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CHAPTER ONE

GOVERNMENT ORGANIZATION

MAYOR – COUNCIL CITIES

ARTICLE 1 - Jurisdiction

1.0101 Over Persons and Property

The jurisdiction of the City of Kulm, North Dakota, extends to all persons, places and property within its boundaries, and such extra-territorial jurisdiction as is granted to it under the provisions of the North Dakota Century Code and amendments.

1.0102 Defining City Limits

There shall be included within the municipal limits of the City all areas duly platted and recorded as being within said City; all lots and blocks shall also include all streets, alleys and public ways included within the area and adjacent thereto which are defined as within the confines of the City limits. The City Council shall have jurisdiction within the corporate City limits and over any common or public grounds belonging to the City, and in and over all places within one mile of the municipal limits for the purpose of enforcing health ordinances and regulations, and police regulations and ordinances adopted to promote the peace, order, safety and general welfare of the municipality. (Source: North Dakota Century Code section 40-06-01)

1.0103 City Fines and Penalties Limited

The provisions of Section 40-05-06 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance. This section shall not be construed to prohibit the utilization of the sentencing alternatives, other than a fine or imprisonment, provided by NDCC Section 12.1-32-02 for the violation of a City ordinance, nor shall this section limit the use of deferred or suspended sentences pursuant to North Dakota Century Code chapter 12.1-32.

ARTICLE 2 - Governing Body - City Council

1.0201 Regular Meetings

The City Council shall meet regularly at the City Hall on the second Monday of each month at the hour of 6:30 p.m., unless some other time and place may be specifically fixed by the council. The council shall meet in addition thereto, as often as required by Section 40-08-10 of the North Dakota Century Code.

1.0202 Special Meetings

Special meetings may be called at any time by the mayor or any two (2) members of the governing body to consider matters mentioned in the call of such meetings. Notice of any special meeting shall be given to each member of the governing body at least three hours before the time of the meeting. (Source: North Dakota Century Code section 40-08-10)

1.0203 Meeting to be Public - Journal of Proceedings to be Kept

All meetings of the governing body shall be open to the public, and a journal of its proceedings shall be kept. Notice of the regular meeting time or of special meeting shall be given as provided by section 44-04-20 of the North Dakota Century Code and amendments.

1.0204 Quorum

The provisions of section 40-06-03 of the North Dakota Century Code and all subsequent amendment are hereby incorporated by reference in this ordinance. A majority of the members of the governing body of a municipality shall constitute a quorum to do business but a smaller number may adjourn from time to time. The governing body may compel the attendance of absentees under such penalties as may be prescribed by ordinance, and may employ the police of the municipality for that purpose.

1.0205 Reconsidering or Rescinding Votes at Special Meeting

The provisions of section 40-06-04 of the North Dakota Century Code and all subsequent amendments are hereby incorporated by reference in this ordinance. No vote of the governing body of a municipality shall be reconsidered or rescinded at a special meeting unless there is present at such special meeting as large a number of members as were present when such vote was taken.

1.0206 Rules and Order of Business

Rules and order of business for the parliamentary government of the governing body shall be governed by Robert's Rules of Order. (Source: North Dakota Century Code section 40-06-05)

1.0207 Home Rule Charter

- I. The inhabitants of the City of Kulm, 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 "City of Kulm."
- II. 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 or the people. 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 in this Charter or, if the manner be not prescribed, then in such manner as may be prescribed by ordinance.

- III. The city shall have all powers granted to municipal corporations by the constitution and laws of this State and by this Charter, together with all the implied powers necessary to carry into execution all powers granted.

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

- (a) To acquire, hold, operate and dispose of property within or without corporate limits and exercise the right of eminent domain for such purposes.
- (b) 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, undertaking and improvements; to contract debts, borrow money, issued bonds, warrants and other evidences of indebtedness; to establish debts and mill levy limitations; provided that all real and personal property in order to be subject to the assessment provisions of this subsection shall be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments.
- (c) To fix the fees, number, terms, conditions, duration and manner of issuing and revoking licenses in the exercise of its governmental police power.
- (d) To provide for City officers, agencies and employees, their selection, terms powers, duties, qualifications, and compensation. To provide for change, selection or creation of its form and structure of government including its governing body, executive officer and City officers.
- (e) 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.
- (f) To provide for all matters pertaining to City elections except as to qualifications of electors.
- (g) 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.
- (h) To lay out or vacate streets, alleys, and public grounds; and to provide for the

use, operation, and regulation thereof.

- (i) To define offenses against private persons and property and the public health.
- (j) To engage in any utility, business or enterprise permitted by the constitution or not prohibited by statute or to grant and regulate franchises therefore to a private person, firm or corporation.
- (k) 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.
- (l) To levy and collect franchise and license taxes for revenue purposes.
- (m) To exercise in the conduct of its affairs all powers usually exercised by a corporation.
- (n) 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 conform with the state law made and provided.
- (o) 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.
- (p) To impose registration fees on motor vehicles or sale and use taxes in addition to any other taxes imposed by law.

The enumeration of particular powers by this Charter shall not be deemed to be exclusive; and in addition to the powers enumerate 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 this state it would be competent for this charter specifically to enumerate.

- IV. The citizens of Kulm shall have the right to initiate ordinances. Qualified electors at least equal in number to ten percent (10%) of the number of electors voting in the City for the office of Governor in the last election, or 100 electors, whichever is greater, may by initiated petition, submit a proposed ordinance to the governing body of the municipality. 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 electors of the City if it is not passed by the governing body of the municipality.

The City Auditor shall pass upon each petition within ten (10) days of receiving same; and if the City Auditor finds that the same is not in order, the City Auditor shall notify the "Committee for the Petitioners" and allow five (5) days for

correction of amendment.

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. In addition, each petition shall have listed the names of three (3) electors who shall constitute the “Committee for Petitioners” and who shall represent and act for the petitioners. At the bottom of each petition, the circulation of that particular petition, shall sign an affidavit affirming that the signers thereto are known to said circulator to be qualified electors of the City.

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

- a) Pass the ordinance without alteration within twenty (20) days after the attachment of the Auditor’s certificate to the accompanying petition that it appears in order; or
- b) Call a special election within ninety (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 fifteen (15) days nor later than ninety (90) days after the date of the filing said petition, the unaltered initiated ordinance shall be placed upon the ballot for vote 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 municipality. Any ordinance proposed by a petition and adopted by a vote of the people cannot be repealed or amended by the governing body for a period of seven (7) years, except by a vote of the people.

The City Auditor shall cause the name and description of any ordinance proposed under this article to be published once in the official newspaper published in the municipality. The City Auditor shall also cause the entire ordinance to be made available at city hall for public viewing during normal business hours.

This article shall be self-executing, and all of its provisions treated as mandatory ordinances may be enacted to facilitate its operation; but no ordinances shall be enacted to hamper, restrict, or impair the exercise of the rights herein reserved to the people.

- V. The citizens of Kulm shall have the right to refer ordinances. Qualified city electors at least equal in number to twenty percent (20%) of the number of electors voting the city for the office of Governor in the last election, or 100 electors, whichever is greater, may by referendum petition, suspend the operation of any ordinance enacted by the governing body except the annual appropriation ordinance; and

except emergency ordinances approved by at least three-fourths (3/4) of all members of the governing body and except for 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. An emergency ordinance shall contain a clause declaring an emergency. The filing of referendum petitions against one (1) 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 thirty (30) days after adoption of the ordinance.

ARTICLE 3 - Elective Officers

1.0301 City Council - Who Constitutes

The governing body of the City shall be the City Council which shall be composed of the mayor and council members. The mayor and four council members shall be elected as provided by law. (Source: North Dakota Century Code sections 40-08-01, 03)

1.0302 Term of Office of Council Members

Council members shall hold offices for four years and until their successors are elected and qualified. Terms of council members shall be arranged so that only one-half of the council members shall be elected in any one election.

1.0303 Mayor - Qualifications - Term

The chief executive officer of the City is the mayor. The mayor shall be a qualified elector within the City and shall hold office for four years and until a successor is elected and qualified. (Source: North Dakota Century Code section 40-08-14)

1.0304 When President and Vice President of a Council are Elected

The provisions of section 40-08-11 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance. At the organization meeting in each even numbered year, the members of the City Council shall proceed to elect from their number a president and vice president who shall hold their respective offices until their successors are elected at the organization meeting following the next biennial election.

1.0305 Vacancies on Council or in Office of Mayor - How Filled

If a vacancy occurs in the office of council member by death, resignation or otherwise, City Council may call a special City Election to fill such vacancy for the unexpired term or may, after fifteen days of the date of such vacancy, appoint a person to fill such vacancy until the next City Election, at which election the unexpired term shall be filled. Upon petition of five percent of the

electors, as determined by the total number of votes cast in the last general election, the council shall call a special election to fill a vacancy occurring more than six months before the next City Election, provided such petition has been submitted with in fifteen (15) days and before 4:00 p.m. of the fifteenth (15th) day of the date of such vacancy or of the vacancy being filled by appointment. If the petition is mailed, it shall be in possession of the council or its representative before 4:00 p.m. on the fifteenth (15th) day after the vacancy occurs or after the vacancy was filled by appointment. (Source: North Dakota Century Code section 40-08-08)

If a vacancy occurs in the office of mayor, the City Council may call a special City Election to fill such vacancy for the unexpired term or may, after fifteen days from the date of such vacancy, elect one of its members to act as mayor, the member so elected shall possess all of the rights and powers of the mayor until the next election and until a mayor is elected and qualified. Upon petition of five percent of the electors, as determined by the total number of votes cast in the City in the last General Election, the council shall call a special election to fill a vacancy occurring more than six months prior to the next City Election, provided such petition is submitted within fifteen days of the date of such vacancy. During the interim between date when a vacancy occurs in the office of the mayor and election and qualification of a successor, the president of the City Council shall be acting mayor. (Source: North Dakota Century Code section 40-08-16)

1.0306 Absence or Disability of Mayor - Who to be Acting Mayor

During the absence of the mayor from the City or during his or her temporary disability, the president of the City Council shall be the acting mayor and shall possess all of the powers of the mayor. In the absence or disability of the mayor and the president of the City Council, the vice president of the City Council shall be the acting mayor. (Source: North Dakota Century Code section 40-08-13)

1.0307 Mayor to Preside at Council Meetings - Voting Power of Mayor

The mayor shall preside at all meetings of the City Council, but shall not vote except in case of a tie, when he shall cast the deciding vote. (Source: North Dakota Century Code section 40-08-18)

1.0308 Mayor may Remove Appointive Officers - Reasons for Removal to be Given

The mayor may remove any office appointed by him or her whenever he or she is of the opinion that the interests of the City demand such removal, but he shall report the reasons for such removal to the council at its next regular meeting. (Source: North Dakota Century Code section 40-08-19)

1.0309 Mayor may Suppress Disorder and Keep Peace

The mayor may exercise within the City limits the powers conferred upon the sheriff to suppress disorder and keep the peace. (Source: North Dakota Century Code section 40-08-20)

1.0310 Mayor to Perform Duties Prescribed by Law - Enforced Laws and Ordinances

The mayor shall perform all duties prescribed by law or by the city ordinances, and shall see that the laws and ordinances are faithfully executed. (Source: North Dakota Century Code section 40-08-22)

1.0311 Inspection of Books, Records and Papers of City by Mayor

The mayor, at any time, may examine and inspect the books, records and papers of any agent, employee or officer of the City. (Source: North Dakota Century Code section 40-08-23)

1.0312 Ordinance or Resolution Signed or Vetoed by Mayor

The mayor shall sign or veto each ordinance or resolution passed by the council. (Source: North Dakota Century Code section 40-08-24)

1.0313 Message to Council

The mayor annually and from time to time shall give the council information relative to the affairs of the City and shall recommend for consideration such measures that he may deem expedient. (Source: North Dakota Century Code section 40-08-25)

1.0314 Mayor May Call on Inhabitants to Aid in Enforcing Ordinances

When necessary, the mayor may call on each inhabitant of the City over the age of eighteen years to aid in the enforcing of the laws and ordinances of the City. (Source: North Dakota Century Code section 40-08-26)

1.0315 Police Chief and Policemen Appointed by Mayor

The mayor may appoint any number of policemen which he or she and the City Council may deem necessary to preserve the peace of the City, and he or she shall appoint one of the number as chief of police. Such appointment shall be subject to approval of the council. (Source: North Dakota Century Code section 40-08-27)

1.0316 Mayor May Administer Oath

The mayor of the City may administer oaths and affirmations. (Source: North Dakota Century Code section 40-08-28)

ARTICLE 4 - Elective Officers Other Than Governing Body

1.0401 Municipal Judge

There shall be elected each four years a municipal judge who shall hold office until a successor is elected and qualified. The municipal judge shall perform all the duties prescribed by law and the ordinances of this City. The municipal judge shall receive a salary as full compensation for all services rendered. (Source: North Dakota Century Code sections 40-14-01, 40-14-02, and 40-18-06)

1.0402 Reports to the City Auditor

It shall be the duty of the municipal judge to make and file a full report under oath, of all fees, fines, and other monetary considerations collected by the court during the preceding month, and showing the actions in which these amounts were collected. Until such report has been filed with the city auditor, no salary shall be paid to the municipal judge. (Source: North Dakota Century Code section 40-18-06)

1.0403 Fees to City Treasury

The municipal judge shall transfer the amount of fees, fines, and other monetary consideration collected in municipal court to the city treasury at the end of each month. (Source: North Dakota Century Code section 40-18-06)

1.0404 Court Hours

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

1.0405 Duties of Municipal Judge

Additional duties of the municipal judge shall be as provided by the provisions of chapter 40-18 of the North Dakota Century Code and all amendments.

ARTICLE 5 - Appointive Offices

1.0501 Appointive Officers in Council Cities

The mayor, with the approval of the City Council, shall appoint the following officers:

1. City auditor;
2. City assessor;
3. City attorney;
4. City engineer;
5. Such other officers as the City Council deems necessary and expedient.

The city assessor shall be appointed at the first meeting of the City Council in September of each odd numbered year. The City Council, by majority vote, may dispense with any appointive office and provide that the duties of that office be performed by others. (Source: North Dakota Century Code section 40-14-04)

1.0502 Term of Appointive Officers

The term of all appointive officers of the City operating under the council form of government shall commence the first day of July succeeding their appointment unless otherwise provided by ordinance, and such officers shall hold their respective offices for two years, and until their successors are appointed and qualified. (Source: North Dakota Century Code section 40-14-05)

1.0503 General Duties of 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 two (2) members of the City Council. (Source: North Dakota Century Code section 40-08-10) The city auditor 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. The city auditor shall also keep a book titled as the "Special Assessment Book" in which to keep all records of special assessments. The city auditor 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 or her during the month and he or she shall duly give to the council a copy of his or her receipt therefore. The city auditor shall further handle all correspondence, permits and licenses and shall do and perform all other duties prescribed by statutes of this state, or by an ordinance, resolution or proper instruction of the City Council. (Source: North Dakota Century Code chapter 40-16)

1.0504 General Duties of City Attorney

The city attorney shall conduct all the law business of the City and of the departments thereof and shall, when requested, furnish written opinions upon the subjects submitted by the City Council or any other department. The city attorney shall also draft all ordinances, bonds, contracts, leases, conveyances and such other instruments as may be required by the officers of the City, examine and inspect tax and assessment rolls and all other proceedings in reference to the levying and collection of taxes, and perform all other duties prescribed by statutes of the state, or by an ordinance, resolution or proper instruction of the City Council.

1.0505 Street Commissioner: Duties - Compensation

It shall be the duty of the street commissioner to establish and construct, under the direction of the City Council, such changes, alterations and improvements in the street crosswalks, curbs and gutters as shall be needed, and he shall be responsible for the proper maintenance and repair of the city sewers, drains, culverts, catch basins, manholes and cesspools, and it shall be his or her

further responsibility to see that sidewalks and streets of the city are kept in good repair. He or she shall perform such other work and duties as shall from time to time be required by the City Council. The street commissioner shall receive as compensation for his or her services such salary per annum as the City Council shall prescribe.

1.0507 Health Officer: Duties

The health officer shall perform all the duties required by law and the ordinances of the city, and shall promptly report to the mayor all violations of the rules and regulations of the Board of Health tending to promote the health of the city.

1.0508 Chief of Police: Duties

The chief of police shall perform such duties pertaining to his or her office as are prescribed by law and the ordinances of the city. He or she shall report to the city attorney all violations of the city ordinances as may come to his or her notice, and assist in securing evidence. He or she shall receive as compensation for his or her services such sum as shall be established by the City Council. Any police officers, watchpeople, or other peace officers of the city may without a warrant arrest a person for the violation of any city ordinance committed or attempted in his or her presence. Any person arrested without a warrant must without unnecessary delay be taken before the municipal judge. When any peace officer shall bring in any person who has been arrested without a warrant before the municipal judge, it is the duty of the said officer to specify the charge upon which he or she has made the arrest. It is then the duty of the municipal judge or city attorney to make complaint of the offense charged and cause the peace officer or some other person to subscribe and make oath to such complaint.

1.0509 Fire Chief: Duties

The chief of the fire department shall perform the duties provided by the laws and the ordinances of the city and the constitution, bylaws, rules and regulations of the fire department, and such other duties as may from time to time be required by resolution of the City Council.

1.0510 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 of North Dakota.

ARTICLE 6 - Special Provisions Regarding City Officers

1.0601 Bonds of Municipal Officers and Employees

The following officers and employees of the City shall be bonded in the accordance with the provisions of section 40-13-02 and chapter 26.1-21 of the North Dakota Century Code:

Mayor
City auditor

Municipal judge
City assessor
City administrator

1.0602 Oaths of Municipal Officers

Every person appointed to any municipal office, before he or she enters upon the discharge of the duties thereof, shall take and subscribe the oath of office prescribed for civil officers and, except in the case of the auditor, shall file the same with the city auditor within 10 days after notice of his or her election or appointment has been given. The oath of the auditor shall be filed in the office of the county auditor. Refusal to take the oath of office shall also be deemed a refusal to serve and, therefore, a failure to qualify for the office pursuant to North Dakota Century Code section 44-02-01. (Source: North Dakota Century Code section 40-13-03)

1.0603 Salaries of Elected Officers Fixed by Ordinance

Any elected officer of this city shall receive the salary, fees or other compensation fixed by ordinance within the limitations set by NDCC sections 40-08-07, 40-08-15 and 40-18-06.

1.0604 Salaries of Appointive Officers and Employees

Salaries of City Appointive Officers and Employees, except as otherwise provided by law, shall be in such sums and amounts as may be fixed from time to time by resolution of the governing body.

1.0605 Meals, Lodging, and Mileage - Amount Allowed

Each elective or appointive officer, employee, representative, or agent of this 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 this 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. Verifications of claims shall not be required for the first three quarters of each day and only a lodging receipt shall be required for the fourth quarter. (Source: North Dakota Century Code section 44-08-04)

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.

Mileage expenses shall be reimbursed at the rate provided for under state law for state officials and employees. (Source: North Dakota Century Code section 54-06-09) Any person filing a false claim with the City for mileage or expenses as herein permitted is guilty of an infraction.

1.0606 Personal Interest in Contract by Public Officer - Prohibited

No contract for the furnishing of supplies to the City, or buying of property from the City shall be entered into by any officer of the municipality, provided, however, that such contracts may be entered into with an officer of the City, if such contract is unanimously approved by other members of the governing body of the City by a finding unanimously adopted by such other members, and entered in the official minutes of the governing body, to be necessary for the reason that the services or property are not otherwise available at equal cost. (Source: North Dakota Century Code section 40-13-05)

1.0607 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 or her successor in office, all property, books and effects of every description in his or her possession belonging to the City or appertaining to his or her office; and upon his or her refusal to do so, shall be liable for all damages caused thereby, and guilty of an infraction.

1.0608 Administrative Policy and Procedure

Each officer shall:

- 1) Perform all duties required of their office by law or ordinance and such other duties not in conflict as may be required by the governing body.
- 2) Be immediately responsible to the governing body 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 governing body 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 control of department 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 governing body.

1.0609 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. Upon conviction, for a violation of this section, such person shall be fined not more than \$1,000.00.

ARTICLE 7 - Purchasing and Disposition of Property

1.0701 Competitive Bidding Requirements

All purchase of and contracts for supplies and contractual services with a cost in excess of one hundred thousand dollars (\$100,000.00) shall be based on competitive bids. (Source: North Dakota Century Code section 48-01.2-04)

1.0702 Procedure

All supplies and contractual services except as otherwise provided herein, when the estimated cost thereof shall exceed \$100,000.00 shall be purchased from the lowest responsible bidder after due notice inviting proposals. Due notice shall be given by advertising for the sale or purchase of the property or service by giving written notice in the official newspaper of the City for three (3) consecutive weeks and the opening of the bids so received not less than 21 days after the first publication thereof. The lowest responsible bidder shall be the lowest best bidder for the project considering past experience, financial condition, past work with the governing body, and other pertinent attributes identified in the advertisement for bids. (Source: North Dakota Century Code sections 48-01.2-01, 48-01.2-04)

1.0703 Open Market Purchases – Emergency

When the City governing body decides that an emergency requires the immediate purchase of supplies or contractual services, the purchases may be made without competitive bidding. (Source: North Dakota Century Code section 48-01.2-04)

1.0704 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.

1.0705 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.

1.0706 Conveyance, Sale, Lease or Disposal of Property

Real property belonging to the municipality shall be conveyed, sold, leased or disposed of, only as approved of by a two-thirds vote of all members of the governing body. Personal property shall be conveyed by a majority vote of all members of the governing body. When the property to be disposed of, whether real property or personal property is estimated, by the governing body of the municipality to be of a value of less than \$2,500.00, such property may be sold at private sale upon the proper resolution of the governing body. In all other cases, such property may be sold only at public sale or as provided under section 40-11-04.2 of the North Dakota Century Code (Source: North Dakota Century Code section 40-11-04). Bids for the purchase or lease of real property belonging to the municipality, whether or not advertisement therefore has been made, shall be made directly to the governing body and submitted to the city auditor, who shall present any and all such bids to the governing body at its next regularly scheduled meeting. When specific statutory provisions contained in the North Dakota Century Code provide for a procedure which is in conflict with this section, governing the conveyance, sale, lease or disposal of real property, this section shall not apply 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 chapter 2-02 of the North Dakota Century Code. Said lease shall further be in compliance with regulations and directives of appropriate federal agencies.
- 2) Conveyance of right of way for any state highway shall be as provided in chapter 24-01 of the North Dakota Century Code.
- 3) Leasing of oil and gas lands shall be as provided in sections 38-09-02 through 38-09-04 and sections 38-09-14 through 38-09-20 of the North Dakota Century Code.
- 4) Conveyance of property to a municipal parking authority shall be as provided in section 40-61-05 of the North Dakota Century Code.
- 5) Lease of public buildings or portions thereof shall be as provided in chapter 48-08 of the North Dakota Century Code.
- 6) Granting of concessions for cafes, restaurants and confectioneries in public buildings or on public grounds shall be as provided in chapter 48-09 of the North Dakota Century Code.
- 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 section 49-09-16 of the North Dakota Century Code.

1.0707 Real Property Transfer Requirements

The provisions of sections 40-11-04.1 and 40-11-04.2 of the North Dakota Century Code and all subsequent amendments are hereby incorporated by reference in this ordinance.

ARTICLE 8 - Municipal Elections

1.0801 Qualified Electors in Municipal Elections - Restrictions

The provisions of section 40-21-01 of the North Dakota Century Code and all subsequent amendments are hereby incorporated by reference in this ordinance. Every resident of a municipality who is qualified to vote therein at general elections may vote at all municipal elections held therein. When elections are held by wards or precincts, no person may vote in any place other than the ward or precinct of which he is a resident.

1.0802 Elections in Council Cities - Polling Places - Polls Open - Notice

The provisions of section 40-21-02 of the North Dakota Century Code and all subsequent amendments are hereby incorporated by reference in this ordinance. Biennial municipal elections shall be held on the second Tuesday in June in each even numbered year at such place or places as the City Council shall designate. The polls shall be opened and closed as provided by state law for the opening and closing of polls at primary, general and special elections. Ten days notice of the time and place of holding each election and offices to be filled thereat shall be given by the city auditor by publication in the official newspaper of the City as provided by section 40-01-09 of the North Dakota Century Code.

1.0803 Designation of Polling Places for Municipal Elections

The governing body of the City, at the time of calling any general or special municipal election, or prior to the time of registration for said election, if said registration is required by law, shall by resolution, designate such voting precincts and polling places for said election as it may deem necessary for the conduct of the same, and shall, in giving notice of said election, designate such voting precincts and polling places. (Source: North Dakota Century Code section 40-21-03.1)

1.0804 Compensation of Inspectors, Judges and Clerks at Municipal Elections

The provisions of section 40-21-05 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance. Each inspector, judge or clerk of any regular or special municipal election shall receive compensation as determined for election officials in Section 16.1-05-05. The amounts determined to be due election officials at municipal elections shall be paid from the funds of the municipality holding the election. In the event a special municipal election is held on the same date as a statewide, district wide or countywide election, and if the same election officials perform services for both elections, the City shall not be required to pay the elections officials, except for any extra officials necessary for such special municipal election.

1.0805 Reference to Party Ballot or Affiliation in Petition of Candidate for
Municipal Office - Prohibited

The provisions of section 40-21-06 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance. No reference shall be made to a party ballot or to the party affiliation of a candidate in a petition to be filed or in behalf of a candidate for nomination to a public office in any incorporated City in this state.

1.0806 Petition for Nomination of Elected Official in Municipalities - Signatures
Required - Contents

The provisions of section 40-21-07 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance. A candidate for any public office in the City may be nominated by filing with the city auditor, at least sixty days and before four p.m. on the sixtieth day prior to the holding of the election, a petition signed by not less than ten percent of the number of qualified electors who voted for that office in the last City election. Qualified electors who sign such a petition shall reside within the ward or precinct in and for which such officer is to be elected, if the election is by wards or within the corporate limits of the City if the officer is elected at large. If a petition is mailed, it must be in the possession of the city auditor before four p.m. on the sixtieth day prior to the holding of the election. In no case shall more than three hundred signatures be required, and such signatures may be on separate sheets of paper. Each qualified elector who signs a petition shall add to the petition the petitioner's mailing address.

1.0807 Ballots in Municipalities - Makeup

The provision of section 40-21-08 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance. The auditor of the City shall place only the names of the persons nominated upon the ballot. The auditor shall arrange the offices upon the ballot in the order in which they are named in the statutes. The auditor shall determine the arrangement of the names of the candidates upon the ballot by conducting a drawing within five days following the last day for the filing of the nomination papers. The city auditor shall set the date, time and location for conducting the drawing and shall give advance notice of the drawing to the candidates involved.

1.0808 Clerks Appointed to Fill Vacancies - Oath - Powers and Duties of Judges
and clerks of Municipal Elections

The provisions of section 40-21-11 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance. When necessary, the judges of election at a municipal election shall appoint clerks to fill vacancies. The judges and clerks of a municipal election shall take the same oath and have the same powers and authority as judges and clerks of general state elections.

1.0809 Municipal Elections to be Governed by Rules Applicable to County
Elections – Absent Voting

The provisions of section 40-21-13 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance. The manner of conducting, voting at, keeping poll lists and canvassing votes at municipal elections, recounts and contests of the results of such elections shall be governed, as nearly as possible and except as otherwise provided in this chapter, by the laws of this state applicable to elections and contests in the case of county officers. Absent voters' ballots must be available in municipal elections in accordance with the provisions of chapter 16.1-07 of the North Dakota Century Code as amended.

1.0810 City Auditor to Notify of Election or Appointments

The provisions of section 40-21-14 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance. The city auditor, within five days after the result of an election is declared or the appointment of an officer is made within the municipality, shall notify each person elected or appointed to municipal office of his election or appointment. Within the same period of time, the city auditor shall also notify the state supreme court of the election or appointment of any municipal judge or alternate judge.

1.0811 New Election Upon Failure to Elect

The provisions of section 40-21-15 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance. If there is a failure to elect an officer required to be elected, the governing body of the municipality may order a new election.

1.0812 Special Elections Conducted in Same Manner as General Elections

The provisions of Section 40-21-16 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance. Special municipal election to fill vacancies or for any other purpose shall be held and conducted by the inspectors and judges of election of several precincts in the same manner and the returns shall be made in the same form and manner as at regular municipal elections.

1.0813 Highest Number of Votes Elects in Municipal Election - Procedure on Tie Vote

The provisions of Section 40-21-17 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance. The person having the highest number of votes for any municipal office shall be declared elected to such office. In case of a tie vote in the election of any municipal officer, a recount must be conducted pursuant to Section 16.1-16-01 of the North Dakota Century Code. If a recount results in a tie vote, the choice shall be determined by a drawing of names in the presence of the governing body of the municipality and in s manner it directs. A candidate involved in a tie vote may withdraw from consideration by signing a written statement to that effect in the presence of the filing officer of the election.

ARTICLE 9 - Records Management Policy

1.0901 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 North Dakota 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.

1.0902 Amendments, Deletions, Additions to City Records Management Manual

Sec. _____ shall be amended to read as follows:

Sec. _____ shall be deleted.

Sec. _____ shall be added to said manual to read as follows:

CHAPTER TWO

ORDINANCES

ARTICLE 1 - Procedure

- 2.0101 Enacting Clause for Ordinances
- 2.0102 Procedure in Passing Ordinances
- 2.0103 Yea and Nay Vote on Passage - When Required
- 2.0104 Reconsideration or Rescinding Vote
- 2.0105 Publication of Ordinances
- 2.0106 Effective Date of Ordinances
- 2.0107 Effect of Repeal
- 2.0108 Enactment and Revision of Ordinances
- 2.0109 Action for Violation of Ordinance in Corporate Name - Previous Prosecution, Recovery or Acquittal - No Defense
- 2.0110 Summons to Issue on Violation of Ordinance - When Warrant of Arrest to Issue
- 2.0111 Commitment of Guilty Person for Non-payment of Fines or Costs
- 2.0112 Costs of Prosecution
- 2.0113 Judgment of Conviction
- 2.0114 Refusal to Work
- 2.0115 Fines and Forfeitures for Violation of Ordinances Paid into Municipal Treasury
- 2.0116 Sentencing Alternatives

CHAPTER TWO

ORDINANCES

ARTICLE 1 - Procedure

2.0101 Enacting Clause for Ordinances

The enacting clause for every ordinance adopted by the City of Kulm shall be “Be it ordained by the City Council of the City of Kulm.” Such caption, however, may be omitted where the ordinances are published in book form or are revised and digested. (Source: North Dakota Century Code section 40-11-01)

2.0102 Procedure in Passing Ordinances

All ordinances shall be read twice and the second reading and final passage shall not be had in less than one week after the first reading. After the first reading and before final passage, an ordinance may be amended. Except as otherwise specifically provided, a majority of all of the members of the governing body must concur in the passage of an ordinance, and in the creation of any liability against the City, and in expending or appropriating money. (Source: North Dakota Century Code section 40-11-02)

2.0103 Yea and Nay Vote on Passage - When Required

The yea and nay shall be taken and entered on the journal of the governing body’s proceedings upon the passage of all ordinances and upon all propositions creating any liability against the City, or providing for the expenditure or appropriation of money, and in all other cases at the request of any member. (Source: North Dakota Century Code section 40-11-03)

2.0104 Reconsideration or Rescinding Vote

No vote of the governing body shall be reconsidered or rescinded at a special meeting unless at such special meeting there is present as large a number of members as were present when such vote was taken. (Source: North Dakota Century Code section 40-06-04)

2.0105 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 municipality. (Source: North Dakota Century Code section 40-11-06)

2.0106 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: North Dakota Century Code section 40-11-07)

2.0107 Effect of Repeal

When any ordinance repealing a former ordinance, clause or provision shall itself be repealed, such repeal shall not be construed to revive such former ordinance, clause or provision, unless it shall be expressly so provided.

2.0108 Enactment and Revision of Ordinances

The provisions of section 40-11-09 of the North Dakota Century Code and all subsequent amendments are hereby incorporated by reference in this ordinance. The executive officer of a municipality may appoint, by and with the advice and consent of the governing body of the municipality, one or more competent persons to prepare and submit to the governing body for its adoption or rejection, an ordinance for the revision or amendment of existing ordinances or for the enactment of new and additional ordinances for such municipality. The attorney for the municipality, if it has an attorney, shall be appointed as one of the persons to prepare and submit such ordinance. The compensation of the reviser or revisers, including that of the attorney, shall be determined by the governing body and shall be paid out of the municipal treasury. Such revision, including any additional ordinances and amendments to existing ordinances contained therein, may be passed as a single ordinance and may be published in pamphlet or book form, by and under the authority of the governing body of the municipality, and shall be valid and effective without publication in a newspaper or posting.

2.0109 Action for Violation of Ordinance in Corporate Name - Previous Prosecution, Recovery or Acquittal - No Defense

The provisions of section 40-11-10 of the North Dakota Century Code and all subsequent amendments are hereby incorporated by reference in this ordinance. Any action brought to recover any fine, to enforce any penalty or to punish any violation of an ordinance of any municipality shall be brought in the corporate name of the municipality as plaintiff. A prosecution, recovery or acquittal for the violation of any such ordinance may not constitute a defense to any other prosecution of the same person for any other violation of any such ordinance, notwithstanding that the different claims for relief existed at the time of the previous prosecution and, if united, would not have exceeded the jurisdiction of the court.

2.0110 Summons to Issue on Violation of Ordinance - When Warrant of Arrest to Issue

The provisions of section 40-11-11 of the North Dakota Century Code and all subsequent amendments are hereby incorporated by reference in this ordinance. In all actions for the violation of an ordinance, the first process shall be a summons, but a warrant for the arrest of the offender shall be issued upon the sworn complaint of any person that an ordinance has been violated and that the person making the complaint has reasonable grounds to believe the person charged is

guilty of such violation. Any person arrested under a warrant shall be taken without unnecessary delay before the proper officer to be tried for the alleged offense.

2.0111 Commitment of Guilty Person for Non-payment of Fines or Costs

The provisions of section 40-11-12 of the North Dakota Century Code and all subsequent amendments are hereby incorporated by reference in this ordinance. Any person upon whom any fine or costs, or both, has been imposed for violation of a municipal ordinance may, after hearing, be committed upon order of the court to jail or other place provided by the municipality for the incarceration of offenders until the fine or costs, or both, are fully paid or discharged by labor as provided in Section 40-18-12. The court may not commit a person under this section when the sole reason for his or her nonpayment of fine or costs, or both, is his or her indigence. An order of commitment under this section shall not be for a period in excess of thirty days. As used in this section, "fine" does not include a fee established pursuant to subsection 2 of section 40-05-06 of the North Dakota Century Code.

2.0112 Costs of Prosecution

In every case of conviction of a violation of any ordinance, or any part thereof, the cost of prosecution may be assessed against the person convicted as part of the punishment.

2.0113 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 may 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, the defendant may be required to work for the municipality at such labor as the defendant's strength and health will permit under the provisions of section 40-18-12 of the North Dakota Century Code.

2.0114 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.

2.0115 Fines and Forfeitures for Violation of Ordinances Paid into Municipal Treasury

All fines, penalties and forfeitures collected for offenses against the ordinances of the City shall be paid into the City's treasury each month.

2.0116 Sentencing Alternatives

The provisions of section 40-18-13 of the North Dakota Century Code and all subsequent

amendments are hereby incorporated by reference in this ordinance. Subject to section 40-05-06 of the North Dakota Century Code, the municipal judge may use the sentencing alternatives provided by section 12.1-32-02 of the North Dakota Century Code.

