, employees, and agents from and against all liability, damages and penalties which they may legally be required to pay as a result of the exercise of a franchise granted pursuant to this article, except claims covered by worker's compensation insurance or any claims arising from or related to a grantor's negligence. Nothing in this article relieves a person from liability arising out of the failure to exercise reasonable care to avoid injuring the grantee's facilities while performing work connected with grading, regarding, or changing the line of a street, or public place or with construction or reconstruction of a sewer or water system.
- (2) In order for a grantor to assert its rights in the indemnification, defended, and held harmless, the grantor must, with respect to each claim:
 - a. Promptly notify a grantee in writing of any claim or legal proceeding which gives use to such right;
 - b. Afford a grantee the opportunity to participate in and fully control any compromise, settlement, or other resolution or disposition of any claim or proceeding; and
 - c. Fully cooperate with reasonable requests of a grantee, at the grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of, such claim or proceeding subject to subsection (a)(2)b of this section.

(b) *Insurance.* A grantee shall maintain in full force and effect at its sole expense a comprehensive general liability insurance policy, including contractual liability coverage, in protection of the grantor in its capacity as such. The policies of insurance shall be in the sum of not less than \$300,000.00 for personal injury or death of any one person and \$1,000,000.00 for personal injury or death of two or more persons in any one occurrence, \$300,000.00 for property damage to any one person and \$1,000,000.00 for property damage resulting from any one act or occurrence.

(c) *Franchise fee.*

- (1) A grantee shall pay the grantor a monthly franchise fee in the amount of three percent of the grantee's gross revenues.
- (2) The franchise fee shall be payable monthly, together with a brief report showing the basis for the computation.
- (3) The period of limitation for recovery of any franchise fee payable hereunder shall be three years from the date on which payments by the grantee is due.

(Ord. No. 2015-02, § 6, 10-5-2015)

Sec. 18-31. Revocation, abandonment, and sale or transfer.

(a) *Grantor's right to revoke.* A grantor reserves the right to revoke, terminate, or cancel a franchise if, after strictly following the procedures required by subsection (b) of this section, it is determined that a grantee has violated any material provision of its franchise or this article and has failed to substantially cure such violation.

(b) *Procedures for revocation.*

- (1) A grantor shall provide a grantee with written notice of a cause for revocation and the intent to revoke and shall allow the grantee 60 days subsequent to receipt of the notice in which to substantially cure the violation or to provide adequate assurance of performance. Together with the notice required herein, a grantor shall provide a grantee with written findings of fact which are the basis for the revocation.
- (2) A grantee shall be provided the right to a public hearing affording due process before the grantor council prior to revocation, which public hearing shall follow the 60-day notice provided in subsection (b)(1) of this section. A grantor shall provide a grantee with the written notice of its decision together with written findings of fact supplementing said decision.
- (3) After the public hearing and upon written determination by the grantor to revoke the franchise, the grantee may appeal said decision with an appropriate state or federal court or agency.
- (4) During the appeal period, the franchise shall remain in full force and effect unless the term thereof expires.
- (5) Upon satisfactory correction by a grantee of the violation upon which said notice was given, the initial notice shall become void.

(c) *Sale or transfer of franchise.* No sale or transfer of a franchise shall take place without the written approval of the grantor, which approval shall not be unnecessarily withheld. All of the rights, privileges, obligations, duties, and liabilities created by this franchise shall pass to and be binding upon the successor or assignee of a grantee. Said approval shall not be required where a grantee grants a security interest in its franchise and assets to secure indebtedness.

(Ord. No. 2015-02, § 7, 10-5-2015)

Sec. 18-32. Miscellaneous provisions.

(a) *Franchise renewal.* Any renewal of a franchise shall be done in accordance with the applicable federal law.

(b) *Amendment of franchise.* A grantee and grantor may agree from time to time to amend a franchise. Such written amendments may be made at any time.

(c) *Marketing.* A grantee shall have the right to conduct direct selling in the franchise area, including door-to-door sales, notwithstanding any peddler or solicitor laws or regulations to the contrary.

(Ord. No. 2015-02, § 9, 10-5-2015)

Sec. 18-33. Acceptance.

A grantee shall accept this franchise by executing same. Such acceptance by the grantee shall be deemed the grant of this franchise for all purposes. With its acceptance, a grantee shall also deliver any insurance certificates required herein that have not been previously delivered.

(Ord. No. 2015-02, § 9, 10-5-2015)

Chapter 19

RESERVED

Chapter 20

HEALTH

Article I. In General

- Sec. 20-1. Board of health.
- Sec. 20-2. Violation of board of health or health department ordinances, rules, or orders.
- Sec. 20-3. Residence; when water required.
- Sec. 20-4. Private water systems.
- Sec. 20-5. Dead animals.
- Sec. 20-6. Water pools; putrid substances.
- Secs. 20-7—20-30. Reserved.

Article II. Tobacco

- Sec. 20-31. Definitions.
- Sec. 20-32. Purchase or use of tobacco products by minors.
- Sec. 20-33. Point of sale of tobacco products.
- Sec. 20-34. Smoking in public places and places of employment.
- Sec. 20-35. City buildings, equipment and vehicles; smoking.

ARTICLE I. IN GENERAL**Sec. 20-1. Board of health.**

(a) *Members.* The board of health is composed of the city council, which shall have and exercise all powers under the law.

(b) *Regulations.* The board of health may make rules regarding any nuisance, source of filth, and any cause of sickness which are necessary for public health and safety. The board of health shall appoint a local health officer. (Source: N.D.C.C. § 23-35-08)
(Code 2002, §§ 10.101, 10.102)

Sec. 20-2. Violation of board of health or health department ordinances, rules, or orders.

Any person who violates any order, ordinance, or rule prescribed by the board of health or health officer or any rule adopted under this chapter shall be guilty of a Class B misdemeanor.

(Code 2002, § 10.202)

Sec. 20-3. Residence; when water required.

(a) It shall be unlawful for any person to use or occupy or permit to be used or occupied for residence purposes any premises or building within the corporate limits of the city without first making or causing to be made proper connections with the city's sewer and water facilities and mains.

(b) The term "proper conditions," when used in this section, means connections with the water mains which are equipped and furnished with proper valves and fittings so as to enable such water connections to be used at all times.

(Code 2002, § 12.101)

Sec. 20-4. Private water systems.

(a) Private water supplies may be constructed to serve new buildings, providing such lot area complies with the requirements of any zoning requirements.

(b) Private water systems may be installed in existing buildings in areas not included in section 20-3.

(c) Each private water supply hereafter altered or constructed shall conform to the state health department standards.

(Code 2002, § 12.103)

Sec. 20-5. Dead animals.

Any person who owned or had possession or control of a dead animal prior to its death shall remove or cause the same to be removed within five hours from the time the animal dies and have the same buried or disposed of in some other sanitary way approved by the city

health officer. Any dead animal remaining in any street, alley or other public place in the city, or in any private premises within the city, for more than five hours after the animal shall have died is hereby declared to be a nuisance. Any person allowing any animal which that person controlled or possessed, prior to its death, to remain in any street, alley or public place, or on any private premises within the city for more than five hours after its death shall be guilty of a violation of this article.

(Code 2002, § 12.106)

Sec. 20-6. Water pools; putrid substances.

It shall be unlawful for the owner or occupant of any parcel of ground in the city to suffer or permit water or any putrid substance, whether animal or vegetable, to accumulate or stand so as to cause an offensive odor to be emitted therefrom or to become injurious or dangerous to the health of the neighborhood. Any pool of water and any putrid substance permitted to become offensive or injurious to the public health are hereby declared to be a public nuisance.

(Code 2002, § 12.107)

Secs. 20-7—20-30. Reserved.

ARTICLE II. TOBACCO

Sec. 20-31. Definitions.

The definitions in N.D.C.C. § 23-12-09 apply to this article. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Minor means a person under the age of 21 years.

Retail tobacco dealer means any individual, partnership, corporation or other business or other legal entity selling, offering for sale, exposing for sale, or having in possession for sale, at retail, tobacco products.

Smoking shelter means a partially enclosed structure designed for smoking with no more than 33 percent of the wall space of the structure enclosed. Doors and windows, whether open or closed, shall be considered walls. The percentage of wall space shall be calculated based upon the surface area of the vertical planes of the perimeter of the structure below any ceiling. Smoking shelters must be located more than 20 feet from entrances, exits, non-fixed windows, and ventilation intakes of public places, places of employment, and any location where smoking is prohibited. Smoking shelters shall comply with all applicable codes and zoning requirements. Smoking shelters may not be constructed on any public right-of-way. Sales, service, and consumption of food and alcoholic beverages is prohibited in smoking shelters.

Tobacco product means any product that is made from or derived from tobacco, which contains nicotine or a similar substance, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device. The term "tobacco product" also includes pipes and rolling papers, but does not include any product specifically approved by the U.S. Food and Drug Administration for legal sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.

(Code 2002, ch. 10, art. 7, § I)

Sec. 20-32. Purchase or use of tobacco products by minors.

(a) It is an infraction for any person to sell or furnish to a minor, or procure for a minor, tobacco products in any form in which it may be smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means. As used in this subsection, the term "sell" includes dispensing from a vending machine under the control of the actor. A violation of this subsection shall be an infraction with a maximum penalty of \$500.00.

(b) It is unlawful for a minor to smoke or use tobacco products in any form in which it may be smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means in the city. However, an individual under 21 years of age may purchase and possess tobacco as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority.

(c) It shall be unlawful for any minor to sell, possess, purchase, attempt to purchase, smoke or use tobacco products in any form in which such products may be smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means. However, an individual under 21 years of age may purchase and possess tobacco products as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority. A minor may sell tobacco products as a bona fide employee of a licensed tobacco retailer.

(d) It is unlawful for a minor to present or offer to another individual a purported proof of age which is false, fraudulent, or not actually the minor's own proof of age, for the purpose of attempting to purchase or possess tobacco products in any form in which it may be smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means.

(e) A violation of this section is a civil violation and there shall be a fee of \$25.00 for a minor 14 years of age or older who has been charged with a violation of this section.

(Code 2002, ch. 10, art. 7, § II)

Sec. 20-33. Point of sale of tobacco products.

No person operating a place of business wherein tobacco products are sold or offered for sale shall sell, permit to be sold, offer for sale or display for sale any tobacco products in any manner, unless such products are stored for sale:

- (1) Behind a counter in an area accessible only to the personnel of such business; or
 - (2) In a locked container; provided, however, such restriction shall not apply to:
 - a. Retail stores which derive at least 90 percent of their revenue from tobacco and tobacco-related products and where that retailer ensures that no person younger than 21 years of age is present, or permitted to enter, at any time; and
 - b. Any places to which admission is restricted to persons 21 years of age or older.
- (Code 2002, ch. 10, art. 7, § III)

Sec. 20-34. Smoking in public places and places of employment.

(a) *Purpose.* The ordinance from which this section is derived is enacted to regulate smoking in public places and places of employment in order to protect the public health and welfare and to recognize the need for individuals to breathe smoke-free air.

(b) *Smoking restrictions; exceptions.*

- (1) Except as otherwise provided herein, smoking is prohibited in all:
 - a. Public places;
 - b. Places of employment;
 - c. Indoor and outdoor areas of restaurants;
 - d. Indoor and outdoor areas of bars;
 - e. Areas within 20 feet (6.10 meters) of any entrance, exit, operable window, air intake and ventilation systems of enclosed areas in which smoking is prohibited;
 - f. Areas designated as a nonsmoking area by a business, employer, the manager of a business, or a person in control of a public place or a place of employment;
 - g. Smoking shelters if food or alcoholic beverages are sold, served or consumed in the smoking shelter.
- (2) The following areas, locations, or uses are exempt from the provisions of subsection (b)(1) of this section:
 - a. Private residences, except when used as a child care, adult day care, or health care facility subject to licensure by the state department of human services.
 - b. Outdoor areas of places of employment, except a sports arena, restaurant, or as otherwise prohibited herein.
 - c. Any area that is not commonly accessible to the public and which is part of an owner-operated business having no employee other than the owner-operator.

- d. Outdoor areas of a bar holding a beverage license, as defined in this Code, provided that patrons entering such licensed premises must be at least 21 years of age and further provided that no food is sold, served, or consumed in such outdoor areas, whether designated as an outdoor patio, terrace, deck, courtyard, sidewalk, porch, or other similar term.
 - e. Smoking shelters provide that no food or alcoholic beverages are sold, served, or consumed in the smoking shelter.
 - f. Smoking as part of a traditional American Indian spiritual or cultural ceremony.
- (3) An owner, operator, manager, or other person who owns or controls a public place or place of employment may seek a variance from the 20-foot zone of exclusion set forth herein by making application to the director of the public health department. The variance may be granted upon the applicant showing, by clear and convincing evidence, that, given the unique circumstances presented by the location of the entrances, exits, windows that open, ventilation intakes, or other factors, smoke will not infiltrate or reach the entrances, exits, open windows, or ventilation intakes or enter into such public place or place of employment and that public health and safety will be adequately protected by a lesser distance from such entrances, exits, windows that open, and ventilation intakes.
- (4) This section shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(c) *Retaliation prohibited.* No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or other person because that person asserts or exercises any rights afforded by this article or reports or attempts to prosecute a violation of this article. An employee who works in a setting where an employer allows smoking does not waive or surrender any legal rights the employee may have against the employer or any other party. Violations of this section shall be a Class B misdemeanor.

(d) *Right to designate nonsmoking areas.* Nothing in this article shall prevent any business, employer, manager of a business, or person in control of a public place or a place of employment, or any owner of real property, from prohibiting smoking in any location, or part thereof, where smoking is otherwise allowed under this article.

(e) *Posting of signs or symbols and other responsibilities of proprietors.* The owner, proprietor, operator, manager, or other person in charge or control of a public place or place of employment where smoking is prohibited by this article shall:

- (1) Clearly and conspicuously post "no smoking" signs or the international no smoking symbol consisting of a pictorial representation of a burning cigarette in a circle with a bar across it in that place.
- (2) Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.

- (3) Clearly and conspicuously post in every vehicle that constitutes a place of employment under this article at least one sign, visible from the vehicle's exterior, stating that smoking is prohibited.
- (4) Remove all ashtrays from any area where smoking is prohibited, except for ashtrays displayed for sale and not for use on the premises.
- (5) Communicate to all existing employees that smoking is prohibited in that place.
- (6) Communicate to all prospective employees, upon their application for employment, that smoking is prohibited in that place.
- (7) Direct a person who is smoking in violation of this article within the public place or place of employment under the control of such owner, proprietor, manager, or other person to extinguish the product being smoked. If the person does not stop smoking, the owner, proprietor, operator, manager, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, proprietor, operator, manager, or employee shall immediately report the violation to the county sheriff's department. The refusal of the person to stop smoking or leave the premises in response to requests made under this section by an owner, proprietor, operator, manager, or employee shall not constitute a violation of this article by the owner, proprietor, operator, manager, or employee.

(f) *Penalty.*

- (1) An individual who smokes in an area in which smoking is prohibited under the provision of this article is guilty of a noncriminal offense.
- (2) A business, employer, owner of a business, or a person with general supervisory authority over a public place or a place of employment who willfully fails to comply with the provisions of this article is guilty of a noncriminal offense.
- (3) A business or an individual who is found guilty of a violation of the provisions of this article shall be punishable by:
 - a. A fine not exceeding \$100.00 for the first violation;
 - b. A fine not exceeding \$200.00 for a second violation occurring within one year of the first violation;
 - c. A fine not exceeding \$500.00 for each violation occurring within one year of the second violation.
- (4) In addition to the fines established by this section, violation of this article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued for the premises, or regulated activities conducted on the premises, for the premises on which the violation occurred.

(Code 2002, ch. 10, art. 7, § IV)

Sec. 20-35. City buildings, equipment and vehicles; smoking.

Smoking is not permitted in city buildings, equipment and vehicles, except in designated smoking areas. The public official having general supervisory authority over any city buildings, equipment or vehicles may designate a smoking area by posting a sign in the smoking area which states "designated smoking area." Any designated smoking area in a place of public assembly may not occupy more than 50 percent of the total area available to the public and must be situated to minimize smoke drift.

(Code 2002, § 3.227)

Chapter 21

RESERVED

Chapter 22

LICENSES, PERMITS AND MISCELLANEOUS REGULATIONS

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ARTICLE I. IN GENERAL

Secs. 22-1—22-18. Reserved.

ARTICLE II. BUSINESS LICENSES AND PERMITS GENERALLY

Sec. 22-19. Purpose.

Unless otherwise specifically provided, licenses and permits required for the carrying on of a business or trade within the city shall be applied for, issued, terminated and revoked according to the provisions of this article.

(Code 2002, § 8.101)

Sec. 22-20. Application.

Any person desiring a license or permit under any ordinance of the city shall make a written application to the city therefor upon the application blanks furnished by the city auditor and shall file the same with the city auditor. The application shall state the purpose for which the license or permit is desired, for what length of time, the place where the business is to be carried on and the proposed sureties on any required bonds.

(Code 2002, § 8.102)

Sec. 22-21. Granting.

The city auditor shall receive applications for licenses and permits and grant the same in all cases where expressly authorized upon the terms and conditions specified by ordinance. If the city auditor shall not feel authorized to grant any particular application for license or permit for any purpose not named by ordinance, the city auditor shall report such application to the next meeting of the governing board for their action thereon.

(Code 2002, § 8.103)

Sec. 22-22. Term.

(a) No license or permit shall be granted for a longer period than one year.

(b) All yearly licenses or permits shall commence on July 1 in each year and expire on June 30 in each year. All semi-annual licenses or permits shall commence on January 1 and July 1 and expire on June 30 and December 31, respectively.

(c) No license or permit shall be valid until signed and sealed nor shall any persons be deemed licensed until a license shall be duly issued to him.

(d) Each license shall be dated the day of issuance thereof; but, if the applicant shall have been acting without a license, the license shall commence with the date business commenced. If the business calls for a yearly license, then a license shall commence on the first day of July in the year for which the license shall be issued.

(e) The date of issuance of the license, together with the time of commencing and expiration, shall be given in the license and the license record.

(Code 2002, § 8.104)

Sec. 22-23. Not transferable.

No license or permit shall be assignable or transferable except by permission of the city council. No person other than the person to whom the license is granted shall be authorized to do business or act under such license or at any other than the place specified therein. The city may grant the continuance of the business licensed to any other portion of the city, such permission to be certified on the license by the city auditor. No license shall authorize any person to act under it at more than one place at the same time, or at any other place than is therein specified. Whoever shall violate any of the provisions of this section shall be deemed to be acting without a license and shall be subject to the same penalty as prescribed for acting without a license.

(Code 2002, § 8.105)

Sec. 22-24. Revocation.

(a) All licenses granted shall be subject to ordinances in force at the time of issuing thereof or which may be subsequently passed by the city council. Any person who shall violate any provision of this article relating to his license may be proceeded against for any fine or penalty imposed thereby, and his license may be revoked or forfeited in the discretion of the city council or the court before which any action may be brought for the recovery of any fine or penalty.

(b) Where not otherwise provided, any license may be revoked by the governing board at any time for cause. The term "cause" shall include, but not be limited to, the following:

- (1) Violation of the laws of the state or any of the ordinances of the city dealing with or pertaining to the business or trade licensed.
- (2) The willful making of any false statement as to a material fact in the application for license.
- (3) Permitting any disorderly practices upon the premises where the licensee is licensed to carry on the business or trade.
- (4) The death of a licensee.
- (5) When the licensee ceases business at the location licensed.
- (6) When the licensee ceased to be a legal a resident of the United States.

(c) When the license is terminated or revoked for cause, the licensee, or those claiming under the licensee, shall not be entitled to any return of any portion of the license fee previously paid to the city.

(Code 2002, § 8.106)

Sec. 22-25. Posting.

All licenses and permits issued by the city for the operation of any business establishment, trade or any part of the operation thereof shall be posted in a conspicuous place in the main business establishment. Where badges representing permits or licenses are issued to be worn by an individual, such licensee shall wear such badge during the normal course of employment for which said badge was issued.

(Code 2002, § 8.107)

Sec. 22-26. Short-term licenses.

No license, unless otherwise specified, shall be issued for a fractional part of the year, but shall relate back if taken out subsequent to July 1 of each year.

(Code 2002, § 8.108)

Sec. 22-27. Enforcement.

All city officials having duties to perform with reference to licensed premises, including all police officers, shall have authority to enter the licensed premises with or without a search warrant to check for violations of ordinances or state laws by the licensee.

(Code 2002, § 8.109)

Secs. 22-28—22-57. Reserved.

ARTICLE III. RUNNERS, SOLICITORS AND CANVASSERS

Sec. 22-58. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Runner, canvasser, or solicitor means any individual, whether a resident of the city or not, traveling either by foot, wagon, automobile, motor truck or any other type on conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future. The term "runner," "canvasser," or "solicitor" includes any person who, for himself, or for another person, firm or corporation, hires, leases, uses or occupies any buildings, structure, tent, railroad boxcar, boat, hotel room, lodginghouse, apartment, shop or any other place within the city for the sole purpose of exhibiting samples and taking orders for future delivery.

(Code 2002, § 8.401)

Sec. 22-59. Exceptions.

No license shall be required hereunder for runners, solicitors or canvassers of regular retailers of goods, wares and merchandise and personal property, but only for those runners, solicitors and canvassers selling directly to the consumer.

(Code 2002, § 8.402)

Sec. 22-60. License required.

It shall be unlawful for any person to engage in the business of runners, solicitors and canvassers of any merchandise, article or thing without having first secured a license therefor.

(Code 2002, § 8.403)

Sec. 22-61. Application for license.

Applicants for license under this article must file with the city auditor a sworn application in writing, which shall give the following information:

- (1) Name, age and sex of the applicant;
- (2) Address (legal and local);
- (3) A brief description of the nature of the business and the goods to be sold;
- (4) If employed, the name and address of the employer, together with credentials establishing the exact relationship;
- (5) The length of time for which the right to do business is desired;
- (6) If a vehicle is to be used, a description of the same, together with license number; and
- (7) A statement as to whether or not the applicant has been convicted of any crimes, misdemeanors or violations of any municipal ordinance, the nature of the offense and punishment or penalty assessed therefor.

(Code 2002, § 8.404)

Sec. 22-62. Fees.

The license fee to be required of all runners, solicitors and canvassers shall be in the amount established by resolution.

(Code 2002, § 8.405)

Sec. 22-63. Exhibition of license.

Runners, solicitors and canvassers are required to exhibit their licenses at the request of any citizen.

(Code 2002, § 8.406)

Sec. 22-64. Transfer.

No license issued under the provisions of this article shall be transferred or used at any time by any person other than the one to whom it was issued.

(Code 2002, § 8.407)

Sec. 22-65. Use of streets.

No runner, solicitor or canvasser shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location, nor shall he be permitted to operate in any congested area where his operations might impede or inconvenience the public. For the purposes of this article, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

(Code 2002, § 8.408)

Sec. 22-66. Enforcement.

It shall be the duty of any police officer of the city to require any person seen soliciting or canvassing, and who is not known by such officer to be duly licensed, to produce his license and to enforce the provisions of this article against any person found to be violating the same.

(Code 2002, § 8.409)

Sec. 22-67. Revocation.

(a) Licenses issued under the provision of this article may be revoked by the city council after notice and hearing, for any of the following causes:

- (1) Fraud, misrepresentation or false statement contained in the application for license;
- (2) Fraud, misrepresentation or false statement made in the course of carrying on his business;
- (3) Any violation of this article;
- (4) Conviction of any crime or misdemeanor involving moral turpitude;
- (5) Conducting the business of soliciting and canvassing in an unlawful manner or in such a manner as to constitute a breach of peace or constitute a menace to the health, safety or general welfare of the public.

(b) Notice of a hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five days prior to the date set for the hearing.

(Code 2002, § 8.410)

Secs. 22-68—22-92. Reserved.

ARTICLE IV. SHOWS, CARNIVALS AND CIRCUSES (RESERVED)**Secs. 22-93—22-112. Reserved.****ARTICLE V. TRANSIENT MERCHANTS****Sec. 22-113. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Transient merchant includes any person, individual, co-partnership or corporation, either as principal or agent, who engages in, does or transacts any temporary or transient business in the city limits, either in one locality or in traveling from place to place, selling goods, wares and merchandise who does not intend to become a permanent merchant of the city and who, for the purpose of carrying on such business, hires, leases, occupies or uses a building, structure, lot, tract, railroad car or motor vehicle for the exhibition and sale of such goods, wares and merchandise. The person, individual, co-partnership or corporation so engaged shall not be relieved from complying with the provisions of this article merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer or by conducting such transient business in connection with, as a part of or in the name of any local dealer, trader, merchant or auctioneer. The term "merchandise" shall not include any livestock or agricultural product.

(Code 2002, § 8.201)

Sec. 22-114. License—Required.

It shall be unlawful to do business in the city as a transient merchant without having first secured a license therefor as is herein provided. For the purpose of this article, any merchant engaging or intending to engage in business as a merchant in the city for a period of time not exceeding 100 days shall be considered as a transient merchant, provided that peddlers shall not be considered transient merchants.

(Code 2002, § 8.202)

Sec. 22-115. License—Fee.

The license fee to be required of all transient merchants for the transaction of such business within the city shall be in the amount established by resolution.

(Code 2002, § 8.203)

Sec. 22-116. License—Application.

Applicants for license under this article, whether an individual, co-partnership or corporation, shall file with the city auditor a written sworn application signed by the applicant if an individual, by all partners of a partnership and by the president if a corporation, showing:

- (1) The applicant's name, present residence, present home address, present business address, and, if a corporation, under the laws of what state the same is incorporated;
- (2) The name, present residence, present home address and present business address of the person having the management or supervision of the applicant's business during the time that it is proposed that it will be carried on in the city;
- (3) The residence, business address and type of business in which the applicant has been engaged in the previous two years;
- (4) The residence, business address and type of business in which the person having the management or supervision of the applicant's business has been engaged in the previous two years;
- (5) The place in the city where it is proposed to carry on the applicant's business, and the length of time during which it is proposed that said business shall be conducted;
- (6) The kind of business to be conducted;
- (7) The name and address of the auctioneer, if any, who will conduct the sale; and
- (8) A statement of the nature, character and quality of the goods, wares or merchandise to be sold or offered for sale by applicant in the city, the invoice value and quality of such goods, wares and merchandise, whether the same are proposed to be sold from stock in possession or by sample, at auction, by direct sale or by taking orders for future delivery, where the goods or property proposed to be sold are manufactured or produced, and where such goods or products are located at the time said application is filed.

(Code 2002, § 8.204)

Sec. 22-117. Bond.

Before any license shall be issued to a transient merchant for engaging in business in the city, the applicant therefor shall file with the city auditor a bond running to the city in the sum of \$1,000.00 executed by the applicant, as principal, and a responsible surety upon which service of process may be made in the state; said bond not to be revocable nor to terminate prior to passage of two years of time after the expiration of the license issued pursuant thereto nor until due notice that the terms of the bond are to be cancelled has been given by the city auditor. The bond is to be approved by the city attorney, conditioned that the applicant shall comply fully with all of the provisions of the ordinances of the city and the statutes of the state, regulating and concerning the sale of goods, wares and merchandise and will pay all judgments rendered against the applicant for any violation of said

ordinances or statutes, together with all judgments and costs that may be recovered against him by any person for damage growing out of any misrepresentation or deception practiced on any person transacting business with the applicant, whether misrepresentations or deceptions were made or practiced by the owners or by their servants, agents or employees, of any character whatsoever, printed or circulated with reference to the goods, wares and merchandise sold or any part thereof. Action on the bond may be brought in the name of the city to the use of the aggrieved person.

(Code 2002, § 8.205)

Sec. 22-118. Service of process.

Before any license, as herein provided, shall be issued for engaging in business as a transient merchant, as herein defined, in the city, such applicant shall file with the city auditor an instrument nominating and appointing the city auditor his true and lawful agent with full power and authority to acknowledge service or notice of process for and on behalf of the applicant in respect to any matters connected with or arising out of the business transacted under the license and the bond given as required by this article, or for the performance of the conditions of said bond or for any breach thereof. This instrument shall also contain recitals to the effect that the applicant for license consents and agrees that service of any notice or process may be made upon said agent, and when so made shall be taken and held to be as valid as if personally served upon the person or persons applying for the license under this article, according to the law of the state or any other state and waiving all claim or right of error by reason of such acknowledgement of service or manner of service. Immediately upon service of process upon the city auditor, as herein provided, the city auditor shall send the licensee at his last known address, by registered mail, a copy of said process.

(Code 2002, § 8.206)

Sec. 22-119. Exhibiting license.

The license issued under this article shall be posted conspicuously in the place of business named therein. In the event that such person or persons applying for a license shall desire to do business in more than one place within the city, separate licenses may be issued for each place of business and shall be posted conspicuously in each place of business.

(Code 2002, § 8.207)

Sec. 22-120. Transfer.

No license issued to a transient merchant in the city shall be transferred.

(Code 2002, § 8.208)

Sec. 22-121. Enforcement by police.

It shall be the duty of the police officers of the city to examine all places of business and persons in their respective territories subject to the provisions of this article, to determine if this article has been complied with and to enforce the provisions of this article against any

person found to be violating the same. The city auditor shall deposit with the police a record of each license number, together with the location within the city of the business licensed thereunder to assist and promote such enforcement.

(Code 2002, § 8.209)

Sec. 22-122. Revocation.

(a) Any license issued pursuant to this article may be revoked by the city council, after notice and hearing for any of the following causes:

- (1) Any fraud, misrepresentation or false statement contained in the application for license;
- (2) Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares or merchandise;
- (3) Any violation of this article;
- (4) Conviction of the licensee of any felony or of a misdemeanor involving moral turpitude; or
- (5) Conducting the business licensed under this article in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

(b) Notice of hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five days prior to the dates set for the hearing.

(Code 2002, § 8.210)

Sec. 22-123. Expiration of license.

All licenses issued under the provisions of this article shall expire at the expiration of the period for which application has been made and prepaid, to be renewable by the city auditor upon application and payment therefor.

(Code 2002, § 8.211)

Chapter 23

RESERVED

Chapter 24

MUNICIPAL COURT

- Sec. 24-1. Municipal judge appointed.
- Sec. 24-2. Report to the city council.
- Sec. 24-3. Contents of report.
- Sec. 24-4. Receipt to accompany report.
- Sec. 24-5. Court hours.
- Sec. 24-6. Duties of municipal judge.

Sec. 24-1. Municipal judge appointed.

(a) The city, acting pursuant to its home rule powers, hereby provides that the municipal judge for the city shall be appointed by the mayor of the city and such appointment shall be confirmed by the city council. Such appointment shall be for a term of two years or such other term as is otherwise specified by the city council.

(b) An alternate municipal judge may be appointed to serve when the municipal judge is unable to serve due to temporary absence, interest, disqualification, or disability. The alternate municipal judge must be compensated at a rate set by the city council and shall possess the qualifications of a municipal judge.

(Code 2002, § 1.401)

Sec. 24-2. Report to the city council.

It shall be the duty of the municipal judge to make a full report under oath of all proceedings in the actions or matters before him in which the city is a party, or interested therein, to the city council at the close of each month. Until such report has been filed with the city auditor, no salary shall be paid the judge for such work.

(Code 2002, § 1.402)

Sec. 24-3. Contents of report.

Such report shall contain the names of the parties to such action or proceeding, a statement of all orders made, whether the defendants be committed, fined or released from custody, the judgment, the extent thereof, the costs, the amount of costs and fine paid, if any, with the disposition thereof, together with an itemized account of any fees of all officers and witnesses and the names of each, the name or each person making the complaint, and the nature and date thereof.

(Code 2002, § 1.403)

Sec. 24-4. Receipt to accompany report.

This report will be accompanied by the duplicate receipt or receipts of the city auditor for the total amount of the fees and money so collected on behalf of the city.

(Code 2002, § 1.404)

Sec. 24-5. Court hours.

The municipal judge shall be in attendance at municipal court for the transaction of business that may come before him and shall devote the time necessary to handle and dispose of the business coming before him.

(Code 2002, § 1.405)

Sec. 24-6. Duties of municipal judge.

Additional duties of the municipal judge shall be as provided by the provisions of N.D.C.C. ch. 40-18 and all amendments.

(Code 2002, § 1.406)

Chapter 25

RESERVED

Chapter 26

NUISANCES

Article I. In General

- Sec. 26-1. Findings.
- Sec. 26-2. Definitions.
- Sec. 26-3. Unlawful property nuisance.
- Sec. 26-4. Location or presence of junked vehicles within the city deemed public nuisance; exceptions.
- Sec. 26-5. Declaration of public nuisance.
- Sec. 26-6. Abatement procedure; notification of nuisance.
- Sec. 26-7. Appeal procedure.
- Sec. 26-8. Abatement by city.
- Sec. 26-9. Limitations period for filing judicial action.
- Sec. 26-10. Lien procedure.
- Sec. 26-11. Removal with permission of owner or occupant.
- Sec. 26-12. Disposal of junked vehicles.
- Sec. 26-13. Application.
- Sec. 26-14. Alternative actions available; violation an infraction; continuing violations a misdemeanor.
- Secs. 26-15—26-31. Reserved.

Article II. Automobiles and Other Personal Property

- Sec. 26-32. Automobiles, personal property; when a nuisance.
- Sec. 26-33. Abatement required—By owners.
- Sec. 26-34. Abatement required—Penalty for failure.
- Sec. 26-35. Removal and impoundment—By city.
- Sec. 26-36. Removal and impoundment—When sold.
- Sec. 26-37. Removal and impoundment—Proceeds.
- Secs. 26-38—26-62. Reserved.

Article III. Grass and Noxious Weeds

- Sec. 26-63. Definitions.
- Sec. 26-64. Weeds and high grasses prohibited.
- Sec. 26-65. Hay bales.
- Sec. 26-66. Notice to destroy.
- Sec. 26-67. Action upon noncompliance.
- Sec. 26-68. Costs assessed to property.

ARTICLE I. IN GENERAL**Sec. 26-1. Findings.**

The city council finds and declares that the regulations set forth in this chapter are necessary in order to eliminate conditions on properties in the city which are detrimental to the health, safety and welfare of residents thereof, to neighboring occupants or properties and the municipal welfare.

(Code 2002, § 10.501)

Sec. 26-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building means any structure used or intended for supporting or sheltering any use or occupancy.

Building official means the city building inspector or his or her designee.

Chief of police means the city chief of police or his or her designee or any peace officer or any law enforcement department with whom the city contracts for police services.

Junked vehicle means any motor vehicle which is inoperative or which does not have lawfully affixed thereto both an unexpired license plate and which is wrecked, dismantled, partially dismantled, or discarded.

Owner means any person owning property, as shown on the last equalized assessment roll for city taxes and also includes the lessee, tenant or other person having control or possession of the property unless otherwise specified.

Property means all real property, including, but not limited to, front yards, side yards, back yards, driveways, walkways and sidewalks, and shall include any building located on such property.

(Code 2002, § 10.502)

Sec. 26-3. Unlawful property nuisance.

It shall be unlawful for any person owning, leasing, renting, occupying or having charge or possession of any property in the city to maintain or to allow to be maintained such property in such manner than any of the following conditions are found to exist thereon, except as may be allowed by this Code or by other city regulations:

- (1) The exterior accumulation of dirt, litter or debris on the property;
- (2) Clotheslines or clothes hanging in front yards, side yards, porches, or balconies; provided, however, that clotheslines and clothes hanging in rear yards are permitted;

- (3) Trash, garbage, or refuse cans, bins, boxes, or other such containers stored in yards for an unreasonable period;
- (4) Packing boxes, lumber, junk, trash, salvage materials, or other debris kept on the property for an unreasonable period;
- (5) Attractive nuisances dangerous to children including abandoned, broken or neglected equipment, machinery, refrigerators and freezers, hazardous pools, ponds and excavations;
- (6) Broken or discarded furniture, household equipment and furnishings or shopping carts stored on the exterior of the property for an unreasonable period;
- (7) Overgrown vegetation likely to harbor rats, vermin and other nuisances causing detriment to neighboring properties or property values or obstructing necessary view of drivers on public streets or private driveways;
- (8) Dead, decayed, diseased, or hazardous trees, weeds, or other vegetation constituting unsightly appearance, dangerous to public safety and welfare, or detrimental to neighboring properties or property values;
- (9) Graffiti or other words, letters, or drawings which remain on the exterior of any building or fence for an unreasonable period and which are visible from a public street;
- (10) Boats, trailers, vehicles or vehicle parts, or other articles of personal property which are located on the property in violation of this chapter or any other city ordinance or state statute or are abandoned or left in a state of partial construction or repair for an unreasonable period of time in the designated paved parking area of the front yard, back yard, side yard, driveway or sidewalk are prohibited and semi-trailer shipping containers (Conex or otherwise), dumpsters, roll-off containers, portable storage units, or other equivalent containers of any size are prohibited from being used as storage units in residential areas;
- (11) Camper shells which are left for a unreasonable period of time in the front yard, driveway, side yard, sidewalk, or walkway and are visible from a public street; and
- (12) Buildings which are abandoned, boarded up, partially destroyed, or left in a state of partial construction for an unreasonable period of time and such buildings which are unpainted or where the paint on the building exterior is mostly worn off.

(Code 2002, § 10.503; Ord. No. 2024-01, § 10.503, 4-1-2024)

Sec. 26-4. Location or presence of junked vehicles within the city deemed public nuisance; exceptions.

The location or presence of any junked vehicle or junked vehicles on any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the city shall be deemed a public nuisance and it shall be unlawful for any person to cause or maintain such public nuisance by wrecking, dismantling, rendering inoperable, abandoning

or discarding his or their vehicles on the property of another or to suffer, permit or allow the same to be placed, located, maintained or exist upon his or their own real property, provided that this section shall not apply to:

- (1) A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property;
- (2) A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or a junkyard; or
- (3) Unlicensed inoperable vehicles stored on private property; provided, however, that the vehicles and outdoor storage areas are maintained in such a manner that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means.

(Code 2002, § 10.504)

Sec. 26-5. Declaration of public nuisance.

Any property found to be maintained in violation of section 26-4 is hereby declared to be a public nuisance and shall be abated by rehabilitation, removal, demolition, or repair pursuant to the procedures set forth herein. The procedures for abatement set forth herein shall not be exclusive and shall not in any manner limit or restrict the city from enforcing other city ordinances and regulations or abating public nuisances in any manner provided by law.

(Code 2002, § 10.505)

Sec. 26-6. Abatement procedure; notification of nuisance.

Whenever the city building official or the city's chief of police determines that any property within the city is being maintained contrary to one or more of the provisions of section 26-3, the city auditor shall give written notice (notice to abate) to the owner of said property stating the section being violated. The notice to abate shall set forth a reasonable time limit, in no event less than seven calendar days, for correcting the violation and may also set forth suggested methods of correcting the same and shall be served upon the owner in accordance with the provisions of subsection (2) of this section covering service in person or by mail.

- (1) *Administrative hearing to abate nuisance.* In the event the owner shall fail, neglect, or refuse to comply with the notice to abate, the city council shall conduct an administrative hearing to ascertain whether the condition complained of in the notice violates this article and, therefore, constitutes a public nuisance.
- (2) *Notice of hearing.* Notice of hearing shall be served upon the owner not less than seven calendar days before the time fixed for hearing. Notice of hearing shall be served in person or by certified mail to the owner's last known address. Service shall be deemed complete at the time notice is personally served or deposited in the mail. Failure of any person to receive notice shall not affect the validity of any proceedings hereunder. Notice shall be substantially in the format set forth below:

NOTICE OF ADMINISTRATIVE HEARING ON ABATEMENT OF NUISANCE

This is a notice of hearing before the City Council to ascertain whether certain property situated in the City of Hankinson, State of North Dakota, known and designated as (street address), and more particularly described as (assessor's parcel number), constitutes a public nuisance subject to abatement by the methods suggested in this notice. If the conditions described in this notice, in whole or in part, is (are) found to constitute a public nuisance as defined in this ordinance or any other ordinance of the City of Hankinson and is (are) not promptly abated by the owner, such nuisance may be abated by municipal authorities, in which the case the cost of abatement will be assessed upon such property and such costs, together with interest thereon, will constitute a lien upon such property until paid. In addition, you may be cited for violation for the provisions of the Hankinson City Ordinances and subject to a fine or imprisonment.

The nuisance conditions consist of the following:_____

The methods of abatement are:_____

All persons having an interest in the matters covered by this notice may attend the hearing and their testimony and evidence will be heard and given due consideration.

Dated this _____ day of _____, 20____.

City Auditor

Time and Date of Hearing:_____

Location of Hearing:_____

- (3) *Administrative hearing by city council.* At the time stated in the notice, the city council shall hear and consider all relevant evidence, objections, or protests relative to such alleged public nuisance and to the proposed methods of abatement which may include cleanup, rehabilitation, repair, removal, demolition of such property of such other methods which the city auditor may deem appropriate. The hearing may be continued from time to time. If the city council finds that such public nuisance does not exist and that there is sufficient cause to abate the nuisance, the city council shall prepare findings and an order, which shall specify the nature of the nuisance, the methods of abatement and the time within which the work shall be commenced and completed. The order shall include reference to the right to appeal set forth in section 26-7. A copy of the findings and order shall be served on all owners of the property in accordance with the provisions of subsection (2) of this section. In addition, a copy of the findings and order shall be forthwith conspicuously posted on the property.

- (4) *Procedure; no appeal.* In the absence of any appeal, the owner shall abate the nuisance on the property in the manner and means specifically set forth in the findings and order. In the event the owner fails to abate the nuisance as ordered, the city council shall cause the nuisance to be abated by city employees or private contract. The costs shall be billed to the owner, as specified in section 26-8. The city council may authorized city employees or the city's contractors to enter upon the property for such purposes.

(Code 2002, § 10.506)

Sec. 26-7. Appeal procedure.

The owner may appeal the city council's finding and order to the district court of the county within ten days of the date of service of the city council's decision. If the tenth day falls on a weekend or legal holiday observed by the city, then the appeal may be filed on the next work day. The appeal shall contain:

- (1) A specific identification of the subject property;
- (2) The names and addresses of all appellants;
- (3) A statement of appellant's legal interest in the subject property;
- (4) A statement in ordinary and concise language of the specific order or action protested and the grounds for appeal, together with all material facts in support thereof;
- (5) The date and signatures of all appellants; and
- (6) The verification of at least one appellant as to the truth of the matters in the appeal.

(Code 2002, § 10.507)

Sec. 26-8. Abatement by city.

If the nuisance is not abated as ordered within the abatement period, the city auditor shall cause the same to be abated by such city employees or private contractors the city auditor may authorize to enter upon the property for such purposes. The cost, including incidental expenses, of abating the nuisance shall be billed to the owner and shall become due and payable 30 days thereafter. The term "incidental expenses" includes, but is not limited to, personnel costs, both direct and indirect; costs incurred in documenting the nuisance; the actual expenses and costs of the city in the preparation of notices, specifications, and contracts and in inspecting the work; and the costs of printing and mailing the notices of required hereunder.

(Code 2002, § 10.508)

Sec. 26-9. Limitations period for filing judicial action.

Any lawsuit challenging the city council's decision and order shall be commenced within ten calendar days of the date of the decision.

(Code 2002, § 10.509)

Sec. 26-10. Lien procedure.

(a) *Record of cost of abatement.* The city auditor shall keep an account of the cost of abating such nuisance on each separate lot or parcel of land where the work is done by the city and shall render an itemized report in writing to the city council showing the cost of abatement, including any salvage value. Before the abatement cost report is submitted to the city council, a copy of the same shall be posted for at least five days upon the subject property, together with a notice of the date when said report shall be heard by the city council for confirmation. A copy of said report and notice shall be served upon the owners of said property in accordance with the provisions of section 26-6(2) at least five calendar days prior to submitting the same to the city council. Proof of said posting and said service shall be made by affidavit filed with the city clerk.

(b) *Assessment lien.* The total cost for abating such nuisance, as so confirmed by the city council, shall constitute a special assessment against the respective lot or parcel of land to which it relates, and upon recordation in the office of the county register of deeds of a notice of lien, as so made and confirmed, shall constitute a lien on said property for the amount of such assessment. After such confirmation and recordation, a certified copy of the city council's decision shall be filed with the county auditor on or before October 1 of each year, whereupon it shall be the duty of said auditor to add the amounts of the respective assessments to the next regular tax bills levied against said respective lots and parcels of land for municipal purposes and thereafter said amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection, and enforcement of municipal taxes shall be applicable to such special assessment.

(c) *Foreclosure.* In the alternative, after such recordation, such lien may be foreclosed by judicial or other sale in the manner and means provided by law.

(d) *Notice of lien.* The notice of lien for recordation shall be in form substantially as follows:

NOTICE OF LIEN

(Claim of City of Hankinson)

Pursuant to the authority vested by the provisions of Ordinance No. _____ of the City of Hankinson, the City Council of the City of Hankinson did on or about the day of _____, 20____, cause the property or condition hereinafter described to be rehabilitated or the building or structure on the property to be repaired, demolished or removed in order to abate a public nuisance on said real property; and the City Council of the City of Hankinson did on the _____ day of _____, 20____, assess the cost of such abatement upon the real property hereinafter described; and the same has not

been paid nor any part thereof; and that the City of Hankinson does hereby claim a lien on such rehabilitation, repair, or demolition in the amount of said assessment, to-wit: the sum of \$_____;

And the same, shall be a lien upon said real property until the same has been paid in full and discharged of record.

The real property hereinafter mentioned, and upon which a lien is claimed, is that parcel of land lying and being in the City of Hankinson, County of Richland, State of North Dakota, and particularly described as follows:

(description)

Dated this _____ day of _____, 20____.

City Auditor, City of Hankinson

(e) *Remedies.* The city may use any other remedies permitted by law in recovery of its costs of abating such nuisances including small claims court, county court and district court actions.

(Code 2002, § 10.510)

Sec. 26-11. Removal with permission of owner or occupant.

If, within ten days after receipt of notice from the city auditor and/or his employees, or his duly authorized agent, to abate the nuisance, as herein provided, the owner or occupant of the premises shall give his written permission the city auditor and/or his employees, or his duly authorized agent, for removal of the junked motor vehicle from the premises, the giving of such permission shall be considered compliance with the provisions of section 26-6.

(Code 2002, § 10.511)

Sec. 26-12. Disposal of junked vehicles.

If such public nuisance is not abated by said owner or occupant after notice is given in accordance with this article, official action shall be taken by the city to abate such nuisance. Junked vehicles or parts thereof may be disposed of by removal to a scrap yard, demolishers, or any suitable site for processing as scrap or salvage.

(Code 2002, § 10.512)

Sec. 26-13. Application.

Nothing in this article shall affect ordinances that permit immediate removal of a vehicle left on public property which constitutes an obstruction to traffic.

(Code 2002, § 10.513)

Sec. 26-14. Alternative actions available; violation an infraction; continuing violations a misdemeanor.

Nothing in this article shall be deemed to prevent the city council from ordering the commencement of a civil proceeding to abate a public nuisance pursuant to applicable law or from pursuing any other remedy available under applicable law. Violation of the provisions of this article constitutes an infraction, for which a fee of up to \$100.00 may be assessed per each day violation continues. Violations which constitute infractions which occur for more than three days shall constitute a misdemeanor for each violation exceeding the three infractions.

(Code 2002, § 10.514)

Secs. 26-15—26-31. Reserved.**ARTICLE II. AUTOMOBILES AND OTHER PERSONAL PROPERTY****Sec. 26-32. Automobiles, personal property; when a nuisance.**

Unsheltered storage of old, used, stripped, junked and other automobiles not in good, safe operating condition, and of any other vehicles, machinery implements and/or equipment and personal property of any kind which is no longer safe for the purposes for which it was manufactured, for a period of 30 days or more (except in a licensed junkyard), within the city, and any motor vehicle, animal and article of personal property which constitutes an obstruction to, hazard or detriment to public traffic, snow removal operations, public safety and public health, or which may be abandoned or unclaimed within the city, is hereby declared to be a nuisance and shall be abated in the manner prescribed in this article. Property must be stored in an enclosed building or within fencing that obstructs the view of such property.

(Code 2002, § 12.401)

Sec. 26-33. Abatement required—By owners.

The owners, tenants, lessees and/or occupants of any lot within the corporate limits of the city upon which such storage is made, and also the owners and/or lessees of the property involved in such storage (all of whom are hereinafter referred to collectively as "owners"), shall jointly and severally abate the nuisance by the prompt removal of the personal property into completely enclosed buildings authorized to be used for storage purposes, if within the corporate limits of the city, or otherwise to remove it to a location outside of corporate limits.

(Code 2002, § 12.402)

Sec. 26-34. Abatement required—Penalty for failure.

If the owners allow a nuisance to exist or fail to abate a nuisance they, and each of them, upon conviction thereof, shall be fined not more than \$500.00 for each infraction and a separate infraction shall be deemed committed on each day during or on which day the nuisance is permitted to exist.

(Code 2002, § 12.403)

Sec. 26-35. Removal and impoundment—By city.

The police department may remove or cause to be removed to the city hall, or any other place within the city selected for storage purposes, any personal property described in 26-32, and may impound and retain the same until the expense of removal, storage and impounding is paid, together with the amount of any fine, costs, bail or other claims of the city against the owner, or any other person lawfully entitled to the possession thereof.

(Code 2002, § 12.404)

Sec. 26-36. Removal and impoundment—When sold.

If not reclaimed and redeemed by the true owner or the person lawfully entitled to the possession thereof within a period of 30 days after impounding, any article of personal property described in section 26-32 may be sold and disposed of by the police department in the manner hereinafter provided. Notice that such property will be sold shall be published once, at least six days prior to the sale, in the official newspaper. Such notice shall specify a description of the property to be sold and the time and place of sale. Any sale may be postponed or discontinued by public announcement at the time of the sale where there are not bidders or when the amount offered is grossly inadequate, or for other reasonable cause. The city may become a purchaser of any or all property at the sale. The chief of police shall give the purchaser at the sale a certificate of purchase of such property.

(Code 2002, § 12.405)

Sec. 26-37. Removal and impoundment—Proceeds.

Within 30 days after a sale, the person making the sale shall make out, in writing, and file with the city a full report of the sale, specifying the property sold, the amount received therefor, the amount of costs and expenses and the disposition of the proceeds of the sale. The proceeds arising from the sale shall be delivered to the city auditor and credited to the general fund.

(Code 2002, § 12.406)

Secs. 26-38—26-62. Reserved.

ARTICLE III. GRASS AND NOXIOUS WEEDS

Sec. 26-63. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Noxious weeds means and includes all weeds of the kind known as Canada thistle, sow thistle, quack grass, leafy spurge (*Euphorbia esula* or *Ruphrobia virgata*), field bindweed, Russian knapweed (*Centaurea picris*), hoary cress (*Lapidium draba*, *Lepidium reoebs*, and *Humenophysa pubescens*), dodder, or any similar unwanted vegetation over eight inches in height.

(Code 2002, § 12.501)

Sec. 26-64. Weeds and high grasses prohibited.

No owner of any lot, place or area within the city or the agent of such owner shall permit on such lot, place, or area and the one-half of any road or street lying next to the lands or boulevards abutting thereon, noxious weeds, grass more than six inches in height or other deleterious, unhealthful growths.

(Code 2002, § 12.502)

Sec. 26-65. Hay bales.

(a) Baling of hay on residential or commercial property located within 600 feet of a residential or commercial structure shall be prohibited. Baling of hay is restricted to the outskirts of the city on residential or commercial property and beyond as long as bales are removed within seven days of baling or a fine will be issued to the property owner.

(b) Penalty for first infraction of this section shall be a citation by law enforcement of not less than \$50.00 if such bales remain on the property after the seventh day and the same penalty exists for each succeeding day until bales have been removed.

(Code 2002, § 12.502A)

Sec. 26-66. Notice to destroy.

The city auditor is hereby authorized and empowered to notify, in writing, the owner of any lot, place, or area within the city, or the agent of such owner, to cut, destroy, and/or remove any noxious weeds and high grasses found growing, lying, or located on such owner's property or upon the one-half of any road or street lying next to the lands or boulevards abutting thereon. The notice shall be by registered or certified mail addressed to said owner or agent of said owner at their last known address and shall give such owner or agent a minimum of five days to cut or destroy the noxious weeds and mow high grasses. The city is

only required to give this notice one time each summer and after having given such notice may summarily follow the procedures set forth in section 26-67 each time any lot, place or area violates sections 26-63 and 26-64.

(Code 2002, § 12.503)

Sec. 26-67. Action upon noncompliance.

Upon the failure, neglect, or refusal of any owner or agent to cut, destroy and/or remove noxious weeds and high grasses growing, lying or located upon the owner's property or upon the one-half of any road or street lying next to the lands or boulevards abutting thereon, after receipt of the written notice provided for in 26-66 or within five days after the date of such notice in the event the same is returned to the city because of inability to make delivery thereof, provided the same was properly addressed to the last known address of such owner or agent, the city auditor is hereby authorized and empowered to pay for the cutting, destroying, and/or removal of such noxious weeds or to order their removal by the city.

(Code 2002, § 12.504)

Sec. 26-68. Costs assessed to property.

When the city has effected the removal of such noxious weeds and high grasses or has paid for their removal, the actual cost thereof, if not paid by the owner prior thereto, shall be charged and assessed against the property upon which the noxious weeds were cut or destroyed. An assessment list showing the lots or tracts to be assessed with the cost against each lot or tract shall be prepared as are other special assessment lists and shall be approved by the city council. Such assessments shall be subject to the same procedure for certification to the county auditor, payment and collection as are other special assessments under state law.

(Code 2002, § 12.505)

Chapter 27

RESERVED

Chapter 28

OFFENSES AND MISCELLANEOUS PROVISIONS

Article I. In General

- Sec. 28-1. North Dakota Criminal Code adopted.
- Sec. 28-2. Juvenile curfew.
- Secs. 28-3—28-22. Reserved.

Article II. Offenses Involving Public Peace, Order, Health, Safety and Sensibilities

Division 1. Generally

- Sec. 28-23. Loud, disturbing, unnecessary noises prohibited.
- Sec. 28-24. Noisy parties; penalty.
- Sec. 28-25. Smoke, dust, ashes, cinders, gases a nuisance.
- Sec. 28-26. Smoke, dust, ashes, cinders, gases prohibited.
- Secs. 28-27—28-55. Reserved.

Division 2. Firearms

- Sec. 28-56. Discharge of firearms.
- Sec. 28-57. Blank cartridges, etc., manufacture, use and sale of.
- Secs. 28-58—28-87. Reserved.

Division 3. Sex Offenders

- Sec. 28-88. Purpose.
- Sec. 28-89. Definitions.
- Sec. 28-90. Sex offender prohibition.
- Sec. 28-91. Evidentiary matters.
- Sec. 28-92. Exceptions.
- Secs. 28-93—28-112. Reserved.

Article III. Offenses Involving Governmental Operations

- Sec. 28-113. Obstructing a public official prohibited.
- Sec. 28-114. Hindering proceedings by disorderly conduct.
- Sec. 28-115. Interference with officers.
- Sec. 28-116. False alarms or false reports.

ARTICLE I. IN GENERAL**Sec. 28-1. North Dakota Criminal Code adopted.**

Except for provisions constituting a felony, N.D.C.C. title 12.1 is hereby adopted by reference.

Sec. 28-2. Juvenile curfew.

(a) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Curfew hour means the time of night, which is designated as 11:00 p.m., except Friday and Saturday nights, which is 1:00 a.m.

Juvenile means a person less than 16 years of age.

Parent means the legally appointed father and/or mother, or the natural father and/or mother, or the persons in charge of, or in control of, said juvenile, including a bona fide employer of said juvenile.

(b) It shall be unlawful for any juvenile to be abroad upon the streets, alleys, public grounds of the city, public places of amusement, or retail or wholesale business establishments between the curfew hour and 5:00 a.m. of the following day unless accompanied by a parent. Any juvenile violating this subsection, in addition to the other punishments prescribed in this section, shall be detained by the authorities until picked up by parent.

(c) It is a defense to prosecution under subsection (b) of this section that the juvenile was:

- (1) Accompanied by the juvenile's parent or guardian or an adult designated by the juvenile's parent or guardian;
- (2) On an errand at the direction of the juvenile's parent or guardian, or an adult designated by the juvenile's parent or guardian, without any detour or stop;
- (3) In a motor vehicle involved in interstate travel;
- (4) Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
- (5) Involved in an emergency. In this subsection, the term "emergency" means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term "emergency" includes, but is not limited to, a fire, a natural disaster, or an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life;
- (6) Attending an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the juvenile, or going to or returning home from, without any

detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the juvenile;

- (7) Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
- (8) Married or had been married or had disabilities of minority removed in accordance with law.

(d) It shall be unlawful for any parents to allow their juveniles to be abroad upon the streets, alleys, public grounds of the city, public places of amusement, or retail or wholesale business establishments in violation of subsection (b) of this section.

(e) A violation of this section shall be an infraction.
(Code 2002, § 13.415)

Secs. 28-3—28-22. Reserved.

ARTICLE II. OFFENSES INVOLVING PUBLIC PEACE, ORDER, HEALTH, SAFETY AND SENSIBILITIES

DIVISION 1. GENERALLY

Sec. 28-23. Loud, disturbing, unnecessary noises prohibited.

The making, creating or maintenance of loud, unnatural or unusual and disturbing noises are a detriment to public health, comfort, convenience, safety and welfare, and are hereby declared to be unlawful and a public nuisance. The following acts, among others, are declared to be prohibited noises in violation of this section, but such enumeration is not exclusive:

- (1) The sounding of horns or signaling devices on any motor vehicle or motorcycle on any street or public place except as a danger warning.
- (2) Radios, phonographs, etc. The using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of reasonable persons of ordinary sensibilities, or at any time with louder volume than is necessary for convenient hearing for the persons who are in the room, vehicle or chamber in which such machine or device is operated, and who are voluntary listeners thereto. The operations of any such set, instrument, phonograph, machine or device in such a manner as to be plainly audible at a distance of 50 feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.

- (3) Yelling, shouting, etc. Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m., or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office, or in any dwelling, hotel or other type of residence, or of any persons in the vicinity.
 - (4) Schools, courts, churches, hospitals. The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while the same are in use, or adjacent to any hospital, which unreasonably interferes with the workings of such institution, or which disturbs or unduly annoys reasonable persons of ordinary sensibilities in the hospital, provided conspicuous signs are displayed indicating that a school, hospital, or court is in the vicinity.
- (Code 2002, § 12.302)

Sec. 28-24. Noisy parties; penalty.

(a) Noisy parties prohibited. No person shall participate in any party or other gathering of people giving rise to noise, disturbing the peace, quiet or repose of a reasonable person of ordinary sensibilities within the city.

(b) Order to disperse; refusal prohibited. When a police officer determines that a gathering is creating such a noise disturbance, the officer may order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disperse immediately. No person shall refuse to leave the premises after being ordered by a police officer to do so.

(c) Tenant or owner cooperation required. Every owner of such premises, or tenant in charge of such premises, who has knowledge of the disturbance shall cooperate with such police officer and shall make reasonable effort to stop the disturbance.

(d) Violations; prima facie evidence. The following shall be prima facie evidence in any prosecution under this section of the owner's or tenant's violation of this section:

- (1) As to tenants, and the owner, if the owner resides on the premises, if twice or more on the same day, or if on successive days, the police department is called upon to enforce the terms of this section, either by citizen complaint or by personal investigation of peace officer.
- (2) As to the owner, if the owner does not reside at the premises, if after the owner receives written notice of three violations of this section by his tenants at any premises owned by the owner in the city within a six-month period, and after receipt of such written notice, the police department is called upon to enforce this section either by citizen complaint or by personal investigation of a peace officer.

(e) Every person, firm or corporation violating this section shall, upon conviction thereof, be guilty of an infraction punished by a fine not to exceed \$500.00.

(Code 2002, § 12.303)

Sec. 28-25. Smoke, dust, ashes, cinders, gases a nuisance.

The emission of dense smoke, ash, dust, cinders or noxious gases from any machine, contrivance or from the smokestack or chimney of any building or premises in such quantities as to cause injury or detriment to any person or to the public, or to endanger the comfort, health or safety of any person, or in such manner as to cause or tend to cause damage or injury to property, is hereby declared to be a public nuisance.

(Code 2002, § 12.201)

Sec. 28-26. Smoke, dust, ashes, cinders, gases prohibited.

No person, association or corporation shall cause, permit or allow the escape from any smoke stack or chimney into the open air, of such quantities of dense smoke, ash, dust, soot, cinders, acid or other fumes, dirt, or other material, or noxious gases, in such place or manner as to cause injury, detriment or nuisance to any person, or to the public, or to endanger the comfort, health or safety to any such person or the public, or in such manner as to cause or have a natural tendency to cause injury or damage to business or property.

(Code 2002, § 12.202)

Secs. 28-27—28-55. Reserved.

DIVISION 2. FIREARMS

Sec. 28-56. Discharge of firearms.

It shall be unlawful for any person to fire or discharge within the city limits any cannon, gun, fowling piece, pistol or other firearms of any description without the written permission of the city governing board which permit shall limit the time of such firing and be subject to revocation by the city governing board at any time after being granted; provided, however, that nothing in this section shall be construed to apply to the firing of any gun or other firearms when done in cases of actual necessity or in the performance of lawful duty or by militia companies or veterans' organizations when on parade.

(Code 2002, § 4.502)

Sec. 28-57. Blank cartridges, etc., manufacture, use and sale of.

No person except a licensed dealer shall manufacture, use, sell or keep for sale within the city any blank cartridges, caps containing dynamite or firecrackers exceeding three inches in length and exceeding one-half inch in diameter.

(Code 2002, § 4.503)

Secs. 28-58—28-87. Reserved.

DIVISION 3. SEX OFFENDERS

Sec. 28-88. Purpose.

The city council finds that sex offenders who are required to register as a sexual predator under N.D.C.C. § 12.1-32-15, present an extreme threat to the health, safety and welfare of children. It is the intent of this division to serve the city's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the city by creating areas around locations where children regularly congregate in concentrated numbers wherein certain registered sex offenders and sexual predators are prohibited from loitering or prohibited from establishing temporary or permanent residency.

(Code 2002, ch. 10, art. 6, § I)

Sec. 28-89. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Child means a person less than 18 years of age or more than 17 years of age and incapable of providing self-care because of a serious health and mental condition. (N.D.C.C. §§ 14-12.2-01(1) and 54-52.4-01(1))

Child care facility means a family foster home for adults, family foster home for children, group home, or residential child care facility for children. (N.D.C.C. ch. 50-11(4))

Child care institution means a child care program licensed to provide early childhood services on a regular basis for 19 or more children aged five years through 11 years. (N.D.C.C. § 50-11.1-02(22))

Child safety zone means city public parks, private and public schools, public libraries, amusement arcades, video arcades, indoor and outdoor amusement centers, public or commercial and semi-private swimming pools, child care facilities, child care institutions, public or private youth sports fields, crisis centers or shelters, public or private youth centers, scouting facilities and offices for child protective services. (N.D.C.C. § 12.1-20-25)

Database means the state department of public safety's sex offender database, the city auditor, or the sex offender registration files maintained by the sex offender registration officer of the county.

Loiter means standing or sitting idly, whether or not the person is in a vehicle or remaining in or around an area.

Park or *playground* means any land, including improvements to the land, that is administered, operated or managed by the city for the use of the general public as a recreational area. City recreational areas include, but are not limited to, conservation areas, jogging, hiking and bicycling trails, recreational centers, or baseball fields.

Permanent residence means a place where the person abides, lodges or resides for 14 or more consecutive days.

Places where children regularly congregate means the same as child safety zones.

Public way means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, shopping centers, parking lots, transportation facilities, restaurants, shops and similar areas that are open to the use of the public.

School means a private or public pre-school, private or public elementary school or private or public secondary school.

Sex offender means an individual who has been convicted of or placed on deferred adjudication for a sexual offense involving a person less than 17 years of age for which the individual is required to register as a sex offender under N.D.C.C. §§ 12.1-31-15 and 12.1-32-15(1)(e).

Sexually dangerous individual means an individual who meets the definition specified in N.D.C.C. § 25-03.3-01.

Temporary residence means a place where a person abides, lodges or resides for a period of 14 or more days in the aggregate, during any calendar year, and which is not the person's permanent address, or a place where the person routinely abides, lodges or resides for a period of four or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

(Code 2002, ch. 10, art. 6, § II)

Sec. 28-90. Sex offender prohibition.

(a) It is an offense for a sex offender to establish a permanent residence or temporary residence within 800 feet inclusive of streets or the real property comprising a school, child care facility, child care institution, park or playground or other places where children regularly congregate.

(b) It is an offense for a sex offender to knowingly enter a child safety zone.

(c) It is an offense for a sex offender to knowingly loiter on a public way within 400 feet inclusive of streets or a child safety zone.

(d) A sex offender shall not, on each October 30 and 31 (or any other date set by the city for trick-or-treaters), between the hours of 4:00 p.m. and 11:00 p.m., leave an exterior porch light on or otherwise invite trick-or-treaters to solicit the premises.

(Code 2002, ch. 10, art. 6, § III)

Sec. 28-91. Evidentiary matters.

(a) If a sex offender that is prohibited from being in a child safety zone is found in a child safety zone by any law enforcement officer, the sex offender is subject to punishment in accordance with this division.

(b) It shall be prima facie evidence that this section applies to such a person if that person's record appears in/on the database and the database indicates that the victim was less than 17 years of age.

(c) The distance of 400 feet inclusive of streets from a child safety zone shall be measured on a straight line from the closest boundary of the child safety zone.

(d) The distance of 400 feet inclusive of streets from a place where children congregate shall be measured on a straight line from the closest boundary line of the sex offender's residence to the closest boundary line of the school, child care facility, child care institution, park or playground or other places where children regularly congregate.

(e) In the case of multiple residences on one property, measuring from the nearest property line of the residences to the nearest property line of the school, child care facility, child care institution, park or playground or other places where children regularly congregate.

(f) In cases of a dispute over measured distances, it shall be incumbent upon the person challenging the measurement to prove otherwise.

(g) A map depicting the prohibited areas shall be created by the city and maintained by county law enforcement. The city shall review the map annually for changes. Said map will be available to the public via the city auditor.

(Code 2002, ch. 10, art. 6, § IV)

Sec. 28-92. Exceptions.

(a) The following conditions shall be excepted from the requirements of this division:

- (1) The person required to register in/on the database established the permanent residence or temporary residence and residency has been consistently maintained and the person has complied with all of the sex offender registration laws of the state, prior to the date of the adoption of the ordinance from which this division is derived.
- (2) The place where children regularly congregate, as specified herein, within 800 feet inclusive of streets of the permanent or temporary residence of the person required to register on/in the database was opened after the person established the permanent or temporary residence and complied with all sex offender registration laws of the state.
- (3) The information on/in the database is incorrect and, if corrected, this section would not apply to the person who was erroneously listed on/in the database.
- (4) The person required to register on/in the database was a minor when he or she committed the offense requiring such registration and was not convicted as an adult.
- (5) The person required to register is required to serve a sentence at a jail, prison, juvenile facility or other correctional institution located within 800 feet inclusive of streets of the real property comprising a school, child care facility, child care institution, park or playground or other places where children regularly congregate.

- (6) The person required to register is under 18 years of age or a ward under guardianship, who resides with a parent or guardian.
- (7) The person required to register has been exempted by a court order from registration as a sex offender under N.D.C.C. § 12.1-32-15.
- (8) The person required to register has had the offense for which the sex offender registration was required, reversed on appeal or pardoned.
- (9) The person's duty to register on/in the database has expired.