CHAPTER THREE

PUBLIC PLACES AND PROPERTY

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CHAPTER THREE

PUBLIC PLACES AND PROPERTY

ARTICLE 1 - Construction and Repair

3.0101 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 street superintendent, who shall be charged with the enforcement of all ordinance provisions relating to such public places (except traffic ordinances) and is hereby authorized to enforce such ordinances.

3.0102 Construction and Repair - 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 therefore, unless said work is performed by the City contractor. Applications for such permits shall be made to the city 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.

3.0103 Bond

Each applicant shall file a bond in the amount of \$5,000.00 with surety to be approved by the governing body conditioned to indemnify the City for any loss or damage resulting from the work undertaken or the manner of doing the same.

3.0104 Specifications

All construction, maintenance and repair herein shall be made in conformity with specifications laid down or approved from time to time by the governing body.

3.0105 Charges and Rules for Repair and Maintenance of City Street System

There shall be and there are hereby established charges for the repair and maintenance of the city street system for the city of Kulm. The rate for street repairs and maintenance shall be a \$3.00 charge per month per business, single family residential unit as well as each individual unit in a multi family dwelling unit, commonly referred to as apartments. The base charge is levied for the purpose of repairing and maintaining city streets and shall be imposed against all property in the city, notwithstanding the fact that the property is not occupied.

3.0106 Application for Permit

An applicant for a permit hereunder shall file with the 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 street superintendent shall find reasonably necessary to the determination whether a permit should be issued hereunder.

3.0107 Standards for Issuance of Permit

The city engineer or street superintendent 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.

3.0108 Sidewalks Built to Grade Specifications

All sidewalks shall be constructed in accordance with the elevations and grade therefore to be furnished by the city engineer and shall be constructed under the direction and supervision of the city engineer or under the direction and supervision of the street superintendent. All sidewalks shall meet the following requirements:

- 1) All sidewalks shall be constructed of concrete.
- 2) All sidewalks in residential areas shall be constructed not less than five (5) feet in width and shall have a minimum slope one-fourth (1/4) inch per foot from the inside edge toward the street.
- 3) All sidewalks shall be of concrete and of at least four (4) inches in thickness.
- 4) All sidewalks shall be laid out as follows:

- a) In locations where the right-of-way is sixty (60) feet or less the sidewalks shall be constructed on the property line.
 - b) In locations where the right-of-way is greater than sixty (60) feet the sidewalk shall be constructed eighteen (18) inches out from the property line.
 - c) 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
 - d) 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.
- 5) 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 (6) feet in width adjacent to the curb shall be constructed thus leaving an area for structural foundations.

3.0109 Materials and Manner of Construction

The kind and quality of material used, 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.

3.0110 Existing Sidewalks

Any sidewalk now in existence or that may come into existence hereafter shall be maintained in good repair and at no time, shall the same be removed unless express written approval has been received from the City Council to do so.

3.0111 City Contractor

The city 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 street superintendent and shall conform to specifications filed with the city auditor by the city engineer or street superintendent and approved by the governing body.

All sidewalks, driveways, curb and gutter and alley returns lying between the property line and the abutting street hereafter constructed within the City must conform to this chapter, and the specifications filed with the city engineer, and approved by the governing body must specify the details with respect thereto. When any contract for the construction of sidewalks, driveways, curb and gutter, 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 this 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 of North Dakota, an additional bond in an amount to be determined by the governing body, running to the City, conditioned that said contractor shall satisfactorily comply with the specifications for construction.

ARTICLE 2 - Use and Care of Streets, Sidewalks and Public Places

3.0201 Obstructions - Penalty

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, except as may be specified by ordinance or by the city engineer or street commissioner. Any person violating the provisions of this section shall be guilty of an infraction and upon conviction thereof, shall be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00).

3.0202 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. Any person violating the provisions of this section shall be guilty of an offense and be fined not less than two hundred dollars (\$200.00), nor more than one thousand five hundred dollars (\$1,500.00) or be imprisoned in the City jail for not to exceed thirty (30) days or by both such fine and imprisonment.

3.0203 Encroachments

It shall be unlawful to erect or maintain any building or structure that encroaches upon any public street or property.

3.0204 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 governing body. All such lawfully maintained openings shall be guarded by a suitable strong cover or railing to be approved by the street superintendent or the city engineer or the official who supervises public improvements.

3.0205 Wires

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 permissions from the City governing body. 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 city engineer or street superintendent, so that no injury

shall be done either to the poles or wires or to the shrubs and trees by their contact.

3.0206 Littering - Prohibited

No person, firm or corporation shall throw or deposit or cause to be thrown or deposited any garbage, glass, bottles, boxes or rubbish of any kind upon any street or alley in the City.

3.0207 Burning

It shall be unlawful for any person, firm or corporation to burn any leaves, paper, rubbish or other substances upon any of the public streets, sidewalks or alleys in the City.

3.0208 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.

3.0209 Heavy Vehicles

No person, firm or corporation shall move, or cause to be moved over the paved streets, sidewalks, crosswalks, culverts, bridges and viaducts within the City any engine, tractor, wagon, truck or other vehicle, object or thing which will tend to injure the paving, sidewalks, crosswalks, culverts, bridges or viaducts over which the same are transported, or which exceeds in weight 16,000 pounds per axle and exceeds 750 pounds per inch of tire widths, or any vehicle to the wheels of which are attached spurs, bars, angle irons or cleats which will tend to mar or deface the paving, sidewalks, crosswalks, culverts, bridges or viaducts, except under the direction and permission of the City governing body. Violators shall pay or cause to be paid to said City, upon demand, any and all damages done to the paving, sidewalks, crosswalks, culverts, bridges or viaducts. When the specified load limits herein contained will cause damage to the City's paved streets, the City governing body, by resolution adopted, may lower said load limits for such period of time as it may deem necessary. The provisions of this section shall not apply to state and federal highways through the City.

3.0210 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 twenty-four (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 salt 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 article. No owner or occupant shall allow the blowing or deposit of ice or snow into any street during the removal process.

3.0211 Removal of Snow and Ice by City

In case the owner of any lot in the City refuses or neglects to remove such ice and snow from the sidewalk in front of or along a lot therein, 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 street superintendent of the City, or salt or sand sprinkled thereon, and the necessary expenses plus an administrative fee in the amount of \$100.00 shall be charged against the abutting property by special assessment in the manner prescribed by law. (Source: North Dakota Century Code section 40-29-18)

3.0212 Assessments by Street Superintendent When Work is Done by City

Whenever the street superintendent shall, pursuant to Section 3.0211 of this article, 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, the street superintendent shall assess the cost of the same against said property, and on or before the first day of May in each year, make and file in the office of the city auditor a list showing separately the amount chargeable and assessed against each lot and tract and stating the name of the owner of each lot or tract as know to the street superintendent. (Source: North Dakota Century Code section 40-29-18)

3.0213 Snow and Ice Removal Assessments, Publication by Auditor, Hearing by City Governing Board

The city auditor shall give notice by publication in the official newspaper of the hearing and confirmation of such report and assessment at the regular June meeting of the City governing board, notifying all persons objecting thereto to appear and present their objections. The notice shall be published once each week for two (2) consecutive weeks, the last publication to be not less than eight (8) days before the date fixed for the hearing. At the June meeting of the City governing board or at such later meeting as the hearing and confirmation of such assessment may be adjourned to, the City governing board shall consider said assessment and shall hear any objections thereto or to any part thereof, and after revising and correcting the same, if necessary, it shall approve and confirm the list. The city auditor shall attach to such list the city auditor's certificate that the same is correct as confirmed by the City governing board and shall file the same in the city auditor's office. The assessment shall be certified to the county auditor by the city auditor in the manner provided in section 40-24-11 of the North Dakota Century Code. (Source: North Dakota Century Code section 40-29-19, 40-29-20)

3.0214 Street Cleaning - Snow Removal

Whenever, in the judgment of the governing body or the city engineer or street superintendent of the City, 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.

3.0215 Notice - Snow Removal or Street Cleaning

Whenever it becomes necessary to remove snow or ice or to sweep and clean streets, or to mark streets for traffic purposes in the City there shall be designated by the city engineer or street superintendent the area and streets to be cleared, cleaned or marked and the time during which such activity will be done by the posting of such information in the area affected or some other means of public notice.

3.0216 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 automobile, truck, machinery, vehicle or equipment from the place where impounded without first paying the cost of such impounding.

3.0217 Blocking Streets

No driver of any vehicle shall stop the same on any street, avenue, lane or alley of the City in such a manner as to hinder or prevent other vehicles or persons from passing at all times, unless in case of absolute necessity, nor shall any driver of any vehicle stop the same at any regular crossing of said street, alley, lane or avenue, so as to prevent the free passage of persons traveling or passing on foot.

3.0218 Excavations - Permit

It shall be unlawful for any person, firm or corporation, except public utilities which have received a franchise from 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 and complying with the provisions of this article and the terms of any such permit.

3.0219 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 suitably guarded.

3.0220 Application for Excavation Permits

Applications for excavation permits shall be made to the city auditor and shall describe the

location of the intended excavation or tunnel, the size thereof, the purpose therefore, and the person, firm or corporation doing the actual excavating work and the name of the person, firm or corporation for 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 to be done.

3.0221 Fees for Excavation Permits

The fee for excavation permits shall be: \$35 per square foot

3.0222 Bond - Excavations

No excavation permit shall be issued unless and until the applicant therefore has filed with the city auditor a bond in the sum of ten thousand dollars (\$10,000.00), 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.

3.0223 Deposit - Excavations

No excavation permit shall be issued unless and until the applicant therefore has deposited with the city auditor a cash deposit or bond in the sum of \$300.00 if no pavement is involved, and the sum of \$3,000.00 if pavement is involved, to insure the proper restoration of the area involved. Any balance will be returned to the applicant without interest after the excavation area is restored.

3.0224 Making Excavations - Notice

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 therefore. 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. No unnecessary damage or injury shall be done to any tree or shrub or the roots thereof.

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 chapter 49-23 of the North Dakota Century Code.

3.0225 Restoration of Excavations

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 no pavement there. Refills shall be properly tamped down, and any bracing in such tunnel or excavation shall be left in the ground. 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 street superintendent or city engineer.

3.0226 Supervision of Excavation Work

The street superintendent or 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 to the enforcement of the provisions of this article. Notice shall be given to the street superintendent or city engineer at least ten (10) hours before the work of refilling any such tunnel or excavation is begun.

3.0227 City Buildings, Equipment and Vehicles - Smoking

Smoking is not permitted in City buildings, equipment and vehicles, except as provided under state law. (Source: North Dakota Century Code sections 23-12-09 through 23-12-11)

ARTICLE 3. Unclaimed and Abandoned Property

3.0301 Unclaimed and Abandoned Property - Defined

Personal property, including motor vehicles, campers, motor homes, trucks, boats and semi trailers, 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 (10) days or more.

3.0302 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, street superintendent or other officer of the City.

3.0303 Holding of Personal Property - Notice of Sale

Abandoned personal property shall be held by the City for a period of not less than sixty (60) days after its seizure as provided herein, and after the expiration of said sixty (60) days, the city auditor shall cause notice to be published in the official newspaper of said City 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 said City, and further notice that said property will be sold at public auction, to the highest bidder for cash, along with the date, hour and place of the sale. Said public auction shall occur not less than ten (10) days from and after the date of the publication of such notice. If prior approval is obtained from the city governing body, 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. (Source: North Dakota Century Code section 40-05-02, subsection 20)

3.0304 Report of Abandoned Property Sale

At the time specified in said notice the said property shall be sold by the City at public auction, to the highest bidder for cash and within three (3) days after said 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 or names of the purchaser or purchasers and the amount received therefore. 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 (3) days after the date of such sale. The officer upon filing the report shall pay to the city auditor the proceeds of said sale.

3.0305 Bill of Sale - Abandoned Property

Upon the receipt of the report as specified in section 3.0304 hereof, 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 governing body and attested by the city auditor and delivered to the purchaser.

3.0306 Proceeds of Sale - Abandoned Property

The city auditor shall retain such money as is received from such sales in a separate account for a period of six (6) 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 said money shall thereupon be transferred to the general fund of the City.

3.0307 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 governing body, reclaim such property upon paying the expenses incurred by the City for the seizure, storage or advertising the sale thereof and any person owning such property as aforesaid may at any time within six (6) months after such sale and upon making satisfactory proof to the governing body 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. (Source: North Dakota Century Code section 40-05-02, subsection 20)

3.0308 Annual Report - Unclaimed and Abandoned Property

The chief of police, 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 or the chief of police shall bring such list to the attention of the governing body at the next regular meeting. (See section 5.0203)

ARTICLE 4 - House Numbering

3.0401 House Numbering Required

All lots, buildings and structures in the City shall be numbered in accordance with the

following plan: Avenues shall progress in sequential order from lower to higher progressing east and west, away from Main Avenue. The west side of all avenues shall be odd-numbered houses, buildings and structures and the east side of all avenues shall be even-numbered houses, buildings and structures. The house, building and structure numbers shall progress lower to higher, away from Main Street.

Streets shall progress in sequential order from lower to higher, progressing north and south, away from Center Street. The north side of all streets shall be odd-numbered houses, buildings and structures and the south side of all streets shall be even-numbered houses, buildings and structures. The house, building and structure numbers shall progress lower to higher, away from Center Street.

3.0402 Numbers of 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 two and one-half (2 ½) inches high, showing the number of the house.

ARTICLE 5 – Trees – Shade Tree Committee

3.0501 Definitions – Street Trees and Park Trees

“Street trees” are herein defined as 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.

“Park trees” are herein defined as 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.

3.0502 Establishment of a Shade Tree Committee – Terms - Compensation

There is hereby established a Shade Tree Committee for the City which consists of five members, residents of this City, who shall be appointed by the mayor with the approval of the City governing body. The terms of committee members shall be three years, except that the term of two of the members appointed to the first committee shall be for only one year and the term of two members of the first committee shall be for two years. In the event that a vacancy occurs during the term of any committee member, a successor shall be appointed for the unexpired portion of the term. Members of the committee shall serve without compensation.

3.0503 Operation and Duties of the Shade Tree Committee

The Shade Tree Committee shall choose its own officers and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business. It shall be the responsibility of the committee 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

governing body and upon their acceptance and approval shall constitute the comprehensive tree plan for the City.

3.0504 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 insure public safety or to preserve or enhance the symmetry and beauty of such public grounds. The Shade Tree Committee 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, park 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 ordinance at the determination of the Shade Tree Committee.

3.0505 Review by City Governing Body

The city governing body shall have the right to review the conduct, acts and decisions of the Shade Tree Committee. Any person may appeal from any ruling or order of the Shade Tree Committee to the city governing body, which may hear the matter and make a final decision.

CHAPTER FOUR

FIRE PROTECTION AND PREVENTION

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CHAPTER FOUR

FIRE PROTECTION AND PREVENTION

ARTICLE 1 - Organization and Regulation of the Fire Department

4.0101 Establishment of Fire Department

There is hereby created and established a fire department, and if hereto created, such department is hereby continued, consisting of a chief and such other members of said fire department as may from time to time be provided for by the governing body. Members shall be appointed in the manner provided by law.

4.0102 Supervision by Fire Chief

The fire chief shall have control, subject to the order and direction of the city governing body, of the fire department and all fire apparatus belonging to the City. Whenever any fire apparatus needs repairing, the fire chief shall cause the same to be done without delay.

4.0103 Volunteer Fire Department

The fire department of the City shall be composed of volunteer firemen who shall receive no wages or salaries therefore.

4.0104 Officers of Fire Department

The officers of the volunteer fire department of the City shall consist of a chief of the fire department and an assistant chief of the fire department, who shall be duly elected from the membership of said department and approved by the city governing body, plus such other officers as the members thereof deem necessary. Said officers are to be elected in December of each year.

4.0105 Chief of Fire Department – Powers, Salary

The chief of the fire department shall be a competent and experienced fireman who shall have entire charge and control of the department at all fires. The fire chief shall further have charge, supervision and control over all property, equipment and supplies of the fire department entrusted to his or her care during his tenure of office. The fire chief may be paid a salary as set by resolution of the city governing body.

4.0106 Duties of Fire Chief

The fire chief shall have the following duties and powers:

- 1) To keep records. The fire chief shall cause to be kept, in books for that purpose, a full and complete record of the organization of the department, its membership, vacancies, appointments and dismissals, and of all notices issued by the

department. The fire chief shall also keep a record of all transactions of the department, all fires occurring in the City, and the cause thereof when ascertainable, and of all property placed in the fire chief's charge. Such records shall always be open to the inspection of any member of the city governing body.

- 2) To command and control. It shall be the duty of the fire chief to preserve order and discipline at all times in the department, and to require and force a strict compliance with the ordinances of the City relating to the department and the rules and regulations pertaining thereto. At all fires the fire chief shall have sole and absolute control and command over all persons connected with the fire department of the City.
- 3) To make reports. The fire chief shall report at the end of each year and when required to do so to the city governing body. At the end of each calendar year, the fire chief shall file an annual report in with the city auditor, including a summary of his monthly reports. The fire chief shall report upon the condition of the fire department, the number of fires that have occurred in the City since the last report, and during the year in the annual report, and the cause of the same, so far as can be ascertained, the number of buildings destroyed or injured, the names of the owners or occupants of the same as nearly as can be ascertained, and the amount of loss upon the buildings and other property. The fire chief shall also file reports on fires to the state fire marshal as required by North Dakota Century Code section 8-01-06.
- 4) To make annual inventory. The fire chief shall, by the end of June in each year, make a complete list and of all fire department property, stating its condition. The fire chief shall also report as to such new apparatus or supplies as in the fire chief's judgment may be needed to properly maintain the department.
- 5) To prepare a budget. The fire chief shall prepare a budget of the cost of providing for and maintaining the fire department of the City during the succeeding fiscal year.
- 6) To keep property in good condition. The fire chief shall keep property in good condition and see that all fire department equipment and facilities are kept clean and in good working condition.
- 7) To have charge of alarm system. The fire chief shall have charge of the fire alarm systems of the City.
- 8) To control crowds at fires. The fire chief may prescribe limits in the vicinity of any fire within which no persons, except those admitted by the fire chief's order, are allowed.
- 9) To order removal of property. The fire chief may order the removal of property whenever it shall become necessary for the preservation of such property from fire, to prevent the spreading of fire, or to protect adjoining property.

10) To command assistance. The fire chief may command assistance from persons in attendance at any fire for the extinguishing of fires.

11) To prescribe badge and uniform. The fire chief may prescribe the badge and uniform to be worn by the members of the fire department.

4.0107 Fire Chief to Report New Equipment Needed

Whenever, in the fire chief's judgment it is necessary, the fire chief or other representative of the fire department shall meet with and render a report to the city governing body as to the equipment and supplies that are needed for the efficient operation of the fire department.

4.0108 Police Powers of Fire Department

All members of the fire department of the City, while on active duty, shall have the powers of the policemen on duty and are authorized to arrest any person or persons who shall interfere or attempt to interfere with or to hinder any member of the department in the performance of their duty.

4.0109 Unlawful to Hinder Fire Department

It shall be unlawful for any person to prevent, interfere with, or in any manner hinder the fire department, or any member thereof, while engaged in the discharge of duty at a fire, or to disobey any lawful command of the fire chief or acting chief of the fire department.

4.0110 Right of Way - Fire Department Vehicles

Any engine, truck or apparatus belonging to the fire department shall, going to or returning from a fire, have the right of way in all streets, alleys and public places over any automobile or other vehicle of any kind whatsoever, and any person in charge of any such vehicle must stop the same when necessary to permit any engine, truck or apparatus of the fire department to pass without hindrance or delay.

4.0111 Driving Over Fire Hoses

No person shall drive any automobile or other vehicle of any kind whatsoever, upon or over any hose belonging to the fire department while the hose is laid in the streets and alleys of the City.

4.0112 False Alarms of Fire

It shall be unlawful for any person knowingly to give or cause to be given any false alarm of fire, or to give or cause to be given, while a fire is in progress, a second or general alarm for the same fire, or tamper with or set off any fire alarm or signal box with like intent; or intentionally interfere with or injure any property of any kind belonging to or used by the fire department; or

hinder or delay any apparatus or equipment or vehicle belonging to the fire department.

4.0113 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 consent of the fire chief.

4.0114 Entering Fire Department

No person shall occupy any rooms in any buildings used by the Fire Department or enter such rooms or handle any apparatus used by the fire department without permission.

4.0115 Fire Department Service Outside Corporate Limits

Members of the fire department are authorized to go outside the corporate limits of the City for the purpose of rendering aid to other fire departments or of extinguishing fires or rendering aid in the case of accidents upon orders of the fire chief, the assistant chief or presiding officer of the City governing body. Where the City has undertaken by contract to render service to property outside the corporate limits, the fire department may leave the corporate limits in the fulfillment of such contract.

ARTICLE 2 - Fire Limits

4.0201 Fire Limits

All those parts of the City which have been zoned for commercial or industrial use or that may hereafter be so zoned.

4.0202 Fire Limits - Erection of Buildings Within

No buildings or parts of any buildings shall be erected within the fire limits unless the construction meets the provisions of the North Dakota State Building Code, which is the official building code of the City. Outbuildings may be erected of any other material, not necessarily of fireproof qualities, by obtaining a permit from the City governing board upon application therefore which may be granted or refused in the City governing board's discretion.

4.0203 Alterations and Additions in Fire Limits

Within the fire limits no buildings or structure of frame construction or of unprotected metal construction shall be hereafter extended on any side unless the construction of such extension conforms to all requirements of this article for new construction. All ordinary construction buildings and all frame buildings hereafter built or altered in which the lower stories or portions thereof are used for business, and the stories above for residence purposes shall have all partitions and ceilings separating the business portions from the residence portions covered with metal lath and plaster or other equivalent fireproofing material.

4.0204 Inspection of Premises, Materials, Order

The building official, or chief of fire department, or other designated official, shall as often as practical, inspect all buildings or structures during construction for which a permit has been issued to see that the provisions of law are complied with and that construction is prosecuted safely. All building materials shall be of good quality and shall conform to generally accepted standard specifications. Whenever in his or her opinion, by reason of defective or illegal work in violation of a provision of this article the continuance of a building operation is contrary to public welfare, he or she may order all further work to be stopped and may require suspension of work until the condition in violation has been remedied.

4.0205 Repairs to Damaged Buildings

It shall be unlawful to repair any existing frame building within the fire limits after the same has been damaged by any cause to fifty percent (50%) of its value. Any existing frame building damaged by fire otherwise over fifty percent (50%) of its value shall be torn down and removed.

ARTICLE 3 - Fires in Public Places

4.0301 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 rooming house, 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 article.

4.0302 Notice - Smoking Ordinance

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

4.0303 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 (10) feet of any combustible materials or construction made up of combustible materials, except in metal or other non-combustible receptacles. Such receptacles shall be placed on non-combustible stands, unless resting on a non-combustible floor or on the ground outside the building, and shall be kept at least two (2) feet away from any combustible wall or partition.

4.0304 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.

4.0305 Reports of Hotel of Apartment Fires

Every fire of any kind, and from whatever source, occurring in or about any hotel, rooming house, lodging house or apartment building in the City shall be reported immediately to the fire department.

ARTICLE 4 - Fire Prevention

4.0401 Adoption of Fire Codes

There is hereby adopted by the City of Kulm for the purposes of prescribing regulations governing conditions hazardous to life and property from fire or explosions, that certain code known as the Fire Prevention Code and the whole thereof, save and except such portions as are hereinafter deleted, modified or amended, of which code a copy is on file in the office of the city auditor and the same is hereby adopted and incorporated in full as if set out length herein.

4.0402 Amendments, Additions and Deletions Made in Fire Code

Amendments

Sec. _____ shall be amended to read as follows:

Additions

Sec. _____ is amended by adding thereto the following:

Deletions

Sec. _____ is deleted.

4.0403 Enforcement of Fire Prevention Code

1. The fire prevention code shall be enforced by the fire department of the City under the supervision of the chief of the fire department.
2. The chief of the fire department may detail such members of the fire department as inspectors as shall from time to time be necessary.

4.0404 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 the following established area: 200 feet on either side of the railroad right of way and 150 feet on either side of Main Ave.

4.0405 Storage of Liquefied Petroleum

The limits or area for storage of liquefied petroleum shall comply with the limits established in Section 4.0404.

4.0406 Modifications of Fire Code

The chief of the fire department shall have power to modify any of the provisions of the fire prevention code upon application in writing by the owner or lessee, or his duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the code, provided that the spirit of the code shall be observed, public safety secured and substantial justice done. The particulars of such modification when granted or allowed and the decision of the chief of the fire department thereon shall be entered upon the records of the department and a signed copy shall be furnished the applicant.

4.0407 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 governing body within thirty (30) days from the date of the decision of the appeal.

ARTICLE 5 - Firearms, Fireworks and Explosives

4.0501 Firearms not to be Furnished to Minors

It shall be unlawful for any person, firm or corporation to sell or rent firearms to minors within the limits of this City.

4.0502 Exploding Firearms

It shall be unlawful for any person or persons to fire or discharge within the city limits of this City, 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.

4.0503 Blank Cartridges, Pistols, 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, pistols, blank cartridge revolver or other blank cartridge firearms, blank cartridge caps containing dynamite or firecrackers exceeding three (3) inches in length and exceeding one-half (1/2) inch in diameter.

4.0504 Fireworks Defined

As used in this article, the term “fireworks” means any substance or combination of substances or articles prepared for the purpose of producing a visible or an audible effect by explosion or detonation and includes blank cartridges, toy cannons and toy canes in which explosives are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, sky rockets, roman candles, dayglo bombs or other fireworks of like construction, and any fireworks containing any explosive or compound, or any tablets, or other device containing any explosive substance and commonly used as fireworks. The term “fireworks” does not include toy pistols, toy guns in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, and toy pistol caps which contain less than twenty-five hundredths of a grain of explosive composition per cap. (Source: North Dakota Century Code section 23-15-01)

4.0505 Fireworks - Discharging of, Sale of

The sale, use, firing or discharging of any rocket, firecracker, torpedoes, roman candles or of any such “Fourth of July” explosives whatsoever, or fireworks within the City limits is expressly prohibited at any time whatsoever, except as provided by state statute.

4.0506 Exceptions to Fireworks Restriction

Nothing in this article shall be construed to prohibit the sale or use of fireworks to airplanes, railroads and other transportation agencies for signal purposes or illumination or the sale or use of blank cartridges for a show or theater or for signal or ceremonial purposes in athletics or sports or for use by military organizations.

ARTICLE 6 - Adoption of Electrical Code

4.0601 Electrical Code Adopted

There is hereby adopted the laws and regulations and wiring standards of North Dakota adopted by the State Electrical Board and the whole thereof of which not less than one (1) 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.

ARTICLE 7 - Penalty for Violation of this Chapter

4.0701 Penalty - Violations of Fire Protection and Prevention Chapter

Any person who shall violate any provisions of this chapter or fail to comply therewith or who shall violate or fail to comply with any order made thereunder or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder or any certificate or permit issued thereunder and from which no appeal has been taken or who shall fail to comply with such an order as affirmed or modified by the governing body or by a court of competent jurisdiction, within the time fixed herein, shall severally for each and every such

violation and noncompliance respectively, be punishable by a fine of not more than one thousand five hundred dollars (\$1,500.00) or by imprisonment for not to exceed thirty (30) days or by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each ten days that prohibited conditions are maintained shall constitute a separate offense.

The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

CHAPTER FIVE

POLICE DEPARTMENT

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CHAPTER FIVE

POLICE DEPARTMENT

ARTICLE 1 - Organization and Regulations

5.0101 Establishment

The police department heretofore created for the City and by this chapter continued shall consist of the chief of police and as many police officers as may be authorized by the governing body.

5.0102 Additional Officers - Emergency

In case of riot or unusual or general disturbances of the peace, the chief of police shall have the power to appoint such other and additional police officers as deemed necessary for the preservation of the public peace.

5.0103 Duties of Chief

The chief of police shall keep such records and make such reports concerning the activities of the department as may be required by statute or by the governing body. The chief shall be responsible for the performance by the police department of its functions and all persons who are members of the police department shall serve subject to the orders of the chief of police. The chief of police shall have the authority to administer oaths to police officers under the chief's supervision.

5.0104 Rules and Regulations

The chief of the police department may make or prescribe rules and regulations for the department. Such rules, when approved by the governing body, shall be binding on members of the department. Such rules and regulations may cover, besides the conduct of the members, uniforms and equipment to be worn or carried, hours of service and all other similar matters necessary or desirable for the better efficiency of the department.

5.0105 Duties of Police - General

It shall be the duty of the police department, and each and every member of the police force, to notice and diligently inquire into and report to the chief of police all violations of the city ordinances or the criminal laws of the state, to make complaint against the person or persons guilty thereof and to attend punctually all trials of offenses in regard to those complaints.

Within the City limits and for a distance of one and one-half (1½) miles in all directions outside the City limits, police officers shall perform the duties and exercise the powers of peace officers as defined and prescribed by the laws of the State of North Dakota. (Source: North Dakota Century Code section 40-20-05)

5.0106 Duties of Police - Hot Pursuit - Defined

A police officer in “hot pursuit” may continue beyond the one and one-half (1½) mile limit to make an arrest, in obedience to a warrant or without a warrant under the conditions of Section 29-06-15 of the North Dakota Century Code, whenever obtaining the aid of peace officers having jurisdiction beyond that limit would cause a delay permitting escape. As used in this subsection, “hot pursuit” means the immediate pursuit of a person who is endeavoring to avoid arrest. (Source: North Dakota Century Code section 40-20-05)

5.0107 Duties of Police - Service of Process, Etc.

Police officers shall serve and execute any warrant, writ, process, order or notice issued to them by a municipal judge within the City in any civil or criminal action or proceeding in which the City is a party or is interested beneficially. The police, within the limits prescribed in this section, may serve and execute all writs and process issued by justices in civil actions. In addition to the duties set out in this section, the police shall perform such other duties as may be prescribed by the chief of police and governing body. (Source: North Dakota Century Code section 40-20-05)

ARTICLE 2 - Powers and Duties

5.0201 Money or Property of Arrested Persons

It shall be the duty of the police department, and of each and every member of the police force, to safely keep all moneys or property which may be found on the person, in possession of or claimed by any person arrested for crime and pay or deliver over the same by the order of the municipal judge, and forthwith after taking the same, to report in writing the kind and amount thereof to the municipal judge.

5.0202 Arrested Persons

Any police officer after making any arrest, with or without a warrant, for any violation of City ordinances shall take the person or persons so arrested, without any unreasonable delay, before the municipal judge or any other available magistrate to be dealt with according to law and the ordinances of the City.

5.0203 Stolen, Abandoned, Lost Property

The chief of police shall have the custody of all lost, stolen or abandoned property recovered in the City and shall make a report concerning such property as provided by Section 3.0308 of these ordinances.

5.0204 Traffic Administration

The police department shall have such duties concerning enforcement, investigation, record keeping and other matters concerning traffic administration as are more fully set forth in Article 2 of Chapter 9 of these ordinances.

5.0205 Witness Fees and Mileage of Municipal Police Officers

Police officers of the City shall be entitled to be paid the witness fees and mileage expenses allowed by law for other witnesses while off duty when such officers are subpoenaed to testify in actions involving the City. Said police officers shall submit vouchers for the above payment in accordance with 1.0704 and 1.0705 of these ordinances.

ARTICLE 3 - Miscellaneous

5.0301 False Alarms - Interference

No person shall give or cause to be given, or make, or place or cause to be given, any false report, call or communication of any kind to the police or any false police alarm with intent to deceive; or tamper with or set off any police alarm or signal box with like intent; or tamper, meddle or interfere with any such police alarm box or intentionally cut, break, deface or remove any such box, or any of the wires or supports thereof, connected with the police alarm system; or intentionally interfere with or injure any property of any kind belonging to or used by the police department; or hinder or delay any apparatus or equipment or vehicle belonging to the police department.

5.0302 Right of Way

Any motor vehicle or motorcycle of the police department shall, when going to or returning on business of the department, have the right-of-way upon giving an audible signal by bell, siren, exhaust whistle or flashing light. The driver of any other vehicle shall drive to the nearest right-hand curb or edge of the road, stop and remain until the police vehicle shall have passed.

CHAPTER SIX

ZONING - LAND USE PLANNING

Zoning and Land Use Planning

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CHAPTER SIX

ZONING - LAND USE PLANNING

NOTE: Zoning and land use planning and development are best left to local design. Therefore, this code will not attempt to formulate model zoning and land use ordinances.

It should be noted that a city may, by resolution, relinquish its zoning authority to the County Zoning Board of the county in which the city is located. The County Zoning Ordinances are then incorporated, by reference, into the city's revised ordinance code. If the City does not relinquish its zoning authority what follows is a broad outline of model zoning ordinances.

CHAPTER SIX

ZONING - LAND USE PLANNING

ARTICLE 1 - Planning and Zoning Commission

6.0101 Planning Commission Created

There is hereby created a planning commission consisting of three (3) members to be appointed by the City's chief executive officer, with the approval of the governing body. The chief executive officer, the engineer and city attorney shall be ex-officio members thereof. If the City exercises extraterritorial zoning authority pursuant to North Dakota Century Code section 40-47-01.1, the planning commission must include one (1) member residing outside the corporate limits of the city. (Source: North Dakota Century Code section 40-48-03)

6.0102 Terms, Compensation, Meetings

The terms of the members, their compensation, and meetings shall be as provided by Chapter 40-48 of the North Dakota Century Code.

6.0103 Ex-Officio Zoning Commission

The Mayor, the City Engineer, and the City Attorney shall be ex-officio members of the 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: North Dakota Century Code section 40-47-06)

ARTICLE 2 - Definitions

6.0201 Definitions

For the purpose of this chapter the following words and phrases shall have the meanings herein given:

- 1) "Accessory Use or Building" is a subordinate use or building customarily incident to and located on the same lot with the main use or building.
- 2) "Alteration" as applied to a building or structure, is 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.
- 3) "Building" is 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 structure 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 “roof” shall include an awning or other similar covering, whether or not permanent in nature.

- 4) “Building Line” is the line between which and the street line or lot line no 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 intersection the ground on such line.
- 5) “Dwelling” is a building designed or used as the living quarters for one or more families.
- 6) “Dwelling House” is a detached house designed for an occupied exclusively as the residence of not more than two families each living as an independent housekeeping unit.
- 7) “Dwelling Unit” is 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.
- 8) “Dwelling, Multi-Family” is a dwelling or group of dwellings on one plot containing separate living units for three or more families, but which have joint services or facilities for both.
- 9) “Family” is 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 board house, lodging house, club, fraternity or hotel.
- 10) “Garage, Private” is a building or part thereof accessory to a main building and providing for the storage of automobiles and in which no occupation or business for profit is carried on.
- 11) “Lot” is 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.
- 12) “Non-conforming Use” is a building, structure or use of land existing at the time of the enactment of this chapter and which does not conform to the regulations of the district in which it is located.
- 13) “Setback Building Line” is a building line back of the street line.

- 14) “Structure” is 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.
- 15) “Use” is 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.
- 16) “Yard” is an open space other than a court, on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in this chapter.
- 17) “Yard, Front” is 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.
- 18) “Yard, Rear” is 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.
- 19) “Yard, Side” is 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.

ARTICLE 3 - Establishment of Districts

6.0301 Use and Area Districts Established

For the purposes of this chapter, the City is hereby divided into use districts and area districts as provided hereafter.