(b) Nothing in this section shall require any person to sell or otherwise dispose of any real estate or home acquired or owned prior to the conviction of the person of a sex offender.
(Code 2002, ch. 10, art. 6, § V)

Secs. 28-93—28-112. Reserved.

ARTICLE III. OFFENSES INVOLVING GOVERNMENTAL OPERATIONS

Sec. 28-113. Obstructing a public official prohibited.

Every person who willfully delays or obstructs a public officer in the discharge or attempt to discharge any duty of his office shall be guilty of an infraction.
(Code 2002, § 1.608)

Sec. 28-114. Hindering proceedings by disorderly conduct.

A person is guilty of an offense if the person recklessly or intentionally hinders an official city proceeding by noise or violent or tumultuous behavior or disturbance.
(Code 2002, § 13.102)

Sec. 28-115. Interference with officers.

No person in the city shall resist any police or fire officer, any member of the police or fire departments, or any person duly empowered with police or fire authority, while in the discharge or apparent discharge of duty, or in any way interfere with or hinder in the discharge of duty.
(Code 2002, § 13.104)

Sec. 28-116. False alarms or false reports.

No person in the city shall intentionally make, turn in, or give a false alarm of fire, or of need for police or ambulance assistance, or aid or abet in the commission of such act. No person in the city shall make to, or file with, the police department of the city any false, misleading or unfounded statement or report concerning the commission or alleged commission of any crime occurring in the city.
(Code 2002, § 13.105)

Chapter 29

RESERVED

Chapter 30

PARKS AND RECREATION

- Sec. 30-1. City parks hours.
- Sec. 30-2. Motorized vehicles.

Sec. 30-1. City parks hours.

(a) All city parks shall have established hours of public access. The hours shall be from 7:00 a.m. to 11:00 p.m. each day. Notice of the same may be published in the official newspaper or posted at the public parks.

(b) Any variance from the hours stated in subsection (a) of this section or use shall be under special permission granted by the park board.

(Code 2002, § 3.226)

Sec. 30-2. Motorized vehicles.

No person may operate a snowmobile, ATV or any other motorized wheeled vehicle at any time within the boundaries of any city park property unless operated by city or park personnel.

(Code 2002, § 9.2109(10))

Chapter 31

RESERVED

Chapter 32

SOLID WASTE

Article I. In General

Secs. 32-1—32-18. Reserved.

Article II. Collection and Disposal

- Sec. 32-19. Definitions.
- Sec. 32-20. Accumulation of refuse prohibited.
- Sec. 32-21. Containers.
- Sec. 32-22. Burning.
- Sec. 32-23. Nuisance.
- Sec. 32-24. City collection.
- Sec. 32-25. Fees.
- Sec. 32-26. Fees; payment—Collection.
- Sec. 32-27. Fees; payment—Collection by franchised contractor.
- Sec. 32-28. Disposal of refuse not collected by the city.
- Sec. 32-29. Supervision.
- Sec. 32-30. Rules and regulations.

ARTICLE I. IN GENERAL

Secs. 32-1—32-18. Reserved.

ARTICLE II. COLLECTION AND DISPOSAL

Sec. 32-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Ashes means the residue from burning wood, coal, coke or other combustible materials.

Garbage means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

Refuse means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and solid market and industrial wastes.

Rubbish means nonputrescible solid wastes (excluding ashes) consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.

(Code 2002, § 10.301)

Sec. 32-20. Accumulation of refuse prohibited.

No person shall permit or allow to accumulate in or about any yard, lot, place or premises, or upon any street or sidewalk adjacent to or abutting upon any lot, block or place, or premises owned and occupied by that person, any and all refuse, nor allow such yard, lot, place or premises to be or remain in such condition.

(Code 2002, § 10.302)

Sec. 32-21. Containers.

(a) All garbage and rubbish shall be placed by the person upon whose premises the same shall have been produced or accumulated, in watertight containers, which shall be protected against the access of flies and rodents.

(b) No person shall place rubbish or garbage in a container owned by someone else or place rubbish or garbage on property of someone else for removal.

(c) Containers shall be placed in the alley of those lots having access to any alley and along the curb if no alley is accessible. The city may specify where containers shall be placed along the alley or street for the convenience of collection.

(Code 2002, § 10.303)

Sec. 32-22. Burning.

No garbage, refuse or rubbish shall be burned within the city limits.
(Code 2002, § 10.304)

Sec. 32-23. Nuisance.

Failure to comply with the provisions of sections 32-20 through 32-22 shall constitute a public nuisance and be punishable as such under the terms of chapter 26.
(Code 2002, § 10.305)

Sec. 32-24. City collection.

All garbage and rubbish, as defined herein, shall be collected by the city or franchised contractor as frequently as is necessary to maintain and preserve community cleanliness and sanitation, except that this section shall not require the collection of garbage and rubbish where streets and alleys are in a temporary condition which makes it impossible to do so and, in case of the failure to collect such garbage and rubbish, such failure shall not relieve the occupant of the premises from the payment of the garbage and rubbish collection fees hereinafter provided for.
(Code 2002, § 10.306)

Sec. 32-25. Fees.

Fees for the collection of garbage and rubbish by the city or franchised contractor and the disposal thereof may be set by resolution by the city council.
(Code 2002, § 10.307)

Sec. 32-26. Fees; payment—Collection.

(a) In all places where water service is provided, fees for garbage and rubbish collection shall be added to and collected as a part of the water bill and collected by the water department but shall be separately stated on the bill. Garbage and rubbish collection bills shall be due and payable at the same time as the water bill, whether monthly or quarterly as the case may be. If such charge is not paid when due, the water service to such premises shall be shut off by the water department in the same manner as is now provided for in the case of delinquency in payment of water bills and such service shall not be restored without the payment of the penalties now provided for.

(b) In all places where water service is not provided, the fees for garbage and rubbish collection shall be paid to the water department of the city upon monthly or quarterly bills from the water department. If the garbage and rubbish charge so established is not paid when due, such sum may be recovered by the city, in an action at law against the owner or occupant, or both, of the property so served.

(c) The proceeds from the collection of the fees and charges shall be placed in the solid waste management fund, and all of the expense of the city, in the purchase and maintenance of equipment and in the collection and disposal of garbage and rubbish, shall be paid out of the solid waste management fund.

(Code 2002, § 10.308)

Sec. 32-27. Fees; payment—Collection by franchised contractor.

In the event the city elects to franchise a contractor to perform the collection services contemplated by this section, collection of fees, limited as set out in this section, are to be made by the contractor. Failure to pay fees billed by the contractor within 30 days of billing and reporting of the failure to pay to the city shall release the contractor from collection responsibility regarding the delinquent premises. On being notified of delinquencies the city may avail itself of any or all of the collection provision of section 32-26.

(Code 2002, § 10.309)

Sec. 32-28. Disposal of refuse not collected by the city.

All other wastes, as defined, and not included under garbage, rubbish and ashes, may be disposed of by the person creating such waste, by hauling such waste for disposal to such points as are designated or approved by the city health officer.

(Code 2002, § 10.310)

Sec. 32-29. Supervision.

The collection, removal and disposal of garbage and rubbish under the provisions of this article shall be under the supervision, direction and control of the public works supervisor with the assistance of the health officer. The director shall, unless there is a franchised contractor, appoint such employees as shall be necessary to carry out the purposes of this article, which appointments shall be subject to the approval of the city council.

(Code 2002, § 10.311)

Sec. 32-30. Rules and regulations.

The public works supervisor shall prescribe such reasonable rules and regulations in connection with preparation, handling and disposition of garbage and rubbish as may be necessary to regulate, enforce and carry out the provisions of this article. The public works supervisor may direct that the city garbage and rubbish collection crews shall not collect garbage and rubbish from any premises where such rules and regulations are not complied with and the failure to collect the same shall not relieve the owner or occupant of the premises from the payment of fees nor from the enforcement of the penalties of this Code. In the absence of the city collection crews the public works supervisor may give instructions to a franchised contractor.

(Code 2002, § 10.312)

Chapter 33

RESERVED

Chapter 34

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

Article I. In General

- Sec. 34-1. Obstructions and signs prohibited; penalty.
- Sec. 34-2. Destruction of city property prohibited; penalty.
- Sec. 34-3. Encroachments.
- Sec. 34-4. Openings.
- Sec. 34-5. Wires.
- Sec. 34-6. Littering prohibited.
- Sec. 34-7. Distributing hand bills, etc.
- Sec. 34-8. Removal of snow and ice from sidewalk.
- Sec. 34-9. Removal of snow and ice by city.
- Sec. 34-10. Assessments by public works supervisor when work is done by city.
- Sec. 34-11. Street cleaning; snow removal.
- Sec. 34-12. Impounding vehicles and equipment.
- Sec. 34-13. Surface runoff and/or groundwater.
- Secs. 34-14—34-31. Reserved.

Article II. Construction and Repair

- Sec. 34-32. Supervision.
- Sec. 34-33. Permits.
- Sec. 34-34. Bond.
- Sec. 34-35. Specifications.
- Sec. 34-36. Duty of owner to maintain.
- Sec. 34-37. Application for permit.
- Sec. 34-38. Standards for issuance of permit.
- Sec. 34-39. Sidewalks built to grade specifications.
- Sec. 34-40. Materials and manner of construction.
- Sec. 34-41. City contactor.
- Secs. 34-42—34-70. Reserved.

Article III. Excavations

- Sec. 34-71. Permit.
- Sec. 34-72. Guarding or excavations and openings.
- Sec. 34-73. Application for excavation permits.
- Sec. 34-74. Bond.
- Sec. 34-75. Deposit.
- Sec. 34-76. Making excavations; notice.
- Sec. 34-77. Restoration of excavations.
- Sec. 34-78. Supervision of excavation work.
- Secs. 34-79—34-99. Reserved.

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Article IV. Unclaimed and Abandoned Personal Property

- Sec. 34-100. Defined.
- Sec. 34-101. Seizure of unclaimed or abandoned property.
- Sec. 34-102. Holding of personal property; notice of sale.
- Sec. 34-103. Report of abandoned property sale.
- Sec. 34-104. Abandoned property—Bill of sale.
- Sec. 34-105. Abandoned property—Proceeds of sale.
- Sec. 34-106. Redemption of personal property.
- Sec. 34-107. Annual report.

ARTICLE I. IN GENERAL**Sec. 34-1. Obstructions and signs prohibited; penalty.**

(a) It shall be unlawful for any person, firm or corporation to cause, create or maintain any obstruction of any street, alley, sidewalk or other public way, including rights-of-way, except as may be specified by ordinance or by the city engineer or public works supervisor. Such obstructions include, but are not limited to, signs advertising meals, benefit events, auctions, business events, garage sales and other events.

(b) Any person violating the provisions of this section shall be issued a warning ticket by law enforcement. Person violating the provisions of this section for second and succeeding offences shall be guilty of a misdemeanor.

(Code 2002, § 3.201)

Sec. 34-2. Destruction of city property prohibited; penalty.

It shall be unlawful for any firm, person or corporation to willfully and without just cause or excuse, to injure, deface or destroy any property owned by the city or held by the city for public use.

(Code 2002, § 3.202)

Sec. 34-3. Encroachments.

It shall be unlawful to erect or maintain any building or structure that encroaches upon any public street or property.

(Code 2002, § 3.203)

Sec. 34-4. Openings.

It shall be unlawful to construct or maintain any opening or stairway in any public street or sidewalk or alley without a permit from the city council. All such lawfully maintained openings shall be guarded by a suitable strong cover or railing to be approved by the public works supervisor or the city engineer or the official who supervises public improvements.

(Code 2002, § 3.204)

Sec. 34-5. Wires.

(a) It shall be unlawful to erect any poles or wires or maintain any poles or wires over any public place, street, alley or other public way without having first secured permission from the city council.

(b) Any person or company which maintains poles and wires in the streets, alleys or other public places shall, in the absence of provisions in the franchise concerning the subject, keep such wires and poles free from and away from any trees and shrubs in such places as far as

may be possible, and keep all such trees and shrubs near such wires and poles properly trimmed, subject to the supervision of the public works supervisor so that no injury shall be done either to the poles or wires or to the shrubs and trees by their contact.

(Code 2002, § 3.205)

Sec. 34-6. Littering prohibited.

No person, firm or corporation shall throw or deposit or cause to be thrown or deposited any garbage, grass, grass clippings, tree branches, fallen leaves, weeds, glass bottles, boxes or rubbish of any kind upon any street, curb or alley in the city.

(Code 2002, § 3.206)

Sec. 34-7. Distributing hand bills, etc.

The scattering, throwing or placing of bills, posters, advertising matter, hand bills and other similar items on private premises, sidewalks, streets or other public places in the city must be done in such a manner so as to prevent the items from being blown about these premises, sidewalks, streets or other public places. Any person or entity violating the provisions of this section shall be guilty of an infraction.

(Code 2002, § 3.208)

Sec. 34-8. Removal of snow and ice from sidewalk.

It shall be, and hereby is declared to be, the duty of the owner or occupant of each lot in the city to remove from the sidewalk in front of or along the same any ice or snow which forms, accumulates or obstructs such sidewalk within 24 hours after the ice forms or the snow ceases to fall thereon. Where the ice accumulated is of such character as to make the removal thereof practically impossible, the sprinkling of ashes or sand thereon within the time specified for removal in such manner as to make such sidewalk safe for the travel of pedestrians thereon shall be deemed a compliance with the provisions of this chapter.

(Code 2002, § 3.210)

Sec. 34-9. Removal of snow and ice by city.

In case the owner of any lot in the city refuses or neglects to remove such ice from such sidewalk in front of or along a lot therein, the ice or snow therefrom within the same time above stated or refuses to sprinkle ashes or sand on the same within the time specified for removal in such manner as to make such sidewalk safe for travel of pedestrians thereon, the same may be removed by or under the direction of the city engineer or public works supervisor of the city, or ashes or sand sprinkled thereon, and the necessary expenses shall be charged against the abutting property by special assessment in the manner prescribed by law.

(Code 2002, § 3.211)

Sec. 34-10. Assessments by public works supervisor when work is done by city.

Whenever the public works supervisor shall, pursuant to section 34-9, remove or cause to be removed any snow or ice from any sidewalk or sidewalks along or in front of any building, grounds or premises, he shall assess the cost of the same against said property, and on or before May 1 in each year, make and file in the office of the city auditor a list of the property chargeable with such expense, the actual cost and expense of such removal and a description of the lot, lots or parcels of land along or in front of which is the sidewalk or sidewalks from which snow or ice has been removed. (Source: N.D.C.C. § 40-29-18)
(Code 2002, § 3.212)

Sec. 34-11. Street cleaning; snow removal.

(a) Whenever it shall be necessary that streets, alleys or public ways in the city shall be cleared of snow or ice or be cleaned by the use of street sweepers or other methods of cleaning such streets, or for marking for traffic purposes, the ordinances of the city regulating the parking of automobiles, trucks and other motor vehicles shall be suspended and it shall be unlawful for any automobile, truck or other motor vehicle to be parked or left standing between the hours hereinafter mentioned and during the period of time during which the said parking ordinances are suspended. The timeframe for such parking shall be from 1:00 a.m. to 7:00 a.m. from October 1 to April 1.

(b) It shall also be unlawful for anyone to push or deposit snow from residential or commercial property onto streets, alleys or public ways. Snow shall be prohibited from being pushed or deposited by anyone other than city personnel on to city street and alley rights-of-way as those areas are used for the sole purpose of the city's storage of snow and ice.

(c) It shall be property owner's responsibility to ensure that such actions as described in this section do not occur. However, if such infraction does occur, first offence shall be a written warning by law enforcement to abate the nuisance. Violation of this section is an infraction.

(Code 2002, § 3.214)

Sec. 34-12. Impounding vehicles and equipment.

Whenever any parked automobile, truck, machinery, vehicle or equipment shall be found in any place prohibited by these restrictions, and during the hours as provided herein, the same shall be impounded by the city at a place to be provided and it shall be unlawful for any person, firm or corporation to remove or attempt to remove any truck, automobile, machinery, vehicle or equipment from the place where impounded without first paying the cost of such impounding.

(Code 2002, § 3.216)

Sec. 34-13. Surface runoff and/or groundwater.

No person shall make or continue to utilize any existing connection of roof downspouts, foundation drains, areaway drains, or other sources of surface runoff or groundwater to a

building sewer, or building drain, which, in turn, is connected directly or indirectly to a public sanitary sewer, unless such connection is approved by the public works supervisor and the state department of health, except as follows:

- (1) The supervisor is authorized to issue a permit to allow a property owner to discharge water into the sanitary water system. Prior to the issuance of the permit, the supervisor or designee shall verify that the criteria set forth in subsection (2) of this section has been satisfied. The permit shall authorize such discharge only from October 1 through April 1 of each year.
- (2) For a property owner to be eligible for a winter discharge, the water being discharged from the sump pump or footing drain cannot be readily discharged into a storm drain or other acceptable drainage system and at least one of the following criteria must be met:
 - a. The freezing of the surface water discharged from the sump pump or footing drain is causing a dangerous condition, such as ice build-up or flooding, on either public or private property;
 - b. The property owner has demonstrated that there is danger that the sump pump or footing drain pipes will freeze up and result in either failure or damage to the sump pump unit or the footing drain and cause basement flooding.
- (3) If the supervisor or designee determines that a sump pump or footing drain is causing an icy condition on streets between October 1 and April 1, he may require the property owner to obtain a discharge permit and discharge owners' sump pump into the sanitary sewer system following ten days' written notice and an opportunity for the property owner to be heard.
- (4) Future inspections. Any property with a sump pump found not in compliance with this Code, but subsequently verified as compliant shall be subject to an annual inspection to confirm continued compliance.
- (5) The supervisor or designee, showing proper credentials and identification, shall be permitted to enter all properties for the purpose of inspection and observation to identify prohibited discharges into the sanitary sewer system. Any person may furnish a certificate from a license plumber certifying their property is in compliance with this section, in lieu of having the city inspect their property.

(Code 2002, § 3.228; Ord. No. 2020-01, 4-6-2020)

Secs. 34-14—34-31. Reserved.

ARTICLE II. CONSTRUCTION AND REPAIR**Sec. 34-32. Supervision.**

All construction, maintenance and repair of public streets, alleys, sidewalks and other public ways shall be under the supervision of the city engineer or public works supervisor. He shall be charged with the enforcement of all ordinances provisions relating to such public places (except traffic ordinances) and is hereby authorized to enforce such ordinances.

(Code 2002, § 3.101)

Sec. 34-33. Permits.

It shall be unlawful to construct, reconstruct, alter, grade or repair any public street, sidewalk, driveway, curbs or gutters without having first secured a permit therefor, unless said work is performed by the city contractor. Applications for such permits shall be made to the auditor and shall state the location of the intended pavement or repair, the extent thereof and the person or firm who is to do the actual construction work. No such permits shall be issued except where the work will conform to the ordinances of the city.

(Code 2002, § 3.102)

Sec. 34-34. Bond.

Each applicant shall file a bond with surety to be approved by the city council conditioned to indemnify the city for any loss or damage resulting from the work undertaken or the manner of doing the same.

(Code 2002, § 3.103)

Sec. 34-35. Specifications.

All construction, maintenance and repair herein shall be made in conformity with specifications laid down or approved from time to time by the city council.

(Code 2002, § 3.104)

Sec. 34-36. Duty of owner to maintain.

It shall be the duty of the owner of any property along which a sidewalk has been constructed to maintain the same in good repair and safe condition. Should any such owner fail so to maintain such sidewalks, the city engineer or public works supervisor shall direct him to make such repairs as may be necessary to restore such sidewalk to a safe condition. Should he fail, within a reasonable time, to follow the directions of the city engineer or public works supervisor, the city engineer or public works supervisor shall report the facts to the city council, which shall then proceed as provided in N.D.C.C. ch. 40-29.

(Code 2002, § 3.105)

Sec. 34-37. Application for permit.

An applicant for a permit hereunder shall file with the city engineer or city auditor an application showing:

- (1) Name and address of the owner, or agent in charge, of the property abutting the proposed work area.
- (2) Name and address of the party doing the work.
- (3) Location of the work area.
- (4) Attached plans or sufficient sketches showing details of the proposed alterations.
- (5) Estimated cost of the alterations.
- (6) Such other information as the city engineer or public works supervisor shall find reasonably necessary to the determination whether a permit should be issued hereunder.

(Code 2002, § 3.106)

Sec. 34-38. Standards for issuance of permit.

The city engineer or public works supervisor shall issue a permit hereunder when it is determined:

- (1) That the work will be done according to the standard specifications of the city for public work of like character.
- (2) That the operation will not unreasonably interfere with vehicular and pedestrian traffic, the demand and necessity for parking spaces, and the means of ingress and egress to and from the property affected and adjacent properties.
- (3) That the health, welfare and safety of the public will not be unreasonably impaired.

(Code 2002, § 3.107)

Sec. 34-39. Sidewalks built to grade specifications.

All sidewalks shall be constructed in accordance with the elevations and grade therefor to be furnished by the city engineer and shall be constructed under his direction and supervision or under the direction and supervision of the public works supervisor. All sidewalks shall meet the following requirements:

- (1) All sidewalks shall be constructed of reinforced concrete.
- (2) All sidewalks in residential areas shall be constructed not less than four feet in width and shall have a minimum slope of one-fourth inch per foot from the inside edge toward the street.
- (3) All sidewalks shall be of concrete and of at least four inches in thickness.
- (4) The outside edge of the sidewalks shall not protrude over six inches above the edge of the curb.

- (5) If a portion of the sidewalk is to be replaced between existing sidewalk that is in good shape the replacement shall conform to the measurements of the existing sidewalk.
- a. All sidewalks shall be laid out as follows:
 - 1. In location where the right-of-way is 60 feet or less the sidewalks shall be constructed on the property line.
 - 2. In locations where the right-of-way is greater than 60 feet the sidewalk shall be constructed 18 inches out from the property line.
 - 3. In no case in the residential district shall the sidewalk be constructed adjacent to the curb unless right-of-way and topographic features require it.
 - 4. Notwithstanding any other provision herein all sidewalks shall be set out so that they are in conformity with existing sidewalks to which they may attach.
 - b. All sidewalks in commercial and/or industrial districts shall be constructed from the property line to the back of the curb and the width of sidewalk shall be governed by the width of street section; provided, however, in areas where commercial development is not complete the entire sidewalk need not be constructed, a section six feet in width adjacent to the curb shall be constructed thus leaving an area for structural foundations.

(Code 2002, § 3.108)

Sec. 34-40. Materials and manner of construction.

The kind and quality of material which, and the manner in which, driveways, curb and gutter, relaying of block walks and paving repairs shall be constructed shall be determined by the city engineer.

(Code 2002, § 3.109)

Sec. 34-41. City contractor.

(a) The auditor shall receive bids for the construction of sidewalks, driveways, curb and gutter and paving repairs as the city may find necessary to have done. Such bids shall be made upon blanks furnished by the city engineer or public works supervisor and shall conform to specifications filed with the city auditor by the city engineer or public works supervisor and approved by the city council.

(b) All sidewalks, driveways, curbs and gutters and alley returns lying between the property line and the abutting street hereafter constructed within the city must conform to this article, and the specifications filed with the city engineer, and approved by the city council must specify the details with respect thereto. When any contract for the construction of sidewalks, driveways, curbs and gutters, relaying of block walks and paving repairs is about to be entered into by the city in accordance with the provisions of the laws of the state, the contractor to whom any such contract shall be awarded shall be required, before such

contract is entered into, to give, in addition to the contract bond required by the laws of the state, an additional bond in an amount to be determined by the city council, running to the city, conditioned that said contractor shall maintain and keep in good repair, for a period of two years from date of final acceptance, all sidewalks, driveways, curbs and gutters and paving repairs so constructed by such contractor under the terms of such contract, and that, in case of default under the part of such contractor to so maintain and keep such improvements in good repair made by him for the said period of two years, or in case they shall within said time begin to crumble or disintegrate or become cracked or broken to such extent that, in the opinion of the city engineer or public works supervisor, the same is not a satisfactory compliance with the specifications for the construction thereof, then the city engineer or public works supervisor may direct that such sidewalks, driveways, curbs and gutters or paving repairs be immediately repaired or re-laid in whole or in part as he shall deem best, and the contractor shall immediately cause the same to be repaired or, upon failure so to repair or to relay the same, the city, at any time within said two-year period or thereafter, may cause the same to be repaired or re-laid, and the cost thereof whether done by the city directly or through a contract, may be recovered against said contractor and the surety upon such bond.

(Code 2002, § 3.110)

Secs. 34-42—34-70. Reserved.

ARTICLE III. EXCAVATIONS

Sec. 34-71. Permit.

It shall be unlawful for any person, firm or corporation, excluding those licensed by the city, to tunnel under or to make any excavation in any street, alley or other public place in the city without having obtained a permit, as is herein required, or without complying with the provisions of this article or in violation of or variance from the terms of any such permit.

(Code 2002, § 3.218)

Sec. 34-72. Guarding or excavations and openings.

It shall be unlawful for any person within the city limits to leave or keep open, uncovered or unguarded any cellar door, pit, grating, vault or other subterranean passage opening from, into or upon any street, alley or sidewalk, or upon any private property if not suitable guarded.

(Code 2002, § 3.219)

Sec. 34-73. Application for excavation permits.

Applications for excavation permits shall be made to the auditor and shall describe the location of the intended excavation or tunnel, the size thereof, the purpose therefor, and the person, firm or corporation doing the actual excavating work and the name of the person,

firm or corporation for whom or which the work is being done, and shall contain an agreement that the applicant will comply with all ordinances and laws relating to the work. (Code 2002, § 3.220)

Sec. 34-74. Bond.

No excavation permit shall be issued unless and until the applicant therefor has filed with the auditor a bond in the sum set forth by resolution, conditioned to indemnify the city for any loss, liability or damage that may result or accrue from or because of the making, existence or manner of guarding or constructing any such tunnel or excavations. Such bond shall have as surety a corporation licensed to do business in the state as a surety company. (Code 2002, § 3.221)

Sec. 34-75. Deposit.

No such permit shall be issued unless and until the applicant therefor has deposited with the auditor a cash deposit or bond in the sum set forth in resolution if no pavement is involved, and if the excavation is in a paved area, the sum set forth in resolution to ensure the proper restoration of the ground and laying of the pavement, if any. From this deposit shall be deducted the expense to the city of relaying the surface of the ground or pavement and of making the refill if this is done by the city or at its expense, and the balance shall be returned to the applicant without interest after the tunnel or excavation is completely refilled and the surface or pavement is restored. (Code 2002, § 3.222)

Sec. 34-76. Making excavations; notice.

(a) It shall be unlawful to make any such excavation or tunnel in any way contrary to or at variance with the terms of the permit therefor. Proper bracing shall be maintained to prevent the collapse of adjoining ground, and in excavations, the excavation shall not have anywhere below the surface any portion which extends beyond the opening at the surface.

(b) No injury shall be done to any pipes, cables or conduits in the making of such excavations or tunnels, and notice shall be given to the persons maintaining any such pipes, cables or conduits or to the city department or officer charged with the care thereof, which are or may be endangered or affected by the making of any such excavation or tunnel before such pipes, cables or conduits shall be disturbed. Notice shall be given as required by N.D.C.C. ch. 49-23.

(c) No unnecessary damage or injury shall be done to any tree or shrub or the roots thereof. (Code 2002, § 3.223)

Sec. 34-77. Restoration of excavations.

(a) Any person, firm or corporation making any excavation or tunnel in or under any public street, alley or other public place in the city shall restore the surface to its original condition if there is not pavement there. Refills shall be properly tamped down, and any bracing in such tunnel or excavation shall be left in the ground.

(b) Any opening in a paved or improved portion of a street shall be repaired and the surface re-laid by the applicant, in compliance with the ordinances of the city and under the supervision of the public works supervisor or city engineer.

(Code 2002, § 3.224)

Sec. 34-78. Supervision of excavation work.

The public works supervisor or the city engineer shall from time to time inspect or cause to be inspected, all excavations and tunnels being made in or under any public street, alley or other public place in the city to see the enforcement of the provisions of this article. Notice shall be given to him at least ten hours before the work of refilling any such tunnel or excavation commences.

(Code 2002, § 3.225)

Secs. 34-79—34-99. Reserved.

ARTICLE IV. UNCLAIMED AND ABANDONED PERSONAL PROPERTY

Sec. 34-100. Defined.

Personal property left upon the streets, alleys or other public ways in the city shall be deemed to be unclaimed or abandoned within the meaning of this article when the same is permitted to remain in any one place upon said streets, alleys or other public ways for a period of ten days or more.

(Code 2002, § 3.301)

Sec. 34-101. Seizure of unclaimed or abandoned property.

Whenever any unclaimed or abandoned personal property is found upon the streets, alleys or other public ways of the city, the same shall be seized and possession thereof taken by any police officer, public works supervisor or other officer of the city.

(Code 2002, § 3.302)

Sec. 34-102. Holding of personal property; notice of sale.

Abandoned personal property shall be held by the city for a period of not less than 30 days after its seizure, as provided herein, and after the expiration of said 30 days the city auditor shall cause notice to be published in the official newspaper of said city, said notice specifying and stating the description of the property so seized and held, the location of the place where the same was seized or taken by the city, and a further notice that said property will be sold at public auction, to the highest bidder for cash, not less than ten days from and after the date of the publication of such notice and the hour, date and place where said sale will be

held. If prior approval is obtained from the city council, such unclaimed or abandoned property may be sold at a community auction, provided that the chief of police or a police officer shall be responsible for the notice and reporting requirements of this article.

(Code 2002, § 3.303)

Sec. 34-103. Report of abandoned property sale.

At the time specified in said notice, the said property shall be sold by the chief of police of the city or by any police officer designated, at public auction, to the highest bidder for cash and within three days after the date of said sale, the officer making the sale shall make a report thereof to the city council. The report shall contain the description of the property sold, the time and place of the sale, the name of the purchaser and the amount received therefor. The report shall be made under oath and subscribed by the officer making such sale and shall be filed with the city auditor within three days after the date of such sale. The officer, upon filing the report, shall pay to the city auditor the proceeds of said sale.

(Code 2002, § 3.304)

Sec. 34-104. Abandoned property—Bill of sale.

Upon the receipt of the report as specified in section 34-103, the city auditor shall prepare a bill of sale of the property sold conveying the same to such purchaser and the same shall be executed by the presiding officer of the city council and attested by the city auditor and delivered to the purchaser.

(Code 2002, § 3.305)

Sec. 34-105. Abandoned property—Proceeds of sale.

The city auditor shall retain such money as is received from such sales in a separate account for a period of six months from and after the time of such sale and if proceeds of such sale are not claimed as hereinafter provided by the owner of said property, the money shall thereupon be transferred to the general fund of the city.

(Code 2002, § 3.306)

Sec. 34-106. Redemption of personal property.

Any person owning such personal property seized as aforesaid may at any time, prior to the sale thereof, upon furnishing satisfactory proof of his ownership thereof to the city council, reclaim such property upon paying the expenses incurred by the city for the seizure, storage or advertising of the sale thereof and any person owning such property as aforesaid may, at any time within six months after such sale, and upon making satisfactory proof to the city council of his ownership thereof, claim the proceeds of such sale, upon payment to the city of the necessary expenses incurred by the city for the seizure, storage and sale of said property.

(Code 2002, § 3.307)

Sec. 34-107. Annual report.

The police department, prior to June 1 of each year, shall submit to the city auditor a written list of all unclaimed and abandoned property held by the city which has not been sold pursuant to the provisions of this article. The city auditor shall bring such list to the attention of the city council at the next regular meeting.

(Code 2002, § 3.308)

Chapter 35

RESERVED

Chapter 36

TAXATION

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Secs. 36-1—36-18. Reserved.

Article II. General Sales and Use Tax

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- Sec. 36-86. Refunds.
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Article V. Lodging Tax

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ARTICLE I. IN GENERAL

Secs. 36-1—36-18. Reserved.

ARTICLE II. GENERAL SALES AND USE TAX

Sec. 36-19. Definitions.

All terms in N.D.C.C. chs. 57-39.2 and 57-40.2, including any future amendments, are adopted by reference.

(Code 2002, § 18.101)

Sec. 36-20. City sales and use tax to parallel state law.

The city sales and use tax imposed herein shall parallel to the state sales and use tax law. All of the exemptions applicable for state sales and use tax apply to the city sales and use taxes, including exemptions for tax exempt entities (schools, counties, state agencies, etc.).

(Code 2002, § 18.102)

Sec. 36-21. Sales tax imposed.

Except as otherwise provided in this article, a tax of one percent is imposed upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within the corporate limits of the city. Such sales tax shall be applied to the following:

- (1) Tangible personal property, consisting of goods, wares, or merchandise.
- (2) The furnishing or service of gas, communications services, or steam other than steam used for processing agricultural products.
- (3) Tickets or admissions to places of amusement or entertainment or athletics events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin.
- (4) The leasing or renting of a hotel or motel room or tourist court accommodations.
- (5) Magazines and other periodicals.
- (6) The leasing or renting of tangible personal property, the transfer of title to which has not been subject to a retail sales tax or a use tax under this article.
- (7) Sale of alcoholic beverages and tobacco products as defined in N.D.C.C. § 57-39.2-04.1.

(Code 2002, § 18.103)

Sec. 36-22. Use tax imposed.

Except as otherwise provided in this chapter, an excise tax of one percent is imposed on the storage, use or consumption in the city on:

- (1) The purchase price of tangible personal property purchased at retail for storage, use or consumption within the city except to the extent such property has already been subjected to a sales or use tax in another state or political subdivision as provided in N.D.C.C. § 57-40.2-11.
- (2) The fair market value, at the time it is brought into the city, of tangible personal property not originally purchased for storage, use or consumption in the city, at the time which it is brought into the city.
- (3) Alcoholic beverages and tobacco products as defined in N.D.C.C. § 57-39.2-04.1.
- (4) Tangible personal property used by a contractor or subcontractor to fulfill a contract as defined in N.D.C.C. § 57-40.2-03.3. The tax applies only to bids submitted on or after the effective date of the ordinance from which this article is derived.

(Code 2002, § 18.104)

Sec. 36-23. Exemptions.

There are specifically exempted from the provisions of this article and from the computation of the amount of tax imposed by it the following:

- (1) All sales, storage, use or consumption of tangible personal property, which are exempt from imposition and computation of the sales or use tax of the state are specifically exempt for the provisions of this article.
- (2) Sales to contractors that are exempt, pursuant to N.D.C.C. § 57-39.2-04(15) shall be exempt from any city sales tax, but contractors shall be subject to the city use tax on those items used within the city that would be taxed, pursuant to N.D.C.C. § 57-04.2-03.3, on which the city sales tax has not previously been paid.

(Code 2002, § 18.105)

Sec. 36-24. Refunds.

Refunds allowed by the state for sales and use taxes paid are also allowed by this article under the same terms and conditions provided for in the North Dakota Century Code.

(Code 2002, § 18.106)

Sec. 36-25. Maximum tax imposed.

No single transaction involving one or more items is subject to a tax in excess of \$25.00.

(Code 2002, § 18.107)

Sec. 36-26. Collection and administration.

The tax commissioner and the city auditor shall have the powers enumerated in the provisions of N.D.C.C. §§ 57-39.2 and 57-40.2 relating to the collection and administration of the sales and use tax including all administrative rules adopted by the tax commissioner. The tax commissioner is authorized to establish rate tables integrating the tax imposed by this article with other state, county and city taxes.

(Code 2002, § 18.108)

Sec. 36-27. City auditor empowered to contract with state tax commissioner.

The city auditor is authorized to contract with the tax commissioner for the administration and collection of taxes imposed by this article. The city auditor has all the powers granted the commissioner and in the absence of a valid contract with the commissioner or failure of the commissioner to perform the delegated duties, shall perform those duties in the place of the commissioner.

(Code 2002, § 18.109)

Sec. 36-28. Corporate officer liability.

(a) Officers of any corporations required to remit taxes imposed by this article are personally liable for the failure of the corporation to file required returns or remit required payments.

(b) The dissolution of the corporation shall not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The tax, penalty, and interest due may be assessed and collected pursuant to the provisions adopted by the ordinance from which this article is derived.

(Code 2002, § 18.110)

Sec. 36-29. Dedication of tax proceeds.

All revenues raised and collected under this article, less administrative expenses, shall be dedicated to infrastructure expenses, real property tax reduction, economic development, or any other project enhancing the general welfare of the community. All revenues shall be placed in the general fund of the city.

(Code 2002, § 18.111)

Sec. 36-30. Compensation.

City sales and use tax permit holders shall not be compensated for collecting and paying the sales tax.

(Code 2002, § 18.112)

Secs. 36-31—36-48. Reserved.

ARTICLE III. COMMUNITY CENTER SALES, USE AND GROSS RECEIPTS TAXES

Sec. 36-49. Definitions.

All terms defined in N.D.C.C. chs. 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2, including any future amendments, are adopted by reference. All references to N.D.C.C. include amendments adopted by the state legislative assembly.
(Ord. No. 2009-04)

Sec. 36-50. Collection and administration.

Where not in conflict with the provisions of this article, the provisions of N.D.C.C. chs. 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2, and all administrative rules adopted by the tax commissioner, pertaining to the collection and administration of the retail sales, use, and gross receipts tax, including provisions for liability, refund, penalty, interest or credit, govern the administration by the state office of state tax commissioner (hereinafter "tax commissioner") of the taxes imposed by this article.
(Ord. No. 2009-04)

Sec. 36-51. Sales tax imposed.

Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided by this article, or the sales and use tax laws of the state, a tax of one percent is imposed upon the gross receipts of retailers from all sales at retail, including the leasing or renting of tangible personal property, within the corporate limits of the city.
(Ord. No. 2009-04)

Sec. 36-52. Use tax imposed.

Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this article, or the sales and use tax laws of the state, an excise tax is imposed upon the storage, use, or consumption within the corporate limits of the city of tangible personal property purchased at retail for storage, use, or consumption in the city, at the rate of one percent of the purchase price of the property. An excise tax is imposed on the storage, use, or consumption within the corporate limits of the city of tangible personal property not originally purchased for storage, use, or consumption in the city at the rate of one percent of the fair market value of the property at the time it was brought into the city.
(Ord. No. 2009-04)

Sec. 36-53. Gross receipts on alcoholic beverages.

Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this article, a gross receipts tax of one percent is imposed upon all gross receipts from the sale of

alcoholic beverages within the city. A person who receives alcoholic beverages for storage, use, or consumption in the state is subject to tax on storage, use, or consumption of those alcoholic beverages at the rate of one percent.

(Ord. No. 2009-04)

Sec. 36-54. Gross receipts on new farm machinery and new farm irrigation equipment.

Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this article, a gross receipts tax of one percent is imposed upon all gross receipts from the sale of new farm machinery and new farm irrigation equipment within the city. A person who receives new farm machinery or new farm irrigation equipment for storage, use, or consumption in the state is subject to tax on storage, use, or consumption of that machinery and/or equipment at the rate of one percent.

(Ord. No. 2009-04)

Sec. 36-55. Exemptions.

(a) This article does not provide for any additional exemptions from imposition and computation of the city sales and use tax other than those provided by state law.

(b) With respect to the purchase price of tangible personal property used by a contractor or subcontractor to fulfill a contract, as defined in N.D.C.C. § 57-40.2-03.3, the tax imposed by this article fully applies to all purchases on and after January 1, 2010 regardless of when the contract bids were submitted.

(Ord. No. 2009-04)

Sec. 36-56. Maximum tax imposed.

Any patron or user paying a tax imposed by this article in excess of \$25.00 upon any single transaction of one or more items may obtain a refund of the excess tax payment by filing a request for refund upon the forms provided by the tax commissioner.

(Ord. No. 2009-04)

Sec. 36-57. Contract with tax commissioner.

The city auditor is hereby authorized to contract with the tax commissioner for administration and collection of taxes imposed by this article. The city auditor has all powers granted to the tax commissioner and in the absence of a valid contract with the tax commissioner or failure of the tax commissioner to perform the delegated duties, shall perform these duties in place of the tax commissioner.

(Ord. No. 2009-04)

Sec. 36-58. Dedication of tax proceeds.

The proceeds of the taxes provided for herein shall be dedicated solely to creation, construction, maintenance, repair and operation of a community center.
(Ord. No. 2009-04)

Sec. 36-59. Compensation.

City sales, use and gross receipts tax permit holders are allowed to retain a portion of tax collected under this article to help recover administrative expenses. This compensation shall equal three percent of the city tax due.
(Ord. No. 2009-04)

Sec. 36-60. Termination date.

This article shall terminate on January 1, 2030, or until all such obligations for which payments of sales tax dollars collected pursuant to this article have been pledged have been paid in full and/or otherwise satisfied, whichever is later.
(Ord. No. 2009-04)

Secs. 36-61—36-78. Reserved.

**ARTICLE IV. PARK BOARD, HOUSING AUTHORITY AND COMMUNITY
DEVELOPMENT CORPORATION SALES AND USE TAX**

Sec. 36-79. Definitions.

All terms in N.D.C.C. §§ 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6 and 57-40.2, including any future amendments, are adopted by reference. All references to N.D.C.C. include amendments thereto.
(Ord. No. 2021-02, § 1001, 6-22-2021)

Sec. 36-80. City sales and use tax to parallel state law.

The city sales and use tax imposed herein shall parallel the state sales and use tax law. All of the exemptions applicable for state sales and use tax apply to the city sales and use taxes, including exemptions for tax exempt entities (schools, counties, state agencies, etc.).
(Ord. No. 2021-02, § 1002, 6-22-2021)

Sec. 36-81. Sales tax imposed.

Except as otherwise provided in this article, a tax of one percent is imposed upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within the corporate limits of the city. Such sales tax shall be applied to the following:

- (1) Tangible personal property, consisting of goods, wares, or merchandise.

- (2) The furnishing or service of gas, communications services, or steam other than steam used for processing agricultural products.
 - (3) Tickets or admissions to places of amusement or entertainment or athletics events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin.
 - (4) The leasing or renting of a hotel or motel room or tourist court accommodations.
 - (5) Magazines and other periodicals.
 - (6) The leasing or renting of tangible personal property, the transfer of title to which has not been subject to a retail sales tax or a use tax under this article.
 - (7) Sale of alcoholic beverages and tobacco products as defined in N.D.C.C. § 57-39.2-04.1.
- (Ord. No. 2021-02, § 1003, 6-22-2021)

Sec. 36-82. Use tax imposed.

Except as otherwise provided in this article, an excise tax of one percent is imposed on the storage, use or consumption in the city on:

- (1) The purchase price of tangible personal property purchased at retail for storage, use or consumption within the city except to the extent such property has already been subjected to a sales or use tax in another state or political subdivision as provided in N.D.C.C. § 57-40.2-11.
 - (2) The fair market value, at the time it is brought into the city, of tangible personal property not originally purchased for storage, use or consumption in the city, at the time which it is brought into the city.
 - (3) Tangible personal property used by a contractor or subcontractor to fulfill a contract as defined in N.D.C.C. § 57-40.2-03.3. The tax applies only to bids submitted on or after the effective date of the ordinance from which this article is derived.
- (Ord. No. 2021-02, § 1004, 6-22-2021)

Sec. 36-83. Gross receipts of alcoholic beverages.

Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this article, a gross receipts tax of one percent is imposed upon all gross receipts from the sale of alcoholic beverages within the city. A person who receives alcoholic beverages for storage, use or consumption in the state is subject to tax on storage, use or consumption of those alcoholic beverages at the rate of one percent.

(Ord. No. 2021-02, § 1005, 6-22-2021)

Sec. 36-84. Gross receipts of new farm machinery and new farm irrigation equipment.

Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this article, a gross receipts tax of one percent is imposed upon all gross receipts from the sale of new farm machinery and new farm irrigation equipment within the city. A person who receives new farm machinery or new farm irrigation equipment for storage, use or consumption in the state is subject to tax on storage, use or consumption of that machinery and/or irrigation equipment at the rate of one percent.

(Ord. No. 2021-02, § 1006, 6-22-2021)

Sec. 36-85. Exemptions.

There are specifically exempted from the provisions of this article and from the computation of the amount of tax imposed by it the following:

- (1) All sales, storage, use or consumption of tangible personal property, which are exempt from imposition and computation of the sales or use tax of the state are specifically exempt from the provisions of this article.
- (2) Sales to contractors that are exempt, pursuant to N.D.C.C. § 57-39.2-04(15) shall be exempt from any city sales tax, but contractors shall be subject to the city use tax on those items used within the city that would be taxed, pursuant to N.D.C.C. § 57-40.2-03.3, on which the city sales tax has not previously been paid.

(Ord. No. 2021-02, § 1007, 6-22-2021)

Sec. 36-86. Refunds.

Refunds allowed by the state for sales and use taxes paid are also allowed by this article under the same terms and conditions provided for in the North Dakota Century Code.

(Ord. No. 2021-02, § 1006, 6-22-2021)

Sec. 36-87. Maximum tax imposed.

No single transaction involving one or more items is subject to a tax in excess of \$25.00.

(Ord. No. 2021-02, § 1007, 6-22-2021)

Sec. 36-88. Collection and administration.

The tax commissioner and the city auditor shall have the powers enumerated in the provisions of N.D.C.C. chs. 57-39.2 and 57-40.2 relating to the collection and administration of the sales and use tax including all administrative rules adopted by the tax commissioner. The tax commissioner is authorized to establish rate tables integrating the tax imposed by this article with other state, county and city taxes. The city shall retain ten percent of all tax collected under this article to help recover administrative expenses.

(Ord. No. 2021-02, § 1008, 6-22-2021)

Sec. 36-89. City auditor empowered to contract with state tax commissioner.

The city auditor is authorized to contract with the tax commissioner for the administration and collection of taxes imposed by this article. The city auditor has all the powers granted by the commissioner and, in the absence of a valid contract with the commissioner or failure of the commissioner to perform the delegated duties, shall perform those duties in the place of the commissioner.

(Ord. No. 2021-02, § 1009, 6-22-2021)

Sec. 36-90. Corporate officer liability.

(a) Officers of any corporation required to remit taxes imposed by this article are personally liable for the failure of the corporation to file required returns or remit required payments.

(b) The dissolution of the corporation shall not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The tax, penalty, and interest due may be assessed and collected pursuant to the provisions adopted by this article.

(Ord. No. 2021-02, § 1010, 6-22-2021)

Sec. 36-91. Dedication of tax proceeds.

(a) All revenues raised and collected under this article, less administrative expenses, shall be dedicated to economic development purposes and shall be utilized as follows:

- (1) City housing authority: one-third;
- (2) City park board: one-third;
- (3) City community development corporation: one-third;

within the city. All revenues shall be placed in the special fund belonging to the city.

(b) In the event that any of the entities named in this article shall be dissolved or shall cease to function, the share of the sales tax proceeds to which said entity would be entitled to under this article shall be remitted to the city general fund.

(Ord. No. 2021-02, § 1011, 6-22-2021)

Sec. 36-92. Compensation.

City sales and use and gross receipts tax permit holders are allowed to retain a portion of tax collected under this article to help recover administrative expenses. This compensation shall equal three percent of the city tax due.

(Ord. No. 2021-02, § 1012, 6-22-2021)

Sec. 36-93. Termination date (sunset).

The taxes provided for in this article shall terminate on October 1, 2041.

(Ord. No. 2021-02, § 1015, 6-22-2021)

Secs. 36-94—36-114. Reserved.

ARTICLE V. LODGING TAX

Sec. 36-115. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Gross receipts means receipts of retailers for the leasing or renting, for periods of less than 30 consecutive calendar days or one month, of hotel, motel, or tourist court accommodations within the corporate limits of the city.

Retailer means any person, firm or corporation in the business of leasing or renting hotel, motel or tourist court accommodations for periods of 30 or less consecutive calendar days or one month.

Visitors promotion fund means and shall be comprised of the funds created by collection of the tax imposed by this article less any amount which may be retained by the city for the collection of such tax. (Source: N.D.C.C. § 40-57.3.01)
(Code 2002, § 18.201)

Sec. 36-116. Tax on gross receipts.

A tax is hereby imposed upon gross receipts as defined herein, which tax shall be computed on a monthly basis by each and every hotel, motel or tourist court located within the corporate limits of the city. Said tax shall be in addition to the state sales tax on rental accommodations provided in section 36-21. The amount of such tax shall be two percent to be placed in the visitors promotion fund of the city visitors committee in accordance with N.D.C.C. § 40-57.3-02.
(Code 2002, § 18.202)

Sec. 36-117. Collection of tax.

The tax administrator shall be the state tax commissioner. The city auditor is hereby authorized and directed to contract with the state tax commissioner for the administration and collection of taxes established under this article, subject to confirmation of the contract by the city council.
(Code 2002, § 18.203)

Sec. 36-118. Tax receipts; utilization; visitors promotion fund.

There is hereby created a fund to be known as the visitors promotion fund, and all taxes collected pursuant to this article, less costs of administration, as herein provided, shall be

placed in this fund and utilized for the purpose of promoting, encouraging, and attracting visitors to come to the city and use the travel and tourism facilities within such city. (Source: N.D.C.C. § 40-57.3-02)
(Code 2002, § 18.204)

Sec. 36-119. Administration of fund; city visitors committee.

The visitors promotion fund shall be administered by the city visitors committee pursuant to agreement with the city. This committee shall consist of five members and the members shall receive no compensation payable from the visitors promotion fund except reimbursement for necessary expenses. (Source: N.D.C.C. § 40-57.3-02)
(Code 2002, § 18.205)

Sec. 36-120. Budget.

The operating budget for the city visitors committee shall be established annually by the board of directors of the city visitors committee and thereafter, submitted to the city council for its approval.
(Code 2002, § 18.206)

Sec. 36-121. Failure to comply; penalty.

If any retailer, as defined herein, shall fail to make payment as required by this article or to file the necessary report within the time provided, or, if upon audit, is found to owe additional tax, such retailer shall be subject to a penalty of five percent of the amount of tax due, plus interest of one percent of such tax for each month of delay or a fraction thereof. The city council, if satisfied that the delay was excusable, may waive all or any part of such penalty and interest. Any penalty and interest paid shall be utilized in the same manner as other receipts under this article.
(Code 2002, § 18.207)

Chapter 37

RESERVED

Chapter 38

TRAFFIC AND VEHICLES

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- Sec. 38-228. Effect of regulations.
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Article VI. Snowmobiles

- Sec. 38-260. Definitions.
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ARTICLE I. IN GENERAL**Sec. 38-1. Definitions.**

Words and phrases used in this chapter shall have the meaning and be defined as provided in N.D.C.C. title 39 and N.D.C.C. § 39-01-01 and all subsequent amendments shall be and are hereby incorporated by reference in this chapter.

(Code 2002, § 9.101)

Sec. 38-2. Statutory offenses adopted.

All provisions of N.D.C.C. title 39, violation of which is not a felony, are hereby adopted by reference. It shall be unlawful for any person to violate any of such provisions.

Sec. 38-3. Obedience to traffic ordinances.

It shall be unlawful for any person to do any act forbidden or fail to perform any act required by the provisions of this chapter.

(Code 2002, § 9.302)

Sec. 38-4. Obedience to police officers or firefighters.

No person shall willfully refuse to comply with any lawful order or direction of any police officer or firefighter invested by law with authority to direct, control, or regulate traffic.

(Code 2002, § 9.303)

Sec. 38-5. Certain nonmotorized traffic to obey traffic regulations.

(a) Every person propelling any pushcart upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter and by the rules of the road portion of the state vehicle code, except those provisions which by their very nature can have no application.

(b) Every person riding a bicycle or an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature can have no application.

(Code 2002, § 9.304)

Sec. 38-6. Use of coasters, roller skates and similar devices restricted.

No person upon roller skates, or riding in or by means of any coaster, toy vehicle, or similar device, shall go upon any roadway except while crossing a street on a crosswalk and when so crossing such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. This section shall not apply upon any street while set aside as a play street as authorized herein.

(Code 2002, § 9.305)

Sec. 38-7. Public employees to obey traffic regulations.

The provisions of this chapter shall apply to the drivers of all vehicles owned or operated by the United States, the state, or any county, town, district, or any other political subdivision of the state, subject to such specific exceptions as are set forth in this chapter or in the state vehicle code.

(Code 2002, § 9.306)

Sec. 38-8. Parade or procession permit.

No funeral procession or parade containing 200 or more persons or 50 or more vehicles, except the armed forces of the United States, the military forces of the state and the forces of the police and the fire departments, shall occupy, march or proceed along any street except in accordance with a permit issued by the city council and such other regulations as are set forth herein which may apply. The permit shall be issued upon a showing that public safety will not be endangered.

(Code 2002, § 9.905)

Sec. 38-9. Prohibition of compression brakes.

No person shall use motor vehicle brakes within the city limits that are in any way activated or operated by the compression of the engine of that motor vehicle or any unit or part thereof. It shall be an affirmative defense to prosecution under this section that the compression brakes were applied in an emergency and were necessary for the protection of persons and/or property.

- (1) This section shall not apply to motorcycles or vehicles of any municipal fire department, whether or not responding to an emergency.
- (2) As used in this section, the term "compression brakes" means the use of the engine to retard the forward motion of a motor vehicle by compression of the engine. Compression brakes are also referred to as exhaust brakes and/or Jake brakes.
- (3) The city director of public works shall have authority to post appropriate signs consistent with these provisions. A violation of this section shall be an infraction.

(Ord. No. 2020-02, § 1, 6-1-2020)

Secs. 38-10—38-36. Reserved.**ARTICLE II. ADMINISTRATION AND ENFORCEMENT****DIVISION 1. GENERALLY****Sec. 38-37. Duty of police department.**

It shall be the duty of the police department to enforce the street traffic regulations of the city and all of the state vehicle laws, to make arrests for traffic violations, to investigate

accidents and to cooperate with the city traffic engineer and other officers of the city in the administration of the traffic laws and in developing ways and means to improve traffic conditions, and to carry out the traffic ordinances of the city.

(Code 2002, § 9.201)

Sec. 38-38. Records of traffic violations.

(a) The police department shall keep a record of all violations of the traffic ordinances of the city or of the state vehicle laws of which any person has been charged, together with a record of the final disposition of all such alleged offenses. Such record shall be so maintained as to show all types of violations and the total of each. Said record shall accumulate during at least a five-year period and from that time on the record shall be maintained complete for at least the most recent five-year period.

(b) All forms for records of violations and notices of violations shall be serially numbered. For each month and year, a written record shall be kept available to the public showing the disposal of such form.

(c) All such records and reports shall be public record.
(Code 2002, § 9.202)

Sec. 38-39. Police department to investigate accidents.

(a) It shall be the duty of the police department to investigate traffic accidents, to arrest and to assist in the prosecution of those persons charged with violations of law causing or contributing to such accidents.

(b) Every law enforcement officer, who in the regular course of duty investigates a motor vehicle accident required to be reported, as provided in N.D.C.C. § 39-08-09, either at the time and at the scene of the accident or thereafter by interviewing the participants, or witnesses, shall make and forward promptly a written report of such accident to the director of the state department of transportation.

(Code 2002, § 9.203)

Sec. 38-40. Authority of police and fire department officials.

(a) It shall be the duty of the officers of the police department or such officers as are assigned by the chief of police to enforce all street traffic laws of the city and all of the state vehicle laws.

(b) Officers of the police department or such officers as are assigned by the chief of police are hereby authorized to direct all traffic by voice, hand or signal in conformance with traffic laws, provided that, in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the police department may direct traffic as conditions may require notwithstanding the provisions of the traffic laws.

(c) Officers of the fire department, when at the scene of a fire, may direct or assist the police in directing traffic thereat or in the immediate vicinity.
(Code 2002, § 9.301)

Sec. 38-41. Destruction of motor vehicle number plates of vehicle used to drive while license suspended or revoked.

The municipal judge may order destruction of the motor vehicle number plates of the motor vehicle owned and operated by the offender at the time of violating N.D.C.C. § 39-06-43 in the manner provided in N.D.C.C. § 39-06-42(4).

Secs. 38-42—38-70. Reserved.

DIVISION 2. TRAFFIC CONTROL DEVICES

Sec. 38-71. Authority to install.

The city engineer or any person authorized by the city council shall place and maintain traffic control signs, signals, and devices when and as required under the traffic ordinances of the city to make effective the provisions of said ordinances, and may place and maintain such additional traffic control devices as he may deem necessary to regulate traffic under the traffic ordinances of the city or under state law, or to guide or warn traffic.
(Code 2002, § 9.401)

Sec. 38-72. Specifications.

All traffic control signs, signals, and devices shall conform to the specifications approved by the director of the state department of transportation pursuant to N.D.C.C. § 39-13-06. All signs and signals required hereunder for a particular purpose shall so far as practicable be uniform as to type and location throughout the city. All traffic control devices so erected and not inconsistent with the provisions of state law or this division shall be official traffic control devices.
(Code 2002, § 9.402)

Sec. 38-73. Designation of walks, lanes, etc.

The city engineer or any person authorized by the city council shall:

- (1) Designate and maintain, by appropriate devices, marks or lines upon the surface of the roadway, crosswalks at intersections where there is particular danger to pedestrians crossing the roadway, and at such other places as directed by the city council.
- (2) Establish safety zones of such kind and character and at such places as may be deemed necessary for the protection of pedestrians as determined by the city council.
- (3) Mark traffic lanes upon the roadway of any street or highway where a regular alignment of traffic is necessary. Where such traffic lanes have been marked, it shall

be unlawful for the operator of any vehicle to fail or refuse to keep such vehicle within the boundaries of any such lane except when lawfully passing another vehicle or preparatory to making a lawful turning movement or performing other lawful traffic movements.

(Code 2002, § 9.406)

Sec. 38-74. Regulations of speed by traffic signals.

The city traffic engineer or authorized person may regulate the timing of traffic signals so as to permit the movement of traffic in an orderly and safe manner at speeds slightly at variance from the speeds otherwise applicable within the district or at intersections and shall erect appropriate signs giving notice thereof.

(Code 2002, § 9.506)

Sec. 38-75. Signs designating through streets.

All traffic control devices designating through streets shall conform to state specifications.

(Code 2002, § 9.702)

Secs. 38-76—38-93. Reserved.

DIVISION 3. VIOLATIONS

Sec. 38-94. Notification of parents or guardians of juvenile traffic offenders.

The municipal judge or municipal court clerk shall notify the parent or guardian of any juvenile appearing before the court on a traffic offense of the charge as contained in the citation, the penalty attached to the offense and the time and place of any court hearing on the matter.

(Code 2002, § 9.2211)

Sec. 38-95. Amount of statutory fees.

Statutory fees shall be as follows:

<i>Traffic Code Violation Type</i>	<i>Offense</i>	<i>Fine</i>
Failure to obey fire, EMS, PD	Non-moving	\$50.00
Failure to yield to emergency vehicle	Moving	\$50.00
Disregard traffic control device	Moving	\$20.00
Unauthorized signs on road	Non-moving	
Careless driving—basic rule	Moving	\$30.00
Speed—RR crossing	Moving	
Speed—school zone	Moving	\$80.00
Speed—blind intersection	Moving	
Speed—poor visibility	Moving	
Speed—restricted zones	Moving	

<i>Traffic Code Violation Type</i>	<i>Offense</i>	<i>Fine</i>
Speed—up to 10 mph in excess	Moving	
Speed—in excess of 11 to 15 mph	Moving	
Speed—in excess of 15 to 20 mph	Moving	
Speed—greater than 20 mph	Moving	
Impeding traffic	Moving	\$20.00
Illegal U-turn	Moving	\$20.00
Improper turn	Moving	\$20.00
Failure to signal turn	Moving	\$20.00
Disregard stop sign	Moving	\$20.00
Disregard yield sign	Moving	\$20.00
Enter RR crossing	Moving	\$50.00
Improper passing	Moving	\$20.00
Following to close	Moving	\$20.00
Failed to yield	Moving	\$20.00
Disregard school bus	Moving	\$50.00
Improper backing	Moving	\$20.00
Obstructed drivers view	Moving	\$20.00
Following emergency vehicle	Moving	\$20.00
Crossing fire hose	Moving	\$20.00
Littering	Moving	\$20.00
Permit unauthorized driving	Moving	\$20.00
Driving without license	Moving	\$20.00
No driver's license in possession	Moving	\$20.00
Load restriction	Moving	\$20.00
Truck route	Moving	
Oversize vehicle	Moving	\$20.00
No parking	Non-moving	\$20.00
Sidewalk	Non-moving	
Driveway	Non-moving	
Intersection	Non-moving	
10 feet of fire hydrant	Non-moving	
On crosswalk	Non-moving	
10 feet of crosswalk	Non-moving	
Within 15 of traffic sign	Non-moving	
Within 15 of RR crossing	Non-moving	
Entrance to fire station	Non-moving	
Obstructing traffic	Non-moving	
Double parking	Non-moving	
Where posted	Non-moving	
Parking in alley	Non-moving	
Snow emergency	Non-moving	

<i>Traffic Code Violation Type</i>	<i>Offense</i>	<i>Fine</i>
Pedestrians soliciting ride	Infraction	
Refusal to weighing	Infraction	
<i>Violation Type, Snowmobiles</i>	<i>Offense</i>	<i>Fine</i>
Speed—care required	Infraction	\$30.00
Tree-plant area	Infraction	\$20.00
No muffler	Infraction	\$20.00
Under age 16 years	Infraction	\$20.00
Improper crossing	Infraction	\$20.00
Failure to stop before crossing	Infraction	
Failure to yield	Infraction	\$20.00
Violation of state code	Infraction	
Speed more than 15 mph	Infraction	
Towing improper sled	Infraction	
Improper passing	Infraction	
Unlicensed operator	Infraction	
Operate in park	Infraction	
Carrying bow/firearm	Infraction	
Motor running attended	Infraction	
More than two people	Infraction	
Disregard traffic sign	Infraction	
Use on streets	Infraction	
Harassment domestic animals	Infraction	
On private property without permission	Class B misdemeanor	

(Code 2002, § 9.2207)

Secs. 38-96—38-118. Reserved.

ARTICLE III. GENERAL RULES OF VEHICLE OPERATION

DIVISION 1. GENERALLY

Sec. 38-119. Truck traffic restricted on residential streets.

(a) Commercial trucks and vans of more than two tons payload capacity, semi tractors and/or trailers, and other heavy equipment are prohibited from traveling on any residential street with city limits and will be required to follow marked truck routes. Exception granted for delivery vehicles to commercial businesses.

(b) Truck routes are as follows:

- (1) Highway 11 (6th Street) from 4th Avenue SW to 3rd Avenue SE;

- (2) Main Avenue from 7th Street South to the city corporate limits at junction with 92nd Street SE also known as County Road 15;
- (3) 1st Street SE from Main Avenue to County Road 1; and
- (4) One block east on 1st Street NE from Main Avenue.

(c) Penalty provision.

- (1) Any violation of this section shall be deemed a nuisance. Any person, firm or corporation violating any provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine, or imprisonment, or both. City law enforcement personnel shall give warning either verbally or by warning ticket for first violation. Second violation shall be fined \$100.00 and third violation shall be fined \$250.00.
- (2) If the owner allows a nuisance to exist or fail to abate a nuisance they, and each of them upon conviction thereof, shall be fined not more than \$500.00.
- (3) City law enforcement personnel may remove or cause to be removed to the city hall or any other place within the city selected for storage purposes, any nuisance vehicle and may impound and retain the same until the expense of removal, storage and impounding is paid, together with the amount of any fine, costs, bail or other claims of the city against the owner, or any other person lawfully entitled to the possession thereof.

(Code 2002, § 9.1413)

Sec. 38-120. Operation of motor vehicle, tractor or other vehicle prohibited on flood protective works; exception; penalty.

(a) Unless authorized by the authority in charge thereof, no person shall operate a motor vehicle, tractor or other vehicle upon or across any flood protective works, including, but not limited to, any dike or flood protective works constructed by a state or federal agency or by any municipality or local subdivision of the state.

(b) Any person violating the provisions of this section shall be liable to any person suffering injury as a result of the violation; and in addition, shall be guilty of a Class B misdemeanor.

(Code 2002, § 9.2110)

Secs. 38-121—38-138. Reserved.

DIVISION 2. STOPPING, STANDING OR PARKING GENERALLY

Sec. 38-139. Parking prohibited, all times.

(a) When signs are erected giving notice thereof, it shall be unlawful for any person, firm or corporation to park or leave either attended or unattended, any motor vehicle in or upon the streets or alleys of the city.

(b) Penalty shall not exceed \$25.00.

(c) When no parking towing zone signs are erected giving notice thereof, city law enforcement personnel may remove or cause to be removed, to a place within the city selected for storage purposes, any nuisance vehicle and may impound and retain the same until the expense of removal, storage and impounding is paid, together with the amount of any fine, costs, bail or other claims of the city against the owner, or any other person lawfully entitled to the possession thereof.

(Code 2002, § 9.1401)

Sec. 38-140. Stopping, parking—Certain purposes prohibited.

No person may park a vehicle upon any roadway for the principal purpose of:

- (1) Displaying such vehicle for sale;
- (2) Washing, greasing or repairing such vehicle except repairing such vehicle necessitated by an emergency.

(Code 2002, § 9.1406)

Sec. 38-141. Stopping, parking—Congested; hazardous places.

(a) The city engineer or other person designated by the city council is hereby authorized to determine and designate by proper signs places in which the stopping, standing or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic.

(b) When official signs are erected at hazardous or congested places as authorized herein, no person may stop, stand or park a vehicle in any such designated place.

(Code 2002, § 9.1407)

Sec. 38-142. Stopping, parking—In alleys.

No person may park a vehicle within an alley, nor shall any person stop a commercial vehicle so as to leave available less than 12 feet of the width thereof for free movement of vehicular traffic, nor shall any person stop in such a position as to block the driveway entrance to any abutting property.

(Code 2002, § 9.1408)

Sec. 38-143. Parking adjacent to schools.

(a) The city traffic engineer or authorized person may erect signs indicating no parking upon either or both sides of any street adjacent to any school property when such parking would, in his opinion, interfere with traffic or create a hazardous situation.

(b) When official signs are erected indicating no parking upon either side of a street adjacent to any school property as authorized herein, no person may park a vehicle in any such designated place.

(Code 2002, § 9.1409)

Sec. 38-144. Restricted vehicles on residential streets.

(a) Parking of commercial trucks and vans of more than two tons payload capacity, semi tractors and/or trailers, farm equipment, wheel loaders, excavators and non-recreational trailers over 16 feet in length or commercial vehicles shall be prohibited except when such vehicles and/or trailers are being used for the purpose of development, improvement, service or demolition on the adjacent site and shall be allowed to park there only for the duration of the work being done.

(b) Penalty provision.

- (1) Any violation of this section shall be deemed a nuisance. Any person, firm or corporation violating any provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine, or imprisonment, or both. City law enforcement personnel shall give warning either verbally or by warning ticket for first violation. Second violation shall be fined \$25.00 and third violation shall be fined \$50.00.
- (2) If the owner allows a nuisance to exist or fail to abate a nuisance they, and each of them upon conviction thereof, shall be fined not more than \$500.00.
- (3) City law enforcement personnel may remove or cause to be removed to the city hall or any other place within the city selected for storage purposes, any nuisance vehicle and may impound and retain the same until the expense of removal, storage and impounding is paid, together with the amount of any fine, costs, bail or other claims of the city against the owner, or any other person lawfully entitled to the possession thereof.

(Code 2002, § 9.1411)

Sec. 38-145. Restriction on recreational vehicles and trailers.