6.0302 Maps and Boundaries

The boundaries of these districts are hereby established as shown on a map entitled “The Zoning Map of the City of Kulm” 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.

6.0303 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 residential district until such classification has been changed by an amendment to the zoning ordinances as prescribed by law. “George’s” Addition, “Kramlich’s” Addition, “Janke’s” Addition, “Wolff’s” Addition, and additions brought forth under the Municipal Annexation Act of 1969 are also hereby classified as portions of the City of Kulm.

ARTICLE 4 - Application of Regulations

6.0401 Application of Regulations, Extraterritorial Zoning

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.

6.0402 Extraterritorial Zoning

Pursuant to North Dakota Century Code section 40-47-01.1, the City has chosen to extend its application of the City's zoning regulations to any quarter section of unincorporated territory if a majority of the quarter section is located within one mile(s) of the corporate limits of the City.

ARTICLE 5 - Non-Conforming Uses

6.0501 Non-Conforming Uses

The lawful use of any building, structure or land existing at the time of the enactment of this chapter may be continued, although such use does not conform with the provisions of this chapter, provided the following conditions are met:

- 1) Alterations. A non-conforming building or structure may be altered, improved or reconstructed provided such work is not to an extent exceeding in aggregate cost twenty-five percent (25%) of the assessed value of the building or structure, unless the building or structure is changed to a conforming use.
- 2) Extension. A non-conforming use shall not be extended, but the extension of a lawful use to any portion of a non-conforming building or structure which existed prior to the enactment of this ordinance shall not be deemed the extension of such non-conforming use.

- 3) Changes. No non-conforming building, structure or use shall be changed to another non-conforming use.
- 4) Abandonment. A non-conforming use of a building or premises which has been abandoned shall not thereafter be returned to such non-conforming 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 this chapter.
- 6) Certificate of Non-Conforming Use. Upon the effective date of this chapter, the City Auditor shall issue a "Certificate of Non-Conforming 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, buildings or structures shall be made other than that specified on the "Certificate of Non-Conforming 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 Non-Conforming Use" shall be filed with the office of the City Auditor. No permit or license shall be issued to any property for which a "Certificate of Non-Conforming Use" has been issued until said permit or license has been approved by the zoning commission.
- 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 non-conforming uses existing therein.

ARTICLE 6 - Use Districts

6.0601 Use Districts

The City is hereby divided into the following Use Districts to be known as:

R-1 Residential Districts, Single-Family
R-2 Residential Districts, Two-Family
R-3 Residential Districts, Multi-Family
C Commercial Districts
I Industrial Districts

6.0602 R-1 - Residential Districts - Single Family

In a single-family 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.

6.0603 R-2 - Residential Districts - Two-Family

In a two-family 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.

6.0604 R-3 - Residential Districts - Multi-Family

In a multi-family district the following buildings and uses are permitted:

- 1) All uses permitted and as regulated in a two-family district.
- 2) Multi-family dwellings.
- 3) Private clubs.
- 4) Lodges or social buildings.
- 5) Hotels, motels, tourist camps.

6.0605 Accessory Uses in Residential Districts

The following accessory uses and buildings are permitted in residential districts:

- 1) Professional office for a physician, clergyman, architect, engineer, attorney or similar professional person residing in such main building.

- 2) Home Occupation. Customary home occupation for gain carried on in the main building or a building accessory thereto requiring only home equipment and employing no non-resident help and no trading in merchandise is carried on.
- 3) Agricultural uses, gardens, poultry enclosures, beehives.
- 4) Private garages.
- 5) Any other accessory use customarily incident to a use authorized in a residential district.

6.0606 Commercial District

The following buildings and uses are permitted in the 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.

6.0607 I - Industrial

The following buildings and uses are permitted in the industrial district:

The compounding, assembly, treatment, manufacture, processing and packing of articles or materials shall be permitted in the industrial district.

- a. Uses permitted. All uses permitted in a C - Commercial District.

- b. Uses prohibited. No dwelling or dwelling unit.

ARTICLE 7 - Area Districts

6.0701 Area Regulations - Residential Districts

In any use district no residence building shall hereafter be erected, established or altered on a parcel of land consisting of less than two lots.

ARTICLE 8 – Fences, Hedges and Walls

6.0801 Installation and Maintenance of Fences, Hedges and Walls within City Limits

1. The following structures shall be subject to regulation as provided herein: a fence, hedge, wall, column, pier, post, latticework, screen or any similar structure or any combination of such structures.
2. Property lines shall be properly located and a building permit obtained prior to the installation of any structure as contemplated herein. This shall be the responsibility of the property owner wishing to erect the fence.
3. Permissible fence type shall be determined by city zoning. In areas of mixed zoning, the City Council shall determine which type of fence shall be permitted.
4. All fences, hedges, walls, or similar structures to be erected or maintained on residential property, must meet the following requirements:
 - a. Be a minimum of five (5) feet inches from any public sidewalk or right-of-way (unless otherwise approved by the city council);
 - b. Be a minimum of five (5) feet from the property line unless a written agreement with the abutting landowner is obtained and filed with the City Auditor prior to the construction of any fence. The written agreement must contain the legal description of both properties and be signed and notarized prior to filing with the City Auditor;
 - c. Be erected and maintained at a height and in an area where such structure will not obstruct a clear vision of intersecting roadways or otherwise constitute a traffic hazard;
 - d. Be thirty-six (36) inches or less in height if such structure is solid or closed so as to obstruct vision and if such structure is to be located in a front yard. Front yard is defined as the yard space between the right of way and main entrance of the residence facing the right of way displaying the property address. Open vision type structures, such as chain link fences must be forty-eight (48) inches in height or less when placed

- in a front yard and subject to any other conditions or requirements set forth herein;
- e. Be eight (8) feet or less in height when located in a back yard or side yard of the property, subject to any other conditions or requirements set forth herein; and
 - f. Be accessible by any entity having authority to enter upon the premises, including but not limited to, utilities for the purposes of reading meters.
5. All fences, hedges, or walls erected or maintain on commercial property, must meet the following conditions:
 - a. Be a minimum of five (5) feet from any public sidewalk or right-of-way (unless otherwise approved by the city council);
 - b. Be a minimum of five (5) feet from the property line unless a written agreement with the abutting landowner is obtained and filed with the City Auditor prior to the construction of any fence. The written agreement must contain the legal description of both properties and be signed and notarized prior to filing with the City Auditor;
 - c. Be erected and maintained at a height and in an area where such structure will not obstruct a clear vision of intersecting roadways or otherwise constitute a traffic hazard;
 - d. Be ten (10) feet or less in height, whether such structure is located in a front, side or back yard, subject to any other conditions or requirements set forth herein.
 6. No fence may be constructed of barb wire or electric fence unless said fence is located on commercial property and approval is obtained from the city council prior to the construction of the same.
 7. Any structures shall be constructed and maintained in good condition and repair so as to serve the purpose for which such structure was originally installed. No person shall allow any such structure to become a hazard or danger to animals or human beings or permit the same to become unsightly or otherwise constitute a nuisance.
 8. The use of boxes, sheet metal, old or decayed wood, broken masonry blocks or other unsightly materials is prohibited.
 9. All similar structures now existing within the city limits of the City of Kulm shall be grandfathered in. Any existing structure not otherwise prohibited shall maintain its grandfather status so long as it is maintained using like materials and similar construction to the original structure. If the property owner wishes to significantly alter the original structure, the new structure shall become subject to the requirements of this ordinance.
 10. Any fencing or structure located around athletic facilities and public property shall be exempt from the requirements of this ordinance.

ARTICLE 9 - Enforcement

6.0901 Administration

1. Administrative Official. Except as otherwise provided herein, the City Auditor, subject to the approval of the City Council, 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 met.
2. Building Permit Required. No building or other structure shall be erected, added to, structurally altered on the exterior or demolished, when the value of such exceeds the sum of \$500.00, until a permit therefore has been issued by the City Council. Under no circumstances shall a fence be erected, added to, structurally altered or demolished until a permit under this section has been obtained. All applications for such permits shall be in accordance with the requirements herein and no such building permit or certificate of occupancy, unless otherwise permitted by the City Council, 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. A building permit issued hereunder shall be good for one (1) year from the date of issuance. If work is not completed prior to the expiration of the permit, an additional permit must be obtained before any more work is completed.
 - a. Matter Accompanying Application. There shall be submitted with all applications for building permits a copy of a 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, accessory buildings, fence or other structure to be erected and such other information as may be necessary to determine and provide for the enforcement of this ordinance.
 - b. Payment of Fee. A fee of \$25.00 shall be due at the time an application for a building permit is made under this section.

6.0902 Amendments

The governing board may, from time to time, amend this article 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 City Council upon its own motion, or upon receipt of a request therefore from the City zoning commission or upon receipt of a petition therefore from any interested person or persons or their agents.

- 1) Report by City Zoning Commission - Public Hearing. The governing body shall require a report from the City zoning commission on a proposed amendment before taking final action thereon. The City zoning commission shall thereupon make a

tentative report and hold a public hearing thereon with notice the same required for a public hearing by the governing body, before submitting its final report. Such final report shall be submitted within ninety (90) days after the time of referral of the proposed amendments to the City zoning commission unless the governing body is agreeable to an extension of time.

- 2) Action by Governing Body - Public Hearing. After the receipt of the required final report on any amendment from the City zoning commission or in the event of the failure of the City zoning commission to so report within ninety (90) days following the time of referral of the proposed amendment to the City zoning commission, the governing body shall hold a public hearing, after which the proposed amendment may be passed. Not less than fifteen (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.
- 3) Vote after Protest. If a protest against a change, supplement, modification, amendment or repeal is filed and signed by owners of twenty percent (20%) or more:
 - a) Of the area of the lots included in such proposed change; or
 - b) Of those immediately adjacent in the rear thereof extending 150 feet there from; or
 - c) Of those directly opposite thereto extending 150 feet from the street frontage of such opposite lots.

The amendment shall not become effective except by the favorable vote of three-fourth (3/4) of all the members of the governing body.

6.1003 Enforcement

The erection, construction, reconstruction, alteration, repair, conversion or maintenance of any building or structure or the use of any building, structure, fence or land in violation of this article or of any regulation, order, requirement, decision or determination made under authority conferred by this article, 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 of bureau charged with the enforcement of this article:

- 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.

A violation of any provision of this article or a violation of or refusal or failure to comply with any regulation, order, requirement, decision of determination made under authority conferred by this article shall be punishable as an infraction. Each day the violation continues constitutes a separate violation. (See North Dakota Century Code section 12.1-32-01)

CHAPTER SEVEN

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CHAPTER SEVEN

WATER AND SEWER

ARTICLE 1 - Utility Established

7.0101 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, trunk 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 this City, subject to all ordinances, rules and regulations.

7.0102 City Water and Sewer Department to be Independent Agency

All of the business affairs of the City Water and Sewer Department shall be conducted, insofar as is possible within the ordinances of the City, as a completely separate and distinct division of the City. 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 given credit upon the books of the City for any and all funds paid by it into the City treasury and 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 governing body nor shall transfer be made from City funds to the Water and Sewer Department without like order. (Source: North Dakota Century Code section 40-33-12)

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 ordinance that as soon as the same can be accomplished without undue burden to the water users of this City, the Water and Sewer Department shall be placed upon an entirely independent basis as a separate business enterprise.

7.0103 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 by-products 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 sewerage service to the City and its inhabitants and industries. Said utility shall at all times be under the management and control of the governing body of the City 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.

7.0104 Service Charges - Use of

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 by-products 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, over and above current principal, interest and reserve requirements, in amounts sufficient to provide reasonable allowances for depreciation and replacement of the utility plus a reasonable return on the City's capital investment therein which 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.

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 governing body.

7.0105 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 governing body 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 governing body 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 (20%) 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 governing body 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 twenty percent (20%) of the cost thereof, as determined by the governing body, may be paid by the levy of ad valorem taxes upon all property within the City over the same period as 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.

7.0106 Utility Fund - Separate Accounts

All moneys received by the City in respect of the services, facilities, products and by-products 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 treasure 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 records 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 a 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, 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 (1) and (2) above. The entirety of the said 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 twelve-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 one-twelfth (1/12) of the sum of the principal and interest to become due on all such revenue bonds within the then next succeeding twelve 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 Section (6) hereof, 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 Chapter 40-22 of the North Dakota Century Code. 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 to which such pledges have been made, and cannot be made sufficient by the transfer of 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 governing body 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 therefore 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 Section 40-33-12 of the North Dakota Century Code; 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 7.0107 hereof. 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.

7.0107 Provisions for Financing Capital Improvements

In borrowing money for capital improvements, extensions or additions to said utility the following provisions shall at all time 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 agreed to be levied for the payment thereof.
- 2) Except as provided in parts (3) and (4) below, 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 7.0106 (3) hereof, received during the then next preceding fiscal year, shall have been in an aggregate amount at least equal to 125% 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 sewerage 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 upon the 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% 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 part (2) hereof, 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 therefore.
- 4) The City also reserves the right and privilege of issuing refunding improvement warrants in the manner and to the extent provided in Chapter 40-27 of the North Dakota Century Code 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 of North Dakota, 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 7.0106 hereof.

- 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.

7.0108 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 7.0106 hereof, 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 7.0106 hereof, 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 thereof of any information which any such bond or warrant holder may request, upon payment of a reasonable fee therefore.

- 6) It will cause the annual financial statement of the City required by the provisions of Section 40-16-05 of the North Dakota Century Code to include a statement as to 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 twenty percent (20%) 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 or 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 governing body 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 are 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 7.0105 hereof with reference to any improvements constructed and financed after the effective date of such modification.
- 10) The holders of twenty percent (20%) 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, any 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 governing body 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 Sections 40-35-15 and 40-35-19 of the North Dakota Century Code are hereby acknowledged to be available to the holders of such obligations.

ARTICLE 2 - Water Service

7.0201 Water System

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 this City, and the inhabitants thereof, now owned or to be owned by this City, whether acquired by the issue of general obligation bonds, special assessment warrants or other obligations of this City, shall constitute and be known as the waterworks system.

7.0202 Superintendent of City Water and Sewer Department

A water and sewer utility superintendent shall be appointed by the governing board. If the superintendent is a part-time employee and is also a City employee in some other capacity, only those services respecting the utility shall be an operating charge of the system. It shall be the duty of the superintendent to exercise control and management of the operation of the utility system. The superintendent shall have power and authority to employ, subject to the approval of the governing body, all such engineers, filter plant operators, meter readers, laborers and other employees, as may be necessary to the operation of the utility system. All such employees shall be subject to the orders and directions of the superintendent, and the superintendent shall be responsible for their acts. The superintendent shall have power and authority to purchase such materials, supplies and repairs for the water-sewer system, with the approval of the governing board of the City, as shall be reasonably necessary for the operation of such system. The superintendent 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 superintendent shall at all times be subject to the supervision and direction of the governing board and shall perform such other duties and have such other powers and authority as are hereinafter provided.

7.0203 Same: Reports

The water and sewer utility superintendent shall make monthly reports to the governing body concerning the operation of the department.

7.0204 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 7.0205, 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, the sum of \$150.00 for a residential building, commercial building or multiple dwelling.

7.0205 Water Service - To Property Not Previously Assessed

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 ten (10) years an amount of money as may be therefore determined by the governing body. The amount of the payment shall be based on the area served and benefit resulting to the property involved. Within 30 days of the receipt of such application, the governing body 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.

7.0206 Subsequent Connection to Premises

Any party, other than the original applicant, desiring service for premises where a connection has been made pursuant to Sections 7.0204 and 7.0205 shall make written application therefore as in cases described in Section 7.0204, 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 7.0204 and 7.0205.

7.0207 Separate Connections for each Premise - Exception

Unless special permission is granted by the water and sewer utility superintendent, each premise 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 7.0222.

7.0208 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 whether the same now is outside or inside the incorporated limits of the City. Water service outside the corporate limits of the City may be permitted pursuant to contractual agreement of the governing body arising in limited and extraordinary circumstances but shall be permitted only upon a resolution unanimously adopted by the governing body. (Source: North Dakota Century Code sections 40-33-13 and 40-33-14)

7.0209 Service in Unplatted 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 governing body and recorded in the office of the County Recorder.

7.0210 Water Service - Construction of - Maintenance of by Owner

The cost of original installation of all plumbing between the main and any service devices maintained by the consumer and all extensions made to such plumbing, as well as all repairs, shall be borne entirely by the consumer, although such plumbing and services 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 by such representatives shall be made promptly, of the City will discontinue service.

All services shall be constructed by licensed plumbers at the owner's expense, and each service shall be 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. Services mean the service line running from the point of connection with the City main to the owner's premises.

7.0211 Water Meters - Checked

Every consumer of water shall provide a suitable place where a water meter can be installed and checked, and each consumer shall supply, maintain and change the water meter when necessary.

7.0212 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.

7.0213 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 fifteenth day of the month next succeeding such defective service, or be deemed waived by the claimant. It shall be the duty of the utility superintendent 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 governing body. 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.

7.0214 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.

7.0215 Regulations Governing Service

The following rules and regulations shall be considered a part of the contract with every person who has the capacity to have water and/or sewer service supplied by the City through the city waterworks system and every such person shall be considered to be bound thereby.

- 1) Who Shall be Assessed. Any property with a structure located thereon within the City of Kulm, regardless of whether the same is deemed to be occupied or habitable, shall be assessed the minimum monthly rate for water and all other minimum monthly fees assessed by the City. Said rates shall apply even if the water is turned off or any other service is discontinued for any period of time due to a request of the home owner, tenant, or any other person authorized to make such a request.
- 2) Shutting Off Water - Who Authorized. No person except an authorized employee of the water department shall shut off or turn off the water at the curb cock to any premises without first obtaining permission from the water department.
- 3) 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.
- 4) 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.
- 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 or who has the capacity to be 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 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 in the performance of their official duties shall open or cause to be opened any fire hydrant without the written permission of the water superintendent.
- 7) Water Disconnect/Water Shutoff. A water service disconnect/shutoff will be done, at the request of the owner or by the City of Kulm if payment is not properly made. There will be no fee if the disconnect/shutoff is made during the business hours of 9:00 a.m. to 3:00 p.m., if nonpayment is not an issue. However, if a request is made after 3:00 p.m. during the week, or at any time on the weekend or a holiday, regardless of the reason made, a \$75.00 disconnect/shutoff fee will need to be paid for in full for each service and if voluntarily requested, the customer will have to wait until the next business day for the disconnect/shutoff to be done.
- 8) Water Reconnect. A water service reconnect fee of \$75.00 will need to be paid prior to re-establishing service for any reason and the customer will be required to wait a period of twenty-four (24) hours before the reconnect will be done. Once the water has been scheduled for shut off for past due payments, the entire amount due on that account including the fees assessed for the disconnect and reconnect and any late penalties that have accrued, must be paid in full before the City of Kulm will reestablish water service to that property.
- 9) Water Services Charges. If the water service has been disconnected/shutoff for nonpayment or seasonal purposes, then water, water treatment and sewer charges related to this service will continue to be billed.
- 10) Final Readings. An owner can request a water disconnect/shutoff of service for rental property, however, a renter shall notify the City of Kulm when leaving rental property. If a disagreement arises between the owner and renter concerning the final reading date, the owner shall be responsible for the disputed time period.

7.0216 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 case to which the service is to be connected by the individual, his or her 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.

7.0217 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 superintendent.

7.0218 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 tight fitting 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.

7.0219 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 superintendent 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 fifty pounds per square inch.

7.0220 Use of Water During Fire - Unlawful

It is hereby declared to be unlawful for any person in this 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.

7.0221 Waterworks Customers May Lay Larger Pipes with Hydrants - When

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 to the city auditor and approval by the City governing body.

7.0222 Rates and Charges

Water and sewer rates shall be fixed from time to time by resolution of the governing body 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.

7.0223 Rates and Charges - Liability for

The owner or owners 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 or the city auditor in case any tenant moves from said premises, prior to such moving. On request of the owner or owners, 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 or owners 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.

7.0224 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 or her 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.

7.0225 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 these ordinances.

7.0226 Restriction of Use of Water

The City governing body 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 other uses of the water as may be necessary to preserve an adequate supply of water for consumption and use by the general public.

ARTICLE 3 - Regulation of Sewer Use

7.0301 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.

7.0302 Definitions

Unless the context specifically indicates otherwise, the meaning of the terms used in the article are as follows:

- 1) "BOD" (denoting Biochemical Oxygen Demand) means the quantity of oxygen

utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20 degrees Centigrade, expressed in milligrams per liter.

- 2) "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 (5) feet (1.5 meters) outside the inner face of the building wall.
- 3) "Building Sewer" means the extension from the building drain to the public sewer or other place of disposal, also called house connection.
- 4) "Combined Sewer" means a sewer intended to receive both wastewater and storm or surface water.
- 5) "Easement" means an acquired legal right for the specific use of land owned by others.
- 6) "Floatable Oil" is 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.
- 7) "Garbage" means the animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.
- 8) "Industrial Wastes" means the wastewater from industrial processes, trade or business as distinct from domestic or sanitary wastes.
- 9) "Natural Outlet" means any outlet, including storm sewers and combined sewer overflows, into a watercourse pond, ditch, lake or other body of surface or groundwater.
- 10) "May" is permissive (see "shall," Sec. 18).
- 11) "Person" means any individual, firm, company, association, society, corporation or group.
- 12) "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 7 and a hydrogen-ion concentration of 10^{-7} .
- 13) "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 $\frac{1}{2}$ inch (1.27 centimeters) in any dimension.

- 14) "Public Sewer" means a common sewer controlled by a governmental agency or public utility.
- 15) "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 ground, storm and surface waters that are not admitted intentionally.
- 16) "Sewage" is the spent water of a community. The preferred term is "wastewater," (see "wastewater," Sec. 24).
- 17) "Sewer" means a pipe or conduit that carries wastewater or drainage water.
- 18) "Shall" is mandatory (see "may," Sec. 10).
- 19) "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 fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration or flows during normal operation and shall adversely affect the collection system and/or performance of the wastewater treatment works.
- 20) "Storm Drain" (sometimes termed "storm sewer") means a drain or sewer for conveying water, groundwater, subsurface water or unpolluted water from any source.
- 21) "Superintendent" means the superintendent 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.
- 22) "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.
- 23) "Unpolluted Water" is 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.
- 24) "Wastewater" means the spent water of a community. From the standpoint of source, it 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 storm water that may be present.
- 25) "Wastewater Facilities" means the structures, equipment and processes required to

collect, carry away and treat domestic and industrial wastes and dispose of the effluent.

- 26) “Wastewater Treatment Works” means an arrangement of devices and structures for treating wastewater, industrial wastes and sludge. It is sometimes used as synonymous with “waste treatment plant” or “wastewater treatment plant” or “water pollution control plant.”
- 27) “Watercourse” means a natural or artificial channel for the passage of water either continuously or intermittently.
- 28) “Hearing Board” means that board appointed according to the provisions of Section 7.0209.

7.0303 Use of Public Sewers Required

- 1) 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.
- 2) 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 ordinance.
- 3) 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.
- 4) 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 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 ordinance, within sixty (60) days after date of official notice to do so, provided that said public sewer is within 200 feet (61 meters) of the property line according to the North Dakota plumbing code.

7.0304 When Private Sewage Disposal Permitted

- 1) Where a public sanitary or combined sewer is not available under the provisions of Section 7.0303(4), the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this article.

- 2) Before commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit signed by the superintendent. 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 superintendent. A permit and inspection fee of \$25.00 shall be paid to the City at the time the application is filed.
- 3) A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the superintendent. The superintendent 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 superintendent.
- 4) The type, capacities, location and layout of a private wastewater disposal system shall comply with all recommendations and/or regulations of the North Dakota State Department of Health. No permit shall be issued for any private wastewater 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.
- 5) At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in Section 7.0303(4), a direct connection shall be made to the public sewer within sixty (60) days in compliance with this ordinance, and any septic tanks, cesspools and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.
- 6) 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 Section 23-19-01 of the North Dakota Century Code.
- 7) No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the local health officer.

7.0305 Building Sewers and Connections

- 1) 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 superintendent.
- 2) There shall be two (2) classes of building sewer permits: (a) for residential and commercial service, and (b) for service to establishments producing industrial wastes. In either case, the owner or his or her 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 superintendent. A permit and inspection fee of \$25.00 for a residential or commercial building sewer permit and \$25.00 for an industrial building sewer permit shall be paid to the City at the time the application is filed.

- 3) All costs and expenses 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.
- 4) 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.
- 5) Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the superintendent, to meet all requirements of this ordinance.
- 6) 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.
- 7) 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.
- 8) 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 superintendent and the North Dakota State Department of Health.
- 9) 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 superintendent before installation.

- 10) The applicant for the building sewer permit shall notify the superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the superintendent or his representative.
- 11) 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.

7.0306 Use of Public Sewers

- 1) No person shall discharge or cause to be discharged any unpolluted waters such as storm water, 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 superintendent and the North Dakota State Department of Health.
- 2) Storm water other than that exempted under Section 7.0306(1) 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 North Dakota State Department of Health.
- 3) No person shall discharge or cause to be discharged any of the following described water or wastes to any public sewers:
 - a) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.
 - b) 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.
 - c) 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.
 - d) 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.

- 4) The following described substances, materials, waters or waste shall be limited in discharges to city systems to concentrations or quantities which will not harm 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 superintendent may set limitations lower than the limitations established in the regulations below if in his or her opinion such more severe limitations are necessary to meet the above objectives. In forming his opinion as to the acceptability, the superintendent 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 superintendent are as follows:
 - a) Wastewater having a temperature higher than 150 degrees Fahrenheit (65 degrees Celsius).
 - b) Wastewater containing more than 25 milligrams per liter of petroleum oil, non-biodegradable cutting oils or product of mineral oil origin.
 - c) Wastewater from industrial plants containing floatable oils, fat or grease.
 - d) Any garbage that has not been properly shredded (see Section 7.0302(13)). 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.
 - e) 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 superintendent for such materials.
 - f) Any waters or wastes containing odor-producing substances exceeding limits which may be established by the superintendent.
 - g) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the superintendent in compliance with applicable state or federal regulations.
 - h) Quantities of flow, concentrations or both which constitute a “slug” as defined herein.

- i) 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.
 - j) 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.
- 5) 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 Section 7.0306(4), and which in the judgment of the superintendent, 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 superintendent may:
- a) Reject the wastes;
 - b) Require pretreatment to an acceptable condition for discharge to the public sewers;
 - c) Require control over the quantities and rates of discharge; and/or
 - d) Require payment to cover the added costs of handling and treating the wastes not covered by other sewer charges.

If the superintendent 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 superintendent and the North Dakota State Department of Health.

- 6) Grease, oil and sand interceptors shall be provided when, in the opinion of the superintendent, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts as specified in 7.0306(4)(c), 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 North Dakota 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 superintendent. Any removal and having of the collected materials not performed by owner personnel must be performed by currently licensed waste disposal firms.

- 7) 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 or her expense.
- 8) When required by the superintendent, 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 superintendent. 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.
- 9) The superintendent may require a use of sewer services to provide information needed to determine compliance with this ordinance. These requirements may include:
 - a) Wastewaters discharge peak rate and volume over a specified time period.
 - b) Chemical analyses of wastewaters.
 - c) Information on raw materials, processes and products affecting wastewater volume and quality.
 - d) Quantity and disposition of specific liquid, sludge, oil, solvent or other materials important to sewer use control.
 - e) A plot plan of sewers of the user's property showing sewer and pretreatment facility location.
 - f) Details of wastewater pretreatment facilities.
 - g) Details of systems to prevent and control the losses of materials through spills to the City sewer.
- 10) All measurements, test and analyses of the characteristics of waters and wastes to which reference is made in this ordinance 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 superintendent.
- 11) 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.

7.0307 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 subject to immediate arrest under charge of disorderly conduct.

7.0308 Powers and Authority of Inspectors

- 1) The superintendent 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 ordinance.
- 2) The superintendent 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.
- 3) While performing the necessary work on private properties referred to in Section 7.0308(1), the superintendent 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 7.0306(8).
- 4) The superintendent 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.

7.0309 Hearing Board

- 1) A hearing board, consisting of three (3) members, may be selected as needed for arbitration of differences between the superintendent and sewer users on matters

concerning interpretation and execution of the provisions of this ordinance by the superintendent.

- 2) If a hearing board is used, one member of the board shall be selected to represent the City, one member shall be selected to represent the sewer used involved in the arbitration and the third member shall be acceptable to both parties and shall serve as the chairman in the arbitration.

7.0310 Penalties

- 1) Any person found to be violating any provision of this ordinance except Section 7.0307 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.
- 2) Any person who continues any violation beyond the time limit provided for in Section 7.0310(1), upon conviction thereof, shall be fined in an amount not exceeding one hundred dollars (\$100.00) for each violation. Each day in which any such violation continues shall be deemed a separate offense.
- 3) Any person violating any of the provisions of this ordinance shall become liable to the City for any expense, loss or damage occasioned the City by reason of such violation.

7.0311 Validity

The invalidity of any section, clause, sentence or provision of this ordinance shall not affect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

ARTICLE 4 - Sewer Surcharge

7.0401 Purpose

- 1) The purpose of this article shall be to generate sufficient revenue to pay all costs for the operation and maintenance of the complete wastewater system.
- 2) The definitions set forth in Section 7.0302 of this chapter shall also apply to this article.

7.0402 Determining the Total Annual Cost of Operation and Maintenance

The City or 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.

7.0403 Surcharge Rate Schedule

Residential and commercial users shall be assessed a monthly surcharge of \$6.00 for use of the city's wastewater system. For the purposes of this ordinance, a residential user is any single family residential unit as well as each individual unit in a multi-family dwelling unit, commonly referred to as apartments.

7.0404 Payment of the User's Wastewater Service Charge

The City may submit an annual statement to the user for the user's annual wastewater service charge or one-twelfth of the user's annual wastewater service charge may be included with the monthly water and/or wastewater utility billing. Should any user fail to pay the user wastewater service charge within six (6) months of the due date, the City may stop the wastewater service to the property.

7.0405 Review of Each User's Wastewater Service Charge

The City shall review the total annual cost of operation and maintenance on an annual basis and will revise the system as necessary to assure equity of the service charge system established herein and to assure that sufficient funds are obtained to adequately operate and maintain the wastewater system.

7.0406 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.

ARTICLE 5 - Adoption of State Plumbing Code

7.0501 Adoption

To promote the 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 on (1) 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.

7.0502 Plumbing Code - 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.

7.0503 Plumbing Code - Changes in Existing Installations

The superintendent 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 storm water sewer, or any private sanitary drain, cesspool or privy, which in the superintendent's 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 owner or owners thereof, in accordance with the superintendent's directions, the superintendent 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 the superintendent's direction.

7.0504 Plumbing Code - 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 storm water 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.

ARTICLE 6 - General Penalty Provision

7.0601 Penalty for Violation of Chapter

Any person, firm or corporation violating any of the provisions of this chapter shall be guilty of an infraction and, upon conviction thereof by a court of competent jurisdiction, shall be subject to a fine of not more than one thousand dollars (\$1,000.00) for each violation.

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CHAPTER EIGHT

BUSINESS REGULATIONS AND LICENSES

ARTICLE 1 - General Provisions

8.0101 Licenses - Application

Any person desiring a license or permit under any ordinance of the City shall make a written application to the City therefore upon 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.

8.0102 Licenses - 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 is not authorized to grant any particular application for license or permit, the city auditor shall report such application to the next meeting of the City governing board for their action thereon.

8.0103 Licenses - Term

1. No license or permit shall be granted for a longer period than one (1) year.
2. All yearly licenses or permits shall commence on the first day of January in each year and expire on the last day of December in each year. All semi-annual licenses or permits shall commence on the first day of January and expire on the last day of June or commence on the first day of July and expire on the last day of December.
3. No license or permit shall be valid until signed and sealed nor shall any person be deemed licensed until a license shall be duly issued to that person.
4. Each license shall be dated the day of issuance thereof; but if the applicant or applicants 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 January in the year for which the license shall be issued.
5. 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.

8.0104 Licenses - Not Transferable

No license or permit shall be assignable or transferable except by permission of the City

governing body. 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 (1) place at the same time (except as authorized by a special event permit), 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.

8.0105 Licenses – Revocation

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 governing body. Any person who shall violate any provision of this article relating to his or her license may be proceeded against for any fine or penalty imposed thereby, and that person’s license may be revoked or forfeited in the discretion of the City governing body or the court before which any action may be brought for the recovery of any fine or penalty.

Where not otherwise provided, any license may be revoked by the City governing body at any time for cause. “Cause” includes, but is not limited to, the following:

- 1) Violation of the laws of the State of North Dakota 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 or immoral 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 ceases to be a legal and bona fide citizen of the State of North Dakota.

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.

8.0106 Licenses - Posting of

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.

8.0107 Licenses - Short Term

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

8.0108 Licenses - 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.

ARTICLE 2 - Transient Merchants

8.0201 Definitions

For the purpose of this article:

- 1) "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 and does not 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, lots, tract, railroad car or motor vehicles 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.
- 2) "Merchandise" does not include any livestock or agricultural product. (Source: North Dakota Century Code section 51-04-01)

8.0202 License Required

It shall be unlawful to do business in the City as a transient merchant without having first secured a license therefore 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.

8.0203 License Fee

The license fee to be required of all transient merchants for the transaction of such business

within the City is hereby fixed at the sum of \$25.00 per day for each and every day during which any such transient merchants shall transact business in the City. (Source: North Dakota Century Code section 51-04-09)

8.0204 License - Application for

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 if a partnership and by the president if a corporation, showing:

- 1) 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 or persons having the management or supervision of 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 applicant has been engaged in the previous two (2) years;
- 4) The residence, business address and type of business in which the person having the management or supervision of applicant's business has been engaged in the previous two (2) years;
- 5) The place or places in the City, where it is proposed to carry on 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 direct sale and by taking orders for future delivery; where the goods or property proposed to be sold are manufactured or produces, and where such goods or products are located at the time the application is filed. (See North Dakota Century Code section 51-04-02)

8.0205 Bond

Before any license shall be issued to a transient merchant for engaging in business in this City, the applicant therefore shall file with the city auditor a bond running to the City in the sum of \$1,000 executed by the applicant, as principal, and a responsible surety upon which service of

process may be made in the State of North Dakota; said bond not to be revocable nor to terminate prior to passage of two years 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 to 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 of North Dakota, regulating and concerning the sale of goods, wares and merchandise. The bond must be conditioned to pay all judgments rendered against the applicant for any violation of city ordinances or state statutes, together with all judgments and costs that may be recovered against the applicant by any person or persons 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.

8.0206 Service of Process

Before any license as herein provided shall be issued for engaging in business as a transient merchant, as herein defined, in this City, such applicant shall file with the city auditor an instrument nominating and appointing the city auditor as a 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 this 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 to the licensee by registered mail, at the licensee's last known address, a copy of said process.

8.0207 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.

8.0208 Transfer

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

8.0209 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. The city auditor shall deposit with the chief of police a record of each license number, together with the location within the City of the business licensed, to assist and promote such enforcement.

8.0210 Revocation

- 1) Any license issued pursuant to this article may be revoked by the City governing body after notice and hearing for any of the following causes:
 - a) Any fraud, misrepresentation or false statement contained in the application for license;
 - b) Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares or merchandise;
 - c) Any violation of this article;
 - d) Conviction of the licensee of any felony or of a misdemeanor involving moral turpitude; or
 - e) 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.
- 2) 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 or her last known address at least five (5) days prior to the date set for the hearing.

8.0211 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 therefore.

ARTICLE 3 - Hawkers and Peddlers

8.0301 Definitions

The word “person” as used herein includes the singular and the plural and means and includes any person, firm or corporation, association, club, co-partnership or society or any other organization. The words “hawker” and “peddler” as used herein include any person, whether a resident of the City or not, traveling by foot, wagon, automotive vehicle or any other type of conveyance from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares or merchandise, offering and exposing the same for sale, or making

sales and delivering articles to purchasers. The words “hawker” and “peddler” also include any person who, without traveling from place to place, shall sell or offer the same for sale from an automotive vehicle, railroad car or other vehicle or conveyance. One who solicits as a part of a scheme or design to evade the provisions of this article is deemed a hawker or peddler subject to the provisions of this article.

8.0302 License Required

It shall be unlawful for any person to engage in the business of hawker or peddler of any merchandise, article or thing without having first secured a transient merchant license as provided for under Section 8.0202.

ARTICLE 4 - Runners, Solicitors and Canvassers

8.0401 Definitions

A “runner,” “canvasser” or “solicitor” is defined as any individual, whether resident of the City or not, traveling either by foot, wagon, automobile, motor truck or any other type of 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 definition shall include any person who, for himself, or for another person, firm or corporation hires, leases, uses or occupies any building, structure, tent, railroad boxcar, boat, hotel room, lodging house, apartment, shop or any other place within the City for the sole purpose of exhibiting samples and taking orders for future delivery.

8.0402 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 transient merchant license as provided for under Section 8.0202.

ARTICLE 6 - Alcoholic Beverages

8.0601 Definitions

For the purpose of this article:

- 1) “Alcoholic beverages” means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.
- 2) “Beer” means any malt beverage containing more than one-half of one percent of alcohol by volume.
- 3) “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.

- 4) "Liquor" means any alcoholic beverage except beer.
- 5) "Person" means and includes any individual, firm, corporation, association, club, co-partnership, society or any other organization; and shall include the singular and the plural.
- 6) "Sale" and "sell" mean all manner or means of furnishing alcoholic beverages, including the selling, exchange, barter, disposition of and keeping for sale of such alcoholic beverages.
- 7) "Package" and "original package" mean and include 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.
- 8) "Club" or "lodge" includes any corporation or association organized for civic, fraternal, social or business purposes or the promotion of sports, which has at least 200 members at the time of application for license.
- 9) "Retail sale" means the sale of alcoholic beverages for use or consumption and not for resale.
- 10) "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.
- 11) "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. (See North Dakota Century Code section 5-01-01)

8.0602 Exceptions

- 1) This article shall not apply to wines delivered to priests, rabbis and ministers for sacramental use.
- 2) This article shall not be construed to apply to the following articles, when they are unfit for beverage purposes:
 - a) Denatured alcohol produced and used pursuant to Acts of Congress and the

regulations there under.

- b) Patent, proprietary, medical, pharmaceutical, antiseptic and toilet preparations.
- c) Flavoring extracts, syrups and food products.
- d) Scientific, chemical and industrial products; nor to the manufacturer or sale of said articles containing alcohol.

8.0603 License Required

No person shall sell at retail within the city limits of this City any alcoholic beverage without first having obtained a license therefore as herein provided. This section shall not apply to public carriers engaged in interstate commerce.

8.0604 Licenses - Classes of - Fees (Source: North Dakota Century Code section 5-02-03)

The fee for an on and off sale liquor license is \$2000.00 per year.

The fee for an on and off sale beer license is \$300.00 per year.

8.0605 Licenses - Terms of

- 1) All licenses issued hereunder shall be for a period of not more than one (1) year and shall expire on the 31st day of December in each year. Where a license is granted for a period less than one (1) year, any subsequent renewal thereof must be made for the full annual term.
- 2) 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 days which said license will be in effect.

8.0606 License - Qualifications for (Source: North Dakota Century Code section 5-02-02)

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

- 1) Applicant, if an individual, must be a legal resident of the United States, a resident of the State of North Dakota and a person of good moral character.
- 2) If applicant is a corporation or limited liability company, the manager of the licensed premises and the officers, directors, shareholder, or members must be legal residents of the United States and persons of good moral character. Corporate and

limited liability applicants must first be properly registered with the North Dakota Secretary of State.

- 3) If applicant is a limited or general partnership, the manager of the licensed premises and all of the members must be legal residents of the United States and of good moral character. Partnership applicants, except a general partnership, must first be properly registered with the North Dakota Secretary of State.
- 4) The applicant or manager must not have been convicted of an offense determined by the North Dakota Attorney General to have a direct bearing upon an applicant's or manager's ability to serve the public as an alcoholic beverage retailer.
- 5) Building in which business is to be conducted must meet local and state requirements regarding the sanitation and safety.
- 6) The applicant for a state license must have first secured a local license.
- 7) The applicant may not have any financial interest in any wholesale alcoholic beverage business.

8.0607 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 governing body, 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 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 of North Dakota, the date the applicant first began to operate.
- 6) 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.
- 7) 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.
- 8) 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 therefore.
- 9) Whether the applicant has ever been convicted of any other crime than stated in subsections (8) and (9) hereof, in this 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.
- 10) The name and address and the place of residence for a period of 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.
- 11) 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.
- 12) 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 of North Dakota, 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.
- 13) The occupations that the applicant has followed during the past five years.
- 14) The names and addresses of at least three business references.
- 15) Whether the applicant is rated by any commercial agency, and if so, the name and

address of said agency.

- 16) 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.
- 17) The classification of license applied for.
- 18) If the applicant is a lodge or a 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 governing body a list of the members belonging to such lodge or club.
- 19) 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 this City or of the State of North Dakota.

8.0608 License - Application Fitness

The chief of police or such other person or officer as may be designated by the governing body 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 governing body.

8.0609 License - Location of

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 City governing body. The application for approval shall be in writing and shall be filed with the City governing body. At the time of hearing, the City governing body 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 protests of neighboring property owners or occupants.

- 6) Zoning regulations.
- 7) Proposed on- or off-sale or both licensees.
- 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.

8.0610 License - Granting

After the City governing body has received the application as provided herein, they shall meet and consider the same. If the City governing body finds 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 the City governing body finds 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 governing body or they may reject the application.

8.0611 License - Limit to One Location

Each license shall be valid only for the specific premises licensed.

8.0612 License - Posting of

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

8.0613 License - Transfer of

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.

8.0614 License 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.

8.0615 Hours and Time of Sale - Penalty

Anyone who dispenses or permits the consumption of alcoholic beverages on a licensed premises after one a.m. on Sundays, before eight a.m. on Mondays or between the hours of one a.m. and eight a.m. on all other days of the week or who dispenses or permits such consumption on

Christmas Day, after six p.m. on Christmas Eve, or provides off sale service after one a.m. on Thanksgiving Day, unless otherwise extended by the City Council consistent with North Dakota law, is guilty of an offense which is punishable by a fine of up to three thousand dollars (\$3,000.00) and possible suspension or revocation of license. (Source: North Dakota Century Code sections 5-02-03, 5-02-05, 5-02-05.1, and 5-02-09).

8.0616 Licensee's Responsibility

Every licensee is hereby made responsible for the conduct of the licensee's 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.

8.0616.1 Sunday Alcoholic Beverage Permit - Penalty

Anyone licensed by the City governing body to sell alcoholic beverages may apply to the City governing body for a permit to sell alcoholic beverages under that license during the hours from twelve noon on Sundays to one a.m. on Mondays. The authority for issuing the permit rests solely with the City governing body. The fee for this permit is five dollars for each Sunday the licensee is allowed to sell alcoholic beverages. (Source: North Dakota Century Code sections 5-02-03, 5-02-05, and 5-02-05.1).

Anyone who dispenses, sells or permits the consumption of alcoholic beverages in violation of this ordinance, or who furnishes false or misleading information in applying for a permit is guilty of an offense which is punishable by a fine of up to three thousand dollars (\$3,000.00) and possible suspension or revocation of license. (Source: North Dakota Century Code Section 5-02-05.1, 5-02-09)

8.0617 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. 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 governing body or license issued by the State of North Dakota.

8.0618 Cashing Certain Checks Prohibited

No licensee hereunder shall cash any bank check, voucher, order or document of any kind drawn by a county welfare board or any state or federal agency in payment for wages made for work done on any so-called work relief project, or for relief purposes, which by its terms authorizes or permits any person presenting such bank check, voucher, order or document to receive payment of money.

8.0619 Sales Prohibited - Persons

No licensee, his or her agent or employee shall sell any alcoholic beverages to a person under twenty-one (21) years of age, a habitual drunkard, an incompetent or an intoxicated person.

8.0620 Minors in Licensed Premises

No licensee shall permit any person under twenty-one (21) years of age to remain on the licensed premises while alcoholic beverages are being sold or displayed thereon, except that a person under twenty-one (21) years of age may remain in a restaurant where alcoholic beverages are being sold if the restaurant is separate from the room in which alcoholic beverages are opened or mixed. (Source: North Dakota Century Code section 5-02-06)

8.0621 Age Identification

Before selling alcoholic beverages to any person, or before determining whether any person shall remain upon the licensed premises a licensee, his or her agent or employee may require a statement in writing and signed by said person of such person's age. 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 article.

8.0622 Street Sales Prohibited

The sale or consumption of alcoholic beverages upon or across any street, alley or public way is prohibited.

8.0623 Premises, Equipment of

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.

8.0624 Closed or Screened Areas

No premises licensed for on-sale of 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.

8.0625 Purchases 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 of North Dakota pursuant to the provisions of Title 5 of the North Dakota Century Code. Each licensee hereunder shall keep on file all invoices covering purchases of such alcoholic beverages showing the name and license number of the wholesaler. Such records 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 of North Dakota.

8.0626 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.

8.0627 Deliveries - Off Licensed Premises

- 1) 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.
- 2) 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.

8.0628 Termination or Revocation of Licenses

- 1) Licenses issued pursuant to this article shall be deemed cancelled and terminated upon the happening of any one or more of the following contingencies:
 - a) The death of the licensee unless upon application to the City governing body by personal representative of the decedent, the City governing body consents to the carrying on of the business by the personal representative.
 - b) When the licensee ceases business at the location licensed, unless a new location has been approved.
 - c) When the licensee is adjudged bankrupt.
 - d) When the licensee has been convicted of the violation of any provision of this article, or of the laws of the State of North Dakota pertaining to alcoholic beverages or of a felony under the laws of the United States, the State of North Dakota or of any other state of the United States.
 - e) When the licensee ceases to possess the qualifications required of an applicant for a license as set out in this article.
 - f) When the license or permit of the licensee from the United States Government or the State of North Dakota to sell alcoholic beverages at the location licensed has been terminated or revoked.

- g) When the licensee ceases to be a legal bona fide resident and citizen of the State of North Dakota.
- 2) License issued pursuant to this ordinance may, in the discretion of the governing body, be either revoked or suspended for such period of time as deemed appropriate, upon the following grounds:
 - a) When the licensee has been convicted of violating any of the provisions of this article.
 - b) 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.
 - c) 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, be convicted in the municipal court of the City or the District Court of drunkenness or disorderly conduct, or if any appeal is taken from such conviction then when such conviction is sustained by the higher court(s).
- 3) Such causes as are hereinbefore detailed shall not be deemed to be exclusive and a license may also be cancelled and revoked or suspended at any time by the City governing body for any cause deemed by the City governing body 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 of North Dakota.
- 4) When any license is terminated or revoked for cause, or the licensee voluntarily ceases business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through the licensee.

8.0629 Penalties

Any person, firm, corporation or association violating any of the provisions of this article shall upon conviction thereof, be subject to a fine of not to exceed three thousand dollars (\$3,000.00). In addition, all powers, right and privileges given by any license granted under the terms of this article may be terminated or revoked in accordance with Section 8.0628.

ARTICLE 7 - Shows, Carnivals and Circuses

8.0701 License Required

No person, firm, association or corporation shall exhibit or cause to be exhibited or assist in exhibiting any natural or artificial curiosity or conduct a circus, tent show, carnival or carnival show, continuous theatrical performance, or other like exhibition without first obtaining a license

from the City.

8.0702 Fees for

The fees to secure license to conduct the exhibitions under Section 8.0701 shall be as follows:

Any show, carnival or circus - per day: \$25.00

In addition to the above fees, any show, carnival or circus granted a license shall deposit with the city auditor a cash deposit in the amount of \$500.00 guaranteeing that the premises upon which such show, carnival or circus is located shall be cleaned after the completion of such show, carnival or circus. Upon determination of the City that the same premises have been cleaned, the cash deposit shall be returned to the licensee. Provided, further, that in addition to such fees, an additional fee in an amount from \$20.00 to \$1,000.00, to be fixed by the City governing body, shall be paid at the time of obtaining the license to provide for fire and police protection in connection with such show, carnival or circus.

ARTICLE 8 - Validity

8.0801 Validity

If any section, part, article or provision of this chapter or the application thereof to any person, firm, corporation or association or to any circumstances shall be held to be invalid for any cause whatsoever, the remainder of this ordinance or the application to persons, firms, corporations or circumstances shall not be affected thereby, and shall remain in full force and effect as though no part thereof had been declared to be invalid.

ARTICLE 9 - Penalty

8.0901 Penalty

Any person, firm, corporation or association violating any of the terms, articles or provisions of this chapter, for which a specific penalty is not prescribed, shall upon conviction thereof, be punished by a fine not to exceed one thousand dollars (\$1,000.00). The court may, in addition thereto, revoke the permit or license of such violator, or terminate or revoke all powers, rights and privileges given by any license granted under the terms of this chapter. Each day or part thereof that a person shall be in violation of the provisions of this chapter shall be considered a separate violation.

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CHAPTER NINE

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ARTICLE 1 – Definitions

9.0101 Definitions

Words and phrases used in this chapter shall have the meaning and be defined as provided in Title 39 of the North Dakota Century Code, and North Dakota Century Code section 39-01-01 and all subsequent amendments are hereby incorporated by reference in this ordinance.

ARTICLE 2 – Traffic Administration

9.0201 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 other officers of the City in the administration of the traffic laws and in developing ways to improve traffic conditions and carry out the traffic ordinances of the City.

9.0202 Records of Traffic Violations

- 1) 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. Each 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.
- 2) 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.
- 3) All such records and reports shall be public record.

9.0203 Police Department to Investigate Accidents

It shall be the duty of the police department to investigate traffic accidents and to arrest and assist in the prosecution of those persons charged with violations of law causing or contributing to such accidents.

Every law enforcement officer, who in the regular course of duty investigates a motor vehicle accident required to be reported as provided in Section 9.0309, 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 North Dakota Department of Transportation.

ARTICLE 3 – Enforcement and Obedience to Traffic Regulations

9.0301 Authority of Police and Fire Department Officials

- 1) 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 this City and all of the state vehicle laws.
- 2) 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.
- 3) Officers of the fire department, when at the scene of a fire, may direct or assist the police in directing traffic.

9.0302 Obedience to Traffic Ordinances

It shall be unlawful for any person to do any act prohibited by this Chapter or fail to perform any act required by this Chapter, and upon conviction of a violation of any of the provisions of this Chapter every person shall be punished as provided in Article 27 of this Chapter.

9.0303 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 regulation traffic.

9.0304 Certain Non-motorized Traffic to Obey Traffic Regulations

- 1) 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 ordinance 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.
- 2) Every person riding a bicycle or 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 ordinance, except those provisions of this ordinance which by their very nature can have no application.

9.0305 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 at 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.

9.0306 Public Employees to Obey Traffic Regulations

The provisions of this ordinance shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, township, school district or any other political subdivision, subject to such specific exceptions as are set forth in this ordinance or in state law.

9.0307 Emergency Vehicles

The provisions of NDCC sections 39-10-03, 39-10-03.1, and 39-10-03.2 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) Authorized emergency vehicles. Class A authorized emergency vehicle shall mean:
 - a) Vehicles of a governmentally owned fire department;
 - b) Vehicles when operated by or under the control of a police officer having authority to enforce the provisions of this title pertaining to all motor vehicles or by a salaried employee of any municipal police department within the municipality or by any sheriff or deputy sheriff not including special deputy sheriffs, or by the director of the department of corrections and rehabilitation and the director's authorized agents who have successfully completed training in the operation of Class A authorized emergency vehicles;
 - c) Vehicles clearly identifiable as property of the department of corrections and rehabilitation when operated or under the control of the director of the department of corrections and rehabilitation;
 - d) Ambulances;
 - e) Vehicles operated by or under the control of the director, district deputy director, or a district deputy game warden of the North Dakota Game and Fish Department;
 - f) Vehicles owned or leased by the United States and used for law enforcement purposes;
 - g) Vehicles designated for the use of the adjutant general or assistant adjutant

general in cases of emergency;

- h) Vehicles operated by or under the control of the director of the North Dakota Parks and Recreation Department;
- i) Vehicles operated or under the control of a licensed railroad police officer and used for law enforcement purposes;
- j) Vehicles operated by or under the control of the North Dakota State Forester. (Source: North Dakota Century Code section 39-01-01)

2) The driver of a Class A authorized emergency vehicle may:

- a) Park or stand, irrespective of the provisions of this chapter;
- b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
- c) Exceed the speed limit so long as he does not endanger life or property;
- d) Disregard regulations governing directions of movement or turning in specified directions.

3) The exceptions herein granted to a Class A authorized emergency vehicle shall apply only:

- a) When the authorized emergency vehicle is in pursuit of or apprehension of a violator or a suspected violator requiring the use of these exemptions;
- b) When the Class A authorized emergency vehicle in being operated in response to a reported emergency involving a possible personal injury, death, or damage to property, and when giving adequate warning by use of a flashing red or combination red and white lights that are visible under normal atmospheric conditions for at least five hundred feet (152.4 meters) and if appropriate, giving audible signal by siren or air horn. A law enforcement vehicle that is otherwise a Class A authorized emergency vehicle may display a flashing blue light in addition to and under the same conditions as the other colors allowed in this subdivision;
- c) In any instance when the head of the law enforcement agency deems advisable within the area of that person's jurisdiction for the protection of person and property and when giving audible signal by siren or when giving adequate warning by use of a flashing red or combination red and white lights which are visible under normal atmospheric conditions for at least five hundred feet (152.4 meters). A law enforcement vehicle that is otherwise a Class A authorized emergency vehicle may display a flashing

blue light in addition to and under the same conditions as the other colors allowed in this subdivision.

- 4) An emergency vehicle may not display or permit to be displayed any red lamp except when operated on official business.
- 5) Any law enforcement officer as provided in paragraph 2 of subdivision a of subsection 2 of Section 39-01-01 of the North Dakota Century Code having stopped another vehicle along a highway, and while still involved in that incident, or any other such activity, may use amber lights, visible under normal atmospheric conditions for at least five hundred feet (152.4 meters), for the purpose of maintaining traffic flow.
- 6) Class B authorized emergency vehicles shall mean wreckers and such other emergency vehicles as are authorized by local authorities. (Source: North Dakota Century Code section 39-01-01)
- 7) The driver of Class B authorized emergency vehicles may:
 - a) Park or stand, irrespective of the provisions of this chapter;
 - b) Exceed the speed limit so long as he does not endanger life or property during the time of a local or national disaster;
 - c) Disregard regulations governing direction of movement or turning in specified directions.
- 8) The exceptions herein granted to a Class B authorize emergency vehicle shall apply only when the authorized emergency vehicle is displaying an amber light visible under normal atmospheric conditions for a distance of five hundred feet (152.4 meters) in any direction, and
 - a) When it is necessary for the authorized emergency vehicle to use these exemptions for the immediate protection of life or property;
 - b) When an authorized emergency vehicle is stopped on a highway for the purpose of performing a duty as required of the driver; or
 - c) When traveling at a speed slower than the normal flow of traffic. (Source: North Dakota Century Code section 39-10-03.1)
- 9) Class C authorized emergency vehicles means:
 - a) Vehicles authorized by the state division of homeland security or local division of emergency management organizations;

- b) Vehicles used by volunteer firefighters while performing their assigned disaster and emergency responsibilities.
 - c) Vehicles other than ambulance, used by emergency medical services personnel. (Source: North Dakota Century Code section 39-01-01)
- 10) Class C authorized emergency vehicles. All Class B specifications apply to Class C authorized emergency vehicles except that a rotating blue flashing light shall be displayed in place of an amber light as provided in section 39-10-03.1 of the North Dakota Century Code. With respect to vehicles used by state and local disaster emergency services personnel, the division of homeland security is responsible for adopting rules for the use of flashing blue lights in accordance with chapter 28-32 of the North Dakota Century Code. (Source: North Dakota Century Code section 39-10-03.2)

9.0308 Operation of Vehicles on Approach of Authorized Emergency Vehicles - Penalty

The provisions of NDCC section 39-10-26 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) Upon the immediate approach of an authorized emergency vehicle displaying a visible flashing, revolving, or rotating blue, white, or red light, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb or the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.
- 2) Whenever an emergency vehicle is parked or stopped at the scene of an emergency and is displaying a flashing, revolving, or rotating blue, white, or red light, approaching traffic shall move to the right-hand edge or curb of the roadway and shall stop, but once having stopped, traffic may proceed past the scene at its own risk when the roadway is clear, except when otherwise directed by a police officer.
- 3) This section shall not operate to relieve the driver of any authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highways.
- 4) Any individual who violates subsection 2 and causes an accident with an authorized emergency vehicle while the authorized emergency vehicle is displaying a visible flashing, revolving, or rotating amber, blue, or red light is guilty of an infraction.

- 1) Immediate notice of accident. The driver of a vehicle involved in an accident resulting in injury to or death of any person or at least one thousand dollars, shall immediately give notice of the accident to the local police department if the accident occurs within the City. The name of the motor vehicle insurance policy carrier and the policy number of the driver, or if the driver is not the owner of the vehicle, then the motor vehicle insurance policy carrier and the policy number of the owner of the vehicle, must be furnished to the law enforcement officer investigating the accident. If the driver does not have the required information concerning insurance to furnish to the investigating law enforcement officer, then within five (5) days of the accident the driver shall supply that information to the Driver's License Division in the form the division requires. (Source: North Dakota Century Code section 39-08-09)
- 2) Officer to report. Every law enforcement officer, who in the regular course of duty investigates a motor vehicle accident required to be reported as provided in subsection 1 either at the time and at the scene of the accident or thereafter by interviewing the participants, or witnesses, shall make and promptly forward to the director of the Department of Transportation a report of the accident in a format prescribed by the director. (Source: North Dakota Century Code section 39-08-10)
- 3)
 - a) An accident notice is not required from any person who is physically incapable of making the report during the period of such incapacity.
 - b) Whenever the driver of a vehicle is physically incapable of giving an immediate notice of an accident and there was another occupant in the vehicle at the time of the accident capable of doing so, such occupant shall make or cause to be given the notice not given by the driver.
 - c) Whenever the driver is physically incapable of giving notice of an accident and such driver is not the owner of the vehicle, then the owner of the vehicle involved shall within five (5) days after learning of the accident give such notice and insurance information not given by the driver. (Source: North Dakota Century Code Section 39-08-11)
- 4) Garages to report. The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in a reportable accident as provided in Section 9.0309(1) or of being struck by any bullet, shall report or cause a report to be made to a police officer within twenty-four (24) hours after such motor vehicle is received, and before any repairs are made to such vehicle, giving the registration number and the name and address of the owner, operator, or person in control of such vehicle with a description of the location and type of damage to the vehicle, or any missing parts, if the vehicle does not have a sticker on a window thereof issued by a police officer, sheriff or highway patrolman bearing information to show that the accident in which the vehicle was

involved had been investigated. The police officer investigating any reportable accident shall attach a sticker to the window of any damaged vehicle showing that the accident in which such vehicle was involved has been investigated. If the vehicle does bear such a sticker the garage or repair shop need not make the report this section requires and may begin repairs immediately. After repairs have been made and before the vehicle is released, the sticker provided herein must be removed. (Source: North Dakota Century Code section 39-07-12)

- 5) Wrecker and towing services to report. The person in charge of the operator of any commercial towing or wrecker service which causes any motor vehicle to be transported to a private residence or business other than a garage or repair shop which show evidence of having been involved in a reportable accident as provided in section 39-08-09 or of being struck by any bullet shall report or cause a report to be made to a police officer within twenty-four hours after such motor vehicle is transported. The report must give the registration number, and the name and address of the owner, operator, or person in control of such vehicle with a description of the location and type of damage to the vehicle, or any missing parts, along with the location such vehicle was transported to, if the vehicle does not have a sticker on a window thereof issued by a police officer, sheriff, or highway patrolman, bearing information to show that the accident in which the vehicle was involved has been investigated. If the vehicle does bear such a sticker the towing or wrecker service need not make the report this section requires. (Source: North Dakota Century Code section 39-07-13)

ARTICLE 4 – Traffic Control Devices

9.0401 Authority to Install

The city engineer or any person authorized by the City governing body shall place and maintain traffic-control signs, signals, and devices when and as required under the traffic ordinances of this City to make effective the provisions of said ordinances, and may place and maintain such additional traffic-control devices as necessary to regulate traffic under the traffic ordinances of this City or under state law, or to guide or warn traffic.

9.0402 Specifications for

All traffic-control signs, signals, and devices shall conform to the specifications approved by the director of the North Dakota Department of Transportation pursuant to North Dakota Century Code section 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 article shall be official traffic-control devices.

9.0403 Obedience to Traffic-Control Devices

The provisions of North Dakota Century Code section 39-10-04 and all subsequent

amendments are hereby incorporated by reference in this ordinance.

- 1) The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter.
- 2) No provision of this chapter for which traffic-control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a state statute does not state that devices are required, such statute shall be effective even though no devices are erected or in place.
- 3) Whenever official traffic-control devices are placed in position approximately conforming to the requirements of state law, such devices shall be presumed to have been so placed by the official act or direction of lawful authority unless the contrary shall be established by competent evidence.
- 4) Any official traffic-control device placed pursuant to the provisions of state law and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of the chapter, unless the contrary shall be established by competent evidence.

9.0404 Unauthorized Signs

The provisions of North Dakota Century Code section 39-10-07.2 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) No person may place, maintain, or display upon or in view of any highway, any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of an official traffic-control device or any railroad sign or signal.
- 2) No person may place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.
- 3) This section may not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.
- 4) Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice when

located on highway right of way.

- 5) No person may place, maintain, or display upon or within the right of way of any highway any sign, post, pole, mailbox, or signal which has a red lamp or red reflector visible to traffic. The provisions of this subsection shall not apply to official traffic devices, lamps, or reflectors on motor vehicles or bicycles, or railroad signals or signs.
- 6) This section does not prohibit the use of portable battery-powered warning devices emitting a flashing red light placed upon a highway to alert oncoming traffic to a disabled or stopped motor vehicle.

9.0405 Interference with Official Traffic Control Device or Sign

The provision of North Dakota Century Code section 39-10-07.3 and all subsequent amendments are hereby incorporated by reference in this ordinance.

A person may not, without lawful authority, attempt to or in fact alter, deface, injure, knock down, remove, or interfere with the operation of any official traffic-control device or any railroad sign or signal or any inscription, shield, or insignia thereon, or any other part thereof.

9.0406 Designation of Walks, Lanes, etc.

The city engineer or any person authorized by the City governing body 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 governing body.
- 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 governing body.
- 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.

ARTICLE 5 – Speed Regulations and Care Required

9.0501 Basic Rules – Penalty for Violation

The provisions of North Dakota Century Code section 39-09-01 and all subsequent

amendments are hereby incorporated by reference in this ordinance.

No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions. Any person who shall drive a vehicle upon a highway or private or public property open to the public for the operation of motor vehicles without heed to the requirements or restrictions of this section has committed careless driving, and must be assessed a fee of thirty dollars (\$30.00).

Any person who, by reason of careless driving as herein defined, causes and inflicts injury upon the person of an operator of snow removal equipment engaged in snow removal operations or causes damage in excess of one thousand dollars to snow removal equipment engaged in snow removal is guilty of an infraction.

As used in this section, “snow removal equipment” means a vehicle that is operated by a person employed by or on behalf of an authority in charge of the maintenance of the highway to perform winter maintenance snow and ice removal, including plowing, hauling away, salting, and sanding.

9.0502 Speed Limitations

The provisions of North Dakota Century Code section 39-09-02 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) Subject to the provisions of 9.0501 and except in those instances where a lower speed is specified in this chapter, it presumably shall be lawful for the driver of a vehicle to drive the same at a speed not exceeding:
 - a) Twenty (20) miles an hour when approaching within fifty (50) feet of a grade crossing of any steam, electric, or street railway when the driver’s view is obstructed. A driver’s view is deemed to be obstructed when at any time during the last two hundred (200) feet of the driver’s approach to such crossing, the driver does not have a clear and uninterrupted view of such railway crossing and of any traffic on such railway for a distance of four hundred (400) feet in each direction from such crossing;
 - b) Twenty (20) miles an hour when passing a school during school recess or while children are going to or leaving school during opening or closing hours;
 - c) Twenty (20) miles an hour when approaching within fifty (50) feet and in traversing an intersection of highways when the driver’s view is obstructed.

A driver's view is deemed to be obstructed when at any time during the last fifty (50) feet of the driver's approach to such intersection, the driver does not have a clear and uninterrupted view of such intersection and of the traffic upon all of the highways entering such intersection for a distance of two hundred (200) feet from such intersection;

- d) Twenty (20) miles an hour when the driver's view of the highway ahead is obstructed within a distance of one hundred (100) feet;
 - e) Twenty-five (25) miles an hour on any highway in a business district or in a residence district or in a public park, unless a different speed limit is designated and posted by local authorities; and
 - f) Fifty-five (55) miles an hour under other circumstances, unless otherwise permitted, restricted, or required by conditions.
 - g) Sixty-five (65) miles an hour on paved two-lane highways of posted for that speed, unless otherwise permitted, restricted, or required by conditions.
 - h) Seventy (70) miles an hour on paved and divided multilane highways, unless otherwise permitted, restricted, or required by conditions.
 - i) Seventy-five (75) miles an hour on access-controlled, paved and divided, multilane interstate highways, unless otherwise permitted, restricted, or required by conditions.
- 2) Except as provided by law, it is unlawful for any person to drive a vehicle upon a highway at a speed that is unsafe or at a speed exceeding the speed limit prescribed by law or established pursuant to law.
- 3) In charging a violation of the provisions of this section, the complaint must specify the speed at which the defendant is alleged to have driven and the speed which this section prescribes is prima facie lawful at the time and place of the alleged offense.

9.0503 When Local Authorities May or Shall Alter Maximum Speed – Limits –
Signs Posted

The provisions of North Dakota Century Code section 39-09-03 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) Whenever the City, on the basis of an engineering and traffic investigation, determines that the maximum speed permitted under this title is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the City may determine and declare a reasonable and safe maximum limit thereon which:

- a) Decreases the limit at intersections;
 - b) Increases the limit within an urban district but not to more than fifty-five (55) miles per hour; or
 - c) Decreases the limit outside an urban district.
- 2) The City shall determine by an engineering and traffic investigation the proper maximum speed for arterial streets and shall declare a reasonable and safe maximum limit thereon which may be greater or less than the minimum speed permitted under this chapter for an urban district.
 - 3) Any altered limit established as hereinabove authorized shall be effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice thereof are erected upon such street or highway.
 - 4) Any alteration of maximum limits on state highways or extensions thereof in the City may not be effective until such alteration has been approved by the director of the North Dakota Department of Transportation.
 - 5) Not more than six such alterations as hereinabove authorized shall be made per mile along a street or highway except in the case of reduced limits at intersections, and the difference between adjacent limits shall not be more than ten (10) miles per hour.

9.0504 Speed Limitations Inapplicable to Whom – Liability of Exempt Driver for Reckless Driving

The provisions of North Dakota Century Code section 39-09-06 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The speed limitations provided for in this article do not apply to Class A authorized emergency vehicles. The exceptions provided for in this section do not protect the driver of any such vehicle from the consequences or a reckless disregard of the safety of others.

9.0505 Minimum Speed Limits

The provisions of North Dakota Century Code section 39-09-09 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) An individual may not drive a motor vehicle at a reduced speed so as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.
- 2) If the director of the North Dakota Department of Transportation and the superintendent of the North Dakota Highway Patrol, acting jointly, or the City,

determines on the basis of an engineering and traffic investigation that slow speeds on any highway or part of a highway impede the safe, normal, and reasonable movement of traffic, the director and superintendent or the City may determine and declare a minimum speed limit below which an individual may not drive a vehicle except when necessary for safe operation or in compliance with law, and that limit is effective when posted upon appropriate fixed or variable signs.

9.0506 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.

9.0507 Exhibition Driving and Drag Racing – Definitions – Penalty

The provisions of North Dakota Century Code section 39-08-03.1 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) No person may engage in exhibition driving of any vehicle on a highway, street, alley, sidewalk, or any public or private parking lot or area, nor may any person engage in a race, a speed competition, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration. Any person who violates this section by engaging in an act defined by subdivision b of subsection 2 must be assessed a fee of fifty dollars. Any person who violates this section by engaging in an act defined by subdivision a or c of subsection 2 must be assessed a fee of one hundred dollars.
- 2) As used in this section:
 - a) “Drag race” means the operation of two or more vehicles from a point side-by-side by accelerating rapidly in a competitive attempt to cause one vehicle to out distance the other; or the operation of one or more vehicles over a common selected course from the same point to the same point for the purpose of comparing the relative speed or powers of acceleration of such vehicle or vehicles within a certain distance or time limit.
 - b) “Exhibition driving” means driving a vehicle in a manner which disturbs the peace by creating or causing unnecessary engine noise, tire squeal, skid, or slide upon acceleration or braking; or driving and executing or attempting one or a series of unnecessarily abrupt turns.
 - c) “Race” means the use of one or more vehicles in an attempt to outgain, outdistance, or to arrive at a given distance ahead of another vehicle or vehicles; or the use of one or more vehicles to willfully prevent another vehicle from passing the facing vehicle or vehicles, or to test the physical

stamina or endurance of the persons driving the vehicles over a long distance driving route.

- 3) Nothing in this section shall be construed as prohibiting drag racing, exhibition driving, or similar events when carried out in an organized manner on a track or other privately owned area specifically set aside and used solely for such purposes by drivers of motor vehicles, including snowmobiles.

9.0508 Radar Evidence in Speed Violations

The provisions of North Dakota Century Code section 39-03-15 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The speed of any motor vehicle may be checked by the use of radio microwaves or other electrical device. The results of such checks shall be accepted a prima facie evidence of the speed of such motor vehicle in any court or legal proceedings where the speed of the motor vehicle is at issue. The driver of any such motor vehicle may be arrested without a warrant under this section, provided the arresting officer is in uniform or displays the officer's badge of authority; provided that such officer has observed the record of the device, or has received a radio message from the officer who observed the speed of the motor vehicle recorded by the radio microwaves or other electrical device.

9.0509 Care Required in Operating Vehicle

The provisions of North Dakota Century Code section 39-09-01.1 and all subsequent amendments are hereby incorporated by reference in this ordinance.

Any person driving a vehicle upon a highway shall drive the vehicle in a careful and prudent manner, having due regard to the traffic, surface, and width of the highway and other conditions then existing, and shall give such warnings as are reasonable necessary for safe operation under the circumstances. No person may drive any vehicle upon a highway in a manner to endanger the life, limb, or property of any person.