(a) Overnight parking of recreational vehicles and trailers including boat trailers, RV campers, four-wheeler trailers on residential streets shall be prohibited from 10:00 p.m. to 7:00 a.m.

(b) Penalty provision.

- (1) Any violation of this section shall be deemed a nuisance. Any person, firm or corporation violating any provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine, or imprisonment, or both. City law enforcement personnel shall give warning either verbally or by warning ticket for first violation. Second violation shall be fined \$25.00 and third violation shall be fined \$50.00.
- (2) If the owner allows a nuisance to exist or fail to abate a nuisance they, and each of them upon conviction thereof, shall be fined not more than \$500.00.
- (3) City law enforcement personnel may remove or cause to be removed to the city hall or any other place within the city selected for storage purposes, any nuisance vehicle

and may impound and retain the same until the expense of removal, storage and impounding is paid, together with the amount of any fine, costs, bail or other claims of the city against the owner, or any other person lawfully entitled to the possession thereof.

(Code 2002, § 9.1412)

Sec. 38-146. Reserved parking areas.

(a) No person, firm or corporation shall, when signs are erected giving notice thereof, park or leave standing, either attended or unattended, any motor vehicle on street areas which are reserved for the following temporary uses: loading and unloading, bus parking, guest parking, taxi parking, emergency parking, no parking, police or fire use.

(b) The chief of police may establish from time to time areas for loading and unloading, bus parking, guest parking, taxi parking, emergency parking, no parking or police and fire use on such public streets in such places and in such number as the chief shall determine or as the city council may specifically designate to be of greatest benefit and convenience to the public. These areas shall be designated by appropriate signs.

(Code 2002, § 9.1501)

Sec. 38-147. Time limit parking zones.

(a) When signs are erected giving notice thereof, no person, firm or corporation shall park or leave standing, either attended or unattended any motor vehicle for more than the amount of time posted.

(b) The city engineer or authorized person may establish time parking zones from time to time in such places as they determine, or as the city council shall specifically designate, to promote the greatest benefit and convenience to the public and the best use of the street areas.

(Code 2002, § 9.1601)

Secs. 38-148—38-177. Reserved.

DIVISION 3. ANGLE PARKING

Sec. 38-178. General provisions.

The city engineer or other person authorized by the city council may mark or sign streets upon which angle parking will be permitted (other than federal aid or state highways). Upon those streets which have been signed or marked for angle parking, no person may park or stand a vehicle other than at the angle to the curb or edge of the roadway indicated by such signs or markings.

(Code 2002, § 9.1301)

Sec. 38-179. Where permitted.

Angle parking shall also be permitted on the following streets:

- (1) On Main Avenue South between the right-of-way of the Red River and Western Railroad Company and Third Street South, on the north side of the streets running on the south sides of Lots 5, 6, 7 and 8 of Block 3 of Fort Hankinson.
- (2) Along the north side of First Street Northeast between Main Avenue and First Avenue Northeast.

(Code 2002, § 9.1302)

Sec. 38-180. Method of parking; penalty.

A violation of the provisions of this division in respect to the method of parking is punishable by a fine of not to exceed \$25.00.

(Code 2002, § 9.1304)

Secs. 38-181—38-198. Reserved.

ARTICLE IV. VEHICLE SIZE, WEIGHT AND LOAD

Sec. 38-199. Load restrictions upon vehicles using certain roadways.

When signs are erected giving notice thereof, not person may operate any vehicle with a gross weight in excess of the maximum indicated weight at any time upon any street or part of a street so designated.

(Code 2002, § 9.2001)

Sec. 38-200. Commercial vehicles prohibited from using certain streets.

When signs are erected giving notice thereof, no person may operate any commercial vehicle exceeding the maximum indicated gross weight at any time upon any street or part of a street so designated except that such vehicles may be operated thereon for the purpose of delivering or picking up materials or merchandise and then only by entering such street at the intersection nearest the designation of the vehicle and proceeding thereon no farther than the nearest intersection thereafter.

(Code 2002, § 9.2002)

Sec. 38-201. Size restrictions upon vehicles using certain highways.

When signs are erected giving notice thereof, no person may operate any vehicle exceeding the dimensions specified by such signs at any time upon any street or part of a street so designated.

(Code 2002, § 9.2003)

Sec. 38-202. Restrictions upon use of streets by certain vehicles.

(a) The city traffic engineer or authorized person may determine and designate those heavily traveled streets upon which shall be prohibited the use of the roadway by motor driven cycles, bicycles, horse drawn vehicles or other non-motorized traffic and shall erect appropriate signs giving notice thereof.

(b) When signs are so erected giving notice thereof, no person may disobey the restrictions stated on such signs.

(Code 2002, § 9.2004)

Secs. 38-203—38-227. Reserved.**ARTICLE V. BICYCLES****Sec. 38-228. Effect of regulations.**

(a) It is a violation of this article for any person to do any act forbidden or fail to perform any act required in this article. Any person who violates any of the provisions of this article may be assessed a fee not to exceed \$5.00.

(b) The parent of any child and the guardian of any ward may not authorize or knowingly permit any such child or ward to violate any of the provisions of this article.

(c) These regulations applicable to bicycles apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein. (Source: N.D.C.C. § 39-10.1-01)

(Code 2002, § 9.1201)

Sec. 38-229. Traffic ordinances apply to persons riding bicycles.

Every person riding a bicycle upon a roadway is granted all of the rights and is subject to all of the duties applicable to the driver of a vehicle by this article, except as to special regulations in this article and except as to those provisions of this article which by their nature can have no application. (Source: N.D.C.C. § 39-10.1-02)

(Code 2002, § 9.1202)

Sec. 38-230. Obedience to traffic control devices.

(a) Any person operating a bicycle shall obey the instructions of official traffic control devices applicable to vehicles, unless otherwise directed by a police officer.

(b) Whenever authorized signs are erected indicating that no right or left or U-turn is permitted, no person operating a bicycle may disobey the direction of any such sign, except where such person dismounts from the bicycle to make any such turn, in which event such person shall then obey the regulations applicable to pedestrians.

(Code 2002, § 9.1203)

Sec. 38-231. Riding on sidewalks.

(a) The chief of police or authorized person may erect signs on any sidewalk or roadway prohibiting the riding of bicycles thereon by any person and when such signs are in place no person may disobey the same.

(b) Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing such pedestrian.

(Code 2002, § 9.1204)

Sec. 38-232. Parking.

No person may park a bicycle upon a street other than upon the roadway against the curb or upon the sidewalk in a rack to support the bicycle or against a building or at the curb, in such manner as to afford the least obstruction to pedestrian traffic.

(Code 2002, § 9.1210)

Sec. 38-233. Cycle racing prohibited.

It shall be unlawful for any persons to run or engage in or cause to be run or be engaged in any bicycle or motorcycle race on any street, alley, highway or public place within the city, except when officially sanctioned to do so by the chief of police.

(Code 2002, § 9.1211)

Secs. 38-234—38-259. Reserved.

ARTICLE VI. SNOWMOBILES

Sec. 38-260. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Dealer means every person, partnership, corporation or limited liability company engaged in the business of buying, selling or exchanging snowmobiles or who advertises or holds out to the public as engaged in the buying, selling or exchanging of snowmobiles or who engages in the buying of snowmobiles for resale.

Operate means to ride in or on and control the operation of a snowmobile.

Operator means every person who operates or is in actual physical control of a snowmobile.

Owner means a person, other than a lien holder, having the property in or title to a snowmobile entitled to the use or possession thereof.

Register means the act of assigning a registration number to a snowmobile.

Registrar or director means the director of the department of transportation of the state as provided in N.D.C.C. § 24-02-01.3.

Roadway means that portion of a highway improved, designed or ordinarily used for vehicular travel.

Snowmobile means as provided in N.D.C.C. § 39-24-01(8).
(Code 2002, § 9.2108)

Sec. 38-261. Rules for operation.

No person owning or having custody or control of a snowmobile shall operate or permit the operation thereof upon any real property or land within the city not owned or leased by such person except as elsewhere permitted by this article, nor shall such person operate or permit to be operated any snowmobile upon any street, avenue, alley, roadway, berm, boulevard, sidewalk, ditch, or city-owned property or right-of-way within the city, except for the use of the city streets and avenues and alleys or designated trail as permitted hereafter under the following circumstances and conditions:

- (1) Driving the snowmobile into the city limits and taking the most direct route to the point of destination within the city or driving the snowmobile out of the city limits and taking the most direct route from the point of departure to the city limits;
- (2) Taking the snowmobile to be repaired or serviced;
- (3) When driving the snowmobile for emergency and rescue work;
- (4) When normal vehicular traffic is prevented because of snow;
- (5) When retail dealers demonstrate a snowmobile within the city limits;
- (6) Snowmobiles coming through the city must use the trail.

(Code 2002, § 9.2109(1)—(9))

Chapter 39

RESERVED

Chapter 40

UTILITIES

Article I. In General

- Sec. 40-1. Water and sewer department established.
- Sec. 40-2. City water and sewer department to be independent agency.
- Sec. 40-3. Scope of utility.
- Sec. 40-4. Service charges.
- Sec. 40-5. Policy on improvements; extensions.
- Sec. 40-6. Stormwater improvement fund surcharge.
- Sec. 40-7. Utility fund; separate accounts.
- Sec. 40-8. Provisions for financing capital improvements.
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- Sec. 40-10. Subsequent connection to premises.
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Article II. Water System

- Sec. 40-41. Generally.
- Sec. 40-42. Supervisor of city water and sewer department—Duties.
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- Sec. 40-44. Application for water service and service connection charge.
- Sec. 40-45. Water service to property not previously assessed.
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- Sec. 40-48. Water service; construction of, maintenance of by city and property owner.
- Sec. 40-49. Unlawful to use water not metered; unlawful to tamper with curb cock.
- Sec. 40-50. Defective service; consumers' duty to report.
- Sec. 40-51. Users consent to regulations.
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- Sec. 40-54. Service pipes specifications.
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- Sec. 40-59. Rates and charges.
- Sec. 40-60. Rates and charges; liability for.
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- Sec. 40-85. Definitions.
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- Sec. 40-87. Authority.
- Sec. 40-88. Applicability.
- Sec. 40-89. Requirements.
- Sec. 40-90. Inspection, testing and repair.
- Sec. 40-91. Reporting and recordkeeping.
- Sec. 40-92. Right of entry.
- Sec. 40-93. Compliance.
- Sec. 40-94. Violations and penalties.
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Article IV. Sewers and Sewage Disposal

Division 1. Generally

- Sec. 40-119. Purpose.
- Sec. 40-120. Definitions.
- Sec. 40-121. Use of public sewers required.
- Sec. 40-122. When private sewage disposal permitted.
- Sec. 40-123. Building sewers and connections.
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Division 2. Surcharge

- Sec. 40-159. Purpose.
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- Sec. 40-161. Determining each user's wastewater contribution percentage.
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ARTICLE I. IN GENERAL**Sec. 40-1. Water and sewer department established.**

There is hereby established and created within the city a department to be known as the city water and sewer department. The department shall have general charge of all plants, systems, works, instrumentalities, equipment, materials, supplies, sewage disposal plants, lagoons, intercepting sewer, truck connections, sewer and water mains, filtration works, pumping stations and all parts and appurtenances of the foregoing which are used or useful in connection with the collection, treatment and disposal of sewage, waste and storm sewers for the inhabitants of the city, subject to all ordinances, rules and regulations.

(Code 2002, § 7.101)

Sec. 40-2. City water and sewer department to be independent agency.

(a) All of the business affairs of the city water and sewer department shall be conducted, insofar as it is possible within the ordinances of the city, as a completely separate and distinct division of the city.

(b) Separate and distinct accounts shall be set up on the books of the city auditor. These accounts shall at all times reflect the true condition of the water and sewer department, as distinct from the remaining business of the city and shall be so devised as to disclose the annual profit or loss of the department. The funds of the department shall be held in the custody of the city auditor and disbursed upon warrant in the same manner as other funds, but the water and sewer department shall be charged on the books of the city with all payments made by the city on its behalf. Transfers from the water and sewer department to the general fund or any other fund of the city shall not be made except upon order of the city council nor shall transfer be made from city funds to the water and sewer department without like order. Where bonds have now been, or may hereafter be issued against any water works improvement or sewage improvement, which constitute a general obligation of the city, the taxes levied for the payment of such bonds and interest shall be levied and expended for such purpose in the manner provided by law, until such time as it may be possible out of the proceeds of the water and sewer department, after setting up a reasonable reserve for depreciation and new construction, to make payment of the bond requirements from the profits of the water and sewer department. It is expressly declared to be the purpose of this section that, as soon as the same can be accomplished without undue burden to the water users of the city, the water and sewer department shall be placed upon an entirely independent basis as a separate business enterprise.

(Code 2002, § 7.102)

Sec. 40-3. Scope of utility.

The properties of the city water and sewer department and all future improvements, extensions and enlargements thereof, together with all cash and other assets held in the city's water and sewer utility fund and all moneys to be derived thereafter from the services, facilities, products and byproducts of said utility, shall be and are hereby appropriated and

dedicated to the purpose of insuring the public health, safety and welfare by furnishing and making available water and sewage service to the city and its inhabitants and industries. The utility shall at all times be under the management and control of the city council and shall by it be operated and maintained in such manner as to provide its service with maximum efficiency and at the minimum cost which is compatible with the plan of operation herein described.

(Code 2002, § 7.103)

Sec. 40-4. Service charges.

(a) The city water and sewer department shall at all times be so operated and maintained, and rates and charges for its services, facilities, products and byproducts shall be such, as to make the utility self-supporting and self-perpetuating. Such charges from time to time imposed and collected shall be made and kept adequate to pay as incurred all costs of operation and maintenance of said utility and to establish and maintain reasonable operating reserves; to produce net revenues which shall be sufficient at all times to pay promptly the principal and interest due on all obligations of the city incurred for the improvement, extension and enlargement of said utility, to the extent that such obligations are according to their terms payable from said net revenues, and to establish and maintain adequate reserves for the security of said obligations. Charges may be set to produce surplus net revenues, when actually on hand, and to the extent that they are not required as a reserve for depreciation and replacement, may from time to time be appropriated by the governing board to pay or contribute to the cost of any other city functions, subject to the limitations now or hereafter prescribed by law.

(b) The foregoing appropriations shall not, however, be deemed or construed to preclude the city from defraying any part or all of the expense of any improvement, enlargement or extension of the water and sewer utility by the levy of special assessments or taxes or the issuance of general obligation bonds, whenever and to the extent that such action is authorized in the manner provided by law and is deemed fair and equitable by the city council.

(Code 2002, § 7.104)

Sec. 40-5. Policy on improvements; extensions.

It is hereby declared to be the policy of the city, subject to such modifications as shall be deemed by the city council to be required by special circumstances in individual cases, and subject to such modifications as may hereafter be made by ordinance amendatory hereof or supplemental hereto, that the cost of capital improvements, enlargements and extensions of said utility shall be paid in the following manner:

- (1) Where water mains not exceeding six inches or sanitary sewer mains not exceeding eight inches in diameter are installed adjacent to residential properties, and where water mains not exceeding eight inches or sewer mains not exceeding ten inches in diameter are installed adjacent to commercial properties, the total cost thereof shall be assessed against the properties abutting on such improvements, in sums

proportionate to and not exceeding the total benefits determined to be derived therefrom by the respective properties. Water and sewer mains of the dimensions above described are referred to herein as lateral mains and other mains are referred to as trunk mains.

- (2) Where a trunk main is installed, the city council, upon advice of the city engineer, shall estimate the probable cost of construction of a lateral main at the same time and place and such estimated cost shall be assessed against the properties abutting on such main and in the manner above provided.
- (3) Twenty percent of the cost of any sanitary sewer in excess of the estimated cost of a lateral sewer at the same time, and place shall be assessed against all properties determined by the city council to require the immediate construction of such main as a trunk sewer, including properties abutting thereon and properties served or capable of being served by lateral sewers connected thereto, in amounts proportionate to and not exceeding the benefits determined to be derived by said respective properties from such trunk sewer.
- (4) The total cost of storm sewers shall be assessed against properties within the area determined to be benefited thereby, in amounts proportionate to and not exceeding the benefits determined to be derived therefrom by the respective properties.
- (5) Where a portion of the benefits of any of the foregoing improvements is deemed to accrue primarily to the city at large, a portion not exceeding 20 percent of the cost thereof, as determined by the city council, may be paid by the levies of assessments for such improvements, or any portion or all of such cost may be paid out of current funds duly provided in the budget, or from the proceeds of general obligation bonds duly authorized by the electors.
- (6) Such portion of the cost of any improvement, extension or addition to the utility as is not paid by special assessments and taxes levied and actually collected in respect thereof shall be paid from the net revenues of the utility.
- (7) Where due to any error or omissions or to any special circumstances a special assessment is not levied against any property benefited by an improvement at the time of the construction thereof in accordance with the program described in this section, the city reserves the right to levy a supplemental special assessment upon such property or to impose and collect a special charge for the connection of such property with the utility system in such amount as shall be required to pay its just share of the assessable cost of such improvement.
- (8) Application; fees.
 - a. No person, partnership, corporation or other entity shall hook-up or otherwise connect a new service in the city's sanitary sewer system without first making an application therefor to the city auditor and paying all hook-up fees provided for the same.

- b. That any person applying for the initial hookup of a new service into the city's sanitary sewer system shall pay a nonrefundable connection fee in the amount set forth by resolution, which shall be due and payable when the application is filed with the city auditor for the hook-up, except that the applicant may enter into an agreement with the city to pay the fee in annual installments as established by resolution. These provisions cover Forced Main and Lift Station District #99-1.

(Code 2002, § 7.105)

Sec. 40-6. Stormwater improvement fund surcharge.

(a) Any person, partnership, corporation or other entity within the city limits for each lot, parcel, or tract owned by it that is hooked up or otherwise connected to the city's storm sewer system, the owner shall pay a hookup fee surcharge in the same principle amount and according to the same amortization schedule as required of and assessed to all city lots for Storm Drain Improvement District 2009-1 (entire city) for having an actual hookup.

(b) Such surcharge will be paid in full, at the time of hookup, unless such user enters into an agreement with the city to pay the fee in annual installments amortized as set forth by resolution.

(Ord. No. 2010-13, eff. 12-1-2010)

Sec. 40-7. Utility fund; separate accounts.

All moneys received by the city in respect of the services, facilities, products and byproducts furnished and made available by the city water and sewer department, except collections of special assessments and taxes appropriated to improvement district funds and moneys borrowed for capital improvements, and all money, receipt and returns received from any investments of such earnings, shall be paid into the treasury of the city and kept in a special fund which shall be permanently maintained on the books of the city, separate and distinct from other funds, and designated as the water and sewer utility fund. In the record of this fund, all receipts and disbursements of money on account of or in connection with the utility shall be entered and reflected; but the moneys from time to time on hand therein shall always constitute public municipal funds and shall be deposited and their safekeeping secured like other city funds. Separate accounts within the water and sewer utility fund shall be permanently maintained for the purpose of segregating the revenues required to meet the several expenses and obligations of the utility, as provided below, and such revenues shall be administered and accounted for as follows:

- (1) *Operation and maintenance account.* There shall be credited at least once in each calendar month to the operation and maintenance account of said fund, as a first lien and charge on the gross revenues of the utility such sum as shall be needed, over and above any credit balance then held therein, to pay all claims due which by accepted accounting practices constitute normal, reasonable and current expenses of operation and maintenance of the utility, and to pay such expenses estimated to accrue for a period of approximately one month, and to maintain reasonable reserve for

contingencies. Moneys in said account shall be used only to pay expenses of the foregoing type, and not for repairs or replacements or for capital improvements properly chargeable to replacement and depreciation reserves or surplus funds.

- (2) *Principal and interest account.* The principal and interest account of the fund, created by resolution, shall continue to be maintained as provided in that resolution until the payment, in full, of the improvement warrants issued against said fund.
- (3) *Revenue bond account.* The net revenues of the utility are herein defined as the aggregate of all sums on hand in the water and sewer utility fund from time to time in excess of the current requirements defined in subsections (1) and (2) of this section. The entirety of the net revenues shall be credited each month to the revenue bond account of the water and sewer fund until there shall have been credited within said account, and thereafter so much of the net revenues as shall be necessary to maintain at all times, a reserve in an amount at least equal to the sum of the principal and interest payments due within each next succeeding 12-month period upon all revenue bonds of the city heretofore or hereafter issued and made payable from said accounts. After this reserve has been created, there shall continue to be credited out of the net revenues to the revenue bond account each month, over and above sums required to maintain such reserve, an amount not less than $\frac{1}{12}$ of the sum of the principal and interest to become due on all such revenue bonds within the then next succeeding 12 months. Moneys in said account shall be used only for the payment of principal and interest as it becomes due on said revenue bonds, and the reserve shall be used for such purpose only when other moneys in the account are insufficient. All revenue bonds heretofore and hereafter issued and made payable from said account, subject to the limitations upon such issuance contained in subsection (6) of this section, shall constitute a first lien and charge on the net revenues of said utility without preference or priority of one bond over any other. However, if at any time the moneys in the revenue bond account should be insufficient to make all payments of principal and interest due on such revenue bonds, and cannot be made sufficient by transfer of moneys from the other accounts described below, the moneys available shall be first used to pay interest then accrued on all bonds payable from said account, and any excess moneys available shall be used to pay matured principal of such bonds in order of their maturity dates, provided that moneys available for payment of bonds maturing on the same date shall be prorated equally among such bonds.
- (4) *Improvement warrant account.* There shall also be maintained in said fund an improvement warrant account, for the purpose of segregating net revenues required for the payment of any portion of the cost of improvements hereafter instituted, for which such revenues have been pledged in accordance with the provisions of N.D.C.C. ch. 40-22. There shall be transferred from said account as required, to the fund of each improvement district for which such pledge has been made, sums sufficient, together with tax and assessment collections held in such funds, to pay when due the principal and interest on all improvement warrants drawn upon such funds for the

financing of such improvements. Moneys sufficient for the requirements of said improvement district funds shall be credited and paid into the improvement warrant account out of the net revenues remaining from time to time after provision for the current requirements of the revenue bond account, and the lien and charge on said net revenues in favor improvement warrants for the payment of which such pledges have been made shall be subordinate only to the lien and charge on said net revenues in favor of revenue bonds payable from the revenue bond account. In the event that moneys in the improvement warrant account shall be insufficient for the making of all transfers required to be made to the several improvement district funds from the remaining accounts described below, the available moneys shall be apportioned first to the several improvement district funds in sums sufficient to pay interest then accrued on all warrants drawn on such district funds, and any remainder shall be applied in payment of matured principal of such warrants in order of the maturity dates thereof. As among warrants maturing on the same date, such available moneys shall be applied to the warrants of the several issues in proportion to the matured principal amount thereof for the payment of which taxes and assessments in the respective improvement funds are insufficient.

- (5) *Replacement and depreciation account.* There shall be maintained a replacement and depreciation account, into which there shall be credited and paid as received, except as otherwise stated below, all net revenues in excess of the current requirements of the other accounts above described. In said account there shall be maintained such balances as the city council shall from time to time determine to constitute an adequate reserve for depreciation and replacement of the utility, which reserve may be used to redeem prior to maturity obligations payable from the net revenues as and when the same become pre-payable according to their terms, or to replace worn out or obsolete properties of the utility, or to make extensions, enlargements or improvements thereto. Any moneys in said account determined to be surplus to the immediate requirements therefor may be invested or may be transferred to other city funds in the discretion of the board, in the manner and subject to the limitations set forth in N.D.C.C. § 40-33-12 and any acts amendatory thereof or supplemental thereto.
- (6) *Moneys on hand.* The moneys on hand in any of the accounts of the water and sewer utility fund shall at all times be available and shall be used to the extent necessary to restore any deficiency in the funds on hand in any of the preceding accounts, in the order listed above, for the fulfillment of the requirements of such preceding accounts as herein defined.
- (7) *Additional accounts.* The city also reserves the right to create additional accounts within the water and sewer utility fund for the purpose of segregating any surplus net revenues which may be pledged and appropriated to the payment of obligations hereafter issued to finance improvements, enlargements or extensions of said utility, other than the obligations made payable from the revenue bond account and the improvement warrant account, pursuant to the authority for such issuance reserved

in section 40-8. Moneys on hand in any such account shall at all times be available for and used to the extent necessary to meet the current requirements of all of the foregoing accounts except the replacement and depreciation account.

(Code 2002, § 7.106)

Sec. 40-8. Provisions for financing capital improvements.

In borrowing money for capital improvements, extensions or additions to said utility the following provisions shall at all times be observed:

- (1) For the purpose of this section, whenever the net revenues of the utility hereinabove appropriated to the improvement warrant account are pledged to pay a portion of the cost of any improvement to be financed by improvement warrants, such warrants and the interest accruing thereon shall be deemed to be payable from said net revenues in the same proportion as that part of the cost payable from said net revenues bears to the principal amount of such warrants. The portion of costs payable from net revenues shall be deemed equal to the principal amount of the warrants less the principal amount of the taxes and assessments to be levied for the payment thereof.
- (2) Except as provided in subsections (3) and (4) of this section, no obligations shall be issued and made payable from the revenue bond account or the improvement warrant account at any time unless the net revenues of the utility, as defined in section 40-7(3), received during the then next preceding fiscal year, shall have been in an aggregate amount at least equal to 125 percent of the average annual principal and interest payments due on all bonds payable from the revenue bond account which are then outstanding or then to be issued, plus such percentage of the average of the annual principal and interest payments due on each issue of improvement warrants then outstanding or then to be issued as shall be payable from said net revenues, which averages shall be computed on the basis of the principal and interest payments due in the fiscal years of the then remaining term of all such revenue bonds and improvement warrants then outstanding. For the purpose of such computation, whenever rates for water and sewer service have been changed in the course of any fiscal year, the net revenues for such year shall be deemed to be those which would have been received if such amended rates had been in effect during the entirety of such year, based on actual quantities of service furnished to each class of customers and the actual expenses of the utility during such year; provided that in no case shall the net revenues so computed be deemed to exceed 125 percent of the net revenues actually received during such year.
- (3) Refunding revenue bonds may be issued for the purpose of prepaying and refunding bonds payable from the revenue bond account when and as they become pre-payable according to their terms, in the manner and to the extent permitted by law, provided that such refunding revenue bonds shall be subject to the requirements set forth in subsection (2) of this section, as applied to the past net revenues and future principal and interest requirements as of the date of the issuance of such refunding revenue bonds. However, the city shall and does hereby also reserve the right and privilege of

issuing refunding revenue bonds, when permitted by law, for the maturities of any bonds payable from the revenue bond account which have matured and for the payment of which the moneys in the revenue bond account are insufficient, and cannot be made sufficient by transfer of moneys from other accounts, and such refunding revenue bonds shall be payable from the revenue bond account on a parity as to interest with all then outstanding bonds payable therefrom, but the maturities of such refunding revenue bonds shall be subsequent to the maturities of all such outstanding bonds. Nothing herein shall be deemed to require the holder of any revenue bond to accept a refunding revenue bond in exchange therefor.

- (4) The city also reserves the right and privilege of issuing refunding improvement warrants in the manner and to the extent provided in N.D.C.C. ch. 40-27 and acts amendatory thereof and supplemental thereto. The lien and charge of such refunding warrants on the net revenues appropriated to the improvement warrant account shall be the same as that in favor of the improvement warrants refunded thereby, provided that, for the purpose of the computations directed to be made in this section, the maturities and the rate or rates of interest payable on such refunding warrants shall be substituted for the maturities and interest rates of the improvement warrants refunded thereby.
- (5) Nothing herein shall be deemed to affect the obligation of the city, under the laws of the state, to levy ad valorem taxes upon all taxable property within its corporate limits for the purpose of paying a deficiency, if any, in the fund of any improvement district, at the time of the maturity of the last warrant drawn thereon, or at such earlier time as may be hereafter directed by such laws; provided that it shall be the policy of the city that the amounts of any deficiency tax levies so made shall be restored to the general funds of the city out of any surplus net revenues thereafter received, over and above the requirements of the several accounts of the water and sewer utility fund as stated in section 40-7.
- (6) Except as hereinbefore authorized, no obligation of any kind shall be issued and made payable from said net revenues unless the lien thereof is expressly made subordinate and junior to the lien and charge on said net revenues in favor of all revenue bonds and improvement warrants payable from the revenue bond account and the improvement warrant account.

(Code 2002, § 7.107)

Sec. 40-9. Agreements with bond and warrant purchasers.

The city shall and does hereby covenant and agree with the original purchaser and each holder from time to time of each bond or warrant issued and made payable from the revenue bond account or the improvement warrant account, as follows:

- (1) It will complete all improvements financed by the issuance of such obligations with due diligence and with the greatest economy consistent with good workmanship and

efficient results, and will do so without creating or permitting the creation of any liens or encumbrances on said utility or on the revenues thereof other than the liens and charges of said revenues expressly authorized in this article.

- (2) As long as any obligations payable from said accounts are outstanding, it will continue to own and operate said utility as a municipal utility, free from all competitions as to the services thereby provided and in good and efficient operating condition.
- (3) It will at all times maintain a schedule of rates, charges and rentals for all services, facilities, commodities and benefits furnished by said utility and will impose and collect the same in amounts at least sufficient to make the minimum payments into the respective accounts of the water and sewer utility fund as specified in section 40-7, and will revise such schedules in such manner and as often as needed to perform this covenant.
- (4) Under each such schedule, the city shall be obligated to pay and will pay from its other funds to the water and sewer utility fund a fair and equitable amount for any and all services, facilities, commodities and benefits furnished to the city or any of its departments by the utility.
- (5) It will at all times maintain books of account adequate to show all receipts and disbursements of the city respecting the utility, and application of such receipts to the purposes of the several accounts described in section 40-7, which books of account shall be open to inspection by the holder of any obligation payable from the revenue bond account or the improvement warrant account at any reasonable time. The city will furnish a certified transcript therefrom of any information which any such bond or warrant holder may request, upon payment of a reasonable fee therefor.
- (6) It will cause the annual financial statement of the city required by the provisions of N.D.C.C. § 40-16-05 to include a statement as the financial condition and the receipts and disbursements of the water and sewer utility fund and of its several accounts during each fiscal year, and will furnish a copy of such statement to the original purchaser of each issue of bonds or warrants upon request.
- (7) Upon written demand of the holder of 20 percent or more of the bonds or warrants of any issue payable from the revenue bond account or improvement warrant account and then outstanding, it will cause an audit of the books of account of the utility to be made by a certified public accountant satisfactory to the holders of such obligations, the cost thereof to be paid as an operating expense of the utility and will furnish a copy of the report of any such audit to such party as shall be designated in such demand.
- (8) It will at all times keep the properties of said utility insured in reasonable amounts against loss or damage by fire, tornado and other risks for which similar properties are customarily insured by prudent owners, and will carry adequate public liability insurance, insuring against any claim of personal injury of property damage which is

or may become a charge against the revenues of the utility. The city will also cause all persons handling funds of the utility to be bonded in suitable amounts for the protection of the city and the holders of obligations of the utility, and the expense of all such insurance and bonds shall be accounted for as an operating cost of the utility. The city will use the proceeds of any such insurance and bonds to restore the loss or damage compensated thereby.

- (9) The city and its city council and each and all of its officers will punctually perform all duties with reference to said utility and the revenues thereof and the obligations issued hereunder which are imposed by the ordinances and resolutions of the city in force on the date upon which any such obligations are issued. All provisions of the constitution and laws and of such ordinances and resolutions which provide security for the holders of bonds issued hereunder are acknowledged to be a part of the city's contract with the holders of such obligations; provided that nothing herein shall be deemed to preclude the city from modifying the policies set forth in section 40-5 with reference to any improvements constructed and financed after the effective date of such modification.
- (10) The holders of 20 percent or more in principal amount of each issue of bonds or warrants payable from the revenue bond account or the improvement warrant account and at the time outstanding shall be privileged, and are hereby empowered, to institute and maintain, on behalf of the holders of all outstanding obligations of the same issue, and suit or proceeding at law or in equity for the protection and enforcement of any covenant, agreement or stipulation herein provided to be performed or observed by the city or its city council or any of its officers, whether or not any such obligations are then in default as to principal and interest. Each and all of the rights and remedies provided by N.D.C.C. §§ 40-35-15 and 40-35-19 are hereby acknowledged to be available to the holders of such obligations.
- (Code 2002, § 7.108)

Sec. 40-10. Subsequent connection to premises.

Any party, other than the original applicant, desiring service for premises where a connection has been made pursuant to sections 40-44 and 40-45 shall make written applications therefor as in cases described in section 40-44, and if the connection charge for such premises has not been fully paid at such time, the applicant shall pay or agree to pay the remainder thereof in like manner and time as described in sections 40-44 and 40-45.

(Code 2002, § 7.206)

Sec. 40-11. Service in un-platted areas.

No application for water and/or sewer service shall be approved and no person shall hook up to or make connection with the city water and sewer system unless the area to be served by said water and/or sewer connection has been duly platted and the plat approved by the city council and recorded in the county register of deeds office.

(Code 2002, § 7.209)

Secs. 40-12—40-40. Reserved.

ARTICLE II. WATER SYSTEM

Sec. 40-41. Generally.

All land, buildings, machinery, equipment, tools and apparatus, water mains, hydrants, service connections and all other property used for the purpose of furnishing a water supply to the city, and the inhabitants thereof, now owned or to be owned by the city, whether acquired by the issue of general obligation bonds, special assessment warrants or other obligations of the city, shall constitute and be known as the waterworks system.

(Code 2002, § 7.201)

Sec. 40-42. Supervisor of city water and sewer department—Duties.