ARTICLE 6 – Turning Movements

9.0601 Required Position and Method of Turning

The provisions of North Dakota Century Code Section 39-10-35 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The driver of a vehicle intending to turn shall do so as follows:

- 1) Right turns. Both the approach for a right turn and a right turn must be made as close as practicable to the right-hand curb or edge of the roadway;
- 2) Left turns. The driver of a vehicle intending to turn left shall approach the turn in

the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle. Whenever practicable, the left turn must be made to the left of the center of the intersection and so as to leave the intersection in the extreme left-hand lane lawfully available to traffic moving in the same direction as such vehicle on the roadway being entered;

- 3) The City may cause official traffic-control devices to be placed and thereby require and direct that a different course from that specified in this section be traveled by turning vehicles, and when such devices are so placed, no driver of a vehicle may turn other than as directed and required by such devices.

9.0602 Vehicle Turning Left

The provision of North Dakota Century Code section 39-10-23 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard.

9.0603 Limitations on Turning Around

The provision of North Dakota Century Code section 39-10-36 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) The driver of any vehicle may not turn such vehicle so as to proceed in the opposite direction unless such movement can be made in safely and without interfering with other traffic.
- 2) No vehicle may be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred (500) feet.

9.0604 Turning Movements and Required Signals

The provision of North Dakota Century Code section 39-10-38 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) No person may turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety without giving an appropriate signal in the manner hereinafter provided;
- 2) A signal of intention to turn right or left when required must be given continuously during not less than the last one hundred (100) feet traveled by the vehicle before turning;

- 3) No person may stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal; and
- 4) The signals required on vehicles by subsection 2 of Section 9.0605 may not be flashed on one side only on a disabled vehicle, flashed as a courtesy or “do pass” signal to operators of other vehicles approaching from the rear, nor be flashed on one side only of a parked vehicle except as may be necessary for compliance with this section.

9.0605 Signals by Hand and Arm or Signal Lamps

The provisions of North Dakota Century Code section 39-10-39 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) Any stop or turn signal when required herein must be given either by means of the hand and arm or by signal lamps, except as otherwise provided in subsection 2.
- 2) Any motor vehicle in use on a highway must be equipped with, and required signals must be given by, signal lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds twenty-four (24) inches (60.96 centimeters), or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen (14) feet (4.27 meters). The latter measurement shall apply to any single vehicle and to any combination of vehicles.

9.0606 Methods of Giving Hand and Arm Signals

The provisions of North Dakota Century Code section 39-10-40 and all subsequent amendments are hereby incorporated by reference in this ordinance.

All signals herein required given by hand and arm must be given from the left side of the vehicle in the following manner and such signals must indicate as follows:

- 1) Left turn: hand and arm extended horizontally;
- 2) Right turn: hand and arm extended upward;
- 3) Stop or decrease speed: hand and arm extended downward.

ARTICLE 7 – Special Stops

9.0701 Authority to Designate Through Streets

The provision of North Dakota Century Code section 39-07-03 and all subsequent

amendments are hereby incorporated by reference in this ordinance.

The director of the North Dakota Department of Transportation with reference to state highways, and the City governing body, with reference to highways under their jurisdiction, may, by proclamation, designate as through highways, any highway, street, or part thereof, and erect stop signs or yield signs at specified entrances thereto, or may designate any intersection as a stop intersection or as a yield intersection and erect stop signs or yield signs at one or more entrances to such intersection.

9.0702 Through Streets Designated

The following streets and parts of streets are hereby declared to be through streets for the purpose of this chapter:

Highway 56 along the West edge of the City of Kulm

County Road 33 along the South edge of the boundaries of the City of Kulm

9.0703 Signs

All traffic control devices shall conform to state specifications.

9.0704 Stop Signs and Yield Signs

The provisions of North Dakota Century Code sections 39-10-24 and 30-10-44 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) Preferential right-of-way may be indicated by stop signs or yield signs as authorized in Section 9.0701.
- 2) Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, or if none, then at the point nearest the intersection roadway where the driver has a view of approaching traffic on the intersection roadway before entering it. After having stopped, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.
- 3) The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop sign, or, if none, before entering the crosswalk on the near side of the intersection or, if none, then at the point nearest the intersection roadway where the driver has a view of approaching traffic on the intersection roadway before entering it. After slowing or stopping, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on

another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways. Provided, however, that if the driver is involved in a collision with a vehicle in the intersection or junction of roadways after driving past a yield sign without stopping, such collision shall be deemed prima facie evidence of his failure to yield the right-of-way.

- 4) Every stop sign and every yield sign must be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is no crosswalk, then as near as practicable to the nearest line of the intersecting roadway.
- 5) Except when directed to proceed by a police officer or traffic control sign, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersection roadway where the driver has a view of approaching traffic on the intersecting roadway.
- 6) The driver of a vehicle approaching a yield sign if required for safety to stop shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, at a clearly marked stop line, but if none, then at a point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.

9.0705 Emerging from Alley or Driveway

The driver of a vehicle emerging from an alley, driveway, private road or building with a business or residential district shall stop such vehicle immediately prior to driving on to the sidewalk or on to the sidewalk area extending across such alley, building entrance, road or driveway, or in the event there is no sidewalk area, shall stop at the point nearest the street to be entered when the driver has a view of approaching traffic thereon. The driver shall yield the right-of-way to any pedestrian as may be necessary to avoid collision and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway. (Source: North Dakota Century Code section 39-10-45)

9.0706 Stop When Traffic Obstructed

The provisions of North Dakota Century Code section 39-10-68 and all subsequent amendments are hereby incorporated by reference in this ordinance.

No driver may enter any intersection or a marked crosswalk or drive on to a railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk, or railroad grade crossing to accommodate the vehicle the driver is operating without obstructing the passage of other vehicles, pedestrians, or railroad trains notwithstanding any traffic-control signal indication to proceed.

9.0707 Obedience to Signal Indicating Approach of Train

The provision of North Dakota Century Code section 39-10-41 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad, and shall not proceed until he or she can do so safely. The foregoing requirements apply when:
 - a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;
 - b) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;
 - c) A railroad train approaching within approximately one thousand three hundred twenty (1,320) feet of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard; or
 - d) An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.
- 2) No person may drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed. No person may drive any vehicle past any human flagman at a railroad crossing until the flagman signals that the way is clear to proceed.

ARTICLE 8 – Operators

9.0801 Operators – Who Prohibited

The driving of motor vehicles, including automobiles, motor scooters, motor cycles, taxi cabs, trucks, or delivery trucks within the city limits of this City by any person who is not legally licensed to operated such vehicles under the laws of the State of North Dakota or by any person during the period his or her license is suspended, is prohibited.

ARTICLE 9 – Miscellaneous Driving Rules

9.0901 When Traffic Obstructed

No driver may enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle the driver is

operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed. (Source: North Dakota Century Code section 39-10-68)

9.0902 Driving Through Funeral or Other Procession

The driver of a vehicle may not drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when such vehicles are conspicuously designated as required in this ordinance, except when authorized to do so by a law enforcement officer or when such vehicle is an emergency vehicle giving an audible or visible signal. (Source: North Dakota Century Code section 39-10-72 (4))

9.0903 Drivers in a Procession

Each driver in a funeral or other procession shall follow the vehicle ahead as close as is practicable and safe. (Source: North Dakota Century Code section 39-10-72 (3))

9.0904 Funeral Processions to be Identified

A funeral procession composed of a procession of vehicles shall be identified as such by headlights burning in daylight hours on all vehicles in the procession. (Source: North Dakota Century Code section 39-10-72 (3))

9.0905 When Permits Required for Parades and Processions

No funeral, procession or parade containing two hundred (200) or more persons or fifty (50) or more vehicles except the Armed Forces of the United States, the military forces of this state and the forces of the police and fire departments, shall occupy, march or proceed along any street except in accordance with a permit issued by the chief of police and such other regulations as are set forth herein which may apply.

9.0906 Drive on right Side of Roadway – Exceptions

The provisions of North Dakota Century Code section 39-10-08 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) Upon all roadways of sufficient width a vehicle must be driven upon the right half of the roadway, except as follows:
 - a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
 - b) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an

immediate hazard;

- c) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or
- 2) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing must be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn in an intersection or into a private road or driveway.
- 3) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle may be driven to the left of the center line of the roadway, except when authorized by official traffic-control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under subdivision b of subsection 1 hereof. However, this subsection shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road, or driveway.

9.0907 Passing Vehicles Proceeding in Opposite Direction

The provisions of North Dakota Century Code section 39-10-09 and all subsequent amendments are hereby incorporated by reference in this ordinance.

Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one-half of the main-travelled portion of the roadway as nearly as possible.

9.0908 Overtaking a Vehicle on the Left

The provisions of North Dakota Century Code section 39-10-11 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated;

- 1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.
- 2) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely

passed by the overtaking vehicle.

9.0909 When Overtaking on the Right is Permitted

The provisions of North Dakota Century Code section 39-10-12 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:
 - a) When the vehicle overtaken is making or about to make a left turn; or
 - b) Upon a roadway with unobstructed pavement of sufficient width for two or more lines of vehicles moving lawfully in the direction being traveled by the overtaking vehicle.
- 2) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. Such movement may not be made by driving off the roadway.

9.0910 Limitations on Overtaking on the Left

The provisions of North Dakota Century Code section 39-10-13 and all subsequent amendments are hereby incorporated by reference in this ordinance.

No vehicle may be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable, and in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within two hundred feet of any approaching vehicle.

9.0911 Further Limitations on Driving on Left of Center of Roadway

The provisions of North Dakota Century Code section 39-10-14 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) No vehicle shall be driven to the left side of the roadway under the following conditions:
 - a) When approaching or upon the crest of a grade or a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

- b) When approaching within one hundred (100) feet of or traversing any intersection or railroad grade crossing; or
 - c) When the view is obstructed upon approaching within one hundred (100) feet of any bridge, viaduct or tunnel.
- 2) The foregoing limitations shall not apply upon a one-way roadway, nor under the conditions described in 9.0906 nor to the driver of a vehicle turning left into or from an alley, private road or driveway.

9.0912 No-Passing Zones

The provisions of North Dakota Century Code section 39-10-15 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) The director of the North Dakota Department of Transportation and the City governing body are hereby authorized to determine those portions of any highway under their respective jurisdiction where overtaking and passing or driving on the left side of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones and when such signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions thereof.
- 2) Where signs or markings are in place to define a no-passing zone as set forth in subsection 1, no driver shall at any time drive on the left side of the roadway with such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.
- 3) This section does not apply under the conditions described in Section 9.0906 nor to the driver of a vehicle turning left into or from an alley, private road or driveway.

9.0913 Driving on Roadways Laned for Traffic

The provisions of North Dakota Century Code section 39-10-17 and all subsequent amendments are hereby incorporated by reference in this ordinance.

Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules in addition to all others consistent herewith shall apply:

- 1) A vehicle must be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.
- 2) Upon a roadway which is divided into three lanes and provides for two-way traffic, a vehicle may not be driven in the center lane except when overtaking and passing

another vehicle traveling in the same direction when such center line is clear of traffic within a safe distance, or in preparation for making a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices.

- 3) Official traffic-control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such device.
- 4) Official traffic-control devices may be installed prohibiting the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of every such device.

9.0914 Following Too Closely

The provisions of North Dakota Century Code section 39-10-18 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) The driver of a motor vehicle may not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.
- 2) The driver of any truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another truck or motor vehicle drawing another vehicle shall, whenever conditions permit leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this does not prevent a truck or motor vehicle drawing another vehicle from overtaking and passing any vehicle or combination of vehicles.
- 3) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles must be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision does not apply to funeral processions.

9.0915 Driving on Divided Highways

The provisions of North Dakota Century Code section 39-10-19 and all subsequent amendments are hereby incorporated by reference in this ordinance.

Whenever any highway has been divided into two or more roadways by leaving an intervening space or by a physical barrier or clearly indicated divided section so construed as to impede vehicular traffic, every vehicle must be driven only upon the right-hand roadway, unless

directed or permitted to use another roadway by official traffic-control devices or police officers. No vehicle may be driven over, across or within any such dividing space, barrier or section, except through an opening in such physical barrier or dividing section or space at a crossover or intersection as established by public authority, unless such crossing is specifically prohibited and such prohibition is indicated by appropriate traffic-control devices.

9.0916 Restricted Access

The provisions of North Dakota Century Code Section 39-10-20 and all subsequent amendments are hereby incorporated by reference in this ordinance.

No person may drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

9.0917 Restrictions on Use of Controlled-Access Roadway

The provisions of North Dakota Century Code section 39-10-21 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The director of the North Dakota Department of Transportation may by order, and the City governing body may by ordinance, with respect to any controlled-access roadway under their respective jurisdictions, prohibit the use of any such roadway by any class or kind of traffic which is found incompatible with the normal and safe movement of traffic.

The director of the North Dakota Department of Transportation or the City governing body, as the case may be, shall erect and maintain official signs on the controlled-access roadway on which such regulations are applicable and when so erected no person may disobey the restrictions stated on such signs.

9.0918 Vehicle Entering Roadway

The provisions of North Dakota Century Code section 39-10-25 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The driver of a vehicle about to enter or cross a roadway from any place other than another roadway shall yield the right-of-way to all vehicles approaching on the roadway to be entered or crossed.

9.0919 Vehicle Approaching or Entering Intersection

The provisions of North Dakota Century Code section 39-10-22 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) When two vehicles approach or enter an intersection not controlled by an official traffic-control device from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the

right. If the intersection is T-shaped and not controlled by an official traffic-control device, the driver of the vehicle on the terminating street shall yield to the vehicle on the continuing street or highway.

- 2) The right-of-way rule declared in this section is modified at through highways and otherwise as stated in this chapter.

9.0920 Overtaking and Passing School bus

The provisions of North Dakota Century Code section 39-10-46 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) The driver of a vehicle meeting or overtaking from either direction any school bus stopped on the highway shall stop the vehicle before reaching the school bus when there is in operation on the school bus the flashing red lights or the stop sign on the control arm specified in North Dakota Century Code section 39-21-18, and the driver may not proceed until the school bus resumes motion, the driver is signaled by the school bus driver to proceed, or the flashing red lights and the stop sign on the control arm are no longer actuated.
- 2) Every school bus shall bear upon the front and rear thereof plainly visible signs containing the word "SCHOOL BUS" in letters not less than eight (8) inches in height. When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or for a school sanctioned activity, all markings thereon indicating "SCHOOL BUS" must be covered or concealed.
- 3) The operator of a school bus equipped with amber caution lights may activate those lights at a distance of not less than three hundred (300) feet nor more than five hundred (500) feet from the point where school children are to be received or discharged from the bus.
- 4) Every school bus must be equipped with a stop sign on a control arm and red visual signals meeting the requirements of North Dakota Century Code section 39-21-18, which may only be actuated by the driver of the school bus whenever the vehicle is stopped on the highway to receive or discharge school children.
- 5) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.
- 6) Every school bus must bear on the rear of the bus a plainly visible sign containing the words "THIS SCHOOL BUS STOPS AT ALL RAILROAD CROSSINGS".

9.0921 Unattended Motor Vehicle

The provisions of North Dakota Century Code section 39-10-51 and all subsequent amendments are hereby incorporated by reference in this ordinance.

No person driving or in charge of a motor vehicle may permit it to stand unattended without first stopping the engine, effectively setting the brake thereon, and, when standing upon any grade, turning the front wheels to the curb or side of the highway.

9.0922 Limitations on Backing

The provisions of North Dakota Century Code section 39-10-52 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) The driver of a vehicle may not back the same unless such movement can be made with safety and without interfering with other traffic.
- 2) The driver of a vehicle may not back the same upon any shoulder or roadway of any controlled-access highway.

9.0923 Obstruction to Driver's View or Driving Mechanism

The provisions of North Dakota Century Code section 39-10-54 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) No person may drive a vehicle when it is so loaded, or when there are in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.
- 2) No passenger in a vehicle may ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle.

9.0924 Opening and Closing Vehicle Doors

The provisions of North Dakota Century Code section 39-10-54.1 and all subsequent amendments are hereby incorporated by reference in this ordinance.

No person may open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so and can be done without interfering with the movement of other traffic, nor may any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

9.0925 Coasting Prohibited

The provisions of North Dakota Century Code section 39-10-56 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) The driver of any motor vehicle when traveling upon a down grade may not coast with the gears or transmission of such vehicle in neutral.
- 2) The driver of a truck or bus when traveling upon a down grade may not coast with the clutch disengaged.

9.0926 Following Fire Apparatus Prohibited

The provisions of North Dakota Century Code section 39-10-57 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The driver of any vehicle other than one on official business may not follow closer than five hundred (500) feet behind an emergency vehicle displaying the appropriate light for that vehicle in an emergency. A driver of a vehicle other than one on official business may not stop the vehicle within two hundred (200) feet of any emergency vehicle stopped in answer to a 911 emergency.

9.0927 Crossing Fire Hose

The provisions of North Dakota Century Code section 39-10-58 and all subsequent amendments are hereby incorporated by reference in this ordinance.

No vehicle may be driven over any unprotected hose of a fire department when laid down on any street, private road or driveway to be used at any fire or alarm of fire, without the consent of the fire department official in command.

9.0928 Garbage, Glass, Etc. on Highways Prohibited

The provisions of North Dakota Century Code section 39-10-59 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) An individual may not deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, rubbish, or any other litter. In addition, an individual may not deposit upon any highway any other substance likely to injure any person, animal or vehicle.
- 2) An individual who deposits, or permits to be deposited, upon any highway any destructive or injurious material shall immediately remove or cause to be removed the same.

- 3) An individual removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from the vehicle.

9.0929 Driving Through Safety Zone Prohibited

The provisions of North Dakota Century Code section 39-10-64 and all subsequent amendments are hereby incorporated by reference in this ordinance.

No vehicle shall at any time be driven through or within a safety zone.

9.0930 Moving Heavy Equipment at Railroad Grade Crossings

The provisions of North Dakota Century Code section 39-10-67 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) No person may operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of ten (10) or less miles per hour or a vertical body or load clearance of less than one-half (1/2) inch per foot of the distance between any two adjacent axles or in any event of less than nine (9) inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.
- 2) Before making any such crossing, the person operating, or moving any such vehicle or equipment shall first stop the same not less than fifteen (15) feet nor more than fifty (50) feet from the nearest rail or such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.
- 3) No such crossing may be made when warning is given by automatic signal or crossing gates or flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing must be under the flagman's direction.

9.0931 Open Container Law - Penalty

The provisions of North Dakota Century Code section 39-08-18 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) A person may not drink or consume alcoholic beverages, as defined in Section 5-01-01 of the North Dakota Century Code, in or on any motor vehicle when the vehicle is upon a public highway or in an area used principally for public parking. A person may not have in that person's possession on that person's person while in or on a private motor vehicle upon a public highway or in an area used principally for public parking, any bottle or receptacle containing alcoholic beverages which

has been opened, or the seal broken, or the contents of which have been partially removed. It is unlawful for the owner of any private motor vehicle or the driver, if the owner be not then present in or on the motor vehicle, to keep or allow to be kept in a motor vehicle when such vehicle is upon the public highway or in an area used principally for public parking any bottle or receptacle containing alcoholic beverages which have been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle is kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment must be deemed to be within the area occupied by the driver and passengers. This subsection does not prohibit the consumption or possession of alcoholic beverages in a house car, as defined in Section 9.0101, if the consumption or possession occurs in the area of the house car used as sleeping or living quarters and that area is separated from the driving compartment by a solid partition, door, curtain or some similar means of separation; however, consumption is not authorized while the house car is in motion. Any person violating the provisions of this section must be assessed a fee of fifty dollars (\$50.00); however the licensing authority shall not record the violation against person's driving record unless the person was the driver of the motor vehicle at the time that the violation occurred.

- 2) Subsection 1 does not apply to a public conveyance that has been commercially chartered for group use, any passenger for compensation in a for-hire motor vehicle, or a privately owned motor vehicle operated by a person in the course of that person's usual employment transporting passengers at the employer's direction. This subsection does not authorize possession or consumption of an alcoholic beverage by the operator of any motor vehicle described in this subsection while upon a public highway or in an area used principally for public parking.

9.0932 Permitting Unauthorized Minor to Drive

No person may cause or knowingly permit the person's child or ward under the age of eighteen (18) years to drive a motor vehicle upon any highway when such minor is not authorized under the laws of this state. (Source: North Dakota Century Code section 39-06-44)

9.0933 Permitting Unauthorized Person to Drive

No person may authorize or knowingly permit a motor vehicle owned by the person or under the person's control to be driven upon any highway by any person who is not authorized under the laws of this state. (Source: North Dakota Century Code section 39-06-45)

ARTICLE 10 - Pedestrians' Rights and Duties

9.1001 Pedestrian Obedience to Traffic Control Devices and Traffic Regulations

The provisions of North Dakota Century Code section 39-10-27 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) A pedestrian shall obey the instructions of any official traffic control device specially applicable to the pedestrian, unless otherwise directed by a police officer.
- 2) Pedestrians are subject to traffic-control and pedestrian-control signals as provided for in Section 9.0403.

9.1002 Pedestrians' Right-of-way in Crosswalks

The provisions of North Dakota Century Code section 39-10-28 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) When traffic-control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.
- 2) No pedestrian may suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close as to constitute an immediate hazard.
- 3) Subsection 1 of this section does not apply under the conditions stated in subsection 2 of Section 9.1003.
- 4) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the highway, the driver of any other vehicle approaching from the rear may not overtake and pass such stopped vehicle.

9.1003 Crossing at other than Crosswalks

The provisions of North Dakota Century Code section 39-10-29 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.
- 2) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.
- 3) Between adjacent intersections at which traffic-control devices are in operation

pedestrians may not cross at any place except in a marked crosswalk.

- 4) No pedestrian may cross a roadway intersection diagonally unless authorized by official traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements.

9.1004 Drivers to Exercise Due Care

The provisions of North Dakota Century Code section 39-10-30 and all subsequent amendments are hereby incorporated by reference in this ordinance.

Notwithstanding other provisions of this chapter, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused, incapacitated, or intoxicated person.

9.1005 Pedestrians to Use Right Half of Crosswalks

The provisions of North Dakota Century Code section 39-10-32 and all subsequent amendments are hereby incorporated by reference in this ordinance.

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

9.1006 Pedestrians on Roadways

The provisions of North Dakota Century Code section 39-10-33 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) Where a sidewalk is provided and its use is practicable, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.
- 2) Where a sidewalk is not available, any pedestrian walking along and upon a highway shall walk only on a shoulder, as far as practicable from the edge of the roadway.
- 3) Where neither a sidewalk nor a shoulder is available, any pedestrian walking along and upon a highway shall walk as near as practicable to an outside edge of the roadway, and, if on a two-way roadway, shall walk only on the left side of the roadway.
- 4) Except as otherwise provided for in this chapter, any pedestrian upon a roadway shall yield the right-of-way to all vehicles upon the roadway.

9.1007 Pedestrians' Right-of-Way on Sidewalks

The provisions of North Dakota Century Code section 39-10-33.1 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The driver of a vehicle shall yield the right-of-way to any pedestrian on a sidewalk.

9.1008 Pedestrians Yield to Authorized Emergency Vehicles

The provisions of North Dakota Century Code section 39-10-33.2 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) Upon the immediate approach of an authorized emergency vehicle making use of an audible signal by bell, siren, or exhaust whistle and displaying a visible flashing revolving, or rotating blue, white or red light, every pedestrian shall yield the right-of-way to the authorized emergency vehicle.
- 2) This section does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway nor from the duty to exercise due care to avoid colliding with any pedestrian.

9.1009 Blind Pedestrians. Right-of-way

The provisions of North Dakota Century Code section 39-10-33.3 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The driver of a vehicle shall yield the right-of-way to any blind pedestrian carrying a clearly visible white cane or accompanied by an assistance dog.

9.1010 Pedestrians Under Influence of Alcohol or Drugs

The provisions of North Dakota Century Code section 39-10-33.4 and all subsequent amendments are hereby incorporated by reference in this ordinance.

A pedestrian who is under the influence of alcohol or any drug to a degree which renders the pedestrian a hazard may not walk or be upon a roadway.

9.1011 Bridge and Railroad Signals

The provisions of North Dakota Century Code section 39-10-33.5 and all subsequent amendments are hereby incorporated by reference in this ordinance.

No pedestrian may pass through, around, over or under any crossing gate or barrier at a railroad grade crossing or bridge while such gate or barrier is closed or is being opened or closed.

9.1012 Pedestrians Soliciting Rides or Business

The provisions of North Dakota Century Code section 39-10-34 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) No person may stand in a roadway for the purpose of soliciting a ride.
- 2) No person may stand in a roadway for the purpose of soliciting employment, business or contributions from the occupant of any vehicle.
- 3) No person may stand on or in proximity to a street or highway for the purpose of soliciting watching of guarding of any vehicle while parked or about to be parked on a street or highway.

ARTICLE 11 – Regulations for Motorcycles

9.1101 Traffic Laws Apply to Persons Operating Motorcycles or Motorized Bicycles

The provisions of North Dakota Century Code section 39-10.2-01 and all subsequent amendments are hereby incorporated by reference in this ordinance.

Every person operating a motorcycle or motorized bicycle is granted all of the rights and is subject to all of the duties applicable to the driver of any other vehicle under this chapter, except as to special regulations in this chapter and except as to those provisions of these ordinances which by their nature can have no application. For purposes of this chapter, the term “motorcycle” means motorcycles and motorized bicycles.

9.1102 Riding on Motorcycles

The provisions of North Dakota Century Code section 39-10.2-02 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and such operator may not carry any other person nor may any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the motorcycle at the rear or side of the operator.
- 2) A person shall ride upon a motorcycle only while sitting astride the seat, facing forward, with one leg on each side of the motorcycle.
- 3) No person may operate a motorcycle while carrying any package, bundle or other article which prevents the person from keeping both hands on the handlebars.

- 4) No operator may carry any person, nor may any person ride in a position that will interfere with the operation or control of the motorcycle or the view of the operator.

9.1103 Operating Motorcycles on Roadways Laned for Traffic

The provisions of North Dakota Century Code section 39-10.2-03 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) All motorcycles are entitled to the full use of a lane and no motor vehicle may be driven in such a manner as to deprive any motorcycle of the full use of a lane. This subsection does not apply to the operation of motorcycles two abreast in a single lane as authorized in subsection 4.
- 2) The operator of a motorcycle may not overtake and pass in the same lane occupied by the vehicle being overtaken.
- 3) No person may operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicle.
- 4) Motorcycles may not be operated more than two abreast in a single lane.
- 5) Subsections 2 and 3 do not apply to police officers in the performance of their official duties.

9.1104 Clinging to Other Vehicles

The provisions of North Dakota Century Code section 39-10.2-04 and all subsequent amendments are hereby incorporated by reference in this ordinance.

No person riding upon a motorcycle may attach the person.s self or the motorcycle to any other vehicle on a roadway.

9.1105 Footrests

The provisions of North Dakota Century Code section 39-10.2-05 and all subsequent amendments are hereby incorporated by reference in this ordinance.

Any motorcycle carrying a passenger, other than in a sidecar or enclosed cab, must be equipped with footrests for such passenger.

9.1106 Equipment for Motorcycle Riders

The provisions of North Dakota Century Code section 39-10.2-06 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) No person under the age of eighteen years may operate or ride upon a motorcycle

unless protective headgear, which complies with standards established by the North Dakota Department of Transportation, is being worn on the head of the operator and rider, except when participating in a lawful parade. If the operator of a motorcycle is required to wear protective headgear, any passenger must also wear protective headgear regardless of the age of the passenger.

- 2) This section does not apply to persons riding within an enclosed cab or on a golf cart.
- 3) No person may operate a motorcycle if a person under the age of eighteen (18) years is a passenger upon that motorcycle and is not wearing protective headgear as provided in subsection 1.

9.1107 Other Applicable Law

The provisions of North Dakota Century Code section 39-10.2-07 and all subsequent amendments are hereby incorporated by reference in this ordinance.

All of the provisions of this chapter pertaining to the disposition of traffic offenses apply to this article.

ARTICLE 12 – Regulations for Bicycles

9.1201 Effect of Regulations

- 1) It is unlawful 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 five dollars (\$5.00).
- 2) 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.
- 3) 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: North Dakota Century Code section 39-10.1-01)

9.1202 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 chapter, except as to special regulations in this chapter and except as to those provisions of this chapter which by their nature can have no application. (Source: North Dakota Century Code section 39-10.1-02)

9.1203 Obedience to Traffic Control Devices

- 1) Any person operating a bicycle shall obey the instructions of official traffic-control devices applicable to vehicles, unless otherwise directed by a police officer.
- 2) 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.

9.1204 Riding on Sidewalks

- 1) 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.
- 2) 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.

9.1205 Riding on Roadways and Bicycle Paths

The provision of North Dakota Century Code section 39-10.1-05 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadways as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.
- 2) Persons riding bicycles upon a roadway may not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.
- 3) Whenever a usable path for bicycle riders has been provided adjacent to a roadway, bicycle riders shall use such path and may not use the roadway.

9.1206 Clinging to Vehicles

The provisions of North Dakota Century Code section 39-10.4-04 and all subsequent amendments are hereby incorporated by reference in this ordinance.

No person riding upon any bicycle, coaster, roller skates, sled or toy vehicle may attach the same or the person's self to any vehicle upon a roadway, except a sled being pulled by a snowmobile.

9.1207 Carrying Articles

The provisions of North Dakota Century Code section 39-10.1-06 and all subsequent amendments are hereby incorporated by reference in this ordinance.

No person operating a bicycle may carry any package, bundle or article which prevents the driver from keeping at least one hand upon the handlebars.

9.1208 Lamps and other Equipment on Bicycles

The provisions of North Dakota Century Code section 39-10.1-07 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) Every bicycle when in use at nighttime must be equipped with a lamp on the front which emits a white light visible from a distance of at least five hundred (500) feet to the front and with a red reflector on the rear of a type approved by the North Dakota Department of transportation. A lamp emitting a red light visible from a distance of five hundred (500) feet to the rear may be used in addition to the red reflector.
- 2) Every bicycle must be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

9.1209 Riding on Bicycles

The provisions of North Dakota Century Code section 39-10.1-03 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) A person propelling a bicycle may not ride other than upon or astride a permanent and regular seat attached thereto.
- 2) No bicycle may be used to carry more persons at one time than the number for which it is designed and equipped.

9.1210 Bicycle 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.

9.1211 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.

9.1212 Point System Not Applicable

The provisions of North Dakota Century Code section 39-10.1-08 and all subsequent amendments are hereby incorporated by reference in this ordinance.

Any violation of this article, or any moving violation as defined in Section 9.2210, or any nonmoving violation as defined in Section 9.2209 when committed on a bicycle as defined in Section 9.0101, is not cause for the licensing authority to access points against the driving record of the violator pursuant to North Dakota Century Code section 39-06.1-10. Any other legally authorized penalty for a criminal traffic offense or non-criminal traffic violation is applicable to bicyclists.

9.1213 Bicycle may be Impounded by Police

Any bicycle left abandoned upon the streets of the City and picked up by the city police shall be held by the police department and a pick up fee shall be charged within the discretion of the police chief. If the bicycle is not licensed, the owner shall purchase a current year's license in addition to the pick up fee before the bicycle is returned to the owner.

ARTICLE 13 – Angle Parking

9.1301 Angle Parking

The city engineer or other authorized city official 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.

9.1302 Angle Parking – Where

Angle parking shall also be permitted on the following streets:

Main Avenue, 1st Avenue Southwest between 1st Street S.W. and 2nd St S.W.

9.1303 Close to Curb

No person may stand or park a vehicle in a street other than on the roadway and parallel with the edge of the roadway headed in the direction of lawful traffic movement and with the right hand wheels of the vehicle within eighteen (18) inches of the curb or edge of the roadway except as otherwise provided in this article.

9.1304 Method of Parking - Penalty

A violation of the provisions of this article in respect to the method of parking is punishable by a fine of not to exceed twenty-five dollars (\$25.00).

ARTICLE 14 - Stopping, Standing or Parking Prohibited in Specific Places

9.1401 Parking Prohibited - Times

When signs are erected giving notice thereof, it shall be unlawful for any person, firm or corporation to park or leave standing either attended or unattended, any motor vehicle in or upon the streets or alleys of the City.

9.1402 Stopping, Standing or Parking Outside of Business or Residence Districts

The provisions of North Dakota Century Code section 39-10-47 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) Upon any highway outside of a business or residence district no person may stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practicable to stop, park or so leave such vehicle off such part of said highway, but in every event an unobstructed width of the highway of not less than twelve (12) feet opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicles shall be available from a distance of two hundred feet in each direction upon such highway.
- 2) Sections 9.1402, 9.1404 and 9.1405 do not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

9.1403 Officers Authorized to Remove Illegally Stopped Vehicles

The provisions of North Dakota Century Code section 39-10-48 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) Whenever any police officer finds a vehicle standing upon a highway in violation of any of the provisions of Section 9.1402, such officer is hereby authorized to move such vehicle, or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or main-traveled part of such highway.
- 2) Whenever any police officer finds a vehicle unattended upon any highway, bridge or causeway, or in any tunnel where such vehicle constitute an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety.
- 3) Any police officer is hereby authorized to remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon a highway when:
 - a) A report has been made that such vehicle has been stolen or taken without

consent of its owner;

- b) The person or persons in charge of such vehicle are unable to provide for its custody or removal; or
- c) When the person driving or in control of such vehicle is arrested for an alleged offense for which the officer is required by law to take the person arrested before a proper magistrate without unnecessary delay.

9.1404 Stopping, Standing or Parking Prohibited in Specified Places

The provisions of North Dakota Century Code section 39-10-49 and all subsequent amendments are hereby incorporated by reference in this ordinance.

No person may stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic-control device, in any of the following places:

- 1) On a sidewalk;
- 2) In front of a public or private driveway;
- 3) Within an intersection;
- 4) Within ten (10) feet of a fire hydrant;
- 5) On a crosswalk;
- 6) Within ten (10) feet of a crosswalk at an intersection;
- 7) Within fifteen (15) feet upon the approach to any flashing beacon, stop sign or traffic-control signal located at the side of a roadway;
- 8) Between a safety zone and the adjacent curb or within fifteen (15) feet of points on the curb immediately opposite the ends of a safety zone, unless the North Dakota Department of Transportation or the City indicates a different length by signs or markings;
- 9) Within fifteen (15) feet of the nearest rail of a railroad crossing;
- 10) Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of said entrance when properly signposted;
- 11) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;

- 12) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
- 13) Upon any bridge or other elevated structure upon a highway or within a highway tunnel; or
- 14) At any place where official signs prohibit stopping.

No person shall move a vehicle not lawfully under the person's control into any such prohibited area or away from a curb such distance as is unlawful.

9.1405 Additional Parking Regulations

The provisions of North Dakota Century Code section 39-10-50 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) Except as otherwise provided in this ordinance, every vehicle stopped or parked upon a two-way roadway must be so stopped or parked with the right-hand wheels of such vehicle parallel to and within twelve (12) inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder.
- 2) Except where otherwise provided by ordinance, every vehicle stopped or parked upon a one-way roadway must be so stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right-hand wheels within twelve (12) inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder, or with its left-hand wheels within twelve (12) inches of the left-hand curb or as close as practicable to the left edge of the left-hand shoulder.
- 3) The City governing body may permit angle parking on any roadway, except that angle parking is not permitted on any federal-aid or state highway without first obtaining the written authorization of the director of the North Dakota Department of Transportation.
- 4) The North Dakota Department of Transportation with respect to highways under its jurisdiction may place official traffic-control devices prohibiting or restricting the stopping, standing or parking of vehicles on any highway where in its opinion such stopping, standing or parking is dangerous to those using the highway or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic thereon. No person may stop, stand or park any vehicle in violation of the restrictions indicated by such devices.

9.1406 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 when repairing such vehicle is necessitated by an emergency.

9.1407 Stopping - Parking - Congested - Hazardous Places

The city engineer or other person designated by the City governing body 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.

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.

9.1408 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 twelve (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.

9.1409 Parking Adjacent to Schools

- 1) 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 the traffic engineer's or other authorized person's opinion, interfere with traffic or create a hazardous situation.
- 2) 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.

9.1410 Stopping - Parking - Over 48 Hours

It shall be unlawful for anyone to park or leave standing on any public street or highway in the City any vehicle for a period longer than forty-eight (48) hours consecutively, provided this section shall not include any area where a shorter time is provided for parking.

9.1411 Parking Privileges for Mobility-Impaired - Certificate - Revocation

The provisions of North Dakota Century Code section 39-01-15 and all subsequent amendments are hereby incorporated by reference in this ordinance.

1. Any mobility-impaired person who displays prominently upon an automobile parked by that person or under that person's direction and for that person's use, a distinguishing certificate or insignia for mobility-impaired persons issued by the

North Dakota Department of Transportation is entitled to courtesy in the parking of the automobile. Provided, however, that the City governing body may, by ordinance, prohibit parking on any street or highway for the purpose of creating a fire lane, or to provide for the accommodation of heavy traffic during morning and afternoon rush hours, and the privileges extended to such impaired persons do not apply on streets or highways where and during such times as parking is prohibited.

2. A mobility-impaired person as used in this ordinance includes any person who uses portable oxygen; requires personal assistance or the use of crutches, a wheelchair, or a walker to walk two hundred feet without rest; is restricted by cardiac, pulmonary or vascular disease from walking two hundred feet without rest; has a forced expiratory volume of less than one liter for one second or an arterial oxygen tension of less than sixty millimeters of mercury on room air while at rest and is classified III or IV by standards for cardiac disease set by the American Heart Association; or has an orthopedic, neurological or other medical condition that makes it impossible for the person to walk two hundred feet without assistance or rest.
3. If a law enforcement officer finds that a mobility-impaired certificate or insignia is being improperly used, the officer may report to the director of the North Dakota Department of Transportation. Any person who is not mobility-impaired and who exercises the privileges granted a mobility-impaired person under subsection 1 shall be guilty of an infraction.
4. Whenever any public or private entity designates parking spaces for use by motor vehicles operated by mobility-impaired persons, those reserved spaces must be indicated by blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space. In addition to blue paint, the space reserved must be indicated by an official sign approved by the director of the North Dakota Department of Transportation. The City may enforce the provisions of this subsection in any parking lot or parking facility that is generally open to the public, whether publicly or privately owned.
5. A person may not stop, stand or park any vehicle in any designated parking space which is reserved for the mobility-impaired unless the vehicle displays a mobility-impaired identification certificate or insignia issued by the director of the North Dakota Department of Transportation. For a violation of this subsection, there will be a fee in the amount of one hundred dollars (\$100.00).

ARTICLE 15 - Reserved Parking Areas

9.1501 Reserved Parking Areas

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.

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 governing body may specifically designate to be of greatest benefit and convenience to the public. These areas shall be designated by appropriate signs.

ARTICLE 16 - Time Limit Parking Zones

9.1601 Time Limit Parking Zones

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.

The city engineer or authorized person may establish time parking zones from time to time in such places as they determine, or as the governing body shall specifically designate, to promote the greatest benefit and convenience to the public and the best use of the street areas.

ARTICLE 17 - Equipment of Vehicles

9.1701 Windshield - Must be Unobstructed and Equipped with Wipers - Tinted Windows

1. Every motor vehicle must be equipped with a windshield. No person may drive any motor vehicle with any sign, poster or other nontransparent material upon the front windshield, side wings or side or rear windows which obstruct the driver's clear view of the highway or any intersection highway.
2. The windshield on every motor vehicle must be equipped with a device for cleaning rain, snow or other moisture from the windshield, which must be so constructed as to be controlled or operated by the driver of the vehicle.
3. Every windshield wiper upon a motor vehicle must be maintained in good working order.
4. A person may not operate a motor vehicle with any object or any material displayed, affixed or applied on the front windshield or on any side window where that material alters the color or reduces the light transmittance, or reduces the clear and unobstructed view through the windshield or window. This subsection does not apply to windows behind the driver or to tinted windows or windshields in compliance with the Federal Motor Vehicle Safety Standards.

9.1702 Child Restraint Devices - Evidence

1. If a child, under four years of age, is present in any motor vehicle, that motor vehicle must be equipped with at least one (1) child restraint system for each such child. However, a child under the age of seven who is at least fifty-seven inches tall and who weighs at least eight pounds is not required to use a child restraint system. The child restraint system must meet the standards adopted by the United States Department of Transportation for those systems (49 CFR 571.213). While the motor vehicle is in motion, each such child must be properly secured in the child restraint system in accordance with the manufacturer's instructions. A child weighing more than forty pounds may be restrained by a lap belt if the vehicle is not equipped with lap and shoulder belts or if all lap and shoulder belts are in use by other occupants. While the motor vehicle is moving, each child of seven through seventeen years of age who is in the motor vehicle must be in an approved child restraint system in accordance with the manufacturer's instructions or correctly buckled in a seatbelt. Use of child restraint systems and seatbelts is not required in motor vehicles that were not equipped with seatbelts when manufactured. If a child is being transported in an emergency situation, this ordinance does not apply.
2. Violation of this ordinance is not, in itself, evidence of negligence. The fact of a violation of this section is not admissible in any proceeding other than one charging the violation. (Source: North Dakota Century Code section 39-21-41.2)

9.1703 Use of Safety Belts - Enforcement

Subject to the limitations of this ordinance and North Dakota Century Code section 39-21-41.5, a driver may not operate upon a highway a motor vehicle designed for carrying fewer than eleven passengers, which was originally manufactured with safety belts unless each front seat occupant is wearing a properly adjusted and fastened safety belt. This section does not apply to a child in a child restraint or seatbelt; to drivers of implements of husbandry; to operators of farm vehicles; to rural mail carriers while on duty delivering mail; to an occupant with a medical or physically disabling condition that prevents appropriate restraint in a safety belt, if a qualified physician states in a signed writing the nature of the condition and the reason restraint is inappropriate; or when all front seat safety belts are in use by other occupants. A physician who, in good faith, provides a statement that restraint would be inappropriate is not subject to civil liability. A violation for not wearing a safety belt under this section is not, in itself, evidence of negligence. The fact of a violation of this ordinance is not admissible in any proceeding other than one charging the violation.

A peace officer may not issue a citation for a violation of this section unless the officer lawfully stopped or detained the driver of the motor vehicle for another violation. (Source: North Dakota Century Code sections 39-21-41.4 and 39-21-41.5)

9.1704 Drawbar or Connection Between Vehicles - Precautions Required

The drawbar or other connection between any two vehicles, one of which is towing or

drawing the other on a highway, shall be of such design, strength and construction so as to prevent the unintentional uncoupling of the vehicles. (Source: North Dakota Century Code section 39-21-44.2)

9.1705 Modification of Motor Vehicle

Except as otherwise provided in this ordinance, a person may not operate upon a public highway a motor vehicle of a type required to be registered under the laws of this state with a weight of seven thousand (7,000) pounds or less with alterations or changes from the manufacturer's original design of the suspension, steering or braking system of the motor vehicle. The weight must be computed on the basis of the unmodified and unloaded weight of the motor vehicle, and without regard to any ballast that may be placed in the vehicle. As to bumpers, motor vehicle height and permitted modifications, the following requirements also apply:

1. The motor vehicle must be equipped with front and rear bumpers.
2. The maximum body height permitted for a motor vehicle is forty-two (42) inches. Measurement of body height is made from a level ground surface to the floor of the cargo area.
3. The maximum bumper height permitted is twenty-seven (27) inches. Measurement of bumper height is made from a level ground surface to the highest point on the bottom of the bumper.
4. The vehicle may be modified in accordance with the following:
 - a. Any modifying equipment must meet specialty equipment marketing association standards.
 - b. If tires placed on a motor vehicle have a diameter greater than that of the tires on the motor vehicle as manufactured, those tires must comply with Department of Transportation requirements.
 - c. The maximum outside diameter permitted for tires is forty-four (44) inches.
 - d. A horizontal drop bumper may be used to comply with the bumper height requirement of subsection 3. The horizontal bumper must:
 - i. Be at least three (3) inches in vertical width;
 - ii. Extend the entire horizontal body width; and
 - iii. Be horizontal, load bearing and attached to the vehicle frame to effectively transfer impact when engaged.
 - e. The maximum lift permitted in the suspension system is four (4) inches.

5. A person charged with violating this ordinance has the burden of proceeding to show that the modifications are permitted under this section.
6. Vehicles owned by law enforcement agencies, the military, firefighting agencies and ambulances may be modified without regard to this ordinance. (Source: North Dakota Century Code section 39-21-45.1)

9.1706 Scope and Effect of Equipment Requirements - Penalty

1. It is unlawful for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which the actor knows to be in such unsafe condition as to endanger any person, or which the actor knows does not contain those parts or is not at all times equipped with lamps and other equipment in proper condition and adjustment as required in this chapter, or which the actor knows is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this ordinance. Any person who, in violation of this ordinance, drives, or any owner who causes or knowingly permits to be driven upon a highway, any vehicle or combination of vehicles which that person knows is unsafe or improperly equipped is guilty of an infraction.
2. Nothing contained in this ordinance may be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter.
3. The provisions of this ordinance with respect to equipment on vehicles do not apply to implements of husbandry, road machinery, road rollers or farm tractors except as specifically made applicable.
4. The provisions of this ordinance with respect to equipment required on vehicles do not apply to motorcycles or motor-driven cycles, except as specifically made applicable.
5. The provisions of this ordinance do not apply to vehicles moved solely by human power, except as specifically made applicable. (Source: North Dakota Century Code section 39-21-46)

ARTICLE 18 - Motorcycle Equipment

9.1801 Purpose

The provisions of North Dakota Century Code chapter 39-27 and all subsequent amendments are hereby incorporated by reference in this ordinance.

It is the purpose of this article to establish performance and equipment requirements for the manufacture, sale and safe operation of a motorcycle upon public highways, and to furnish administrators with a guide for registration eligibility and continued conformity as related to motorcycles. (Source: North Dakota Century Code section 39-27-01)

9.1802 Manufacturer's or Distributor's Certification

1. The manufacturer or distributor shall provide a certification of the fact that a motorcycle or class of motorcycles is designed and manufactured for use upon public highways and complies with the performance and equipment requirements of this chapter, and the rules and regulations promulgated hereunder.
2. The certificate must be incorporated on the manufacturer's statement of origin (MSO) upon transfer of vehicle ownership. (Source: North Dakota Century Code section 39-27-02)

9.1803 Frame-Chassis Requirements

- 1) The motorcycle frame-chassis, including the suspension components and engine mountings, must be of substantial construction, capable of supporting the combined weight of all vehicle components and riders for which the vehicle is designed, and withstand normal road shocks and operational stresses without constituting a hazard to the riders or other users of the highway.
- 2) The wheelbase may not be less than forty (40) inches. (Source: North Dakota Century Code section 39-27-03)

9.1804 Brakes

- 1) Every motorcycle must have either a split service brake system or two (2) independently actuated service brake systems in accordance with rules adopted by the director of the North Dakota Department of Transportation. Brakes must act on the front and rear wheels.
- 2) Every motorcycle must meet the requirements for brake system effectiveness, fade and partial systems as specified in rules adopted by the director of the North Dakota Department of Transportation.
- 3) All linkage, cables, pivots and bearings must be free of excess (high) friction, with the front wheel brake cable so located and secured as not to become pinched between fork and frame members when wheel is turned completely to the right or left.
- 4) Brake actuating devices must be in an accessible location, unencumbered by vehicle components, and so positioned that adequate leverage and safe operation is ensured. Service brake system controls and operation requirements must be in accordance with rules adopted by the director of the North Dakota Department of

Transportation. A suitable mechanism shall be provided for the purpose of automatically returning the actuating devices to normal position upon release.

- 5) Motorcycle brakes must be capable of being adjusted automatically or manually with means provided to prevent unintentional adjustment.
- 6) Each three-wheel motorcycle must be equipped with a parking brake of a friction type with a solely mechanical means to retain engagement. (Source: North Dakota Century Code section 39-27-04)

9.1805 Brakes on Motor-Driven Cycles

The City may require an inspection of the brake on any motor-driven cycle and may disapprove any brake which is not so designed or constructed as to ensure reasonable and reliable performance in actual use. (Source: North Dakota Century Code section 39-27-04.1)

9.1806 Tires, Wheels and Rims

- 1) Motorcycle tires must be of pneumatic design with a minimum width of two and twenty-five hundredths ($2 \frac{25}{100}$) inches designed for highway use.
- 2) Tires on two-wheel motorcycles and the front tire on a three-wheel motorcycle must have a load capacity rating at least equal to their respective gross axle weight ratings (GAWR). Each tire on the rear axle of a three-wheel motorcycle must have a load capacity rating at least equal to one-half ($1/2$) the rear axle gross axle weight rating (GAWR).
- 3) Wheel rim diameters may not be less than ten (10) inches (25.4 centimeters) and shall otherwise comply with applicable state standards, as promulgated by the registrar of motor vehicles. Two-wheel motorcycles using low pressure tires are exempt from this subsection, if the inflated height of the tire is twenty (20) inches or greater. (Source: North Dakota Century Code section 39-27-05)

9.1807 Steering and Suspension Systems

- 1) Motorcycle steering and suspension systems must be designed and engineered to provide the operator with the means of safely controlling vehicle direction under all maneuvers required for normal and safe operation.
- 2) The rear wheel of a two-wheel motorcycle must track behind a front wheel within one (1) inch with both wheels in a vertical plane when the vehicle is operating on a straight course. On a three-wheel motorcycle, the two wheels mounted on the rear axle must have a wheel track distance no less than thirty (30) inches and the mid-point of the rear wheel track distance shall be within one (1) inch of the front wheel track when the vehicle is proceeding on a straight course. The vehicle must

be equipped with an adjustment feature that will provide proper wheel tracking.

- 3) The steering head must be provided with a bearing or similar device that will allow the steering shaft to turn freely in rotational motion only.
- 4) All motorcycles, except three-wheel motorcycles, must meet the following specifications in relationship to front wheel geometry:

Maximum Rake: 45 degrees - Trail: 14 inches positive

Minimum Rake: 20 degrees - Trail: 2 inches positive

Manufacturer's specifications must include the specific rake and trail for each motorcycle or class of motorcycles and the terms "rake" and "trail" must be defined by rules adopted by the director of the North Dakota Department of Transportation.

- 5) Handlebars must be of sturdy construction, adequate in size to provide proper leverage for steering and capable of withstanding a minimum force of one hundred (100) pounds applied to each handgrip in any direction. Handlebar grips may not be located above the shoulder height of the seated operator and must be capable of vertical adjustment. The handlebars must provide a minimum of eighteen (18) inches between grips after final assembly.
- 6) Handlebars must be equipped with handgrips consisting of a material and surface patten to ensure firm, non-slip gripping for the driver.
- 7) Every motorcycle must be equipped with a suspension system and such suspension system must be applicable to at least the front wheel. The suspension system must be effective in reducing road shock and designed for the purpose of maximizing vehicle stability. (Source: North Dakota Century Code section 39-27-06)

9.1808 Fuel Systems

- 1) All fuel system components, including the tank, pump, tubing, hoses, clamps, etc. must be securely fastened to the motorcycle so as not to interfere with vehicle operation and be leak proof when the vehicle is in its normal operating attitude.
- 2) Fuel lines must be positioned in a manner to prevent their contact with the engine head, manifold, exhaust system or other high temperature surfaces or moving components. The fuel system must be adequately vented and provided with a fuel shutoff valve located between the fuel supply and the engine. (Source: North Dakota Century Code section 39-27-07)

9.1809 Exhaust Systems - Prevention of Noise

Motorcycles must be equipped with an exhaust system incorporating a muffler or other mechanical device for the purpose of effectively reducing engine noise. Cutouts and bypasses in

the exhaust system are prohibited. The system must be leak proof and all components must be securely attached to the vehicle and located so as not to interfere with the operation of the motorcycle. Shielding must be provided to prevent inadvertent contact with the exhaust system by the operator or passenger during normal operation. In addition, all motorcycles operating on streets and highways must meet the noise decibel limitations as established by the Environmental Protection Agency. No person may sell, offer for sale or install any noise suppressing system or device which will produce noise in excess of the maximum allowable decibel limitations of this section. (Source: North Dakota Century Code section 39-27-08)

9.1810 Mirrors

Every motorcycle must be equipped with at least one mirror of unit magnification, securely affixed to the handlebar and capable of adjustment within a range that will reflect an image that includes at least the horizon and the road surface to the rear of the motorcycle. Such mirror must consist of a minimum reflective surface of ten (10) square inches (64.52 square centimeters). All mirrors shall not contain sharp edges or projections capable of producing injury. (Source: North Dakota Century Code section 39-27-09)

9.1811 Fenders

Each wheel of a motorcycle must be equipped with fenders or otherwise covered by the body configuration. Fenders must be securely mounted and of sufficient size and strength to minimize water or other road surface substances from coming in contact with the vehicle riders, or throwing the road substances unreasonably to the rear of the vehicle. Fender design must be effective in reducing side spray. (Source: North Dakota Century Code section 39-27-10)

9.1812 Seat or Saddle

A seat or saddle securely attached to the vehicle must be provided for the use of the operator. The seat or saddle may not be less than twenty-five (25) inches (63.5 centimeters) above a level road surface when measured to the lowest point on top of the seat or saddle cushion with the operator seated in a driving position. The seat or saddle adjustment locking device must prevent relative movement of the seat from its selected and secured position under all normal vehicle operating conditions. (Source: North Dakota Century Code section 39-27-11)

9.1813 Chain Guard

Any drive chain on a motorcycle must be equipped with a chain guard or covering device to prevent chain or chain sprocket contact with any rider. (Source: North Dakota Century Code section 39-27-12)

9.1814 Vehicle Stand

All motorcycles designed with two wheels must be equipped with a retracting vehicle stand to permit the vehicle to remain in an upright stored position without outside assistance. The stand may be of a side or center type, and shall be of substantial construction to hold the vehicle to

equipped. (Source: North Dakota Century Code section 39-27-13)

9.1815 Glazing

When equipped, all motorcycle windscreens and windshields must meet the following standards:

- 1) The glazing material must comply with the standards promulgated by rule of the director of the North Dakota Department of Transportation.
- 2) The metal support must be of a material which shall bend rather than fragment under impact.
- 3) Covering material, other than glazing, must be beaded at the edges to prevent fraying. (Source: North Dakota Century Code section 39-27-14)

9.1816 Horn

Every motorcycle must be equipped with an operative horn in good working order as described by Subsection 1 of Section 39-21-36 of the North Dakota Century Code. The horn shall operate from a control device located on the left handlebar. (Source: North Dakota Century Code section 39-27-15)

9.1817 Speedometer and Odometer

Every motorcycle must be equipped with a properly operating speedometer and odometer calibrated in miles (kilometers) per hour and miles (kilometers) respectively and must be fully illuminated when the headlamp is activated. (Source: North Dakota Century Code section 39-27-16)

9.1818 Lighting Equipment

- 1) A motorcycle must be equipped with lamps, reflective devices and associated equipment as required by and in compliance with standards adopted by the director of the North Dakota Department of Transportation.
- 2) A gearbox indicator light, if provided, must be located within the operator's field of vision.
- 3) A headlamp beam indicator light must be located within the operator's field of vision and illuminated automatically when the high beam of the headlamp is actuated.
- 4) A motorcycle must be equipped with at least one tail lamp in accordance with

North Dakota Century Code section 39-21-04.

- 5) A motorcycle must be equipped with a stop lamp in accordance with subsection 1 of North Dakota Century Code section 39-21-19. (Source: North Dakota Century Code section 39-27-17)

9.1819 Lighting Equipment on Motor-Driven Cycles

The headlamp or headlamps upon every motor-driven cycle must be of the single-beam or multiple-beam type but in either event must comply with the requirements and limitations as follows:

- 1) Every headlamp or headlamps on a motor-driven cycle must be of sufficient intensity to reveal a person or a vehicle at a distance of not less than one hundred (100) feet when the motor-driven cycle is operated at any speed less than twenty-five (25) miles per hour and at a distance of not less than two hundred (200) feet when the motor-driven cycle is operated at a speed of twenty-five (25) or more miles (40.23 or more kilometers) per hour and at a distance of not less than three hundred (300) feet when the motor-driven cycle is operated at a speed of thirty-five (35) miles per hour.
- 2) In the event the motor-driven cycle is equipped with a multiple-beam headlamp or headlamps the upper beam may not exceed the limitations set forth in Subsection 1 of Section 39-21-20 of the North Dakota Century Code, and the lowermost beam shall meet the requirements applicable to the lowermost distribution of light as set forth in Subsection 2 of Section 39-21-20 of the North Dakota Century Code.
- 3) In the event the motor-driven cycle is equipped with a single-beam lamp or lamps the lamp or lamps must be so aimed that when the vehicle is loaded none of the high-intensity portion of light, at a distance of twenty-five (25) feet ahead, projects higher than the level of the center of the lamp from which it comes. (Source: North Dakota Century Code section 39-27-17.1)

9.1820 Passenger Seat

Motorcycles designed to carry more than one person must be equipped with a securely mounted seat for each passenger located to the side or rear of the driver such that the passenger seat does not interfere with the driver's control or operation of the vehicle. In the case of a two-wheel vehicle, the passenger seat must be located on the longitudinal centerline of the motorcycle. (Source: North Dakota Century Code section 39-27-18)

9.1821 Footrests

Footrests must be provided for each designated seating position. Each footrest for a passenger must be so designated and constructed to support a static weight of two hundred fifty (250) pounds applied at the center of the foot pedal. Footrests must be so located to provide

reasonable accessibility for the passenger's feet. Footrests must fold rearward or upward when not in use if the footrest protrudes beyond the width of the handlebars. (Source: North Dakota Century Code section 39-27-20)

9.1822 Highway Bars

If a motorcycle is so equipped, highway bars must have a maximum width of twenty-six (26) inches; shall be located less than fifteen (15) inches from the foot controls and may not interfere with the operation of the foot controls. (Source: North Dakota Century Code section 39-27-21)

9.1823 Equipment Approval

All motorcycle lighting devices, electrical systems, brake components, glazing materials and exhaust systems, incorporating a muffler or other mechanical exhaust device, required or optional, must be approved by the North Dakota Department of Transportation before they will be available for use within the state. (Source: North Dakota Century Code section 39-27-22)

ARTICLE 19 - Lighted Lamps Required

9.1901 When Lighted Lamps are Required

Subject to exceptions with respect to parked vehicles, every vehicle upon a highway within this state must display lighted lamps and illuminating devices as required in this article for different classes of vehicles as follows:

- 1) At any time from sunset to sunrise, and every farm tractor upon a highway within this state at any time from a half hour after sunset to a half hour before sunrise;
- 2) At any time when it is raining, snowing, sleeting or hailing or during other adverse driving conditions and these conditions do not render a person or vehicle on the highway clearly discernible at a distance of one thousand (1000) feet ahead; or
- 3) At any other time when visibility is impaired by weather, smoke, fog or other conditions or when there is insufficient light to render a person or vehicle on the highway clearly discernible at a distance of one thousand (1000) feet ahead.

Stoplights, turn signals and other signaling devices must be lighted as prescribed for the use of such devices. (Source: North Dakota Century Code section 39-21-01)

ARTICLE 20 - Regulating the Kinds and Classes of Traffic on Certain Roads

9.2001 Load Restrictions Upon Vehicles Using Certain Roadways

When signs are erected giving notice thereof, no 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.

9.2002 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.

9.2003 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 sign or signs at any time upon any street or part of a street so designated.

9.2004 Restrictions Upon Use of Streets by Certain Vehicles

- 1) The city traffic engineer or authorized person may determine and designate those streets upon which shall be prohibited the use of the roadway by off-highway vehicles, all-terrain vehicles, snowmobiles, bicycles, horse-drawn vehicles or other types of traffic and shall erect appropriate signs giving notice thereof.
- 2) When signs are so erected giving notice thereof, no person may disobey the restrictions stated on such signs.

ARTICLE 21 - Criminal Traffic Violations

9.2101 Persons Under the Influence of Intoxicating Liquor or Narcotic Drugs not to Operate Vehicle - Penalty

The provisions of North Dakota Century Code section 39-08-01 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:
 - a) That person has an alcohol concentration of at least eight one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle.

- b) That person is under the influence of intoxicating liquor.
- c) That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.
- d) That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.

The fact that any person charged with violating this ordinance is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section, unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

- 2) A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection. (1) For a first offense, the sentence must include both a fine of at least five hundred dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program. (2) In addition, for a first offense when the convicted person has an alcohol concentration of at least sixteen one-hundredths of one percent by weight, the offense is an aggravated first offense and the sentence must include a fine of at least seven hundred fifty dollars and at least two days' imprisonment.
- 3) For a second offense within seven years, the sentence must include at least ten days' imprisonment, of which forty-eight hours must be served consecutively; a fine of one thousand five hundred dollars; an order for addiction evaluation by an appropriate licensed addiction treatment program; and at least three hundred sixty days' participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.
- 4) For a third offense within seven years, the sentence must include at least one hundred twenty days' imprisonment; a fine of at least two thousand dollars; an order for addiction evaluation by an appropriate licensed addiction treatment program; at least three hundred sixty days' supervised probation; and at least three hundred sixty days' participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.
- 5) For a fourth or subsequent offense within fifteen years, the sentence must include at least one year and one day's imprisonment; a fine of at least two thousand dollars; an order for addiction evaluation by an appropriate licensed treatment program; at least two years' supervised probation; and participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.
- 6) The execution or imposition of sentence under this section may not be suspended or

deferred under subsection 3 or 4 of section 12.1-32-02 of the North Dakota Century Code.

- 7) For purposes of this ordinance, conviction of an offense under a law or ordinance of another state which is equivalent to this section must be considered a prior offense if such offense was committed within the time limitations specified in this subsection.
- 8) If the penalty mandated by this ordinance includes imprisonment or placement upon conviction of a violation of this ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment or placement under this section. (Source: North Dakota Century Code section 39-08-01)

9.2102 Reckless Driving - Penalty

The provision of North Dakota Century Code section 39-08-03 and all subsequent amendments are hereby incorporated by reference in this ordinance.

Any person is guilty of reckless driving if the person drives a vehicle:

- 1) Recklessly in disregard of the rights or safety of others; or
- 2) Without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or the property of another.

Except as otherwise herein provided, any person violating the provisions of this section shall be guilty of an offense.

9.2103 Accidents Involving Damage to Vehicle - Penalty

The provisions of North Dakota Century Code section 39-08-05 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until the driver has fulfilled the requirements of Section 39-08-06 of the North Dakota Century Code. Every such stop must be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances is guilty of an offense.

9.2104 Duty Upon Striking Unattended Vehicle - Penalty

The provisions of North Dakota Century Code section 39-08-07 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of the vehicle of the name and address, as well as the name of the motor vehicle insurance policy carrier, of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address, as well as the name of the motor vehicle insurance policy carrier, of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances of the collision. Any person violating this section is guilty of an offense.

9.2105 Duty Upon Striking Fixtures Upon a Highway

The provisions of North Dakota Century Code section 39-08-08 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of the driver's name and address and of the registration number of the vehicle the driver is driving and shall upon request and if available exhibit his operator's or chauffeur's license and shall make report of such accident when and as required in Section 9.0309.

9.2106 Penalty for Driving While License Suspended or Revoked - Impoundment of Vehicle Number Plates - Authority of City

The provisions of North Dakota Century Code section 39-06-42 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) Except as provided in Section 39-06.1-11 of the North Dakota Century Code, any person who drives a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state while that person's license or privilege so to do is suspended or revoked is guilty of a class B misdemeanor for the first, second or third offense within a five-year period. Any subsequent offense within the same five-year period is a class A misdemeanor.
- 2) If a suspension or revocation was imposed for violation of Section 39-08-01 of the North Dakota Century Code or equivalent ordinance or was governed by Section 39-06-31 or Chapter 39-20 of the North Dakota Century Code, the sentence must be at least four (4) consecutive days' imprisonment and such fine as the court deems proper. The execution of sentence may not be suspended or the imposition of sentence deferred under Subsection 3 or 4 of Section 12.1-32-02 of the North Dakota Century Code. Forfeiture of bail is not permitted in lieu of the defendant's

personal appearance in open court for arraignment on a charge under this subsection.

- 3) In addition to any other punishment imposed, the court may order the number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded by law enforcement officers for the duration of the period of suspension or revocation. When a period of suspension has been extended under Subsection 5 of Section 39-06-17 of the North Dakota Century Code, the court may order the number plates to be impounded in accordance with this subsection. The impounded number plates may be released, upon order of the court, to a bona fide purchaser of the offender's motor vehicle, if that purchaser produces a new certificate of title to the motor vehicle issued by the director of the North Dakota Department of Transportation.
- 4) The municipal judge may order impoundment of motor vehicle number plates in the manner provided in Subsection 3.

9.2107 Operation of Snowmobiles

Definitions:

For the purpose of this article, the following definitions are hereby adopted:

- 1) "Operate" means to ride in or on and control the operation of a snowmobile.
- 2) "Operator" means every person who operates or is in actual physical control of a snowmobile.
- 3) "Person" includes an individual, partnership, corporation, limited liability company, association, the state and its departments, agencies and political subdivisions and any body of persons, whether incorporated or not.
- 4) "Roadway" means that portion of a highway improved, designed or ordinarily used for vehicular travel.
- 5) "Snowmobile" means a self-propelled vehicle designed for travel on snow, ice or a natural terrain and steered by skis or runners. (Source: North Dakota Century Code section 39-24-01)

9.2108 Rules for Operation of Snowmobiles

- 1) No person may operate a snowmobile upon the roadway, shoulder or inside bank or slope of any road, street or highway in this City except as provided pursuant to this article. No snowmobile shall be operated at any time within the right of way of any interstate highway except for emergency purposes.

- 2) A snowmobile may make a direct crossing of a street or highway provided:
 - a) The crossing is made at an angle of approximately ninety (90) degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;
 - b) The snowmobile is brought to a complete stop before crossing the shoulder or main traveled way of the highway;
 - c) The driver yields the right of way to all oncoming traffic which constitutes an immediate hazard; and
 - d) In crossing a divided highway, the crossing is made only at an intersection of such highway with another public street or highway.
- 3) No snowmobile may be operated unless it is equipped with at least one (1) headlamp, one tail lamp and brakes, all in working order, which conform to standards prescribed by rule of the director of the North Dakota Department of Transportation.
- 4) The emergency conditions under which a snowmobile may be operated other than as provided by this article shall be such as to render the use of an automobile impractical under such conditions at such period of time and location.
- 5) It is unlawful for any person to drive or operate any snowmobile in the following ways which are declared to be unsafe and a public nuisance:
 - a) At a rate of speed greater than reasonable or proper under all the surrounding circumstances.
 - b) In a careless, reckless or negligent manner so as to endanger the person or property of another or to cause injury or damage to such person or property.
 - c) While under the influence of intoxicating liquor or a drug as defined in Section 39-24.1-01 of the North Dakota Century Code, or a combination thereof.
 - d) Without a lighted headlamp and tail lamp when required for safety.
 - e) In any tree nursery or planting in a manner which damages or destroys growing stock.
 - f) Without a manufacturer-installed or equivalent muffler in good working order and connected to the snowmobile exhaust system.
 - g) Upon any private land when the private land is posted by the owner or

tenant prohibiting trespassing. The name of the person posting the land must appear on each sign in legible characters. The posted signs shall be readable from the outside of the land and shall be placed conspicuously at a distance of not more than eight hundred eighty (880) yards (804.68 meters) apart, provided further that as to land entirely enclosed by a fence or other enclosure, posting of signs at or on all gates through the fence or enclosure constitutes posting of all the enclosed lands.

- 6) It is unlawful for any person to operate a snowmobile pursuant to Chapter 39-24 of the North Dakota Century Code without having in possession a valid driver's license or permit, except as provided by section 39-24-09.1 of the North Dakota Century Code.
- 7) When snowmobiles are operated within the right of way of any road, street or highway of this state pursuant to this chapter, during times or conditions that warrant the use of lights, such snowmobiles shall travel in the same direction as the direction of motor vehicles traveling on the side of the roadway immediately adjacent to the side of the right of way traveled by the snowmobile.
- 8) It is unlawful for any person to operate a snowmobile within a highway right of way as defined in subsection 37 of section 24-01-01.1 of the North Dakota Century Code between April 1 and November 1 of any year.
- 9) No snowmobile may be operated at any time within the right of way of any highway within this state while towing a sled, skid or other vehicle, unless the sled, skid or other vehicle is connected to the snowmobile by a hinged swivel and secure hitch.
- 10) No person under the age of eighteen years may operate, ride or otherwise be propelled on a snowmobile unless the person wears a safety helmet meeting United States department of transportation standards.

9.2109 Operation of Motor Vehicle, Tractor or Other Vehicle Prohibited on Flood Protective Works - Exception - Penalty

- 1) 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.
- 2) 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. (Source: North Dakota Century Code section 39-10-65)

9.2110 Driving Without a License

A person may not drive any motor vehicle upon a highway in this City unless such person has a valid license as an operator, or is expressly exempted from licensing requirements, by the laws of this state.

9.2111 License to be Carried and Exhibited on Demand

The provisions of North Dakota Century Code section 39-06-16 and all subsequent amendments are hereby incorporated by reference in this ordinance.

A licensee shall have the licensee's, operator's license or permit in the licensee's immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of any district court, municipal court, a patrolman, peace officer or a field deputy or inspector of the North Dakota Department of Transportation. However, a person charged with violating this section may not be convicted or assessed any court costs if the person produces in court, to the chief of police or in the office of the arresting officer an operator's license or permit theretofore issued to that person and valid and not under suspension, revocation or cancellation at the time of the person's arrest.

9.2112 Penalty

Any person who violates any provision of this ordinance for which a specific penalty is not provided may be assessed a fee of up to one hundred dollars.

ARTICLE 22 - Disposition of Traffic Offenses

9.2201 Halting Person for Violating Traffic Regulations - Duty of Officer Halting

The provisions of North Dakota Century Code section 39-07-07 and all subsequent amendment are hereby incorporated by reference in this ordinance.

Whenever any person is halted for the violation of any of the provisions of North Dakota Century Code Chapters 39-01 through 39-13, 39-18, 39-21 and 39-24, or of equivalent City ordinances, the officer halting that person, except as otherwise provided in sections 39-07-09, 39-20-03.1 or 39-02-03.2 of the North Dakota Century Code, may:

- 1) Take the name and address of the person;
- 2) Take the license number of the person's motor vehicle; and
- 3) Issue a summons or otherwise notify that person in writing to appear at a time and place to be specified in the summons or notice.

A halting officer may not take a person into custody or require that person to proceed with the officer to any other location for the purpose of posting bond, where the traffic violation was a

non-criminal offense under Section 39-06.1-02. The officer shall provide the person with an envelope for use in mailing the bond.