A water and sewer supervisor shall be hired by the governing board. It shall be the duty of the supervisor to exercise control and management of the operation of the utility system. City employees as may be necessary to the operation of the utility system shall be subject to his orders and directions, and he shall be responsible for their acts. The supervisor shall report directly the chairperson of the water and sewer committee and the city council on all matters considered out of the ordinary. The chairperson of the water and sewer committee, or, in his/her absence, the mayor, shall have the authority to authorize expenditures as needed to mitigate any situation which he considers to be an emergency involving the water and sewer system with such expenditure presented to and approved by the city council at its next regular or special meeting. The supervisor shall have the power and authority to purchase such materials, supplies and repairs for the water and sewer system between regular council meetings, which shall be reasonably necessary for the operation of such system. The supervisor shall keep such books and records of matters pertaining to the operation of the system, as are necessary to show the operation and condition thereof. The supervisor shall perform such other duties and have such other powers and authority as are hereinafter provided for in this article.

(Code 2002, § 7.202)

Sec. 40-43. Supervisor of city water and sewer department—Reports.

The water and sewer utility supervisor shall make monthly reports to the city council concerning the operation of the water and sewer department.

(Code 2002, § 7.203)

Sec. 40-44. Application for water service and service connection charge.

Any party desiring water and sewer service from said utility for premises not heretofore connected with the system, and not subject to the provisions of section 40-45, shall apply for a connection on a form provided by the city. Such application shall state an exact description of the premises to be served, and the uses, both general and special, to which the water is to

be put, the nature of sewage to be discharged, and the estimated amount of water to be used for a quarter-annual period. Such application shall be filed with the city auditor, and the applicant shall thereupon pay to the city auditor, as a connection charge. Amount of charge is set by resolution.

(Code 2002, § 7.204)

Sec. 40-45. Water service to property not previously assessed.

(a) No permit shall be issued for the making of any connection between any water or sewer line on any property which has not previously been benefited by existing water and/or sewer lines or whenever the owners of such property have not been assessed for such water and sewer lines, unless and until such person shall have paid or made a written statement with the city to pay in monthly installments within a maximum of 25 years an amount of money as may be therefore determined by the city council. The amount of the payment shall be based on the area served and benefit resulting to the property involved.

(b) Within 30 days of the receipt of such application, the city council shall determine the amount of money required to be paid before such connection shall be made and shall advise the applicant property owner of such determination. All such money paid and received pursuant to the provisions of this section shall be placed in the water and sewer utility fund and shall be expended in accordance with the purposes of such fund.

(Code 2002, § 7.205)

Sec. 40-46. Separate connections for each premises; exception.

Unless a special permission is granted by the water and sewer utility supervisor, each premises shall have a separate and distinct water service connection and sewer service connection, and where permission is granted for branch service systems, each unit on the branch shall pay the fees as set in section 40-60.

(Code 2002, § 7.207)

Sec. 40-47. Service outside city limits prohibited; exception.

No application for water and/or sewer service outside the city limits of the city shall be approved and no person outside the corporate limits of the city shall hook up to or make connection with the city water and/or sewer system. Water service outside the corporate limits of the city may be permitted pursuant to contractual agreement of the city council arising in limited and extraordinary circumstances but shall be permitted only upon a resolution adopted by the city council.

(Code 2002, § 7.208)

Sec. 40-48. Water service; construction of, maintenance of by city and property owner.

(a) The cost of original installation of all plumbing between the water main and any city shutoff devices maintained by the city, and all extensions made to service devices, as well as all repairs, shall be borne entirely by the city. Service devices and services lines, as well as

the meters, shall at all reasonable times be subject to inspection by duly authorized representatives of the city. Any repairs found to be necessary to service devices and service lines by such representatives shall be made promptly, and will be the responsibility of the property owner.

(b) The cost of the original water meter and plumbing of such meter from curb stop to said residence is borne entirely by the consumer.

(c) All services shall be constructed by licensed plumbers at the owner's expense, and each service maintained by the owner. Services heretofore acquired by the issuance of special assessment warrants and assessed against the property, or which may be acquired in the future in like manner, shall likewise be maintained by the owner. The term "services" means the service line running from the point of connection with the city main to owner's premises.

(d) The city will be responsible for maintenance and repairs to water mains and up to and including all curb stops, including a second older curb stop, that are located within city street or alley right-of-way.

(e) If a second curb stop is located on private property, repairs to that curb stop are the responsibility of the property owner.

(f) If curb stop for a property is not located within the street or alley right-of-way, the city will be responsible for repairs and maintenance of service line from water main to and including curb stop and its connector to property service line. The city retains the right to install a new curb stop in right-of-way at its discretion.

(Code 2002, § 7.210)

Sec. 40-49. Unlawful to use water not metered; unlawful to tamper with curb cock.

It shall be unlawful for any person to use water from any premises without the consent of the owner or to use water from the city water system except when drawn through a meter installed by the city. No person except an authorized representative of the city shall turn on or off or tamper with any curb cock.

(Code 2002, § 7.211)

Sec. 40-50. Defective service; consumers' duty to report.

All claims for defective service shall be made in writing and filed with the utility superintendent on or before the 15th day of the month next succeeding such defective service, or be deemed waived by the claimant. It shall be the duty of the utility supervisor to investigate the facts alleged in each claim and determine the amount, if any, which should be refunded to a claimant by reason of defective service and report such determination to the city council. If a claim is approved by that body, such amount shall be allowed as credit on

the following bill or paid as other claims, but no claim shall be made against the city for any fire or any injuries to the person or property of any consumer of water or sewer service under the provisions hereof.

(Code 2002, § 7.212)

Sec. 40-51. Users consent to regulations.

Every person applying for water and sewer service from the municipal system, and every owner of property for which such application is made, shall be deemed by such application to consent to all the rules, regulations and rates contained in the resolution or ordinances of the city and to any modification thereof and to all new rules, regulations or rates duly adopted.

(Code 2002, § 7.213)

Sec. 40-52. Regulations governing service.

The following rules and regulations shall be considered a part of the contract with every person who takes water and/or sewer service supplied by the city through the city waterworks system and every such person who takes such service shall be considered to be bound thereby:

- (1) *Shutting off water; who authorized.* No person except an authorized employee of the water and sewer department shall shut off the water at the curb cock to any premises without first obtaining permission from the water and sewer department.
- (2) *City reserves right to shut off water; notice.* In the case of making repairs or constructing new work, the city reserves the right to shut off the water at once and keep the same shut off as long as may be necessary to accomplish such purposes. Service may also be discontinued for nonpayment of bills or for disregard of rules and regulations affecting the service.
- (3) *Non-liability of city for deficient supply or quality of water.* It is expressly provided that the city shall in no event be or become liable to any consumer of water for a deficiency in the supply of water or the quality thereof, whether by shutting off the same to make repairs or to construct new work or for any other cause whatsoever.
- (4) *Shutting off water; charges.* The water and sewer department shall make a charge in the amount established by resolution for shutting off or turning on services.
- (5) *Entrance and access to premises by waterworks employees.* Authorized employees of the water and sewer department shall have free access to any premises supplied with water, at proper times, to inspect and ascertain the condition of the meters and fixtures, or for reading meters, and no owner or occupant shall refuse such employees such access. The water and sewer department shall have the right to enter any premises and remove the meter for the purpose of examination and test after first notifying the owner or occupant, and to shut off the water to premises where free access is prevented.

(6) *Fire hydrants; who may open.* No person except city employees or volunteer fire department members in the performance of their official duties shall open or cause to be opened any fire hydrant without written permission of the water supervisor.
(Code 2002, § 7.214)

Sec. 40-53. Connection to be supervised by city employees.

In installing water and sewer service, all taps shall be driven, street excavations made, corporation cocks inserted, pipes installed from the main and the curb cock installed in an iron box to which the service is to be connected by the individual, his agent or employee under the supervision, direction and control of the water and sewer department. Ten feet spacing shall be allowed between all water and sewer lines in new connections to service. Failure to comply with this section shall be considered a disregard of the rules of the department and service to the affected property can be withheld or discontinued as the case may be.
(Code 2002, § 7.215)

Sec. 40-54. Service pipes specifications.

All service pipes connected with the water and sewer utility shall be laid five feet and six inches below the established grades or as low as the street mains. All water and sewer pipes shall be of a material approved by the utility supervisor.
(Code 2002, § 7.216)

Sec. 40-55. Curb cock specifications.

There shall be a curb cock in every service line attached to the water mains, the same to be placed as near as possible to the curb if on a street, or within one foot of the alley line if the main is located in the alley. Curb cocks shall be supplied with strong and suitable T handles and shall be enclosed in a substantial iron case covered with a tightfitting iron lid with the letter "W" cast upon it. There shall be one or more stops and waste cocks attached to every supply pipe at some point between the curb cock and the meter so that the water can be shut off and the house plumbing entirely drained. There shall be another such stop and waste cock in the pipe on the house side of the meter.
(Code 2002, § 7.217)

Sec. 40-56. Check valves required when necessary.

Check valves are hereby required on all water connections to steam boilers or any other connection deemed by the utility supervisor to require one. Safety and release valves shall be placed on all boilers or other steam apparatus connection with the water system where the steam pressure may be raised in excess of 50 pounds per square inch.
(Code 2002, § 7.218)

Sec. 40-57. Use of water during fire unlawful.

It is hereby declared to be unlawful for any person in the city or any person owning or occupying premises connected to the utility to use or allow to be used during a fire any water from said utility except for the purpose of extinguishing said fire; and upon the sounding of a fire alarm, it shall be the duty of every such person to see that all water services are tightly closed and that no water is used, except for necessary household purposes during said fire. (Code 2002, § 7.219)

Sec. 40-58. Waterworks customers may lay larger pipes with hydrants.

Whenever proprietors of lumber yards, manufactories, halls, stores, hotels, public buildings or regular customers from the water works wish to lay larger pipes with hydrants and hose couplings, to be used only in case of fire, they will be permitted to connect with the street main at their own expense, upon application for a permit to the city auditor, and under the direction of the city council will be allowed the use of water, for fire purposes only, free of charge. No standpipe will be allowed on the premises where the water is not taken for other than fire purposes. (Code 2002, § 7.220)

Sec. 40-59. Rates and charges.

Water and sewer rates shall be fixed from time to time by resolution of the city council and the city reserves the right to change the rates from time to time as it deems best. The resolution fixing water and sewer rates and charges shall be kept on file in the office of the city auditor and shall be open for public inspection. (Code 2002, § 7.221)

Sec. 40-60. Rates and charges; liability for.

The owner of all real property in the city furnished water or sewer service or service line repairs shall be responsible for the payment of any and all such charges regardless of who the occupant or tenant may be. Owners of premises where water or sewer service is supplied shall notify the water or sewer department of the city auditor in case any tenant moves from said premises, prior to such moving. On request of the owner, the city auditor will bill or cause to be billed the occupant or tenant for such charges, but if such charges are not paid when due by the occupant or tenant, the owner shall be responsible for such charges and they shall be assessed to the property served. It shall be the duty of the city auditor to certify to the county auditor such unpaid water or service charges that are unpaid in the same manner and at the same time as other assessments are certified, and they shall be assessed and collected in the same manner. (Code 2002, § 7.222)

Sec. 40-61. Duty to report to auditor.

Every owner or operator of a multiple-dwelling unit shall file with the city auditor a report indicating the total number of units under his control. Every owner or operator of a mobile

home park shall file with the city auditor a report indicating the total number of units in the park and shall further notify the city auditor of any changes in the number of units in the park if the number increases or decreases.

(Code 2002, § 7.223)

Sec. 40-62. Excavators.

No person, firm or corporation shall excavate in or on any street alley or other public place for the purpose of installing any water and/or sewer connection until they have complied with the provisions of sections 34-73 through 34-78.

(Code 2002, § 7.224)

Sec. 40-63. Restriction of user of water.

The city council may from time to time declare that water may not be used for specific purposes or may only be used in certain parts of the city on certain days for certain purposes. The city shall have the right to prohibit the watering of lawns and gardens, the washing of cars or such uses or the water as may be necessary to preserve for the general public an adequate supply of water for consumption and use by the general public.

(Code 2002, § 7.225)

Secs. 40-64—40-84. Reserved.

ARTICLE III. BACKFLOW PREVENTION

Sec. 40-85. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Active date means the first day that a backflow prevention assembly or backflow prevention method is used to control a cross connection in each calendar year.

Air gap means a physical separation between the free-flowing discharge end of a potable water supply pipeline and an open or non-pressure receiving vessel installed in accordance with standard ASME A112.1.2.

Backflow means the undesirable reversal of flow of water or mixtures of water and other liquids, gases or other substances into the public water systems distribution system from any source or sources other than its intended source.

Backflow contamination event means backflow into a public water system from an uncontrolled cross connection such that the water quality no longer meets the state primary drinking water regulations or presents an immediate health and/or safety risk to the public.

Backflow prevention assembly means any mechanical assembly installed at a water service line or at a plumbing fixture to prevent a backflow contamination event, provided that the mechanical assembly is appropriate for the identified contaminant at the cross connection and is an in-line field-testable assembly.

Backflow prevention method means any method and/or non-testable device installed at a water service line or at a plumbing fixture to prevent a backflow contamination event, provided that the method or non-testable device is appropriate for the identified contaminant at the cross connection.

Certified cross connection control tester or repairer means a person who possesses a valid backflow prevention assembly tester certification from one of the following approved organizations: American Society of Sanitary Engineering (ASSE) or the American Backflow Prevention Association (ABPA). If a certification has expired, the certification is invalid.

Containment means the installation of a backflow prevention assembly or a backflow prevention method at any connection to the public water system that supplies an auxiliary water system, location, facility, or area such that backflow from a cross connection into the public water system is prevented.

Containment by isolation means the installation of backflow prevention assemblies or backflow prevention methods at all cross connections identified within a customer's water system such that backflow from a cross connection into the public water system is prevented.

Controlled means having a properly installed, maintained, and tested or inspected backflow prevention assembly or backflow prevention method that prevents backflow through a cross connection.

Cross connection means any connection that could allow any water, fluid, or gas such that the water quality could present an unacceptable health and/or safety risk to the public, to flow from any pipe, plumbing fixture, or a customer's water system into a public water system's distribution system or any other part of the public water system through backflow.

Multi-family means a single residential connection to the public water system's distribution system from which two or more separate dwelling units are supplied water.

Single family means:

- (1) A single dwelling which is occupied by a single family and is supplied by a separate service line; or
- (2) A single dwelling comprised of multiple living units where each living unit is supplied by a separate service line.

Uncontrolled means not having a properly installed and maintained and tested or inspected backflow prevention assembly or backflow prevention method, or the backflow prevention assembly or backflow prevention method does not prevent backflow through a cross connection.

Water supply system means a water distribution system, piping, connection fittings, valves and appurtenances within a building, structure, or premises. Water supply systems are also referred to commonly as premises plumbing systems.

(Ord. No. 2022-01, § 4, 4-4-2022)

Sec. 40-86. Purpose.

The purpose of this article is to protect the public water system from contaminants or pollutants that could enter the distribution system by backflow from a customer's water supply system through the service connection.

(Ord. No. 2022-01, § 1, 4-4-2022)

Sec. 40-87. Authority.

(a) The authority to implement this program is contained in the following documents:

- (1) North Dakota Administrative Code 33.1-17-01-19, Protection of Public Water Systems.
- (2) 2018 North Dakota Plumbing Code.
- (3) 2018 Uniform Plumbing Code.

(b) The public water system shall have the authority to survey all service connections within the distribution system to determine if the connection is a cross connection.

(c) The public water system shall have the authority to control all service connections within the distribution system if the connection is a cross connection.

(d) The public water system may control any service connections within the distribution system in lieu of a survey if the service connection is controlled with an air gap or reduced pressure zone backflow prevention assembly.

(e) The public water system may collect fees for the administration of this program.

(f) The public water system shall maintain records of cross connection surveys and the installation, testing and repair of all backflow prevention assemblies installed for containment and containment by isolation purposes.

(g) Except as otherwise provided herein, the public water system shall administer, implement and enforce the provisions of this article.

(Ord. No. 2022-01, § 2, 4-4-2022)

Sec. 40-88. Applicability.

This article applies to all commercial, industrial and multi-family residential service connections within the public water system and to any persons outside the city who are, by

contract or agreement with the public water system, users of the public water system. This article does not apply to single-family residential service connections unless the public water system becomes aware of a cross connection at the single-family connection.

(Ord. No. 2022-01, § 3, 4-4-2022)

Sec. 40-89. Requirements.

(a) Commercial, industrial and multi-family service connections shall be subject to a survey for cross connections. If a cross connection has been identified an appropriate backflow prevention assembly and or method shall be installed at the customer's water service connection within 60 days of its discovery. The assembly shall be installed downstream of the water meter or as close to that location as deemed practical by the public water system. If the assembly or method cannot be installed within 60 days the public water system must take action to control or remove the cross connection, suspended service to the cross connection or receive an alternative compliance schedule from the state department of environmental quality.

(b) In no case shall it be permissible to have connections or tees between the meter and the containment backflow prevention assembly. In instances where a reduced pressure principle backflow preventer cannot be installed, the owner must install approved backflow prevention devices or methods at all cross connections within the owner's plumbing system.

(c) Backflow prevention assemblies and methods shall be installed in a location which provides access for maintenance, testing and repair.

(d) Reduced pressure principle backflow preventers shall not be installed in a manner subject to flooding.

(e) Provisions shall be made to provide adequate drainage from the discharge of water from reduced pressure principle backflow prevention assemblies. Such discharge shall be conveyed in a manner which does not impact waters of the state.

(f) All assemblies and methods shall be protected to prevent freezing. Those assemblies and methods used for seasonal services may be removed in lieu of being protected from freezing. The assemblies and methods must be reinstalled and then tested by a certified cross connection control technician upon reinstallation.

(g) Where a backflow prevention assembly or method is installed on a water supply system using storage water heating equipment such that thermal expansion causes an increase in pressure, a device for controlling pressure shall be installed.

(h) All backflow prevention assemblies shall be tested at the time of installation and on an annual schedule thereafter. Such tests must be conducted by a certified cross connection control tester or repairer.

(i) The public water system shall require inspection, testing, maintenance and as-needed repairs and replacement of all backflow prevention assemblies and methods, and of all required installations within the owner's plumbing system in the cases where containment assemblies and/or methods cannot be installed.

(j) All costs for design, installation, maintenance, testing and as needed repair and replacement are to be borne by the customer.

(k) No grandfather clauses exist except for fire sprinkler systems where the installation of a backflow prevention assembly or method will compromise the integrity of the fire sprinkler system.

(l) For new buildings, all building plans must be submitted to the public water system and approved prior to the issuance of water service. Building plans must show:

- (1) Water service type, size and location.
- (2) Meter size and location.
- (3) Backflow prevention assembly size, type and location.
- (4) Fire sprinkler system service line, size and type of backflow prevention assembly.
 - a. All fire sprinkling lines shall have a minimum protection of an approved double check valve assembly for containment of the system.
 - b. All glycol (ethylene or propylene) or antifreeze systems shall have an approved reduced pressure principle backflow preventer for containment.
 - c. Dry fire systems shall have an approved double check valve assembly installed upstream of the air pressure valve.
 - d. In cases where the installation of a backflow prevention assembly or method will compromise the integrity of the fire sprinkler system the public water system can chose to not require the backflow protection. The public water system will measure chlorine residual at location representative of the service connection once a month and perform periodic bacteriological testing at the site. If the public water system suspects water quality issues the public water system will evaluate the practicability of requiring that the fire sprinkler system be flushed periodically.

(Ord. No. 2022-01, § 5, 4-4-2022)

Sec. 40-90. Inspection, testing and repair.

(a) Backflow prevention assemblies or methods shall be tested by a certified cross connection control technician upon installation and tested at least annually thereafter. The tests shall be made at the expense of the customer. Any backflow prevention assemblies or methods that are non-testable shall be inspected at least once annually by a certified cross connection control technician. The inspections shall be made at the expense of the customer.

(b) As necessary, backflow prevention assemblies or methods shall be repaired and retested or replaced and tested at the expense of the customer whenever the assemblies or methods are found to be defective.

(c) Testing gauges shall be tested and calibrated for accuracy at least once annually.
(Ord. No. 2022-01, § 6, 4-4-2022)

Sec. 40-91. Reporting and recordkeeping.

(a) Copies of records of test reports, repairs and retests, or replacements shall be kept by the customer for a minimum of three years.

(b) Copies of records of test reports, repairs and retests shall be submitted to the public water system by mail, facsimile or e-mail by the testing company or testing technician.

(c) Information on test reports shall include, but may not be limited to:

- (1) Assembly or method type;
- (2) Assembly or method location;
- (3) Assembly make, model and serial number;
- (4) Assembly size;
- (5) Test date;
- (6) Test results including all results that would justify a pass or fail outcome;
- (7) Certified cross connection control technician certification agency;
- (8) Technician's certification number;
- (9) Technician's certification expiration date;
- (10) Test kit manufacturer, model and serial number;
- (11) Test kit calibration date.

(Ord. No. 2022-01, § 7, 4-4-2022)

Sec. 40-92. Right of entry.

A properly credentialed representative of the public water system shall have the right of entry to survey all buildings and premises for the presence of cross connections for possible contamination risk and for determining compliance with this section. This right of entry shall be a condition of water service in order to protect the health, safety and welfare of customers throughout the public water system's distribution system.

(Ord. No. 2022-01, § 8, 4-4-2022)

Sec. 40-93. Compliance.

(a) Customers shall cooperate with the installation, inspection, testing, maintenance, and as needed repair and replacement of backflow prevention assemblies and with the survey process. For any identified uncontrolled cross connections, the public water system shall complete one of the following actions within 120 days of its discovery:

- (1) Control the cross connection.
- (2) Remove the cross connection.
- (3) Suspend service to the cross connection.

(b) The public water system shall give notice in writing to any owner whose plumbing system has been found to present a risk to the public water system's distribution system through an uncontrolled cross connection. The notice and order shall state that the owner must install a backflow prevention assembly or method at each service connection to the owner's premises to contain the water service. The notice and order will give a date by which the owner must comply. In instances where a backflow prevention assembly or method cannot be installed, the owner must install approved backflow prevention assemblies or methods at all cross connections within the owner's water supply system. The notice and order will give a date by which the owner must comply.

(Ord. No. 2022-01, § 9, 4-4-2022)

Sec. 40-94. Violations and penalties.

Any violation of the provisions of this article shall, upon conviction, be punishable as provided in all applicable statutes, laws, and regulations.

(Ord. No. 2022-01, § 9, 4-4-2022)

Sec. 40-95. Conflict with other codes.

If a dispute or conflict arises between the state plumbing code as adopted herein, and any plumbing, mechanical, building, electrical, fire or other code adopted by the state, then the most stringent provisions of each respective code shall prevail.

(Ord. No. 2022-01, § 10, 4-4-2022)

Secs. 40-96—40-118. Reserved.

ARTICLE IV. SEWERS AND SEWAGE DISPOSAL

DIVISION 1. GENERALLY

Sec. 40-119. Purpose.

It is the purpose of this article to provide ordinances regulating the use of public and private sewers and drains, private sewage disposal, the installation and connection of building sewers and the discharge of waters and wastes into the public sewer system and to provide penalties for violations thereof.

(Code 2002, § 7.301)

Sec. 40-120. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

BOD or *biochemical oxygen demand* means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees centigrade, expressed in milligrams per liter.

Building drain means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (1.5 meters) outside the inner face of the building wall.

Building sewer means the extension from the building drain to the public sewer or other place or disposal; also called house connection.

Combined sewer means a sewer intended to receive both wastewater and stormwater or surface water.

Easement means an acquired legal right for the specific use of land owned by others.

Floatable oil means oil, fat or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection system.

Garbage means the animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.

Hearing board means that board appointed according to the provisions of section 40-11.

Industrial wastes means the wastewater from industrial processes, trade or business as distinct from domestic or sanitary wastes.

Natural outlet means any outlet, including storm sewers and combined sewer overflows, into a watercourse pond, ditch, lake or other body of surface water or groundwater.

pH means the logarithm of the reciprocal of the hydrogen-ion concentration. The concentration is the weight of hydrogen ions, in grams, per liter of solution. Neutral water, for example, has pH value of seven and a hydrogen-ion concentration of 10^{-7} .

Properly shredded garbage means the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch (1.27 centimeters) in any dimension.

Public sewer means a common sewer controlled by a governmental agency or public utility.

Sanitary sewer means a sewer that carries liquid- and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with minor quantities of groundwaters, stormwaters and surface waters that are not admitted intentionally.

Sewage means the spent water of a community. The preferred term is "wastewater."

Sewer means a pipe or conduit that carries wastewater or drainage water.

Slug means any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration or flows during normal operation and shall adversely affect the collection system and/or performance of the wastewater treatment works.

Storm drain (sometimes termed storm sewer) means a drain or sewer for conveying water, groundwater, subsurface water or unpolluted water from any source.

Supervisor means the supervisor of wastewater facilities, and/or of wastewater treatment works, and/or of water pollution control of the city or an authorized deputy, agent or representative.

Suspended solids means total suspended matter that either floats on the surface of, or is in suspension in water, wastewater or other liquids, and that is removable by laboratory filtering as prescribed in Standard Methods for the Examination of Water and Wastewater and referred to as non-filterable residue.

Unpolluted water means water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

Wastewater means the spent water of a community. From the standpoint of source, wastewater may be a combination of the liquid- and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and stormwater that may be present.

Wastewater facilities means the structures, equipment and processes required to collect, carry away and treat domestic and industrial wastes and dispose of the effluent.

Wastewater treatment works means an arrangement of devices and structures for treating wastewater, industrial wastes and sludge. Sometimes used as synonymous with wastewater treatment plant or water pollution control plant.

Watercourse means a natural or artificial channel for the passage of water either continuously or intermittently.

(Code 2002, § 7.302)

Sec. 40-121. Use of public sewers required.

(a) It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the city or in any area under the jurisdiction of the city any human or animal excrement, garbage or other objectionable waste.

(b) It shall be unlawful to discharge to any natural outlet within the city or in any area under the jurisdiction of the city any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this article.

(c) Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage.

(d) The owner of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the city, and abutting on any street, alley or right-of-way in which there is now located or may in the future be located or may in the future be located a public sanitary sewer, is hereby required at the owner's expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this article, within 30 days after date of official notice to do so, provided that said public sewer is within 200 feet (61 meters) according to the state plumbing code of the property line.

(Code 2002, § 7.303)

Sec. 40-122. When private sewage disposal permitted.

(a) Where a public sanitary or combined sewer is not available under the provisions of section 40-121(d), the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this article.

(b) Before commencement of construction of a private wastewater disposal system, the owner shall obtain a written permit signed by the supervisor. The application for such permit shall be made on a form furnished by the city, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the supervisor.

(c) A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the supervisor. The supervisor shall be allowed to inspect the work at any stage of construction, and, in any event, the applicant for

the permit shall notify the superintendent when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 72 hours of the receipt of notice by the supervisor.

(d) The type, capacities, location and layout of a private wastewater disposal system shall comply with all recommendations and/or regulations of the state department of health. No permit shall be issued for any private disposal system not meeting these conditions. No septic tank or cesspool shall be permitted to discharge to any natural outlet or to the ground surface.

(e) At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in section 40-121(d), a direct connection shall be made to the public sewer within 30 days in compliance with this article, and any septic tanks, cesspools and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.

(f) The owner shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the city. All sludge or solids, to be disposed of from a septic tank, cesspool or other individual method of disposal shall be disposed of by a licensed septic tank pumper in accordance with N.D.C.C. § 23-19-01.

(g) No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the local health officer.
(Code 2002, § 7.304)

Sec. 40-123. Building sewers and connections.

(a) No unauthorized person shall uncover, make any connection with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the supervisor.

(b) There shall be two classes of building sewer permits: for residential and commercial service, and for service to establishments producing industrial wastes. In either case, the owner or his agent shall make application on a special form furnished by the city. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the supervisor.

(c) All costs and expense incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

(d) A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the

rear building and the whole considered as one building sewer. The city does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection.

(e) Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the supervisor, to meet all requirements of this article.

(f) The size, slope alignment, materials of construction of all sanitary sewers including building sewers, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city. In the absence of suitable code provisions, specifications of the state building and plumbing codes shall apply.

(g) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

(h) No person shall make connection of roof downspouts, foundation drains, areaway drains or other sources of surface runoff or groundwater to a building sewer, or building drain which in turn is connected directly or indirectly to a public sanitary sewer unless such connection is approved by the supervisor and the state department of health.

(i) The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city. All such connections shall be made gastight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the supervisor before installation.

(j) The applicant for the building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.

(k) All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.

(Code 2002, § 7.305)

Sec. 40-124. Sewer service, construction of; maintenance of by owner.

(a) The installation cost of manholes, sewer mains and service connections shall be borne entirely by the city which may utilize special assessment proceedings. Service connections shall at all reasonable times be subject to inspection by duly authorized representatives of the city. Any repairs found to be necessary by such representatives shall be made promptly, and will be the responsibility of the city.

(b) All services shall be constructed by licensed plumbers at the owner's expense, and each service maintained by the owner. The cost of the plumbing from the main to said residence is borne entirely by the consumer. Service means the service line running from the point of connection with the city main to owner's premises.

(c) The city shall be responsible for any plumbing attachments to the main where residential or commercial services tie in with the main. Any fracture or blockage that affects the sewer main and service connections will be the city's responsibility to locate the problem. If necessary, the city shall open the street surface to gain access to the main and service lines for repairs. The city shall determine the quality and quantity of plumbing located beneath the street surface and who will be responsible for payment of repairs. The city shall notify the property owner within a reasonable time prior to making repairs of service line problem regarding percentage of cost which will be their responsibility. Full payment by a property owner may be made at time of completion of repairs, or payment may, at the request of the property owner, be added as a special assessment to property taxes over a period of up to five years at 1.5 percent over current Bank of North Dakota prime rate.

(Code 2002, § 7.305.1)

Sec. 40-125. Use of public sewers.

(a) No person shall discharge or cause to be discharged any unpolluted waters such as stormwater, surface water, groundwater, roof runoff, subsurface drainage or cooling water to any building drain or sewer which in turn is connected directly or indirectly to the sanitary sewer unless such connection is approved by the supervisor and the state department of health.

(b) Stormwater other than that exempted under subsection (a) of this section and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the superintendent and the state department of health.

(c) No person shall discharge or cause to be discharged any of the following described water or wastes to any public sewer:

- (1) Any gasoline, benzene, naptha, fuel oil or other flammable or explosive liquid, solid or gas.
- (2) Any waters containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the wastewater treatment plant.
- (3) Any waters or wastes having a pH lower than 5.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the wastewater works.

- (4) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers or other interference with the proper operation of the wastewater facilities, such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

(d) The following described substances, materials, waters or waste shall be limited in discharges to city systems to concentrations or quantities which will not harm either the sewers, wastewater treatment process or equipment, will not have an adverse effect on the receiving stream, or will not otherwise endanger lives, limb, public property or constitute a nuisance. The supervisor may set limitations lower than the limitations established in the regulations below if, in his opinion, such more severe limitations are necessary to meet the above objectives. In forming his opinion as to the acceptability, the supervisor will give consideration to such factors as the quantity of subject waste in relation to flows and velocities in the sewers, materials of construction of the sewers, the wastewater treatment process employed, capacity of the wastewater treatment plant, degree of treatability of the waste in the wastewater treatment plant and other pertinent factors. The limitations or restrictions on materials or characteristics of waste or wastewaters discharged to the sanitary sewer which shall not be violated without approval of the supervisor are as follows:

- (1) Wastewater having a temperature higher than 150 degrees Fahrenheit (65 degrees Celsius).
- (2) Wastewater containing more than 25 milligrams per liter of petroleum oil, nonbio-degradable cutting oils or product of mineral oil origin.
- (3) Wastewater from industrial plants containing floatable oils, fat or grease.
- (4) Any garbage that has not been properly shredded. Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers.
- (5) Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances to such degree that any such material received in the composite wastewater at the wastewater treatment works exceeds the limits established by the supervisor for such material.
- (6) Any waters or wastes containing odor producing substances exceeding limits which may be established by the supervisor.
- (7) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the supervisor in compliance with applicable state or federal regulations.
- (8) Quantities of flow, concentrations or both which constitute a "slug" as defined herein.

- (9) Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only to such a degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
- (10) Any water or wastes which, by interaction with other water or wastes in the public sewer system, release obnoxious gases, form suspended solids which interfere with the collection system or create a condition deleterious to structures and treatment processes.

(e) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in subsection (d) of this section, and which, in the judgment of the supervisor, may have a deleterious effect upon the wastewater facilities, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the supervisor may:

- (1) Reject the wastes;
- (2) Require pretreatment to an acceptable condition for discharge to the public sewers;
- (3) Require control over the quantities and rates of discharge; and/or
- (4) Require payment to cover the added costs of handling and treating the wastes not covered by sewer charges under the provisions of this section.

If the supervisor permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the supervisor and the state department of health.

(f) Grease, oil and sand interceptors shall be provided when, in the opinion of the supervisor, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts as specified in subsection (d) of this section, or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the state plumbing code and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors the owner shall be responsible for the proper removal and disposal by appropriate means of the captivated material and shall maintain records of the dates, and means of disposal which are subject to review by the supervisor. Any removal and having of the collected materials not performed by owner personnel must be performed by currently licensed waste disposal firms.

(g) Where pretreatment or flow equalizing facilities are provided or required by any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

(h) When required by the supervisor, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such structures, when required, shall be accessibly and safely located and shall be constructed in accordance with plans approved by the supervisor. The structure shall be installed by the owner at his expense and shall be maintained by the owner so as to be safe and accessible at all times.

(i) The supervisor may require a use of sewer services to provide information needed to determine compliance with this article. These requirements may include:

- (1) Wastewaters discharge peak rate and volume over a specified time period.
- (2) Chemical analyses of wastewaters.
- (3) Information on raw materials, processes and products affecting wastewater volume and quality.
- (4) Quantity and disposition of specific liquid, sludge, oil, solvent or other materials important to sewer use control.
- (5) A plot plan of sewers of the user's property showing sewer and pretreatment facility location.
- (6) Details of wastewater pretreatment facilities.
- (7) Details of systems to prevent and control the losses of materials through spills to the city sewer.