9.2202 Hearing - Time - Promise of Defendant to Appear - Failure to Appear - Penalty

The provisions of North Dakota Century Code section 39-07-08 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The time to be specified in the summons or notice provided for in Section 9.2201 must be within thirty-five (35) days after the issuance of the summons or notice or earlier if so ordered by the municipal judge or if the person halted demands an earlier hearing. If the person halted desires, the person may have the right, at a convenient hour, to an immediate hearing or to a hearing within twenty-four (24) hours. The hearing must be before the municipal court. Upon the receipt from the person halted of a written promise to appear at the time and place mentioned in the summons or notice, the officer shall release the person from custody. Any person refusing to give a written promise to appear must be taken immediately by the halting officer before the nearest or most accessible magistrate, or to such other place or before such other person as may be provided by a statute or ordinance authorizing the giving of bail. Any person willfully violating the person's written promise to appear is guilty of an offense, regardless of the disposition of the charge upon which the person originally was halted. The time limitations for a hearing as provided by this section do not preclude a recharging of the alleged violation if the person being charged receives a new summons or notice subject to the provisions of this section.

9.2203 Offenses Under Which Person Halted May Not be Entitled to Release Upon Promise to Appear

The provisions of North Dakota Century Code section 39-07-09 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The provisions of Section 9.2201 do not apply to a person if:

- 1) The halting officer has good reason to believe the person guilty of any felony or if the person is halted and charged with any of the offenses listed in Section 39-06.1-05 of the North Dakota Century Code, but not listed in subsection 2; or
- 2) The halting officer, acting within the officer's discretion, determines that it is inadvisable to release that person upon a promise to appear and if the person has been halted and charged with any of the following offenses
 - a) Reckless driving.
 - b) Driving in excess of speed limitations established by the state or by local authorities in their respective jurisdictions.
 - c) Driving while license or driving privilege is suspended or revoked for

violation of section 39-06-42 of the North Dakota Century Code, or an equivalent ordinance.

- d) Operating a modified vehicle.
- e) Driving without liability insurance in violation of section 39-08-20 of the North Dakota Century Code.
- f) Failing to display a placard or flag, in violation of any rule implementing section 39-21-44 of the North Dakota Century Code, while transporting explosive or hazardous materials.
- g) Operating an unsafe vehicle in violation of subsection 2 of section 39-21-46 of the North Dakota Century Code

The halting officer forthwith shall take any person not released upon a promise to appear before the nearest or most accessible magistrate.

9.2204 Traffic Violations Noncriminal – Exceptions – Procedures

Any person cited, in accordance with the provisions of Sections 9.2201 and 9.2202 of these ordinances, other than an offense listed in Section 39-06.1-05 of the North Dakota Century Code, is deemed to be charged with a non-criminal offense. The person may appear before the designated official and pay the statutory fee for the violation charged at or before the time scheduled for a hearing. If the person has posted bond in person or by mail, the person may forfeit bond by not appearing at the designated time. If the person appears at the time scheduled in the citation, the person may make a statement in explanation of the person's action, and the official may at that time waive, reduce or suspend the statutory fee or bond, or both. If the person cited follows the foregoing procedures, the person is deemed to have admitted the violation and to have waived his right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the official designated in the citation must be identical to the statutory fee established by Section 39-06.1-06 of the North Dakota Century Code. Within ten (10) days after forfeiture of bond or payment of the statutory fee, the official having jurisdiction over the violation shall certify to the licensing authority:

1. Admission of the violation; and
2. In speeding violations, whether the speed charged was in excess of the lawful speed limit by more than nine (9) miles (14.8 kilometers) per hour and the miles (kilometers) per hour by which the speed limit was exceeded.

This section shall not be construed as allowing a halting officer to receive the statutory fee or bond, unless he is otherwise authorized by law to do so. (Source: North Dakota Century Code section 39-06.1-02)

The provisions of North Dakota Century Code section 39-06.1-03 and all subsequent amendments are hereby incorporated by reference in this ordinance.

- 1) A person cited for a traffic violation, other than an offense listed in section 39-06.1-05 of the North Dakota Century Code, who does not follow one of the procedures set forth in section 39-06.1-02 of the North Dakota Century Code, may request a hearing on the issue of commission of the violation charged. The hearing must be held at the time scheduled in the citation, or at the time scheduled in response to the person's request or at some future time, not to exceed ninety (90) days later, set at that first appearance.
- 2) At the time of a request for a hearing on the issue of commission of the violation, the person charged shall deposit with the official having jurisdiction an appearance bond equal to the statutory fee for the violation charged.
- 3) If a person cited for a traffic violation, other than an offense listed in Section 39-06.1-05 of the North Dakota Century Code, has requested a hearing on the issue of the commission of the violation charged and appears at the time scheduled for the hearing, and the state or City, as the case may be, does not appear or is not ready to prove the commission of a charged violation at the hearing, the official shall dismiss the charge.
- 4) If the official finds that the person had committed the traffic violation, the official shall notify the licensing authority of that fact, and whether the person was driving more than nine (9) miles per hour in excess of the lawful limit, stating specifically the miles (kilometers) per hour in excess of the lawful limit, if charged with a speeding violation, within ten (10) days of the date of the hearing. The fact that a person has admitted a violation, or has, in any proceeding, been found to have committed a violation, may not be referred to in any way, nor be admissible as evidence in any court, civil, equity or criminal, except in an action or proceeding involving that person's driving license or privilege.
- 5) a) If a person is aggrieved by a finding that he committed the violation, the person may, without payment of a filing fee, appeal that finding to the district court for trial anew. If, after trial in the appellate court, the person is again found to have committed the violation, there shall be no further appeal. Notice of appeal under this subsection must be given within thirty (30) days after a finding of commission of a violation is entered by the official. Oral notice of appeal may be given to the official at the time that the official adjudges that a violation has been committed. Otherwise, notice of appeal shall be in writing and filed with the official, and a copy of the notice must be served upon the prosecuting attorney. An appeal taken under this subsection may not operate to stay the reporting requirement of subsection 4, nor to stay appropriate action by the licensing authority upon

receipt of that report.

- b) The appellate court upon application by the appellant may:
 - i) Order a stay of any action by the licensing authority during pendency of the appeal, but not to exceed a period of one hundred twenty (120) days;
 - ii) Order a stay and that the appellant be issued a temporary restricted driving certificate by the licensing authority to be effective for no more than one hundred twenty (120) days; or
 - iii) Deny the application.

An application for a stay or temporary certificate under this subdivision must be accompanied by a certified copy of the appellant's driving record, for the furnishing of which the licensing authority may charge a fee of three dollars (\$3.00). Any order granting a stay or a temporary certificate must be forwarded forthwith by the Clerk of Court to the licensing authority, which shall issue a temporary certificate in accordance with the order in the manner provided by law. A court may not make a determination on an application under this subdivision without notice to the appropriate prosecuting attorney. A person who violates or exceeds the restrictions contained in any temporary restricted driving certificate issued pursuant to this subdivision is guilty of a traffic violation and must be assessed a fee of twenty dollars (\$20.00).

- c) If the person charged is found not to have committed the violation by the appellate court, the clerk of court shall report that fact to the licensing authority immediately. If an appeal under this subsection is from a violation of a City ordinance, the city attorney shall prosecute the appeal. In all other cases, the appropriate state's attorney shall prosecute the appeal.
- 6) The state or the City, as the case may be, must prove the commission of a charged violation at the hearing or appeal under this section by a fair preponderance of the evidence. Upon an appeal under subsection 5, the court and parties shall follow, to the extent applicable, the North Dakota rules of Civil Procedure. If on the appeal from the finding of the official the finding is affirmed, costs may be assessed at the discretion of the trial judge.
 - 7) As used in Sections 39-06.1-02, 39-06.1-03 and 39.06.1-04 of the North Dakota Century Code, the word "official" means a municipal judge or a magistrate or other qualified person appointed by the presiding judge of the judicial district, to serve as such official for all or a specified part of the judicial district.

9.2206 Failure to Appear, Pay Statutory Fee, Post Bond - Procedure - Penalty

The provisions of North Dakota Century Code section 39-06.1-04 and all subsequent amendments are hereby incorporated by reference in this ordinance.

If a person fails to choose one of the methods of proceeding set forth in Sections 9.2204 or 9.2205, the person must be deemed to have admitted to commission of the violation charged, and the official having jurisdiction shall report such fact to the licensing authority within ten (10) days after the date set for the hearing. Failure to appear at the time designated, after signing a promise to appear, without paying the statutory fee or posting and forfeiting bond is a class B misdemeanor. Failure to appear without just cause at the hearing must also be deemed an admission of commission of the violation charged.

9.2207 Offenses Excepted

The provisions of North Dakota Century Code section 39-06.1-05 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The procedures authorized under Sections 39-06.1-02 and 39.06.1-03 of the North Dakota Century Code may not be utilized by a person charged with one of the following offenses:

- 1) Driving or being in actual physical control of a vehicle in violation of Section 9.2101.
- 2) Reckless driving or aggravated reckless driving in violation of Section 9.2103.
- 3) A violation of Chapter 12.1-16 of the North Dakota Century Code resulting from the operation of a motor vehicle.
- 4) Leaving the scene of an accident in violation of Sections 39-08-04, 39-08-05, 39-08-07, 39-08-08 of the North Dakota Century Code, or equivalent ordinances.
- 5) Driving while license or driving privilege is suspended or revoked in violation of Section 39-06-42 of the North Dakota Century Code, or an equivalent ordinance.
- 6) Violating subdivisions b and c of subsection 5 of Section 39-24-09 of the North Dakota Century Code.
- 7) Operating a modified motor vehicle in violation of Section 39-21-45.1 of the North Dakota Century Code.
- 8) Driving without liability insurance in violation of Section 39-08-20 of the North Dakota Century Code.
- 9) Operating an unsafe vehicle in violation of subsection 1 of section 39-21-46 of the North Dakota Century Code.

10) Causing an accident with an authorized emergency vehicle in violation of subsection 2 of section 39-21-46 of the North Dakota Century Code.

9.2208 Amount of Statutory Fees

The provisions of North Dakota Century Code section 39-06.1-06 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The fees required for a criminal disposition pursuant to either Section 9.2204 or Section 9.2205 shall be as follows:

- 1) For a nonmoving violation as defined in Section 9.2209, a fee of any amount not to exceed twenty dollars (\$20.00).
- 2) For a moving violation as defined in Section 9.2210, a fee of twenty dollars (\$20.00), except no fee may be imposed for a violation of Section 9.1702.
- 3) For a violation of Section 9.0502 a fee established as follows:

Miles Per Hour Over Lawful Speed Limit	Fee
1 - 5	\$ 5.00
6 - 10	\$ 5.00 plus \$1/each mph over 5 mph over limit
11 - 15	\$ 10.00 plus \$1/each mph over 10 mph over limit
16 - 20	\$ 15.00 plus \$2/each mph over 15 mph over limit
21 - 25	\$ 25.00 plus \$3/each mph over 20 mph over limit
26 - 35	\$ 40.00 plus \$3/each mph over 25 mph over limit
36 - 45	\$ 70.00 plus \$3/each mph over 35 mph over limit
46 +	\$100.00 plus \$5/each mph over 45 mph over limit

- 4) For a violation of Section 9.0501, or an ordinance defining careless driving, a fee of thirty dollars (\$30.00).
- 5) For a violation of Section 9.0509, or an ordinance defining care required in driving, a fee of not less than ten dollars (\$10.00) nor more than thirty dollars (\$30.00).

6) For a violation of Section 9.1703, a fee not to exceed twenty dollars (\$20.00).

9.2209 “Nonmoving Violation” Defined

The provisions of North Dakota Century Code section 39-06.1-08 and all subsequent amendments are hereby incorporated by reference in this ordinance.

For the purpose of 9.2208, a “nonmoving violation” means a violation of Sections 9.0924, 9.0932, 9.0933 or the provisions of Article 13, Article 14, Article 15 or Article 16 of this Chapter.

9.2210 “Moving Violation” Defined

The provisions of North Dakota Century Code section 39.06.1-09 and all subsequent amendments are hereby incorporated by reference in this ordinance.

For the purpose of 9.2208, a “moving violation” means a violation of Article 5, Article 6, Article 9, Article 11, Article 17, Article 18, Article 19 or Article 21 of this Chapter, except those sections for which a specific penalty is provided and those sections which are specifically listed in Section 9.2209.

9.2211 General Penalty for Violation of Chapter

The provisions of North Dakota Century Code section 39-07-06 and all subsequent amendments are hereby incorporated by reference in this ordinance.

Any person violating any of the provisions of this Chapter for which another criminal penalty is not provided specifically is guilty of an infraction as defined in section 12.1-32-01 of the North Dakota Century Code. As used in this section, the phrase “another criminal penalty” includes provision for payment of a fixed fee for violating another section of this chapter but does not include other administrative sanctions which may be imposed.

9.2212 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.

ARTICLE 23 - Sections not Adopted

The sections of Title 39 of the North Dakota Century Code not expressly adopted in Article 1 through Article 22 of this Chapter, inclusive, are not adopted by reference.

ARTICLE 24 - Filing of Ordinance

Incident to the adoption of certain portions of Title 39 of the North Dakota Century Code

by reference, a copy of the text of the adopted code shall be filed in the office of the city auditor as required by North Dakota Century Code section 40-05-01(1) for use and examination by the public.

ARTICLE 25 - Adoption of Amendments by Reference

The adoption of certain portions of Title 39 by reference shall be construed to incorporate such amendments as may be made therein from time to time, and such copy of the adopted portions to Title 39 filed as required in Article 24 of this Chapter shall at all times be kept current in the office of the city auditor of this City.

ARTICLE 26 - Severability Clause

If any provision of this ordinance or its application to any person, or circumstances is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

ARTICLE 27 – Penalties

Any person who is convicted of violating or of failing to comply with any of the provisions of this ordinance may be punished by a fine of not more than one thousand, five hundred dollars (\$1,500.00) or by imprisonment not to exceed thirty (30) days, or both.

CHAPTER TEN

HEALTH

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CHAPTER TEN

HEALTH

ARTICLE 1 – Board of Health

10.0101 Members

The Board of Health is composed of the City governing body, which shall have and exercise all powers under the law. (Source: North Dakota Century Code section 23-35-03)

10.0102 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: North Dakota Century Code section 23-35-08).

ARTICLE 2 – Local Health Officer

10.0201 Duties of Local Health Officer – Term

- 1) A local health officer shall serve a term of five years, subject to removal for cause by the governing body or the district board of health. The health officer must be a physician licensed to practice medicine in this state and need not be a resident of the public health unit. The appointee shall qualify by filing the constitutional oath of office in the manner provided for the members of the board of health. If the state health officer finds a local health officer is failing to perform the duties of the position, the state health officer may report the case to the governing body. At the next meeting of the governing body or district board of health, the governing body or district board of health shall declare the office vacant and may appoint another physician to fill the unexpired term, or shall report the matter to the board of health, and the board shall declare the office vacant and promptly shall appoint another physician to fill the unexpired term.
- 2) Within the jurisdiction of the board of health, a local health officer:
 - a) Shall keep a record of the official acts of the local health officer.
 - b) Shall enforce every law and rule relating to preservation of life and health of individuals.
 - c) May exercise the powers and duties of the board of health under the supervision of the board of health.
 - d) May make sanitary inspections of any place within the jurisdiction in which the local health officer finds a probability a health-threatening condition

exits.

- e) May investigate public water and ice supplies suspected of contamination and initiate necessary condemnation proceedings.
 - f) May enforce school cleanliness; inspect any schools that may be overcrowded, poorly ventilated, or unsanitary; and, when necessary, report cases of any unsanitary or unsafe school building to the board of health for investigation.
 - g) May take any action necessary for the protection of public health and safety.
 - h) May determine when quarantine and disaffection is necessary for the safety of the public. The local health officer may establish quarantines consistent with procedures provided under chapter 23-07.6 of the North Dakota Century Code, and perform any acts required for disinfecting when necessary.
 - i) Shall maintain an office within the jurisdiction of the public health unit consistent with any terms of appointment.
 - j) May select and discharge any assistant health officer in the public health unit, consistent with any terms of appointment.
- 3) A local health officer may request the assistance of a county sheriff or city health department in the same manner as provided under subsection 3 of section 23-35-09 of the North Dakota Century Code. (Source: North Dakota Century Code section 23-35-12)

10.0202 Penalty

Any person who violates any order, ordinance, or rule prescribed by the board of health or local health officer or any rule adopted under this chapter shall be punishable by a fine of not more than one thousand, five hundred dollars (\$1,500.00) or by imprisonment not to exceed thirty (30) days or both such fine and imprisonment. (Source: North Dakota Century Code section 23-35-13)

ARTICLE 3 – Garbage, Refuse, Rubbish

10.0301 Definitions

For the purpose of this article the following words shall have the meanings given herein:

- 1) “Ashes” is the residue from burning wood, coal, coke or other combustible materials.
- 2) “Garbage” is putrescible animal and vegetable wastes resulting from the handling,

preparation, cooking and consumption of food.

- 3) "Refuse" is all putrescible and non-putrescible solid wastes (except body wastes) including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and solid market and industrial wastes.
- 4) "Rubbish" is non-putrescible solid wastes (excluding ashes) consisting of both combustible and non-combustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.

10.0302 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.

10.0303 Containers

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.

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 the convenience of collection.

10.0304 Burning

No garbage, refuse or rubbish shall be burned within the City or in disposal grounds maintained by the City.

10.0305 Nuisance

Failure to comply with the provisions of Sections 10.0302, 10.0303 and 10.0304, shall constitute a public nuisance and be punishable as such under the terms of Chapter 12 of these ordinances.

10.0306 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.

10.0307 Fees

Fees for the collection of garbage rubbish by the City or franchised contractor and the disposal thereof may be set by resolution of the City governing body. If a person living outside of City limits desires to have his or her garbage collected by the City, he or she shall be subject to a fee of \$15.00 per month for such service.

10.0308 Fees – Payment – Collection

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, either 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.

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, the amount thereof may be assessed against the premises to which the service is rendered. This amount may be collected and returned in the same manner as other municipal taxes are assessed, certified, collected and returned. (Source: North Dakota Century Code section 40-05-01.1)

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.

10.0309 Fees – Payment – Collection by Franchised Contractor

In the event the City elects to franchise a contractor to perform the collection services contemplated by this Article, 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 thirty (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 10.0308.

10.0310 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.

10.0311 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 superintendent with the assistance of the City health officer. The public works superintendent 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 governing body.

10.0312 Rules and Regulations

The health officer of the City 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 chapter. The health officer 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 City collection crews the health officer may give instructions to a franchised contractor.

ARTICLE 4 – Dangerous Buildings

10.0401 Dangerous Buildings Defined

For the purpose of this chapter, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered.

- 1) Those whose interior walls or other vertical structural members lean, list, or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.
- 2) Those which, exclusive of the foundation, show thirty-three percent of more of damage or deterioration of the supporting member or members, or fifty percent of damage or deterioration of the non-supporting enclosing or outside walls or covering.
- 3) Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonable safe for the purpose used.
- 4) Those which have been damaged by fire, wind, or other causes so as to have become dangerous to life, safety, morals, or the general health and welfare of the occupants or the people of the city.
- 5) Those which have become, or are, so dilapidated, decayed, unsafe or unsanitary or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation or are likely to cause or aggravate sickness or disease, so

as to work injury to the health, morals, safety, or general welfare of those living therein.

- 6) Those having light, air, and sanitation facilities which are inadequate to protect the health, morals, safety, or general welfare of human beings who live or may live therein.
- 7) Those having inadequate facilities for egress in case of fire or panic or those having insufficient stairways, elevators, fire escapes, or other means of communication.
- 8) Those which have parts thereof which are so attached that they may fall and injure members of the public or property.
- 9) Those which because of their condition are unsafe, unsanitary, or dangerous to the health, morals, safety or general welfare of the people of this city.
- 10) Those building existing in violation of any provision of the Building Code, zoning ordinances, any provision of the Fire Prevention Code or other ordinances of this city.

10.0402 Standards for Repair, Vacation or Demolition

The following standards shall be followed in substance by the building inspector and the City governing body in ordering repair, vacation or demolition:

- 1) If the “dangerous building” can be reasonably repaired so that it will no longer exist in violation of the terms of this article it shall be ordered repaired.
- 2) If the “dangerous building” is in such condition as to make it dangerous to the health, safety or general welfare of its occupant it shall be ordered to be vacated.
- 3) In any case where a “dangerous building” is fifty percent damages, decayed, or deteriorated from its original value or structure, it shall be demolished and in all cases where a building cannot be repaired so that it will no longer be in violation of the terms of this article, it shall be demolished. In all cases where a “dangerous building” is a fire hazard existing or erected in violation of the terms of this article or any ordinance of this city or statute of the state of North Dakota, it shall be demolished.

10.0403 Dangerous Buildings – Nuisances

All “dangerous buildings” within the terms of Section 10.0401 of this article are hereby declared to be public nuisances and shall be repaired, vacated, or demolished as hereinbefore and hereinafter provided.

10.0404 Duties of Building Inspector

The building inspector, as designated by the City governing body, shall:

- 1) Inspect or cause to be inspected semi-annually, all public buildings, schools, halls, churches, theaters, hotels, tenements, commercial, manufacturing or loft buildings for the purpose of determining whether any conditions exist which render such places a “dangerous building” within the terms of Section 10.0401 of this Article.
- 2) Inspect any building, wall or structure about which any person to the effect files complaints that a building, wall, or structure is or may be existing in violation of this Article. Inspect any building, wall or structure reported by the fire or police departments of this City as probably existing in violation of the terms of this Article.
- 3) Notify in writing the owner, occupant, lessee, mortgagee and all other persons having an interest in said building, as shown by the records in the office of the Register of Deeds of the County of LaMoure, of any building found by the building inspector to be a “dangerous building” within the standards set forth in Section 10.0401 of this Article that: (a) the owner must vacate, or repair, or demolish said building in accordance with the terms of the notice and this article; (b) the owner or occupant must vacate said building or may have it repaired in accordance with the notice and remain in possession. Provided, that any person notified under this subsection to repair, vacate, or demolish any building shall be given such reasonable time, not exceeding thirty (30) days as may be necessary to do, or have done, the work or act required by the notice provided for herein. (See Appendix 10-2)
- 4) Set forth in the notice provided for in subsection 4 hereof a description of the building or structure deemed unsafe, a statement of the particulars which make the building or structure a “dangerous building”, and an order requiring the same to be put in such condition as to comply with the terms of this ordinance within such length of time, not exceeding thirty (30) days, as is reasonable.
- 5) Report to the City council any noncompliance with the “notice” provided for in subsection 4 and 5 hereof.
- 6) Appear at all hearings conducted by the City council and testify as to the conditions of “dangerous buildings.”
- 7) Place a notice on all “dangerous buildings” reading as follows: “This building has been found to be a dangerous building by the building inspector. This notice is to remain on this building until it is repaired, vacated, or demolished in accordance with the notice which has been given the owner, occupant, lessee or mortgagee of this building and all other persons having an interest in said building as shown by the records of the Register of Deeds of the County of LaMoure. It is unlawful to remove this notice until such notice is complied with.” (See Appendix 10-1)

10.0405 Duties of the City Governing Body

The City Council shall:

- 1) Upon receipt of a report of the building inspector as provided for in Section 10.0404, subsection 6 hereof, give written notice to the owner, occupant, mortgagee, lessee and all other persons having an interest in said building as shown by the records of the Register of Deeds of the County of LaMoure to appear before it on the date specified in the notice to show cause why the building or structure reported to be a “dangerous building” should not be repaired, vacated or demolished in accordance with the statement of particulars set forth in the building inspector’s notice provided for herein in Section 10.0404, subsection 5. (See Appendix 10-3)
- 2) Hold a hearing and hear such testimony as the building inspector or the owner, occupant, mortgagee, lessee or any other person having an interest in said building as shown by the records of the Register of Deeds of the County of LaMoure shall offer relative to the “dangerous building”.
- 3) Make written findings of fact from the testimony offered pursuant to subsection 2 as to whether or not the building in question is a “dangerous building” within the terms of section 10.0401 hereof.
- 4) Issue an order based upon findings of fact made pursuant to subsection 3 commanding the owner, occupant, mortgagee, lessee, and all other persons having an interest in said building as shown by the records of the Register of Deeds of the County of LaMoure to repair, vacate or demolish any building found to be a “dangerous building” within the terms of this article and provided that any person so notified, except the owners, shall have the privilege of either vacating or repairing said “dangerous building”.
- 5) If the owner, occupant, mortgagee, or lessee fails to comply with the order provided for in Subsection D hereof, within ten days, the board of city commissioners shall cause such building or structure to be repaired, vacated, or demolished as the facts may warrant, under the standards hereinabove provided for in Section 2 of this ordinance and shall, with the assistance of the city attorney, cause the costs thereof to be assessed back against the property in the manner provided by law, or in the alternative, cause the costs of such repair, vacation, or demolition to be recovered in a suit at law against the owner or other proper party.
- 6) Report to the city attorney the names of all persons not complying with the order provided for in Subsection D of this section.

10.0406 Failure to Comply with Decision of the City Council

If the owner, occupant, mortgagee or lessee fails to comply with the order of the City council or fails to appeal to the District Court within thirty (30) days as provided herein, the City through its officers and employees shall cause such building or structure to be repaired, vacated or demolished as ordered by the City council and shall cause the costs of such repair, vacation or demolition to be charged against the land on which said building existed by special assessment, or as a municipal; lien, or shall cause said cost of removal to be levied as a special tax against the land upon which said building stands or did stand or to be recovered in a suit at law against the owner.

10.0407 Violations – Penalty for Disregarding Notices or Orders

The owner of any “dangerous building” who shall fail to comply with any notice or order to repair, vacate to demolish said building given by any person authorized by this Article to give such notice or order shall be guilty of an infraction and upon conviction thereof shall be fined not exceeding one hundred dollars (\$100.00) for each offense and every day subsequent to such notice in which the said owner shall fail to comply with any notice or order as stated shall be deemed a separate offense.

The occupant or lessee in possession who fails to comply with any notice to vacate or who fails to repair said building in accordance with any notice given as provided for in this Article shall be guilty of an infraction and upon conviction thereof shall be fined not exceeding one hundred dollars (\$100.00) for each offense and every day subsequent to such notice in which the said occupant or lessee shall fail to comply with any notice or order as above stated, shall be deemed a separate offense.

Any person removing the notice provided for in Subsection 8 of Section 10.0404 shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding one hundred dollars (\$100.00) for each offense.

10.0408 Duties of the City Attorney

The city attorney shall:

- 1) Prosecute all persons failing to comply with the terms of the notices provided for in Section 10.0404, subsections 4 and 5 and the order provided for in Section 10.0405, subsection 4.
- 2) Appear at all hearings before the City council in regard to “dangerous buildings”.
- 3) Take such other legal action as is necessary to carry out the terms and provisions of this article.

10.0409 Where Owner Absent from the City

All notices or orders provided for herein shall be sent by registered mail to such owner, occupant, lessee or mortgagee, and all other persons having an interest in said building, to the last

known address of each, and a copy of such notice shall be posted in a conspicuous place on the “dangerous building” to which it relates. Such mailing and posting shall be deemed adequate service.

10.0410 Duties of Fire Department

The employees of the fire department shall make a report in writing to the building inspector of all building or structures which are or may be suspected to be “dangerous buildings” within the terms of this article. Such reports must be delivered to the building inspector within twenty-four hours of the discovery of such building by an employee of the fire department.

10.0411 Duties of Police Department

All employees of the police department shall make a report in writing to the building inspector of any building or structures which are or may be suspected to be “dangerous buildings” within the terms of this article. Such reports must be delivered to the building inspector within twenty-four hours of the discovery of such building by any employee of the police department.

10.0412 Duties of Health Department

All employees of the health department shall make a report in writing to the building inspector about any buildings or structures which are or may be suspected to be “dangerous buildings” and which, because of their condition, are untenable, unsanitary, or dangerous to the health, morals, safety, or general welfare of the occupants or the people of this city. Such reports must be delivered within twenty-four hours of the discovery of such buildings by any employee of the health department.

10.0413 Appeal

The City governing body shall serve upon the owner, occupant, mortgagee, lessee and all other persons having an interest in any building ordered to be repaired, vacated or demolished, a copy of its order. The owner, occupant, mortgagee or lessee shall thereafter have thirty (30) days from the date of the service of such order in which to appeal from such order to the District Court or to take such other legal steps to enjoin the enforcement of such order.

APPENDIX 10-1

This is a suggestion as to the warning sign that should be printed in red.

WARNING

This building has been found to be a dangerous building by the building inspector. This notice is to remain on this building until it is repaired, vacated, or demolished in accordance with the notice which has been given the owner, occupant, lessee or mortgagee of this building and all other persons having an interest in said building as shown by the records of the County Recorder. It is unlawful to remove this notice until such notice is complied with.

City Building Inspector
Kulm, North Dakota

APPENDIX 10-2

**IN THE MATTER OF A “DANGEROUS BUILDING” LOCATED IN
THE CITY OF KULM, NORTH DAKOTA,
WITH AN ADDRESS OF**

NOTICE AND ORDER

You are hereby notified that the undersigned, building inspector of the City of Kulm, North Dakota, acting pursuant to Article 4, Chapter 10 of the Ordinances of the City of Kulm, has made an inspection of the following described building in which you are, or appear to be, interested:

You are further notified that the undersigned building inspector deems the foregoing described building to be dangerous within the meaning of Section 10.0401 of said Ordinances in the following particulars: _____

YOU ARE THEREFORE ORDERED TO _____

the said building on or before this _____ day of _____, 20____.

Building Inspector

Dated this _____ day of _____, 20____.

APPENDIX 10-3

**IN THE MATTER OF "DANGEROUS BUILDINGS" LOCATED
AT KULM, NORTH DAKOTA
UNDER ARTICLE 4, CHAPTER TEN**

NOTICE OF HEARING

You are hereby notified that the building inspector of Kulm, North Dakota, has filed with the City governing body a report that you have not complied with a Notice and Order that buildings located at _____ were dangerous buildings and were to be demolished by you prior to _____, 20__.

You are further notified to appear before the City governing body at _____ on the _____ day of _____, 20__, at the hour of _____ o'clock __m., to show cause as to why the building reported to be "dangerous building", should not be demolished in accordance with the statement of particulars set forth in the Building Inspector's Notice.

Dated _____, 20__.

THE CITY OF KULM, NORTH DAKOTA

By _____
Mayor

ATTEST:

City Auditor

ARTICLE 5 - Smoking in Public Places and Places of Employment

10.0501 Definitions.

For the purposes of this Article and unless the context or subject matter otherwise requires:

- 1) "Bar" means a retail alcoholic beverage establishment licensed under chapter 5-02 that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages. The term includes a bar located within a hotel, bowling center, restaurant, or other establishment that is not licensed primarily or exclusively to sell alcoholic beverages.
- 2) "Business" means a sole proprietorship, partnership, association, joint venture, corporation, or other business entity, either for profit or not for profit, including retail establishments where goods or services are sold and professional corporations and other entities where professional services are delivered.
- 3) "E-cigarette" means any electronic oral device, such as one composed of a heating element, battery or electronic circuit, or both, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, and e-pipe or under any other product, name, or descriptor.
- 4) "Employee" means an individual who is employed by an employer in consideration for direct or indirect monetary wages or profit, or an individual who volunteers services for an employer.
- 5) "Employer" means an individual, business, or private club, including a municipal corporation or trust, or the state and its agencies and political subdivisions that employs the services of one or more individuals.
- 6) "Enclosed area" means all space between a floor and ceiling, and/or roof, that has thirty-three percent or more of the surface area of its perimeter bounded by opened or closed walls, windows, or doorways. A wall includes any physical barrier regardless of whether it is opened or closed, temporary or permanent, or contains openings of any kind, and includes retractable dividers and garage doors.
- 7) "Health care facility" means any office or institution providing health care services or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions. Some examples of health care facilities include hospitals; clinics; ambulatory surgery centers; outpatient care facilities; weight control clinics; nursing homes; homes for the aging or chronically ill; nursing, basic, long-term, or assisted living facilities; laboratories; and offices of any medical professional licensed under title 43, including all specialties and

subspecialties in those fields. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, wards within health care facilities, and any mobile or temporary health care facilities.

- 8) "Health care services" means services provided by any health care facility. Some examples of health care services are medical, surgical, dental, vision, chiropractic, psychological, and pharmaceutical services.
- 9) "Place of employment" means an area under the control of a public or private employer, including work areas, auditoriums, classrooms, conference rooms, elevators, employee cafeterias, employee lounges, hallways, meeting rooms, private offices, restrooms, temporary offices, vehicles, and stairs. A private residence is not a place of employment unless it is used as a licensed child care, adult day care, or health care facility.
- 10) "Public place" means an area which the public enters. Some examples of public places are publicly owned buildings, vehicles, or offices; bars; bingo facilities; gambling and gaming facilities as defined in section 12.1-28-01 of the North Dakota Century Code; child care and adult day care facilities subject to licensure by the department of human services, including those operated in private homes; convention facilities; educational facilities, both public and private; facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; financial institutions; health care facilities; hotels and motels, including all rooms that are rented to guests; laundromats; any common areas in apartment buildings, condominiums, mobile home parks, retirement facilities, nursing homes, and other multiple-unit residential facilities; private and semiprivate nursing home rooms; museums, libraries, galleries, and aquariums; polling places; professional offices; public transportation facilities, including buses, trains, airplanes, and similar aircraft, taxicabs and similar vehicles such as towncars and limousines when used for public transportation, and ticket, boarding, and waiting areas of public transit facilities, including bus and train stations and airports; reception areas; restaurants; retail food production and marketing establishments; retail service establishments; retail stores, including tobacco and hookah establishments; rooms, chambers, places of meeting or public assembly, including school buildings; shopping malls; sports arenas; theaters; and waiting rooms.
- 11) "Publicly owned building, vehicle, or office" means a place or vehicle owned, leased, or rented by any state or political subdivision, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of taxes.
- 12) "Restaurant" includes every building or other structure, or any part thereof, and all buildings in connection therewith that are kept, used, maintained, advertised, or held out to the public as a place where food is served. Some examples of restaurants include coffee shops, cafeterias, sandwich stands, private and public school

cafeterias, kitchens, and catering facilities in which food is prepared on the premises for serving elsewhere, and a bar area within a restaurant.

- 13) "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional businesses.
- 14) "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. Smoking also includes the use of an e-cigarette which created a vapor, in any manner or any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Ordinance.
- 15) "Sports arena" means an indoor or outdoor place where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events. Some examples of sports arenas include sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling centers.

10.0502. Smoking restrictions - Exceptions - Retaliation - Application.

- 1) In order to protect the public health and welfare and to recognize the need for individuals to breathe smoke-free air, smoking is prohibited in all enclosed areas of:
 - a) Public places; and
 - b) Places of employment.
- 2) Smoking is prohibited within twenty feet [6.10 meters] of entrances, exits, operable windows, air intakes, and ventilation systems of enclosed areas in which smoking is prohibited. Owners, operators, managers, employers, or other persons who own or control a public place or place of employment may seek to rebut the presumption that twenty feet [6.10 meters] is a reasonable minimum distance by making application to the director of the local health department or district in which the public place or place of employment is located. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the unique circumstances presented by the location of 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, therefore, the public health and safety will be adequately protected by a lesser distance.
- 3) The following areas are exempt from subsections 1 and 2:
 - a) Private residences, except those residences used as a child care, adult day

care, or health care facility subject to licensure by the department of human services.