(j) All measurements, test and analyses of the characteristics of waters and wastes to which reference is made in this article shall be determined in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association. Sampling methods, location, times, durations and frequencies are to be determined on an individual basis by the supervisor.

(k) No statement contained in this section shall be construed as preventing any special agreement or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment. (Code 2002, § 7.306)

Sec. 40-126. Damage to sewer works prohibited.

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the wastewater facilities. Any person violating this provision shall be s guilty of a misdemeanor. (Code 2002, § 7.307)

Sec. 40-127. Powers and authority of inspectors.

(a) The supervisor and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing pertinent to discharge to the community system in accordance with the provisions of this article.

(b) The supervisor or other duly authorized employees are authorized to obtain information concerning industrial processes that have a direct bearing on the kind and source of discharge to the wastewater collection system. The industry may withhold information considered confidential. The industry must establish that the revelation to the public of the information in question might result in an advantage to competitors.

(c) While performing the necessary work on private properties referred to in subsection (a) of this section, the supervisor or duly authorized employees of the city shall observe all safety rules applicable to the premises established by the company, and the company shall be held harmless for injury or death to the city employees, and the city shall indemnify the company against loss or damage to its property by city employees and against liability claims and demands for personal injury or property damage asserted against the company growing out of the gauging and sampling operation, except such as may be caused by negligence or failure of the company to maintain safe conditions as required in section 40-125(h).

(d) The supervisor and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all private properties through which the city holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the wastewater facilities lying within said easement. All entry and subsequent work, if any, on said easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

(Code 2002, § 7.308)

Sec. 40-128. Hearing board.

(a) A hearing board, consisting of three members, shall be selected as needed for arbitration of differences between the supervisor and sewer users on matters concerning interpretation and execution of the provisions of this article by the supervisor.

(b) One member of the board shall be selected to represent the city, one member shall be selected to represent the sewer user involved in the arbitration and the third member shall be acceptable to both parties and shall serve as chairperson in the arbitration.

(Code 2002, § 7.309)

Sec. 40-129. Penalties.

(a) Any person found to be violating any provision of this article except section 40-126 shall be served by the city with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

(b) Any person who shall continue any violation beyond the time limit provided for in subsection (a) of this section shall be guilty of a misdemeanor.

(c) Any person violating any of the provisions of this article shall become liable to the city for any expense, loss or damage occasioned the city by reason of such violation.
(Code 2002, § 7.310)

Sec. 40-130. Surface runoff and/or groundwater.

No person shall make or continue to utilize any existing connection of roof downspouts, foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer, or building drain, which, in turn, is connected directly or indirectly to a public sanitary sewer, unless such connection is approved by the public works supervisor and the state department of health, except as follows:

- (1) The supervisor is authorized to issue a permit to allow a property owner to discharge water into the sanitary water system. Prior to the issuance of the permit, the supervisor or designee shall verify that the criteria set forth in subsection (2) of this section has been satisfied. The permit shall authorize such discharge only from October 1 through April 1 of each year.
- (2) For a property owner to be eligible for a winter discharge, the water being discharged from the sump pump or footing drain cannot be readily discharged into a storm drain or other acceptable drainage system and at least one of the following criteria must be met:
 - a. The freezing of the surface water discharged from the sump pump or footing drain is causing a dangerous condition, such as ice build-up or flooding, on either public or private property;
 - b. The property owner has demonstrated that there is danger that the sump pump or footing drain pipes will freeze up and result in either failure or damage to the sump pump unit or the footing drain and cause basement flooding.
- (3) If the supervisor or designee determines that a sump pump or footing drain is causing an icy condition on streets between October 1 and April 1, he may require the property owner to obtain a discharge permit and discharge owners' sump pump into the sanitary sewer system following ten days written notice and an opportunity for the property owner to be heard.
- (4) Future inspections. Any property with a sump pump found not in compliance with this Code, but subsequently verified as compliant shall be subject to an annual inspection to confirm continued compliance.
- (5) The supervisor or designee, showing proper credentials and identification, shall be permitted to enter all properties for the purpose of inspection and observation to

identify prohibited discharges into the sanitary sewer system. Any person may furnish a certificate from a license plumber certifying their property is in compliance with this section, in lieu of having the city inspect their property.
(Code 2002, § 3.228; Ord. No. 2020-01, 4-6-2020)

Secs. 40-131—40-158. Reserved.

DIVISION 2. SURCHARGE

Sec. 40-159. Purpose.

(a) The purpose of this division shall be to generate sufficient revenue to pay all costs for the operation and maintenance of the complete wastewater system. The costs shall be distributed to all users of the wastewater system in proportion to each user's contribution to the total loading of the treatment works. Factors such as strength (BOD and TSS), volume and delivery flow rate characteristics shall be considered and included as the basis for the user's contribution to ensure a proportional distribution of operation and maintenance costs to each user.

(b) The definitions set forth in section 40-120 shall also apply to this division.
(Code 2002, § 7.401)

Sec. 40-160. Determining the total annual cost of operation and maintenance.

The city or the city engineer shall determine the total annual costs of operation and maintenance of the wastewater system which are necessary to maintain the capacity and performance, during the service life of the treatment works, for which such works are designed and constructed. The total annual cost of operation and maintenance shall include, but need not be limited to, labor, repairs, equipment replacement, maintenance, necessary modifications, power, sampling, laboratory tests and a reasonable contingency fund.
(Code 2002, § 7.402)

Sec. 40-161. Determining each user's wastewater contribution percentage.

(a) The city or the city engineer shall determine for each user's average daily volume of wastewater, which has been discharged to the wastewater system, which shall then be divided by the average daily volume of all wastewater discharged to the wastewater system, to determine such user's volume contribution percentage. The amount used as the total average daily volume of wastewater shall exclude infiltration and inflow. The city or city engineer shall determine each user's average daily poundage of five-day 20-degree centigrade biochemical oxygen demand which has been discharged to the wastewater system which shall then be divided by the average daily poundage of all five-day 20-degree centigrade biochemical oxygen demand discharged to the wastewater system to determine each user's biochemical oxygen demand contribution percentage.

(b) The city or the supervisor or the city engineer shall determine each user's average daily poundage of suspended solids that has been discharged to the wastewater system which shall then be divided by the average daily poundage of all suspended solids discharged to the wastewater system, to determine such user's suspended solids contribution percentage. Each user's volume contribution percentage, biochemical oxygen demand contribution percentage and suspended solids contribution percentage shall be multiplied by the annual operation and maintenance costs for the total volume, the total five-day 20-degree centigrade biochemical oxygen demand and the total suspended solids for the wastewater system, respectively.

(Code 2002, § 7.403)

Sec. 40-162. Wastes prohibited from being discharged to the wastewater system.

The discharge of any waters containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any wastewater treatment process or to constitute a hazard in the receiving waters of the wastewater treatment plan is hereby prohibited.

(Code 2002, § 7.404)

Chapter 41

RESERVED

Chapter 42

ZONING

Article I. In General

- Sec. 42-1. Definitions.
- Sec. 42-2. Jurisdiction to include extraterritorial zoning lands.
- Sec. 42-3. Statute of extraterritorial zoning district and zoning classifications.
- Sec. 42-4. Application of regulations.
- Secs. 42-5—42-26. Reserved.

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- Sec. 42-27. Administrative official.
- Sec. 42-28. Nonconforming uses.
- Sec. 42-29. Creation of board.
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Article III. Zoning Districts Established

- Sec. 42-51. Use districts.
- Sec. 42-52. Maps and boundaries.
- Sec. 42-53. Annexed property.
- Sec. 42-54. Additional uses permitted in R-1 and R-2 with special use permits.
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Article IV. Zoning District Regulations

- Sec. 42-84. R-1 Residential District, Single-Family.
- Sec. 42-85. R-2 Residential District, Two-Family.
- Sec. 42-86. R-3 Residential District, Multi-Family.
- Sec. 42-87. A Agricultural District.
- Sec. 42-88. RB-2 Residential Business District.
- Sec. 42-89. Accessory uses in residential districts.
- Sec. 42-90. Commercial districts.
- Sec. 42-91. I Industrial District.
- Sec. 42-92. Special exceptions.

ARTICLE I. IN GENERAL**Sec. 42-1. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory use or building means a subordinate use or building customarily incident to and located on the same lot with the main use building.

Alteration, as applied to a building or structure, means a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

Building means a structure designed, built or occupied as a shelter or roofed enclosure for persons, animals or property, including tents, lunch wagons, dining cars, camp cars, trailers and other roofed structures on wheels or other supports used for residential, business, mercantile, storage, commercial, industrial, institutional, assembly, educational or recreational purposes. For the purposes of this definition, the term "roof" shall include an awning or other similar covering, whether or not permanent in nature.

Building line means the line between which and the street line or lot line not building or other structure or portion thereof, except as provided in this Code, may be erected above the grade level. The building line is considered a vertical surface intersecting the ground on such line.

Child day care centers means all group day care homes or facilities and day care centers where care is provided to seven or more children, other than the provider's own children, who have obtained the appropriate occupancy permit from the city building inspector and complied with inspection by the city fire inspector.

Dwelling means a building used exclusively for permanent residential occupancy, or a portion thereof, including one-family dwellings, two-family dwellings, and multiple-family dwellings, but not including a mobile home, as defined by this section, designed or used primarily for residential occupancy, or hotel, motel, apartments, boarding, lodging or roominghouse, tents, cottage camps or other structures designed or used primarily for transient residents.

Dwelling unit means one or more rooms providing complete living facilities for one family, including equipment for cooking, or provisions for the same, and including room or rooms for living, sleeping and eating.

Dwelling, multi-family, means a building, or portion thereof, containing three or more dwelling units.

Dwelling, single-family, means a detached building containing only one dwelling unit designed to be located on a permanent foundation and, if site built, constructed in accordance with the provisions of the applicable city codes governing construction; or, if manufactured

off site, constructed in accordance with either the city code governing construction or the HUD Manufactured Home Construction and Safety Standards (24 CFR 3280) and designed for occupancy or use exclusively by one family. All single-family dwellings shall be considered and taxed as real property as provided by law. Each single-family dwelling shall meet the following requirements:

- (1) The main entrance shall face the street;
- (2) Each unit shall have no less than two entrances;
- (3) The roof pitch shall not be less than 4:12 ratio;
- (4) The roof shall have an overhang of not less than 24 inches;
- (5) Each unit shall have space for at least a single stall attached garage;
- (6) Modular homes and site built homes meet the requirements of the Uniform Building Code;
- (7) Manufactured homes meet the HUD Code;
- (8) Each unit shall have at least 900 square feet of living space with a minimum width of 24 feet, excluding the garage;
- (9) Each unit shall have appearances similar to the surrounding dwelling units; and
- (10) All moving devices, such as wheels and hitches, if any, must be removed.

Dwelling, two-family, means a building designed or used exclusively for occupancy by two families.

Family means a single individual, doing his own cooking, and living upon the premises as a separate housekeeping unit, or a collective body of persons doing their own cooking and living together upon the premises as a separate housekeeping unit in a domestic relationship based upon birth, marriage or other domestic bond as distinguished from a group occupying a boardinghouse, lodginghouse, club, fraternity or hotel.

Garage, private, means a building or part thereof accessory to a main building and providing for the storage of automobiles and in which not occupation or business for profit is carried on.

Lot means a parcel of land occupied or capable of being occupied by one building, and the accessory buildings or uses customarily incident to it, including such open spaces as are required by this chapter.

Manufactured homes means factory-built dwelling units with at least 900 square feet of living space, to be placed on a permanent foundation or basement and is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to be placed on a permanent site and bears a label certifying that it was built in compliance with the latest standards adopted by the U.S. Department of Housing and Urban Development for a manufactured home and the state building code for a modular home.

Mobile home means a manufactured unit, transportable in one or more sections and has at least 900 square feet of living space and is designed as a year-round dwelling unit and built prior to the enactment of the Federal Manufactured Home Construction and Safety Standards Act of 1974 (24 CFR 3280), which became effective June 15, 1976. A recreational travel trailer is not a mobile home.

Mobile home park means any premises where one or more mobile homes are parked for living or sleeping purposes, or any premises used or set apart for supplying to the public parking space for one or more mobile homes for living or sleeping purposes, and which include any buildings, structure, vehicles or enclosure used or intended for use as a part of the equipment of such mobile home park.

Nonconforming use means a building, structure or use of land existing at the time of the enactment of the ordinance from which this chapter is derived and which does not conform to the regulations of the district in which it is located.

Permanent foundation means an extension of the outer walls of a building or structure made of solid materials such as brick, concrete or treated wood and extended below the ground surface through the frost zone, or other depths as required by the city.

Setback building line means a building line back of the street line.

Structure means anything constructed or erected which requires location on the ground or attached to something having location on the ground, including signs and billboards, but not including fences or walls used as fences.

Use means the purpose for which land or a building is arranged, designed or intended or for which either land or a building is or may be occupied or maintained.

Yard means an open space other than a court, on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in this chapter.

Yard, front, means an open unoccupied space on the same lot with a main building, extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of the lot.

Yard, rear, means an open unoccupied space on the same lot with the building between the rear line of the building and the rear line of the lot and extending the full width of the lot.

Yard, side, means an open unoccupied space on the same lot with the building situated between the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a lot line.
(Code 2002, § 6.201)

Sec. 42-2. Jurisdiction to include extraterritorial zoning lands.

The jurisdiction of this chapter shall include all lands within the corporate limits of the city and the application of the city's zoning regulations is hereby extended to all unincorporated territory located outside the limits of the city for a distance of one mile from

the city limits as permitted by N.D.C.C. § 40-47-01.1(1)(a). The application of the city's zoning regulations contained herein and elsewhere shall extend to each quarter section of unincorporated territory, the majority of which is located within one mile of its limits in any direction.

(Code 2002, § 6.104)

Sec. 42-3. Statute of extraterritorial zoning district and zoning classifications.

The zoning classifications for an extraterritorial zoned area shall continue with the current zoning classification of the respective township zoning ordinances until otherwise amended and as set forth on the map attached hereto.

(Code 2002, § 6.106)

Sec. 42-4. Application of regulations.

Except as provided in this chapter:

- (1) *Conformity of buildings and land.* No building, structure or premises shall be used or occupied, and no building or part thereof or other structure shall be erected, raised, moved, placed, reconstructed, extended, enlarged or altered except in conformity with the regulations herein specified for the district, as shown on the official map, in which it is located.
- (2) *Conformity of buildings.* No building, structure or premises shall be erected, altered or used so as to produce smaller yards or less unoccupied area, and no building shall be occupied by more families than prescribed for such building, structure or premises for the district in which it is located.
- (3) *Conformity of open spaces.* No yard, court or open space, or part thereof, shall be included as a part of the yard, court or open space similarly required for any other building, structure or dwelling under this chapter.

(Code 2002, § 6.401)

Secs. 42-5—42-26. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

Sec. 42-27. Administrative official.

(a) *Administrative official.* Except as otherwise provided herein, the city assessor shall administer and enforce the provisions of this chapter, including the receiving of applications, the inspection of premises and the issuing of building permits. No building permit or certificate of occupancy shall be issued except where the provisions of this chapter have been complied with.

(b) *Building permit required.* No building or structure shall be erected, added to or structurally altered until a permit therefor has been issued by the city assessor. All applications for such permits shall be in accordance with the requirements herein and, unless upon written order of the board of equalization, no such building permit or certificate of occupancy shall be issued for any building where said construction, addition or alteration or use thereof would be in violation of any of the provisions of this chapter.

- (1) *Matter accompanying application.* There shall be submitted with all applications for building permits a copy of the layout or plot drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected and such other information as may be necessary to determine and provide for the enforcement of this chapter.
- (2) *Payment of fee.* The permit will be issued upon approval of the assessor upon the payment of a fee to be determined by council by resolution. If a variance is needed, the variance will need to be approved by the council.

(c) *Special exception building permits and zoning use.* No building or structure shall be erected, added to or structurally altered until a permit therefor has been issued by the city auditor. All applications for such permits shall be in accordance with the requirements herein and, unless upon written order of the board of equalization, no such building permit or certificate of occupancy shall be issued for any building where said construction, addition or alteration or use thereof would be in violation of any provisions of this chapter unless such building is a special exception to zoning use. Applications for special exception zoning permits shall be made to the city auditor in writing upon forms approved by the city council prior to starting construction or establishing use, and such forms shall be filled in by the owner or authorized agent, and shall be accompanied by a plan in duplicate, drawn to scale, showing the actual lot dimensions, use and intended use, height, size and location of building or buildings, and shall be accompanied by such data as may be required. Such plans and data shall be final and conclusive and any deviation therefrom shall require a new zoning and use registration permit. Upon receipt of application, the city council shall hold a hearing as to the granting of the special exception permit. All persons living within 150 yards of the property applying for the special exception permit must be given notice of the hearing five days prior to the hearing. Upon determining the application satisfies the special exception requirements and does not violate any other pre-existing rules, laws, or ordinances, the special exception permit may be granted with any conditions the council deems appropriate.

(d) *Certificates of occupancy.*

- (1) No land shall be occupied or used and no building hereafter erected, altered or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the zoning administrator, stating that the building or proposed use thereof complies with the provisions of this chapter.
- (2) No nonconforming use shall be maintained, renewed, changed or extended without a certificate of occupancy having first been issued by the assessor therefor.

- (3) All certificates of occupancy shall be applied for coincident with the application for a building permit. Said certificate shall be issued within 30 days after the erection or alteration shall have been approved.
 - (4) The assessor shall maintain a record of all certificates and copies shall be furnished, upon request, to any person having a proprietary or tenancy interest in the building affected.
 - (5) No permit for excavation for, or the erection or alteration of or repairs to any building shall be issued until an application has been made for the certificate of occupancy.
 - (6) Under such rules and regulations as may be established by the board of adjustment and filed with the assessor, a temporary certificate of occupancy for not more than 30 days for a part of a building may be issued by him.
- (Code 2002, § 6.901; Ord. No. 2016-07, § 6.901, 4-4-2016)

Sec. 42-28. Nonconforming uses.

The lawful use of any building, structure or land existing at the time of the enactment of the ordinance from which this chapter is derived may be continued, although such use does not conform with the provisions of this chapter, provided the following conditions are met:

- (1) *Alterations.* A nonconforming building or structure may be altered, improved or reconstructed provided such work is not to an extent exceeding in aggregate cost 25 percent of the assessed value of the building or structure is changed to a conforming use.
- (2) *Extension.* A nonconforming use shall not be extended, but the extension of a lawful use to any portion of a nonconforming building or structure which existed prior to the enactment of this chapter shall not be deemed the extension of such nonconforming use.
- (3) *Changes.* No nonconforming building, structure or use shall be changed to another nonconforming use.
- (4) *Abandonment.* A nonconforming use of a building or premises which has been abandoned shall not thereafter be returned to such nonconforming use.
- (5) *Unlawful use not authorized.* Nothing in this chapter shall be interpreted as authorization for or approval of the continuance of the use of a structure or premises in violation of zoning regulations in effect at the time of the effective date of the ordinance from which this chapter is derived.
- (6) *Certificate of nonconforming use.* Upon the effective date of the ordinance from which this chapter is derived, the zoning committee shall issue a certificate of nonconforming use to all owners of property, the use of which does not conform to the provisions of the use zone in which the property is located.
 - a. In accordance with the provisions of this section, no use of land or structures shall be made other than that specified on the certificate of nonconforming use, unless said use shall be in conformity with the provisions of the use zone in which the property is located.

- b. A copy of each certificate of nonconforming use shall be filed with the office of the zoning committee. No permit or license shall be issued to any property for which a certificate of nonconforming use has been issued until said permit or license has been approved by the city.
- (7) *District changes.* Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall apply to any nonconforming uses existing therein.
(Code 2002, § 6.501)

Sec. 42-29. Creation of board.

(a) *Establishment.* For the purposes of these regulations, the city council is hereby designated the board of adjustment.

(b) *Powers and duties.* The board of adjustment shall have all the powers and duties prescribed by law and by this chapter, which are more particularly specified as follows:

- (1) *Interpretation.* Upon appeal from a decision by an administrative official, to decide any question involving the interpretation of any provision of this chapter, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.
- (2) *Variances.* To vary or adapt the strict application of any of the requirements of this chapter in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, but in no other case. In granting any variance, the board of adjustment shall prescribe any conditions that it deems to be necessary or desirable. However, no variance in the strict application of any provision of this chapter shall be granted by the board of adjustment unless it finds:
 - a. That there are special circumstances or conditions, fully described in the findings, applying to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the neighborhood, and that said circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or building.
 - b. That, for reasons fully set forth in the findings, the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the board is the minimum variance that will accomplish this purpose.
 - c. That the granting of this variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. In addition to considering the

character and use of adjoining buildings and those in the vicinity, the board, in determining its finding, shall take into account the number of persons residing or working in such buildings or upon such land and traffic conditions in the vicinity.

(c) *Procedure.* The board of adjustment shall act in strict accordance with the procedure specified by law and by this chapter. All appeals and applications made to the board shall be in writing, on forms prescribed by the board. Every appeal or application shall refer to the specific provisions of the ordinance involved, and shall exactly set forth the interpretation that is claimed, the use for which a special permit is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. Every decision of the board of adjustment shall be by resolution, each of which shall contain a full record of the findings of the board in the particular case. Each such resolution shall be filed in the office of the city auditor.

(d) *Notice and hearing.* No action of the board shall be taken on any case until after due notice has been given to the parties and public hearing has been held.
(Code 2002, § 6.1001)

Sec. 42-30. Amendments.

The governing board may, from time to time, amend this chapter by supplementing, changing, modifying or repealing any of the regulations, restrictions or other provisions thereof or of the district map or the districts on said map or of the boundaries of such district. A proposed amendment may be initiated by the board upon its own motion, or upon receipt of a request therefor from the city zoning commission or upon receipt of a petition therefor from any interested person or persons or their agents.

- (1) *Action by city council; public hearing.* The city council shall hold a public hearing, after which the proposed amendment may be passed. Not less than 15 days' notice of the time and place of holding such public hearing shall first be published in the official newspaper. A hearing shall be granted to any person interested, and the time and place specified.
- (2) *Vote after protest.*
 - a. If a protest against a change, supplement, modification, amendment or repeal is filed and signed by owners of 20 percent or more of:
 1. The area of the lots included in such proposed change;
 2. Those immediately adjacent in the rear thereof extending 150 feet therefrom; or
 3. Those directly opposite thereto extending 150 feet from the street frontage of such opposite lots.
 - b. The amendment shall not become effective except by the favorable vote of three-fourth of all the members of the city council.

(Code 2002, § 6.1002)

Sec. 42-31. Enforcement.

(a) The erection, construction, reconstruction, alteration, repair, conversion or maintenance of any building or structure or the use of any building, structure or land in violation of this chapter or of any regulation, order, requirement, decision or determination made under authority conferred by this chapter shall constitute the maintenance of a public nuisance and any appropriate action or proceeding may be instituted by the city, through any administrative officials, department, board or bureau charged with the enforcement of this chapter:

- (1) To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use;
- (2) To restrain, correct or abate such violation;
- (3) To present the occupancy of the building, structure or land; or
- (4) To prevent any illegal act, conduct, business or use in or about such premises.

(b) A violation of any provision of this chapter or a violation of or refusal or failure to comply with any regulation, order, requirement, decision of determination made under authority conferred by this chapter shall be punishable as provided in section 1-8.

(Code 2002, § 6.1003)

Secs. 42-32—42-50. Reserved.**ARTICLE III. ZONING DISTRICTS ESTABLISHED****Sec. 42-51. Use districts.**

The city is hereby divided into the following use districts to be known as:

- (1) R-1 Residential District, Single-Family.
- (2) R-2 Residential District, Two-Family.
- (3) R-3 Residential District, Multi-Family.
- (4) RB-2 Residential Business District.
- (5) C-1 Commercial District.
- (6) C-2 Commercial District.
- (7) I Industrial District.
- (8) A Agricultural District.

(Code 2002, § 6.601; Ord. No. 2023-05, § 6.601, 8-7-2023)

Sec. 42-52. Maps and boundaries.

The boundaries of the districts in section 42-51 are hereby established as shown on a map titled "The Zoning Map of the City of Hankinson" which is on file in the office of the city auditor. This map, with all explanatory matter thereon, is hereby made a part of this chapter.

(Code 2002, § 6.302)

Sec. 42-53. Annexed property.

Property which has not been included within a district and which has become a part of the city by annexation shall automatically be classified as lying and being in the A Agricultural District until such classification has been changed by an amendment to the zoning ordinances as prescribed by law.

(Code 2002, § 6.303)

Sec. 42-54. Additional uses permitted in R-1 and R-2 with special use permits.

(a) The following uses and those previously designated as such may be permitted in certain districts only after securing special use permits therefor, following approval by the city council:

- (1) Home occupations. The term "home occupation" means any occupation carried on in a dwelling unit by a member or members of the family and which meets the following requirements:
 - a. The occupation is conducted within the principal building or an accessory building; such occupations operated in an accessory building shall be limited to activities that do not generate objectionable noise, dust or fumes. Operations such as body shops and auto repair shall not be permitted. All home occupancy activities shall be conducted inside the home or accessory building and all supplies and materials shall be stored indoors;
 - b. That the occupation is incidental and secondary to the use of the dwelling unit;
 - c. That only the members of the immediate family residing on the premises may be employed, unless authorized by the city council by a variance;
 - d. That no more than 25 percent of the floor area of the dwelling is devoted to such home occupation;
 - e. That no sign or display other than a name plate not more than two square feet in area shall be used outside of the premises.
- (2) Public or private utility structures.
- (3) Municipal facilities.
- (4) Fraternal organizations.
- (5) Retail uses and services compatible with the surrounding uses, which will not adversely affect the residential properties.

(6) Bed and breakfast establishments.

(b) Application for the issuance of a special use permit shall be made to the city council and a fee charged the applicant as set by resolution. The city council shall hold at least one public hearing on any application for a special use permit. The city council may take whatever action it deems advisable; but the city council may not grant a special use permit unless it finds that the establishment, maintenance, or conducting of the use for which a special use permit is sought will not under the circumstances of the particular case be detrimental to the health, safety, morals, comfort, convenience or welfare of the persons residing or working in the area adjacent to such use, or to the public welfare, or injurious to property or improvements in the area adjacent to such use. The city council may designate conditions and require guarantees in the granting of special use permits.

(1) The city council shall make a decision upon the request of a special use permit.

(2) Any special use shall be established and conducted in conformity with the terms of such permit and of any conditions designated in connection therewith.

(3) An application for a special use permit may be denied by motion of the city council and such motion shall constitute a finding and determination by the city council that the conditions required for approval do not exist.

(4) The city council may periodically review the special use permit and, if the conditions established are not adhered to, the city council may revoke the permit.

(Ord. No. 2019-02, § 6.611, 5-14-2019)

Secs. 42-55—42-83. Reserved.

ARTICLE IV. ZONING DISTRICT REGULATIONS

Sec. 42-84. R-1 Residential District, Single-Family.

In a single-family residential district, the following buildings and uses are permitted:

(1) Dwelling houses occupied by not more than one family.

(2) Publicly owned and operated buildings.

(3) Churches and parish houses.

(4) Hospitals.

(5) Nursing and rest homes.

(6) Homes for the aged.

(7) Playgrounds and parks.

(8) Cemeteries.

(Code 2002, § 6.602)

Sec. 42-85. R-2 Residential District, Two-Family.

In a two-family residential district, the following buildings and uses are permitted:

- (1) All uses allowed by and permitted in R-1 Residential District, Single-Family.
- (2) Two-family dwellings.

(Code 2002, § 6.603; Ord. No. 2023-05, § 6.603, 8-7-2023)

Sec. 42-86. R-3 Residential District, Multi-Family.

In a multi-family residential district, the following buildings and uses are permitted:

- (1) All uses allowed by and permitted in R-1 Residential District, Single-Family; R-2 Residential District, Two-Family; and RB-2 Residential Business District.
- (2) Multiple-family dwellings.

(Ord. No. 2023-05, § 6.6035, 8-7-2023)

Sec. 42-87. A Agricultural District.

In an agricultural district, the following uses are permitted: agriculture and agricultural buildings, cemeteries, churches, one- and two-family dwellings and mobile homes, existing railroad rights-of-way, home occupations, parks or other open land recreational uses.

(Code 2002, § 6.604)

Sec. 42-88. RB-2 Residential Business District.

In a residential business district, the following buildings and uses are permitted:

- (1) Dwelling houses each occupied by not more than two families. Each family shall not be allowed more than two roomers or boarders per family.
- (2) All other uses permitted in a one-family district.
- (3) Boardinghouses and roominghouses, light business and commercial uses limited to business or professional offices, medical or dental clinics, book stores, barber and beauty shops and floral or plant and flower stores.

(Code 2002, § 6.605)

Sec. 42-89. Accessory uses in residential districts.

The following accessory uses and buildings are permitted in residential districts:

- (1) Professional office for a physicians, clergymen, architects, engineers, attorneys or similar professional persons residing in such main building.
- (2) Home occupations. Customary home occupation for gain carried on in the main building or a building accessory thereto requiring only home equipment and employing no nonresident help and no trading in merchandise is carried on.
- (3) Agricultural uses, gardens.

- (4) Private garages.
 - (5) Any other accessory use customarily incident to a use authorized in a residential district.
- (Code 2002, § 6.606)

Sec. 42-90. Commercial districts.

The following buildings and uses are permitted in a commercial district:

- (1) Retail stores and shops.
 - (2) Service establishments.
 - (3) Business and professional offices.
 - (4) Eating establishments.
 - (5) Funeral homes and mortuaries.
 - (6) Transportation services.
 - (7) Amusements and recreation.
 - (8) Wholesale businesses.
 - (9) Storage buildings and warehouses.
 - (10) Any other building or use similar to the uses herein listed in the type of services or goods sold.
 - (11) Any accessory use customarily incident to a use herein listed.
- (Code 2002, § 6.607)

Sec. 42-91. I Industrial District.

- (a) The following buildings and uses are permitted in an industrial district:
 - (1) The compounding, assembly, treatment, manufacture, processing and packing of articles or materials.
 - (2) All uses permitted in a commercial district.
 - (b) The following uses are prohibited in an industrial district: dwellings and dwelling units.
- (Code 2002, § 6.608)

Sec. 42-92. Special exceptions.

Special exception uses shall be applied to all use districts and shall be as follows: child day care center homes.

(Code 2002, § 6.610)

APPENDIX A

FRANCHISES

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ARTICLE I. OTTER TAIL POWER COMPANY*

An ordinance granting to Otter Tail Corporation, a Minnesota corporation, its successors and assigns, permission to erect, construct, install, and maintain within the City of Hankinson, North Dakota, an electric light and power system and transmission line and to operate the same and to install conduits, poles, wires, pipes, and other fixtures in, upon, and under the streets, alleys, bridges, and public grounds of said city for the purpose of furnishing electric light, heat, and power to said city and the inhabitants thereof.

Be it ordained, by the city council of the City of Hankinson, North Dakota, hereinafter called the "city":

Sec. 1.

There is hereby granted to Otter Tail Corporation, a Minnesota corporation, its successors and assigns, hereinafter called the "grantee," for a period of 20 years from and after the passage and approval of this ordinance and during all of said time, subject to the conditions and requirements hereinafter set forth, permission to construct, install, and maintain an electric light and power system and transmission line and to operate and maintain the same within and through the city and to transmit electricity to and from the other towns or cities for the purpose of light, power, and heat and to erect, construct, install, and maintain conduits, poles, wires, pipes, and other necessary fixtures and attachments upon and under the streets, alleys, bridges, and public grounds of said city for the purpose of furnishing and selling electricity for light, heat, and power and such other purposes for which electricity may be used by the inhabitants of said city, said permission and franchise to become operative and continue under the conditions hereinafter set forth.

Sec. 2.

Said grantee shall use poles, wires, cross arms, equipment, and devices to conform with the standards of construction adopted by the National Electrical Safety Code of the United States, Department of Commerce, and all apparatus connected therewith shall be located so as not to obstruct the avenues, streets, and alleys of said city or to endanger persons or property or to hinder or to obstruct the use of said avenues, streets, and alleys or public places by the inhabitants of said city, or public in general, or to interfere with any street, sidewalk, curb, gutter, or park improvements that the city may deem proper to make along the lines of said avenues, streets, and public places.

***Editor's note**—Printed herein is Ordinance No. 2008-02, adopted on May 5, 2008. Amendments are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of capitalization and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

Sec. 3.

All conduits, poles, wires, and pipes installed by virtue of this ordinance shall be erected in such places and in such manner as not unnecessarily to encroach upon streets, alleys, bridges, or public grounds of said city, and so as not to unnecessarily obstruct the use thereof for the ordinary purpose of travel thereon, and the erection thereof shall be subject to the reasonable supervision and direction of the city council of the said city. Whenever practicable, all poles shall be set in alleys, and poles now in position upon or along the streets, whenever practicable shall be removed, and the locations of all of said poles shall be designated by the mayor under the supervision of the city council of said city.

All poles where set in alleys shall be set at or near the boundary line thereof, and where set in streets shall be located at such distances as shall be directed by the city from the property line of the abutting owner, and shall be placed so as not to interfere with the construction or placing of any water pipes, sewers, or drains or the flow of water therefrom which has been or may be placed by authority of said city. In the event that said grantee shall make any unnecessary obstructions of said streets, alleys, public grounds, or places not designated by the city council, the city may cause the removal of such obstructions and charge and collect from such grantee the actual cost of such removals.

Sec. 4.

During the construction, maintenance, or enlargement of any part of said electric light and power system, said grantee shall not unnecessarily impede or block travel in said streets and highways in said city and shall leave all streets, highways, alleys, sidewalks, curbs, lanes, and public places and all grounds disturbed by said construction in good condition upon the completion of said work.

The city reserves the right to make and adopt, and the rights and privileges hereby granted shall at all times be and remain subject to such reasonable regulations of a police nature as it may deem necessary for the best interest of the city, but the city will not by any such regulations or by acts of its own or agents do anything to prevent or interfere with the grantee carrying on its business in accordance with the franchise hereby granted.

Sec. 5.

Whenever the said grantee, in erecting, constructing, and maintaining said lines or poles, shall take up any of the pavements, sidewalks, crossings, or curbs on any of the avenues, streets, and alleys, or public places in said city or shall make any excavations thereon, such excavations shall be refilled and the sidewalk, crossing, or curb replaced under the direction of the city and any excavation so made shall be properly lighted at night during the construction, and in case of the failure to do so on the part of the said grantee, then the city may do the same at the expense of said grantee and said grantee agrees to pay said city for the reasonable cost or value of said work. Said grantee shall be liable for all loss or damage caused by the negligence of grantee, which may result to persons or property within the said city, caused by it, or its agents, servants, or employees in erecting, operating, and

maintaining the electric system within said city, and shall at all times save the city harmless from any and all damages to persons or property in erecting, operating, or maintaining said electric system.

Sec. 6.

There is granted to said grantee, its successors and assigns, during the term hereof, permission and authority to trim all trees in alleys, streets, and public grounds of said city so as to remove all parts of said trees interfering with the proper erection, maintenance, and operation of poles, cables, wires, masts, or other fixtures, or appliances installed or to be installed pursuant to authority hereby granted.

Said grantee shall have full right and authority to assign to any person, persons, firm or corporation all the rights that are given it by this ordinance, provided that the assignee of such rights by accepting such assignment shall become subject to the terms and conditions of this ordinance.

Sec. 7.

The grantee shall use due diligence and care in furnishing electric service, as herein provided, but shall not be liable for any loss or damage which may arise from failure of the service, either partial or total, but this shall not be construed to exempt said grantee from liability for negligence.

Sec. 8.

The rates to be charged by said grantee in the said city shall be filed with the public service commission of the State of North Dakota, and no increase or decrease in said rates shall be made except in accordance with the rules and regulations of the public service commission.

Sec. 9.

This contract shall be subject to any present or future laws of a regulatory nature enacted by the State of North Dakota, or any amendment or addition to such laws, and further shall be subject to the rules and regulations laid down by the public service commission of the State of North Dakota.

Sec. 10.

It is further expressly and specifically provided that all permits, licenses, and franchises heretofore granted by the city giving or purporting to give permission to any person, persons or corporation to construct, install, or maintain an electrical line or system in, upon, or through the streets, alleys, or public grounds of the city for the purpose of furnishing light, heat, and power to the city or its inhabitants, be, and the same hereby are in all respects revoked, cancelled, and annulled, with the exception of a limited franchise granted to Dakota Valley Electric Cooperative, Inc., by the City of Hankinson as Ordinance 2006-01 adopted on

October 2, 2006, which grants the right and privilege as shall be exercised by the grantee (Dakota Valley Electric Cooperative, Inc.) only for the limited purpose of furnishing electric service to the following described areas or places: That part of the Southwest Quarter (SW $\frac{1}{4}$) of Section 18, Township 130 North, Range 49 West, Richland County, North Dakota lying North of the Canadian Pacific Railroad.

Sec. 11.

The city reserves the right, if not prohibited by the laws of the State of North Dakota, to make charge of the grantee for this franchise of such percent as determined by resolution adopted by the city council of the gross revenue received by the grantee in the City of Hankinson from the users of electrical service distributed to them by the grantee in the City of Hankinson, which charge shall be subject to review of the City of Hankinson city council at the first meeting in January of each and every year of the franchise period.

Sec. 12.

This ordinance shall take effect and be in full force from and after its passage and approval by the city council. The said grantee shall specify its acceptance of this franchise in writing, to be filed with the city auditor and in no event shall this ordinance be binding on said grantee until the filing of such acceptance.

Adopted May 5, 2008.

ARTICLE II. DAKOTA VALLEY ELECTRIC COOPERATIVE*

BE IT ORDAINED, by the governing body of the City of Hankinson, hereafter called city:

Sec. 1. Franchise.

(a) *Term franchise.* There is hereby granted to Dakota Valley Electric Cooperative, Inc., a North Dakota electric cooperative corporation, its successors and assigns, hereinafter called the grantee, for a period of 20 years from and after the passage and approval of this ordinance, subject to the conditions and requirements hereinafter set forth, permission to construct, operate and maintain an electric power distribution system within and through the city and to transmit electricity to and from other points for the purpose of furnishing electricity and to construct and maintain conduits, poles, wires, pipes, and other necessary

***Editor's note**—Printed herein is Ord. No. 2006-09, adopted on May 5, 2006. Amendments are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of capitalization and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

fixtures and attachments upon and under the streets, alleys, bridges, and public grounds of said city for the purpose of furnishing and selling electricity for all purposes for which electricity may be used by the inhabitants of said city.

(b) *Non-exclusive grant.* This ordinance shall not be construed to grant any exclusive right, privilege, or franchise to the grantee. The city reserves the right to grant a similar use of said streets, alleys and public ways to any person at any period of this franchise.

(c) *Limited franchise.* The right and privilege herein granted shall be exercised by the grantee only for the limited purpose of furnishing electric service to the following described areas or places:

That part of the Southeast Quarter (SE $\frac{1}{4}$) of Section 18, Township 130 North, Range 49 West, Richland County, North Dakota described as follows:

Beginning at the northeast Corner of said Southeast Quarter (SE $\frac{1}{4}$);

Thence S 02° 32'24" E along the east line of said Southeast Quarter (SE $\frac{1}{4}$) for a distance of 1,819.37 feet to a point on the north right-of-way line of the Canadian Pacific Railroad; 2,656.51 feet to a point on the west line of said Southeast Quarter (SE $\frac{1}{4}$);

Thence N 02° 38'11" W along the west line of said Southeast Quarter (SE $\frac{1}{4}$) for a distance of 1,458.17 feet to the northwest corner of said Southeast Quarter (SE $\frac{1}{4}$);

Thence N 87° 45'58" E along the north line of said Southeast Quarter (SE $\frac{1}{4}$) for a distance of 2,632.37 feet to the northeast quarter of said Southeast Quarter (SE $\frac{1}{4}$), the point of beginning.

Said tract contains 98.98 acres, more or less.

Said tract subject to rights-of-way and easement recorded and unrecorded.

And:

That part of the Southeast Quarter (SE $\frac{1}{4}$) of Section 17, Township 130 North, Range 49 West, Richland County, North Dakota described as follows:

Commencing at the southeast corner of said Southeast Quarter (SE $\frac{1}{4}$);

Thence N 02° 48'20" W along the east line of said Southeast Quarter (SE $\frac{1}{4}$) for a distance of 46.88 feet to a point on the northerly right-of-way line of the Canadian Pacific Railroad, said right-of-way line is parallel to and 50 feet northerly of the main tract centerline, the point of beginning;

Thence N 84° 25'25" W along said Canadian Pacific Railroad right-of-way line for a distance of 2,676.73 feet to a point on the west line of said Southeast Quarter (SE $\frac{1}{4}$);

Thence N 02° 40'38" W along the west line of said Southeast Quarter (SE $\frac{1}{4}$) for a distance of 247.09 Feet;

Thence N 87° 17'44" E parallel to the south line of said Southeast Quarter (SE $\frac{1}{4}$) for a distance of 2,647.59 feet to a point on the east line of said Southeast Quarter (SE $\frac{1}{4}$);

Thence S 02° 48'20_ E along the east line of said Southeast Quarter (SE ¼) for a distance of 632.61 feet to a point of beginning.

And:

That part of the Southeast Quarter (SE ¼) of Section 17, Township 130 North, Range 49 West, Richland County, North Dakota described as follows:

Commencing at the southeast corner of said Southeast Quarter (SE ¼);

Thence S 87° 17'44_ W along the south line of said Southeast Quarter (SE ¼) for a distance of 372.26 feet to a point on the southerly right-of-way line of the Canadian Pacific Railroad, said right-of-way line is parallel to and 50 feet southerly of the main track centerline, the point of beginning;

Thence continue S 87° 17'44_ W along the south line of said Southeast Quarter (SE ¼) for a distance of 2,276.85 feet to the southwest corner of said Southeast Quarter (SE ¼);

Thence N 02° 40'38_ W along the west line of said Southeast Quarter (SE ¼) for a distance of 331.36 feet to a point on said southerly right-of-way line of the Canadian Pacific Railroad;

Thence S 84° 25'25_ E along said Canadian Pacific right-of-way line for a distance of 2,071.56 feet to the point of beginning.

Said tract contains 35.40 acres, more or less.

Said tract subject to rights-of-way and easement recorded and unrecorded.

And:

That part of the Southwest Quarter (SW ¼) of Section 17, Township 130 North, Range 49 West, Richland County, North Dakota described as follows:

Commencing at the southwest corner of said Southwest Quarter (SW ¼);

Thence N 02° 32'28_ W along the west line of said Southwest Quarter (SW ¼) for a distance of 817.83 feet to a point on the northerly right-of-way line of the Canadian Pacific Railroad, said right-of-way line is parallel to and 50 feet northerly of the main track centerline, the point of beginning;

Thence continue N 02° 32'28_ W along the west line of said Southwest Quarter (SW ¼) for a distance of 247.00 feet;

Thence S 84° 25'25_ E parallel to said Canadian Pacific Railroad right-of-way line for a distance of 2,675.40 feet to a point on the east line of said Southwest Quarter (SW ¼);

Thence S 02° 40'38_ E along the east line of said Southwest Quarter (SW ¼) for a distance of 247.09 feet to a point on said northerly right-of-way line of the Canadian Pacific Railroad;

Thence N 84° 25'25_ W along said Canadian Pacific Railroad right-of-way line for a distance of 2,675.99 feet to the point of beginning.

Said tract contains 15.02 acres, more or less.

Said tract subject to rights-of-way and easement recorded and unrecorded.

Sec. 2. Construction, operation and maintenance.

(a) Grantee shall use materials and equipment which conform with the standards of construction adopted by the National Electrical Safety Code of the United States of America Department of Commerce.

(b) All conduits, poles and wires installed by virtue of this ordinance shall be erected in such places and in such a manner as not unnecessarily to encroach upon streets, alleys, bridges, or public grounds of said city and so as not to unnecessarily obstruct the use thereof for the ordinary purpose of travel thereon and the erection thereof shall be subject to the reasonable supervision and direction of said city.

(c) All poles, conduits and wire shall be placed so as not to interfere with the construction or placing of any water pipes, sewers, or drains or the flow of water therefrom, which has been or may be placed by authority of said city.

(d) During the construction, maintenance or enlargement of any part of said electric power distribution system, said grantee shall not unnecessarily impede or block travel in said streets and alleys in said city and any excavation made shall be properly lighted at night during the construction. The grantee shall leave all streets, alley, sidewalks, curbs, and public places and all grounds disturbed by said construction in good condition upon the completion of said construction.

(e) Grantee shall be liable for all loss or damage caused by the negligence of grantee, which may result to persons or property within the said city caused by it, or its agents, servants, or employees in erecting operating and maintaining the said electric system within said city and shall at all times save the city harmless from any and all damages to persons or property in erecting, operating or maintaining said electric system within said city and shall at all times save the city harmless from any and all damages to persons or property in erecting, operating or maintaining said electric system.

(f) The city reserves the right to make and adopt, and the rights and privileges hereby granted shall at all times be and remain subject to such reasonable regulations of a police nature, as it may deem necessary for the best interests of the city, the city will not, by any such regulations or by its acts of its own or agents, do anything to prevent or interfere with the grantee carrying on its business in accordance with the franchise hereby granted.

Sec. 3. Trimming trees.

There is granted to grantee permission and authority to trim all trees in alleys, streets, and public grounds of said city so as to remove all parts of said trees interfering with the proper erection, maintenance and operation of poles, wires, or other fixtures or appliances installed or to be installed pursuant to authority hereby granted.

Sec. 4. Assignment.

Grantee shall have full right and authority to assign to any person, persons, firm or corporation all the rights that are given it by the ordinance, provided that the assignees of such rights, by accepting such assignment shall become subject to the terms and conditions of this ordinance.

Sec. 5. Liability.

The grantee shall use due diligence and care in furnishing electric service, as herein provided, but shall not be liable for any loss or damage which may arise from failure of the service, either partial or total, but this shall not be construed to exempt said grantee from liability for negligence.

Sec. 6. Regulatory laws.

This ordinance shall be subject to any present or future laws of a regulatory nature applicable to grantee and enacted by the State of North Dakota, or any amendment or addition to such laws.

Sec. 7. Franchise fees.

The city reserves the right, if not prohibited by the laws of the State of North Dakota, to make charge of the grantee for this franchise of such percent as determined by resolution adopted by the city council of the gross revenue received by the grantee in the City of Hankinson from the users of electrical service distributed to them by the grantee in the City of Hankinson, which charge shall be subject to review of the City of Hankinson city council at the first meeting in January of each and every year of the franchise period.

Sec. 8. Approval and acceptance.

This ordinance shall take effect and be in full force from and after its passage and approval, the grantee shall specify its acceptance of this franchise in writing, to be filed with the auditor and in no event shall this ordinance be finding on grantee until the filing of such acceptance.

Approved December 4, 2006.

ARTICLE III. MONTANA DAKOTA UTILITIES*

Be it ordained by the city council of the City of Hankinson, North Dakota, hereinafter called the "city": that chapter ____ is hereby repealed and reenacted to provide as follows:

Sec. I.

For convenience herein, said municipal corporation is designated and referred to as "municipality" and Montana-Dakota Utilities Co. is designated and referred to as "grantee." Any reference to either includes their respective successors and assigns.

Sec. II.

There is hereby granted to Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., a corporation, grantee, its successors and assigns, subject to the limitations herein stated, the right and franchise to occupy now and use of the streets, alleys and public grounds of the municipality as now, or hereafter constituted, for the purpose of constructing, maintaining, and operating, within, upon, in and under the same, a gas distribution system for transmitting and distributing natural or manufactured gas, or a mixture of both, for public and private use.

Sec. III.

Grantee shall maintain an efficient distribution system for furnishing natural or manufactured gas, or a mixture of both for public and private use at such reasonable rates as may be approved by the public service commission of the State of North Dakota and under such orders, rules or regulations as may be issued by a federal or state agency having jurisdiction thereof.

Sec. IV.

This franchise shall not be exclusive and shall not be construed to prevent the municipality from granting to any other party the right to use the streets, alleys, and public grounds of the municipality for like purposes.

Sec. V.

The municipality reserves any right it may have, under its police power, or otherwise, to control or regulate the use of said streets, alleys, and public grounds by grantee.

***Editor's note**—Printed herein is Ord. No. 2007-08, adopted on November 5, 2007. Amendments are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of capitalization and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

Sec. VI.

Grantee shall indemnify and save and hold the municipality harmless from any loss or damage due to the construction, installation, and maintenance of its distribution system, and its use of the streets, alleys, and public grounds of the municipality.

Sec. VII.

Grantee shall have the right to assign this franchise to any party, or corporation, but all obligations of grantee hereunder shall be binding upon its successors and assigns.

Sec. VIII. Restrictions.

Subd. 1. All gas pipes, mains, regulators and other property and facilities shall be located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic, travel upon and use of public ways of city. In installing, repairing, maintaining, removing, or replacing said gas pipes, mains and appurtenances, company shall, in all cases, place the public ways, in, on, under, or across which the same are located in as good condition as they were prior to said operation.

Subd. 2. Company shall provide field locations for all its underground facilities when requested by city within a reasonable period of time. The period of time will be considered reasonable if it compares favorably with the average time required by the cities in the county to locate municipal underground facilities for company. ("County" refers to the county in which city is located.)

Sec. IX. Relocating.

Subd. 1. Whenever city shall grade, regrade or change the line of any public way, or construct or reconstruct any city utility system therein and shall, in the proper exercise of its police power, and with due regard to reasonable working conditions, when necessary, order company to relocate permanently its mains, services and other property located in said public way, company shall relocate its facilities at its own expense. City shall give company reasonable notice of plans to grade, regrade or change the line of any public way or to construct or reconstruct any city utility system therein.

Subd. 2. Any relocation, removal or rearrangement of any company facilities made necessary because of the extension into or through city of a federally aided highway project shall be governed by the provisions of North Dakota or federal statutes as supplemented or amended.

Subd. 3. Nothing contained herein shall relieve any person, persons, or corporations from liability arising out of the failure to exercise reasonable care to avoid injuring company's facilities while performing any work connected with grading, regrading or changing the line of any public way, or with the construction or reconstruction of any city utility system.

Sec. X.

Franchise fee. The city reserves the right, if not prohibited by the laws of the State of North Dakota, to make charge of the grantee for this franchise of not to exceed three percent of the gross revenue received by the grantee in the City of Hankinson from the users of natural or manufactured gas service distributed to them by the grantee in the City of Hankinson, per year, which charge shall be subject to change of the city by the Hankinson city council at the first meeting in January of each and every year of the franchise period.

Sec. XI.

Within 30 days after grantee is notified of passage and final approval of this ordinance, grantee shall file with the clerk or auditor of the municipality its written acceptance of this franchise.

Sec. XII.

This franchise shall continue and remain in full force and effect for a period of 20 years from the date upon which this ordinance shall become effective as provided by law.

Date of Adoption: November 5, 2007.

ARTICLE IV. CABLE COMMUNICATIONS***Sec. 1. Short title and definitions.**

1.) *Short title.* This ordinance shall be known and cited as the Cable Communications Regulatory Ordinance.

2.) *Definitions.* For the purposes of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.

- (a) "Basic cable service" means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the franchise to be carried on the basic tier. Basic cable service as defined herein shall not be inconsistent with 47 USC 543(b)(7).

***Editor's note**—Printed herein is Ord. No. 2010-09, adopted on July 6, 2010. Amendments are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of capitalization and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

- (b) "Cable programming service" means any video programming provided over a cable system, regardless of service tier other than:

Video programming carried on the basic service tier.

Video programming offered on a pay-per-channel or pay-per-program basis; or

A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service:

Consists of commonly-identified video programming; and

Is not bundled with an regulated tier of service.

Cable programming service as defined herein shall not be inconsistent with the definition set forth in 47 USC 543(1)(2) and 47 CFR 76.901(b) (1993).

- (c) "Cable service" means the one-way transmission to subscribers of video programming, or other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
- (d) "Cable system" or "system" shall have the meaning ascribed to it in federal law.
- (e) "Council" means the Hankinson, North Dakota City Council.
- (f) "Franchise" means an initial authorization, or renewal thereof issued by a franchising authority, whether such authorization is designated by the franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system or other MVPD facility.
- (g) "Franchise area" means the area within the legal boundaries of the grantor.
- (h) "Grantee" is the person which is granted a franchise in city pursuant to this ordinance, its agents an employees, lawful successors, transferees or assignees.
- (i) "Grantor" is the City of Hankinson.
- (j) "Gross revenue" means only that monthly revenue received from basic cable service, cable programming service, and pay television directly by the grantee from the operation of its system within franchise area. The term "gross revenues" shall not include any other revenue billed or received by the grantee including franchise fees, late fees, any fees itemized and passed through as a result of franchise imposed requirements or any taxes or fees on services furnished by grantee imposed directly on any subscriber or use by any municipality, state, or other governmental unit and collected by grantee for such governmental unit.
- (k) "Multichannel video program distributor" or "MVPD" means a person such as, but not limited to a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, an OVS provider, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.

- (l) "Open video services" or "OVS" means any video programming services provided to any person by a franchise certified by FCC to operate an open video system pursuant to section 47 USC 573, as may be amended, regardless of the facilities used.
- (m) "Pay television" means the delivery over the system of pay-per-channel or pay-per-program audio-visual signals to subscribers for a fee or charge, in addition to the charge for basic cable service or cable programming services.
- (n) "Person" is any person, firm, partnership, association, corporation, company, or other legal entity.
- (o) "Standard installation" means any residential installation which can be completed using a drop of 150 feet or less.
- (p) "Street" means the surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway, or drive, or any easement or right-of-way now or hereafter held grantor.
- (q) "Subscriber" means an person who lawfully receives cable service.
- (r) "Video programming" means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

Sec. 2. Grant of authority and general provisions.

1.) *Franchise required.* It shall be unlawful for any person to construct, operate or maintain a cable system or MVPD facility or to provide cable service, video programming or other MVPD services, including OVS, in the grantor without a franchise authorizing the same, unless applicable federal or state law prohibits the grantor's enforcement of such a requirement.

2.) *Grant of franchise.* Any franchise that is granted in city shall be subject to the terms and conditions contained herein.

3.) *Grant of nonexclusive authority.*

- (a) A grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, across, above, over and under the streets, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in franchise area, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in franchise area of a cable system.
- (b) A franchise shall be nonexclusive, and grantor reserves the right to grant a similar use of said streets to any MVPD at any time; provided, however, that all franchises shall contain the same terms and conditions as this franchise in order that on MVPD is not granted a competitive advantage over another. In the even a MVPD commences operation without a franchise or is granted a franchise to operate by the grantor, the terms and conditions of which do not comply with this ordinance, other grantees shall have the right either (i) to opt in to the competitor's franchise by

provide ten days' prior written notice to the grantor, or (ii) to petition the grantor for modification to its franchise, in which case the grantor shall work in good faith with the affected grantee(s) to review and adopt modification which the grantee(s) deem necessary, review and approval by grantor shall not be unreasonably denied.

- (c) Before granting an additional franchise, the grantor shall give written notice to all grantees of any new application, identifying the applicant for such additional franchise and providing at least 30 days prior notice of the date, time, and place at which the grantor shall consider and/or determine whether such additional franchise should be granted.
- (d) Every franchise shall apply to the entire service area of the grantor as it exists now or may later be configured.
- (e) In the event grantor grants one or more additional franchises or one or more non-franchised MVPDs commence providing cable service in the grantor, a grantee shall have the right to terminate or reduce the term of this franchise in its sole discretion.
- (f) Neither city nor grantee(s) may unilaterally alter the material rights and obligations set forth in this franchise. In the event of a conflict between any other ordinance and this franchise, the franchise shall control.

4.) *Franchise term.* A franchise shall be in effect for a period of up to 11 years from the date of acceptance by a grantee, unless renewed, revoked, or terminated sooner as herein provided.

Editor's note—Ordinance No. 2022-02, adopted March 9, 2022, set an amended expiration date of the franchise term to be July 6, 2032.

5.) *Territorial area involved.* A franchise shall be granted for the corporate boundaries of grantor, as it exists from time to time. In the event of annexation by grantor, or as development occurs, an new territory shall become part of the area covered; provided, however that grantee(s) shall not be required to extend service beyond its present system boundaries unless there is a minimum of 25 homes per cable mile as measure from the last fiber node or terminating amplifier.

6.) *Written notice.* All notices, reports, or demands required to be given in writing under this ordinance shall be deemed to be given when delivered personally to any officer of grantee or grantor's administrator of this ordinance as specified in a franchise.

Sec. 3. Application for new franchise.

1.) An application for an initial franchise to provide video programming shall be in writing on a form provided by the city which shall contain where applicable:

- (a.) Applicant name and business address of applicant.

- (b.) A statement as to the proposed franchise area, and whether applicant holds and existing authorization to access the rights-of-way in the city and a map of the areas where such authorization exist if for an area other than the entire city.
- (c.) Resume of prior history of applicant, including the legal, technical, and financial expertise of applicant in the cable service field.
- (d.) List of officers, directors, and managing employees of applicant and resumes of each.
- (e.) A proposed construction and schedule to provide cable service or video programming to subscribers.
- (f.) A certificate of insurance consistent with the requirements of this ordinance.
- (g.) A description of the cable system the applicant intends to build, including its capacity, the types of equipment propose for use and the cable services or video programming which will be offered.
- (h.) A description of the financial qualifications of the applicant to construct and operate the system including a balance sheet, income statement sources and uses of funds statement and pro forma projections for at least three years of operation subsequent to system completion.
- (i.) A proposed plan for public, education, and government access channels, including funding, facilities, and equipment and capacity on the system to be dedicated for educational and governmental use.

2.) The initial franchise application may be evaluated according to the following criteria, an approved within 180 days after city deems the application is complete. In the event applicant is already authorized to occupy the rights-of-way, the time for review and approval will be 90 days.

- (a.) The evidence of legal, technical and financial ability required in the applicant's proposal will be such as to assure the ability to complete the entire system within a reasonable time from the date the franchise is granted. The city will also consider the applicant's ability to operate the system and provide the necessary cable services or video programming in compliance with the terms of this ordinance.
- (b.) The city administrator or designee shall prepare a report and make his or her recommendations respecting such application to the city council.
- (c.) A public hearing shall be set prior to any grant of a franchise, at a time and date approved by the city council. Within 30 days after the close of the hearing, the city council shall make a decision based upon the evidence received at the hearing as to whether or not the franchise(s) should be granted, and, if granted subject to what conditions.
- (d.) The city may consider any additional information that it deems applicable.

Sec. 4. Construction and operations standard.

1.) *Conditions on street use.*

- (a) A grantee shall obtain all required permits from grantor before commencing any construction upgrade or extension of the system.
- (b) The grantor shall impose no permit fees upon a grantee.
- (c) If at any time during the period of this franchise grantor shall elect to alter, or change the grade or location of any street, alley or other public way, a grantee shall, at its own expense, upon reasonable notice by grantor, remove and relocate its poles, wires, cables, conduits, manholes, and other fixtures of the system. If grantor reimburses other occupants of the street, a grantee shall be likewise reimbursed.
- (d) A grantee shall, on request of any person holding a moving permit issued by grantor, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the person requesting the same, and a grantee shall be given not less than ten days' advance notice to arrange for such temporary changes.
- (e) A grantee shall have the authority to trim any trees upon and overhanging the streets, alleys, sidewalks, or public easements of grantor so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee.
- (f) Nothing contained in this ordinance shall relive any person from liability arising out of the failure to exercise reasonable care to avoid injuring grantee's facilities.
- (g) In areas where all other utility lines are placed underground. Grantee shall construct and install its cables, wires and other facilities underground. In any area where one or more public utilities are aerial, grantee may construct and install its cables, wires other facilities from the same pole with the consent of the owner of the pole.
- (h) A grantee shall at all times construct and operate its System in accordance with applicable FCC Technical specifications.
- (i) In the event that the use of any part of the system is discontinued for any reason for a continuous period of 12 months, or in the event such systems or property has been installed in any street or public place without complying with the requirements of this ordinance, or the rights granted hereunder have been terminated, cancelled or have expired, grantee shall, subject to the rights of the city to acquire the system as specified in section 3.1(j) herein, promptly remove from the streets, or public places all such property and poles of such system other than any which the city may permit to be abandoned in place. In the event of such removal, grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the city.

- (j) Any property of grantee to be abandoned in place shall be abandoned in such a manner as the city may prescribe. Upon permanent abandonment of the property of grantee in place, it shall submit to the city the instrument to be approved by the city, transferring to the city the ownership of such property.
- (k) All cable and passive equipment for cable television reception service installed by grantee at a subscriber's location shall remain the property of grantee and grantee shall have the right to remove said cable and equipment. Upon termination of service to any subscriber, the grantee shall promptly remove all its above-ground facilities and equipment from the premises of such subscriber upon his request.
- (l) No poles or other wire-holding structures shall be erected by the grantee without prior approval of the designated representative of the city council with regard to locations, height type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire-holding structure of the grantee shall be a vested interest and such poles or structures shall be removed or modified by the grantee at its own expense whenever the city council or its designated representative determines that the public convenience would be enhanced thereby.
- (m) Where poles or tother wire-holding structures already existing in use in serving the city are available for use by grantee, but it does not make arrangements for such use, the city council may require the grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.
- (n) Where the city or a public utility service the city desires to make use of poles or other wire-holding structures of the grantee but agreement therefor with the grantee cannot be reached, the city council may require the grantee to permit such use for such consideration as is just and reasonable and upon such terms as the council determines the use would enhance the public convenience and would not unduly interfere with the grantee's operations.
- (o) Grantee shall at all times maintain on file with the city auditor a schedule setting forth all rates and charges to be made to subscribers for basic cable service, including installation charges.
- (p) During the term hereof, the city may regulate rates only if authorized to do so by Federal Communications Commission regulations and then such regulation shall only be in accordance with the provisions of such regulations.

Sec. 5. System provisions and public services.

1.) *Operation and maintenance of system.* A grantee shall render effective service, makes repairs promptly, and interrupt service only for good cause and for the shortest time possible.

2.) *Service to schools and city.* A grantee shall, subject to the line extension requirements of section 2.5 herein, provide one drop and one outlet of basic cable service at no cost to public and parochial elementary and secondary schools in city, and one city building to be mutually agreed upon by city and grantee.

3.) *PEG channel.* The grantee shall allocate one channel to the city as a public, educational or governmental access channel. Until such time as the city files a written request with grantee for full-time use of the channel, grantee shall have the right to use that portion of the channel capacity that is not being used by the city. Grantee shall have a reasonable period of time after notification to vacate its use of the channel. Grantee shall assist the city in obtaining the necessary licenses and frequency clearance to enable the city to use said channel.

4.) *Emergency use.* In the case of any emergency or disaster, a grantee shall, upon request of the city council, make available its facilities to the city, for emergency use. A grantee shall comply with the emergency alert requirements of federal law.

5.) *Lockout device.* Upon the request of a subscriber, grantee shall provide by sale or lease a lockout device.

Sec. 6. Operation and administration provisions.

1.) Indemnification of grantor.

- (a) A grantee shall indemnify, defend, and hold harmless grantor, its officers, boards, committees, commission, selected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise of a franchise granted pursuant to this ordinance, except claims covered by worker's compensation insurance or any claims arising from or related to grantor's negligence. Nothing in this ordinance relieves a person from liability arising out of the failure to exercise reasonable care to avoid injuring the grantee's facilities while performing work connected with grading, regarding, or changing the line of a street or public place or with the construction or reconstruction of a sewer or water system.
- (b) In order for grantor to assert its rights to be indemnified, defended, and held harmless, grantor must with respect to each claim:
 - (1) Promptly notify a grantee in writing of any claim or legal proceeding which gives rise to such right;
 - (2) Afford grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
 - (3) Fully cooperate with reasonable requests of grantee, at grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph (2) above.

2.) *Insurance.* A grantee shall maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of grantor in its capacity as such. The policies of insurance shall be in the sum of not less than \$300,000.00 for personal injury or death of any one person, and \$1,000,000.00 for personal injury or death of two or more persons in any one occurrence, \$300,000.00 for property damage to any one person and \$1,000,000.00 for property damage resulting from any one act or occurrence.

3.) *Franchise fee.*

- (a) A grantee will pay grantor a monthly franchise fee in the amount of three percent of grantee's gross revenues.
- (b) The franchise fee shall be payable monthly, together with a brief report showing the basis for the computation.
- (c) The period of limitation for recovery of any franchise fee payable hereunder shall be three years from the date on which payment by grantee is due.

Sec. 7. Revocation, abandonment, and sale or transfer.

1.) *Grantor's right to revoke.* Grantor reserves the right to revoke, terminate or cancel a franchise, if after strictly following the procedures required by section 7.2 herein, it is determined that a grantee has violated any material provision of its franchise or this ordinance and has failed to substantially cure said violation.

2.) *Procedures for revocation.*

- (a) Grantor shall provide a grantee with written notice of a cause for revocation and the intent to revoke and shall allow grantee 60 days subsequent to receipt of the notice in which to substantially cure the violation or to provide adequate assurance of performance. Together with the notice required herein, grantor shall provide grantee with written findings of fact which are the basis of the revocation.
- (b) Grantee shall be provided the right to a public hearing affording due process before the grantor council prior to revocation, which public hearing shall follow the 60-day notice provided in paragraph (a) above. Grantor shall provide grantee with written notice of its decision together with written findings of fact supplementing said decision.
- (c) After the public hearing and upon written determination by grantor to revoke the franchise, grantee may appeal said decision with an appropriate state or federal court or agency.
- (d) During the appeal period, the franchise shall remain in full force and effect unless the term thereof sooner expires.
- (e) Upon satisfactory correction by grantee of the violation upon which said notice was given, the initial notice shall become void.

3.) *Sale or transfer of franchise.* No sale or transfer of a franchise shall take place without the written approval of the grantor, which approval shall not be unreasonably withheld. All of the rights, privileges, obligations, duties, and liabilities created by this franchise shall pass to and be binding upon the successor or assign of a grantee. Said approval shall not be required where a grantee grants a security interest in its franchise and assets to secure indebtedness.

Sec. 8. Miscellaneous provisions.

1.) *Franchise renewal.* Any renewal of a franchise shall be done in accordance with applicable federal law.

2.) *Amendment of franchise.* A grantee and grantor may agree, from time to time, to amend a franchise. Such written amendments may be made at any time.

3.) *Marketing.* A grantee shall the right to conduct direct selling in the franchise area, including door-to-door sales, notwithstanding any peddler or solicitor laws or regulations to the contrary.

4.) *Severability.* If any section, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, unenforceable or unconstitutional by a decision of any authority or court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance and the remainder shall remain in full force and effect.

Sec. 9. Publication, effective date.

1.) *Publication; effective date.* If applicable, this ordinance shall be published in accordance with law. The effective date of this ordinance shall be 1-6-2010.

2.) *Acceptance.*

(a) Grantee shall accept this franchise by executing same. Such acceptance by the grantee shall be deemed the grant of this franchise for all purposes. With its acceptance, grantee shall also deliver any insurance certificates required herein that have not been previously delivered.

(b) Upon acceptance of this franchise, grantee shall be bound by all the terms and conditions contained herein.

Passed and adopted this 6th day of July, 2010.

CODE COMPARATIVE TABLE

2002 CODE

The following table gives the location within the Code of sections of the 2002 Code.

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9.2004	38-202	Ch. 10, Art. 7, § I	20-31
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