- b) Outdoor areas of places of employment, except those listed in subsection 2.
 - 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.
- 4) Smoking as part of a traditional American Indian spiritual or cultural ceremony is not prohibited.
 - 5) 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 section or reports or attempts to prosecute a violation of this section. 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 subsection shall be a class B misdemeanor.
 - 6) This section may not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.
 - 7) Notwithstanding any other provision of this chapter, an owner, operator, manager or other person in control of an establishment, facility, or outdoor area may declare that an entire establishment, facility, or outdoor area as a nonsmoking place.

10.0503. Complaints and enforcement - City and county ordinances and home rule charters.

- 1) Nothing in this Ordinance shall preempt or otherwise affect any other state or local tobacco control law that provides more stringent protection from the hazards of secondhand smoke.
- 2) The provisions of this Ordinance shall be enforced by the City Attorney or State's Attorney. Law enforcement agencies may apply for injunctive relief to enforce provisions of this Ordinance.

10.0504. Responsibility of proprietors.

The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this Ordinance shall:

- 1) Clearly and conspicuously post no smoking signs or the international no smoking symbol 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 on every vehicle that constitutes a place of employment under this Ordinance 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 and to all prospective employees upon their application for employment that smoking is prohibited in that place.
- 6) For places under his or her control, direct a person who is smoking in violation of this Ordinance to extinguish the product being smoked. If the person does not stop smoking, the owner, 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, operator, manager, or employee shall immediately report the violation to an enforcement agency identified in this Ordinance. The refusal of the person to stop smoking or leave the premises in response to requests made under this section by an owner, operator, manager, or employee shall not constitute a violation of the Ordinance by the owner, operator, manager, or employee of the entity, business or premises.

10.0505. Construction and severability.

This Ordinance shall be construed liberally so as to further its purposes. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance, or its application to any person or circumstances, shall be held invalid, that invalidity shall not affect the other provisions of this Ordinance that can be given without the invalid provision or applications.

10.0506. Penalty.

- 1) An individual who smokes in an area in which smoking is prohibited under section 10.0502 is guilty of an infraction punishable by a fine not exceeding fifty dollars.
- 2) Except as otherwise provided in subsection 5 of section 10.0502, an owner or other person with general supervisory responsibility over a public place or place of employment who willfully fails to comply with section 10.0502 is guilty of an infraction, subject to a fine not to exceed one hundred dollars for the first violation, to a fine not to exceed two hundred dollars for a second violation within one year, and a fine not to exceed five hundred dollars for each additional violation within one year of the preceding violation.

- 3) In addition to the fines established by this section, violation of this Ordinance 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 to the person for the premises on which the violation occurred.
- 4) Violations of this Ordinance are declared to be a public nuisance that may be abated by restraining order, preliminary or permanent injunction, or other means provided by law.
- 5) Each day on which a violation of this Ordinance occurs shall be considered a separate and distinct violation.

CHAPTER ELEVEN
ANIMALS AND FOWL

ARTICLE 1 - General Regulations

- 11.0101 Cruelty - Penalty
- 11.0102 Dangerous Animals
- 11.0103 Permit - When Issued
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CHAPTER ELEVEN
ANIMALS AND FOWL

ARTICLE 1 – General Regulations

11.0101 Cruelty – Penalty

Any person that willfully engages in animal neglect is guilty of a class A misdemeanor. Any person that willfully engages in animal abuse is guilty of a class A misdemeanor for a first or a second offense and a class C felony for a third or subsequent offense occurring within ten years. Any person that intentionally engages in animal cruelty is guilty of a class C felony. (Source: North Dakota Century Chapter 36-21.1)

11.0102 Dangerous Animals

It is unlawful to permit any dangerous animal or vicious animal of any kind to run at large within the City. Exhibitions or parades of wild animals may be conducted only upon securing a permit from the chief of police. It is also unlawful to keep or harbor within the City any dangerous animal without first having obtained a permit to keep or harbor such animal from the chief of police.

11.0103 Permit – When Issued

The chief of police shall have discretion as to whether or not to issue a permit pursuant to Section 11.0102. If the chief of police shall refuse to issue a permit, the decision may be appealed to the City governing body. No permit shall be issued without first obtaining a description of the animal, the name of the owner or person in charge, the purpose for which the animal is kept, and such other pertinent information as the chief of police may determine. Any dangerous animal kept or allowed to run at large without the owner or keeper having first obtained a permit in compliance with this section is hereby declared a nuisance and the owner or keeper is guilty of a violation of this article.

11.0104 Killing Dangerous Animals

The members of the police department in the City are authorized to kill any dangerous animals of any kind when it is necessary for the protection of any person or property.

11.0105 Diseased Animals

No domestic animal afflicted with a contagious or infectious disease shall be allowed to run at large, or to be exposed in any public place whereby the health of man or beast may be affected; nor shall such diseased animal be shipped or removed from the premises of the owner thereof, except under the supervision of the chief of police or the health officer.

It is hereby made the duty of the health officer to secure such disposition of any diseased animal and such treatment of affected premises as to prevent the communication and spread of the contagion or infection, except in cases where the state department of health is empowered to act.

11.0106 Housing

No person shall cause or allow any stable or place where any animal is or may be kept to be unclean.

11.0107 Keeping of Certain Animals Prohibited

It is unlawful to keep any live sheep, swine or pigs, cattle, chickens or other poultry, goats, or rabbits 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 licensed livestock auction market.

11.0108 Strays

It is 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 is also unlawful to picket or tie any such animal in any of the streets of the City for the purpose of grazing or feeding.

11.0109 Noises

It is unlawful to harbor or keep any animal which habitually disturbs the peace by loud noises at any time of the day or night.

11.0110 Penalty

Any person who violates the provisions of this article for which a specific penalty is not otherwise provided shall be guilty of an infraction for which the maximum penalty is a fine of one thousand dollars (\$1,000.00). The owner of any animal impounded pursuant to the provisions of this article shall pay all costs and charges assessed for such impoundment before such animal may be released to the owner.

ARTICLE 2 – Dogs and Cats

11.0201 License Required

No dog or cat over one month of age shall be permitted to be or remain in the City without being licensed as provided in this Article. It shall be the duty of the owner or keeper of any dog or cat kept within the City to have the dog or cat inoculated against rabies and proof thereof must shown to the person issuing the license before a license may be issued.

11.0202 Licensing Procedure and Terms

All dogs and cats shall be registered as to sex, breed, name and addressees of owner and name of dog. Licenses shall be issued by the chief of police or other authorized person on an annual basis. The person paying the license fee shall receive a receipt therefore and a license tag with which to mark the animal. It shall be the duty of the owner or keeper to cause such license tag or to be securely attached around the animal's neck and kept there at all times during the license period.

11.0203 License Fee

The license fee shall be \$10.00 annually for each dog or cat.

11.0204 License: When Due and Payable

The license fees or renewal fees previously provided for shall become due and payable on the 1st day of July in each year. If the fee is not paid before the first day of July a penalty of \$50.00 shall be added to the license or renewal fee.

11.0205 Dog or Cat Running at Large Prohibited

It shall be unlawful for the owner or keeper of any dog or cat to permit the same to run at large in the City at any time. A dog or cat shall not be considered running at large if attended and on a leash or when in the confines of the owner's or keeper's premises.

11.0206 Disposition of Unlawful Dogs or Cats

Any unlicensed dog or cat or any dog or cat running at large may be taken up by any police officer and impounded at the City dog pound, or such other place as may be designated by the governing body. The dog or cat shall not be released to any person until such dog or cat is licensed (if unlicensed); a fee of \$50.00 is paid for the taking of each animal, and all pound charges are paid directly to the facility where the dog or cat is housed.

11.0207 Disposition of Unclaimed Dogs or Cats

The owner or keeper shall be notified of the taking of the dog or cat. If the owner or keeper fails to pay the charges (including license if necessary) and claim the animal within three days of notification the animal may be destroyed. If the owner or keeper is unknown, the chief of police shall give public notice of the taking of the animal before it is destroyed or otherwise disposed of.

11.0208 Return to Owner if Known

Notwithstanding the provisions of Section 11.0206, if a dog or cat is found at large and its owner can be identified and located, such dog or cat need not be impounded but may, instead, be taken to the owner. In such case the policeman or other officer may proceed against the owner or keeper for violation of this article.

11.0209 Noisy Dog or Cat Prohibited

It shall be unlawful to keep or harbor within the City any dog or cat that disturbs the peace by habitually howling, barking, whining, meowing or making other disagreeable noise. Any person wishing to file a complaint shall be required to give his name and address and sign a complaint.

11.0210 Nuisance – When

Any licensed dog or cat, any dog or cat running at large, any dog or cat disturbing the peace, or any dog or cat molesting passersby, chasing vehicles or trespassing upon private property is hereby declared to be a nuisance.

11.0211 Dangerous Dogs

- 1) As used in this ordinance, “dangerous dog” shall mean and include any of the following:
 - a) Without provocation, inflicted substantial bodily harm on a human on public or private property; or
 - b) Killed a domestic animal without provocation while off the owner’s property; or
 - c) Been found to be potentially dangerous, and after the owner has notice that the dog is potentially dangerous, the dog, unprovoked, aggressively bites, attacks, or endangers the safety of humans or domestic animals; or
 - d) Any dog, not owned by a governmental or law enforcement unit, used primarily to guard public or private property.
- 2) As used in this ordinance, potentially dangerous dog. shall mean and include any of the following.
 - a) When unprovoked, inflicts bites on a human or a domestic animal on public or private property; or
 - b) When unprovoked, chases or approaches a person, including persons on a bicycle, persons upon streets, sidewalks, or any public or private property, other than the dog owner’s property, in an apparent attitude to attack; or
 - c) Has a known propensity, disposition, or tendency to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.

- 3) As used in this ordinance, a “dangerous dog” does not include the following:
 - a) An animal that bites or attacks a person, who is knowingly trespassing on the property of the animal’s owner;
 - b) An animal that is responding in a manner that an ordinary and reasonable person would conclude was designed to protect a person if that person is engaged in a lawful activity or is the subject of an assault; or
 - c) An animal that bites or attacks a person who provokes or torments the animal.
- 4) As used in this ordinance, an “attack by a dog” means any assault or battery by a dog upon a person or domestic animal, to include biting, felling or toppling, tearing of clothing, provoking flight to escape attack, or any other act which could reasonably cause physical injury to the person or domestic animal.
- 5) As used in this ordinance, a “bite by a dog” means any seizing, gripping or grasping, no matter how slight or momentary, by a dog between its jaws of the body parts of a person or domestic animal, so as to cause physical injury to such person or domestic animal. This does not include playful behavior by a puppy that is welcome and not likely to cause any injury, fear or harm to the person or animal.
- 6) As used in this ordinance, a “law enforcement dog” means a dog trained for police work to recognized law enforcement standards and presently used by and under the control of a law enforcement officer to carry out the law enforcement officer’s official duties.
- 7) As used in this ordinance, a “lawful hunt” means a hunt for lawful game conducted on private or public property with the consent of the owner or custodian of the property by a person with a valid license (if required) during the lawful season for the game concerned using dogs customarily employed and suitable for such game.
- 8) As used in this ordinance, an “owner” means any person or legal entity that has a possessory property right in a dog, including the harbinger or keeper of a dog with the consent of the owner or of a dog that has been abandoned by or escaped the custody of its owner.
- 9) As used in this ordinance, an “owner’s real property” means any real property owned or leased by the owner of the dog, not including any public right of way or a common area of a condominium, apartment complex or townhouse development.
- 10) As used in this ordinance, a “substantial bodily injury” means any physical injury that results in broken bones or disfiguring lacerations or requires cosmetic surgery or hospitalization or an injury that requires multiple sutures.

11) The provisions of this ordinance do not apply to:

- a) A law enforcement dog or guard dog being used by a law enforcement officer or bona fide professional security guard to carry out the law enforcement officers or security guard's official duties or professional responsibilities;
- b) A dog being used in a lawful hunt;
- c) A dog where the injury or damage inflicted by the dog was sustained by a person who, at the time of the injury, was tormenting, abusing or assaulting the dog, had tormented, abused, or assaulted the dog, or was committing or attempting to commit a crime.

12) It shall be unlawful for any person to keep or harbor a dog that such person knows, or reasonably should know, to be a dangerous dog, unless the keeper or harborer receives a permit as required along with complying with the following requirements:

- a) **Confinement.** Any keeper or harborer of a dangerous dog shall keep such dog confined, except as set forth hereinafter. "Confined" as that term is used in this section, shall mean such dog is securely kept indoors or in a securely enclosed and locked pen or dog-run area made of at least, nine-gauge chain link with no more than one-inch spacing. Said pen or run must be locked with a key or combination lock whenever such dog is within the structure. Said pen or dog-run area must have sides at least six (6) feet high and be secured over the top. If the pen or dog-run area has no bottom secured to the sides, the sides must be embedded into the ground no less than one (1) foot deep.
- b) **Leash and Muzzle.** Any keeper or harborer of a dangerous dog shall, when the dog is not confined pursuant to section (L)(1), securely muzzle and restrain the dog with a leash, chain, rope or harness having a minimum tensile strength of three hundred (300) pounds and not exceeding three (3) feet in length.
- c) **Notice.** Any keeper or harborer of a dangerous dog shall display, in a prominent place on the premises where the dog is kept, a sign easily readable by the public using the words "Beware of Dog." In addition, a similar sign shall be posted on the pen or run of such animal.
- d) **Registration and Reporting.** Any keeper or harborer of a dangerous dog shall properly license the dog pursuant to Ordinance No. 13.0103 and pursuant to the requirements set forth in this subsection. Upon issuance, the dangerous animal license shall be effective for one (1) year from the date of issuance and shall be reapplied for prior to its expiration. Such dangerous

animal license shall not be transferable and shall expire whenever changes occur that would make the keeper or harbored ineligible to obtain a license. The keeper or harbored of the dangerous dog shall maintain with the city auditor the address where the dangerous dog is primarily kept or harbored.

- e) Insurance. Any keeper or harbored of a dangerous dog shall maintain liability insurance in the single incident amount of \$100,000.00 for bodily injury or death of any person(s) or for damage to property which may result from actions of the dangerous dog, or from actions or inactions of the keeper or harbored related to the dangerous dog. The application or reapplication for a dangerous animal license shall include a certificate of liability insurance that indicates the required insurance level and is valid for the intended registration period.
- f) Identification. Any keeper or harbored of the dangerous dog must prior to the issuance of the dangerous animal license make the dog available to the city to take photographs to be used to depict the animal's size, coloring, and distinguishing features. Failure to make the dog available when reasonably requested by the city shall be grounds for denial of the application.

13) Any keeper or harbored of a dog that is a size and/or breed that allows the dog to be capable of inflicting life threatening injuries upon human beings or domestic animals is hereby held to a very high standard of care regarding their knowledge of factors or incidents that indicate that the dog may be dangerous as defined in subsection (a). The court, in determining whether a keeper or harbored of such dog reasonably should know about the dog's dangerousness, shall apply such very high standard. Examples of breeds to which this standard applies include, but are not limited to, the following, to-wit:

- a) Staffordshire Bull Terrier;
- b) American Staffordshire Terrier;
- c) American Pit Bull Terrier;
- d) Argentine Dogo;
- e) Cane Corso;
- f) Dogue do Bordeaux;
- g) Dogo Cubano;
- h) Dogo Sardesco;
- i) Fila Brasileiro

- j) Perro de Presa Canario;
- k) Rottweiler;
- l) Doberman Pinscher;
- m) Any dog, whether purebred or mix, that has the appearance and characteristics of any of the breeds listed above.

14) In the event that a law enforcement officer or animal control officer has probable cause to believe that a dog is dangerous as defined herein, such officer may file an affidavit with the municipal court judge, setting forth the facts upon which such officer relies to support such probable cause. Upon receipt of such affidavit, if the judge determines that the facts set forth in the affidavit are sufficient to establish such probable cause, the judge shall schedule a hearing for the purpose of determining whether or not the dog in question should be deemed dangerous as defined herein. The judge, also, upon request of the city attorney, shall issue a search warrant, pursuant to the applicable city ordinances to seize the dog, and to impound the dog at an animal shelter pending the determination of whether the dog is dangerous. The court shall provide notice of the hearing to any known harborer or keeper of the dog. Such notice shall be served on such harborer or keeper in the same manner as the service of a subpoena. The hearing date shall not be less than five (5) days nor more than thirty (30) days following the date of service upon the harborer or keeper. At the hearing, the city shall have the burden, by clear and convincing evidence, to prove the dog is dangerous as defined herein and shall present evidence to that effect. The keeper or harborer of the dog may present evidence to rebut the city's evidence. The failure of the keeper or harborer to attend or participate in the hearing shall not prevent the judge from making the appropriate determination concerning the dog. After the hearing, the keeper or harborer of the dog shall be notified in writing of the judge's determination. If a determination is made that the dog is dangerous, the keeper or harborer shall submit a request for a license within the time frame established by the court, which shall not be more than twenty (20) days. If the dog has been impounded pending the determination by the court, the dog shall remain impounded until the harborer or keeper has complied with this subsection. If the keeper or harborer fails to comply with the provisions of this article within the time frame established by the court, and the court has not granted an extension of such time, the keeper or harborer shall be deemed to have abandoned the dog and it shall become the property of the city. The city shall have the right to dispose of the dog in any manner it determines to be applicable, including the destruction of the dog. Either the city or the keeper or harborer may appeal the judge's determination to the LaMoure County District Court, by filing an appeal, and posting the appropriate bond as required under the appropriate North Dakota Statutes. In the event an appeal by the keeper or harborer of a dog impounded hereunder, the bond for such an appeal shall include an amount to insure the payment of the costs of impoundment for 30 days and such bond may be adjusted during the pendency of such an appeal. The failure to post such bond, or

adjustment thereto, within a time frame established by the Court shall be deemed an abandonment of the dog by the keeper or harborer and the city shall have the right to dispose of the dog in any manner it determines to be applicable, including the destruction of the dog. If the dog is not determined to be dangerous, the court may determine whether the keeper or harborer shall pay any or all of the costs of impoundment, taking into consideration whether other reasons existed for impoundment and such other relevant factors as the court determines.

PENALTIES Any violation of Section 12 subparts a-f, shall be deemed an infraction punishable by a fine of \$50 per infraction.

15) In addition to any penalties the court may prescribe for violation of this section, if the court finds, after notice to the keeper or harborer and an opportunity for hearing, that such dangerous dog represents a continuing threat of serious harm to human beings or other domestic animals, either because the court finds that the keeper or harborer is unlikely to comply with the provisions of this section, or because the court finds that, even with compliance with this section, the dangerous dog poses a threat to the public that is unreasonable, the court shall render such animal destroyed.

16) No person who has been convicted of a violation of this section shall keep or harbor a dangerous dog nor shall such person be eligible for a dangerous animal license for a period of five (5) years following such conviction. In addition, no dangerous dog shall be kept or harbored and no license shall be issued for any dog, if the primary location where such dog is to be kept or harbored is the residence of a person who has been convicted of a violation of this section within the previous five (5) years. Except that if the court permits the person who has been convicted of a violation to keep or harbor his or her dangerous dogs existing at the time of the conviction, the person may keep and harbor such dogs and apply for or re-apply for a dangerous animal license only for those particular dog(s).

11.0212 Penalty

Any person violating any provision of this article shall be guilty of an infraction and be fined not to exceed one thousand dollars (\$1,000.00).

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CHAPTER TWELVE

PUBLIC NUISANCES

ARTICLE 1 – Sanitary Nuisances

12.0101 Residence – When Sewer and Water Required

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 this City without first making or causing to be made proper connections with the City's sewer and water facilities and mains.

The term "proper connections" when used in this section shall be construed to mean connections with the water mains and sanitary sewers which are equipped and furnished with proper valves and fittings so as to enable such water connections to be used at all times. Sanitary toilets and drains and such equipment shall at all times be kept in repair so as to make them available for household use and in condition to be used at all seasons of the year.

12.0102 Outhouses – Cesspools – A Nuisance

The use, construction, maintenance, building or erection of any outhouse, privy, vault or cesspool within this City is hereby declared to be a nuisance and a menace to public health, when in violation of Section 12.0101.

12.0103 Outhouses – Cesspools – Exceptions

- 1) Private sewage system and private water supplies may be constructed to serve new buildings to be built in areas not included in Section 12.0101, providing such lot area complies with the requirements of any zoning requirements.
- 2) Private sewage systems and private water systems may be installed in existing buildings in areas not included in Section 12.0101.
- 3) Each private sewage system or private water supply hereafter altered or constructed shall conform to the State Health Department Standards.

12.0104 Outhouses – Cesspools – Offensive Odors

It shall be unlawful for the owner or occupant of any lot or piece of ground within the corporate limits of this City to permit any private sewer system to emit any offensive odors or to become dangerous or injurious to public health or offensive to sense of smell of the people of the City. Any private sewer system emitting such odor is hereby declared to be a nuisance and a menace to the public health of the City.

12.0105 Outhouses – Cesspools – Cleaning of

In the cleaning of private septic tanks and sewage systems the contents thereof shall be removed in containers fitted so as to prevent the escape of odors or materials therefrom and disposed of in a manner approved by the City health officer.

The pumping of a private sewage system on the surface of the ground or hauling contents thereof in such a manner as to allow the material to spill on the ground, street or public ways is hereby declared to be a public nuisance.

12.0106 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 (5) 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 this City, or in any private premises within this City, for more than five (5) 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 (5) hours after its death shall be guilty of a violation of this Article.

12.0107 Water Pools – Putrid Substances

It shall be unlawful for the owner or occupant of any parcel of ground in this City to suffer or permit water or 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.

12.0108 Garbage and Refuse

Depositing, maintaining or permitting to be maintained or to accumulate upon any public or private property, any household waste, including but not limited to items such as paper, rags, trash, garbage, discarded clothing, shoes, curtains, linens, and other apparel, batteries, motor oil, tin cans, aluminum cans, plastic containers, glass containers, cleaning utensils, cooking utensils, and discarded household fixtures, water, sewage, offal or excrement, any decaying hint, vegetables, fish, meat or bones or any foul, putrid or obnoxious liquids substances when such items are stored, collected, piled or kept on private or public property and in view of adjacent properties or public right of ways is hereby declared to be a public nuisance.

12.0109 Impure Water

Any well or other supply of water used for drinking or household purposes which is polluted or which is so constructed or situated that it may become polluted is hereby declared to be a public nuisance.

12.0110 Undressed Hides and Carcasses

Undressed hides and carcasses kept longer than twenty-four hours, except at the place where they are to be manufactured, or in a storeroom, or basement whose construction is approved by the health department, is hereby declared to be a public nuisance.

12.0111 Breeding Place for Flies

The accumulation of manure, garbage, or anything in which flies may breed, is hereby declared to be a public nuisance.

12.0112 Stagnant Water

Any excavation in which stagnant water is permitted to collect is hereby declared to be a public nuisance.

12.0113 Garbage Handling Improperly

Throwing or letting fall on or permitting to remain on any street, alley or public ground any manure, garbage, rubbish, filth, fuel or wood while engaged in handling or removing any such substances is hereby declared to be a public nuisance.

12.0114 Rodents

Accumulation of junk, old iron, automobiles or parts thereof, or anything in which rodents may live or breed or accumulate, or collection of branches or stumps, is hereby declared to be a public nuisance.

12.0115 Bonfires in Public Places or Private Ground

Burning, causing or permitting to be burned in any street, alley or public or private ground any dirt, filth, manure, garbage, sweepings, leaves, ashes, paper, rubbish or material of any kind is hereby declared to be a public nuisance. The burning of wood in commercial or equally suitable burning pits, fireplaces or wood burning stoves not exceeding 3 feet in diameter shall not be prohibited by this section.

12.0116 Parking Livestock Trucks or Trailers in Residential Districts

Parking or permitting a livestock truck or trailer to remain on any street, area or public ground in a residential district when such truck or trailer gives off an offensive odor or is contaminated with manure or other filth is hereby declared to be a public nuisance.

12.0117 Household Appliances

Household appliances, fixtures and furniture including but not limited to items such as

stoves, refrigerators, freezers, sinks, cabinets, and other kitchen appliances, bedroom furniture, mattresses, tables, chairs, clothes washing and drying machines, heating appliances, water heaters, bathroom appliances and light fixtures, light fixtures, washtubs, when such items are stored, collected, piled or kept in a district zoned residential, neighborhood commercial, highway commercial or any residences in other zoning districts and are not stored inside a building is hereby declared to be a public nuisance.

12.0118 Dismantled Motor Vehicles, Etc.

The wrecking, storing or accumulation of dismantled motor vehicles, motor vehicle bodies and disassembled parts thereof, dismantled bicycles or bicycle parts, or other machines and motors and old cars for the purpose of junking the bodies and securing parts by any other person in residential, neighborhood commercial, highway commercial or any residences in other zoning districts, and are not stored inside a structure, thus causing unsightliness in such districts, is hereby declared to be a public nuisance.

12.0119 Electrical Generators

The use of generators to supply electricity to any structure within the City of Kulm is prohibited. This prohibition shall not apply to emergency situations when the delivery of electricity by a public utility is interrupted. The failure to pay an electrical bill, resulting in a disconnect by the public utility shall not be deemed an emergency. Contractors may use generators for licensed work between the hours of 6:00 A.M. and 6:00 P.M. unless the city auditor grants a further extension of time, limited to several days.

12.0120 Dog Waste

The owners of all dogs must immediately remove the excrement of their dog(s) from any street, alley, sidewalk, city park, or other public grounds. The owners of all dogs shall immediately remove the excrement of their dog(s) from private property which they do not own or lease. Owners of dogs shall not allow dog excrement from their dog(s) to accumulate on their property if it creates a breeding ground for flies or other insects. Violation of this section is not subject to the other notice requirements of this chapter and may subject the owner of the dog to a fine not to exceed \$500.00 for each violation.

ARTICLE 2 – Smoke – Gases

12.0201 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 smoke stack or chimney of any building or premises in such quantities as to cause injury or detriment to any person or persons or to the public, or to endanger the comfort, health or safety of any person or persons, or in such manner as to cause or tend to cause damage or injury to property, is hereby declared to be a public nuisance.

12.0202 Smoke, Dust, Ashes, Cinders, Gases – Prohibited

No person, persons, 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 persons, or to the public, or to endanger the comfort, health or safety to any such person or persons, or the public, or in such manner as to cause or have a natural tendency to cause injury or damage to business or property.

ARTICLE 3 – Radio Interference and Noise Control

12.0301 Radio Interference Prohibited

It shall be unlawful for any person knowingly to maintain, use, operate or cause to be operated within this City, any machine, device, appliance, equipment or apparatus of any kind whatsoever, the operation of which shall cause reasonably preventable electrical interference with radio reception within said municipal limits. The maintenance, use or operation within the City of any machine, device, appliance, equipment or apparatus of any kind so as to interfere with radio reception in violation hereof is hereby declared a public nuisance.

12.0302 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) 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 the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the person or 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 fifty (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) The using, operating or permitting to be played, used or operated, any radio receiving set, musical instrument, phonograph, loudspeaker, amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of advertising or attracting the attention of the public to any structure.

- 4) Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 PM and 7:00 AM, 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.
- 5) 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 patients in the hospital, provided conspicuous signs are displayed indicating that a school, hospital, or court is in the vicinity.

12.0302 Engine Brakes

- 1) It shall be unlawful for the driver of any motor vehicle to intentionally use compression release engine brakes on a public road, highway, street, parking lot or alley located within and adjacent to the city limits of the City of Kulm. This Ordinance is not intended to prohibit the passage of vehicles equipped with engine brakes in posted areas, but rather limit the use of such equipment in posted areas under the aforesaid circumstances.
 - (a) Definition. Compression release engine brakes, for the purpose of this ordinance, shall include any engine retarding brake system which alters the normal compression of the engine thereby converting the engine into an air compressor for the purposes of braking without the use of wheel brakes.
 - (b) Signage. Appropriate signage shall be erected at locations throughout the City of Kulm as deemed necessary by the City Council, Kulm Chief of Police and/or LaMoure County Sheriff's Department.
- 2) Penalty. The penalty for violation of this Article constitutes an infraction and is punishable by a fine of twenty-five dollars (\$25.00) for a first offense and fifty dollars (\$50.00) for a second or subsequent offense.

ARTICLE 4 – Automobiles – Personal Property

12.0401 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 thirty (30) days or more (except in a licensed junk yard) 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.

12.0402 Abatement Required by Owners

The owner, owners, tenants, lessees and/or occupants of any lot within the corporate limits of this City upon which such storage is made, and also the owner, /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.

12.0403 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 one thousand dollars (\$1,000.00) for each infraction and a separate infraction may be deemed committed on each day during or on which the nuisance is permitted to exist.

12.0404 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 12.0401, 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.

12.0405 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 thirty (30) days after impounding, any article of personal property described in 12.0401 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 (6) 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 person making the sale shall give the purchaser at the sale a receipt for the purchase of such property.

12.0406 Removal and Impoundment Proceeds

Within thirty (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 therefore, 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.

ARTICLE 5 – Noxious Weeds

12.0501 Definition

Whenever used in this ordinance, the term “noxious weeds” shall mean and include 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 reebs, and Humenophysa pubescens), dodder, or any similar unwanted vegetation over eight inches in height.

12.0502 Weeds 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 or other deleterious, unhealthful growths.

12.0503 Grass Over Five Inches in Height 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, grass in excess of five inches in height.

12.0504 Blowing Grass Clippings/Leaves Into Street Prohibited

No person shall blow or allow to be deposited any grass clippings or leaves into any street or gutter within the City.

12.0505 Notice to Destroy

The City health officer or person designated by the City 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 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.

12.0506 Action Upon Non-Compliance

Upon the failure, neglect, or refusal of any owner or agent to cut, destroy and/or remove noxious weeds 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 12.0505 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, the health officer or person designated by the City 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.

12.0506 Cost Assessed to Property

When the City has effected the removal of such noxious weeds 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 governing body. 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. (Source: North Dakota Century Code section 40-05-01.1)

ARTICLE 6 – General Penalty Provision

12.601 Penalty for Violation of Chapter

Any person violating any of the provisions of this Chapter, upon conviction, is subject to a fine of not more than one thousand dollars (\$1,000.00) for each violation, and a separate violation may be deemed committed on each day the violation is permitted to exist.

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CHAPTER THIRTEEN

OFFENSES

ARTICLE 1 – In General

13.0101 Criminal Contempt

- 1) The Municipal Court has power to punish for contempt of its authority for the following offenses:
 - a) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
 - b) Misbehavior of any of its officers in their official transactions; or
 - c) Disobedience or resistance to its lawful writ, process, order, rule, decree or command.
- 2) A criminal contempt proceeding under this section is not a bar to subsequent prosecution for a specific offense if the court certifies in the judgment of conviction of criminal contempt, or the order terminating the proceeding without acquittal or dismissal, that a summary criminal contempt proceeding was necessary to prevent repetition of misbehavior disruptive of an ongoing proceeding and that subsequent prosecution as a specific offense is warranted.
- 3) This section shall not be construed to deprive a court of its power, by civil contempt proceedings, to compel compliance with its lawful writ, process, order, rule, decree or command or to compensate a complainant for losses sustained by reason of disobedience or resistance thereto, in accordance with the prevailing usage's of law and equity, including the power of detention.

13.0102 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.

13.0103 Fleeing or Attempting to Elude a Police Officer

Any driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police vehicle, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a class B misdemeanor. A signal complies with the section if the signal is perceptible to the driver and the police officer giving such signal is in uniform, prominently displaying the officer's badge of office, and the vehicle is appropriately marked showing it to be an official police vehicle. (Source: North Dakota Century Code section 39-10-71).

13.0104 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.

13.0105 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.

ARTICLE 2 – Offenses Against Persons

13.0201 Simple Assault

- 1) A person is guilty of an offense if that person:
 - a) Willfully causes substantial bodily injury to another human being; or
 - b) Negligently causes substantial bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
- 2) Consent to the conduct causing bodily injury by all persons injured by the conduct is a defense if:
 - a) Neither the injury inflicted nor the injury threatened is such as to jeopardize life or seriously impair health;
 - b) The conduct and the injury are reasonable foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or
 - c) The conduct and the injury are reasonable foreseeable hazards of an occupation or profession or of medical or scientific experimentation conducted by recognized methods and the persons subjected to such conduct or injury, having been made aware of the risks involved, consent to the performance of the conduct or the infliction of the injury.
- 3) Assent does not constitute consent, within the meaning of this ordinance, if:
 - a) It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense and such incompetence is manifest or

known to the actor;

- b) It is given by a person who by reason of youth, mental disease or defect, or intoxication, is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature of harmfulness of the conduct charged to constitute the offense; or
- c) It is induced by force, duress or deception. (Source: North Dakota Century Code sections 12.1-17-01 and 12.1-17-08)

13.0202 Sexual Assault

- 1) A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense if:
 - a) That person knows or has reasonable cause to believe that the contact is offensive to the other person;
 - b) That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders that other person incapable of understanding the nature of that other persons conduct;
 - c) That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct, by administering or employing without the victim's knowledge, intoxicants, a controlled substance as defined in Chapter 19-03.1 of the North Dakota Century Code, or other means for the purpose of preventing resistance;
 - d) The other person is in official custody or detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over that other person;
 - e) The other person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare; or
 - f) The other person is a minor, fifteen years of age or older, and the actor is an adult. (Source: North Dakota Century Code section 12.1-20-07).

13.0203 Harassment

A person is guilty of an offense if, with intent to frighten or harass another, the person:

- a) Makes a telephone call anonymously or in offensively coarse language;
- b) Makes repeated telephone calls, whether or not a conversation ensues, with no

purpose of legitimate communication; or

- c) Communicates a falsehood by telephone and causes mental anguish.
(Source: North Dakota Century Code section 12.1-17-07(1)(b), (c), (d))

13.0210 Dog License Required

- (A) License Required. No owner shall keep any dog, six months of age and older, within the city unless a license therefore has first been secured. Licenses shall be issued by the Police Department, for a one-time fee of \$20. If the dog is deemed a dangerous dog or potentially dangerous dog, as defined in Ordinance 13.0209, in which case the permit shall be issued upon payment of a fee of \$150 per year, provided all measures are taken to comply with that ordinance and the licensing ordinance 13.0103. The dog owner must apply for an annual dangerous dog permit from the Chief of Police
- (B) Rabies Vaccination. Every application for a license shall be accompanied by a certificate from a duly licensed veterinarian showing that the dog to be licensed has been given a vaccination against rabies in compliance with Chapter 13 of the Kulm City Ordinances.
- (C) Fees Due. It shall be the duty of each owner of a dog to pay the license fee to the City Auditor before January 1 in the year following expiration of the current license, or upon acquiring ownership or possession of any unlicensed dog or upon establishing residence in the city.
- (D) Payment and Tags. Upon payment for the license, the City Auditor shall give an original receipt to the person who pays the fee, retaining a duplicate. The Auditor will then issue a durable tag to the owner of the dog, to be worn on the dog collar.
 - 1. License Tags. The City Auditor shall procure a sufficient number of suitable tags, the year for which the license fee is paid and shall deliver one appropriate tag to the owner when the fee is paid. License Tags shall be fastened to the dog's collar or harness and worn at all times when the dog is not within the structure or dwelling of the owner or custodian, except as provided by Section (E) 2 or (F).
 - 2. Wearing of License Tags Required. The owner shall cause the tag to be affixed by a permanent metal fastening to the collar of the dog so licensed in a manner that the tag may be easily seen. The owner shall see that the tag is constantly worn by the dog
 - a) It shall be unlawful for the owner, keeper or harbinger of any licensed dog to allow or permit such dog to be outside of the residence of the owner, keeper or harbinger at any time other than when enclosed on all sides in a cage or covered dog run without having attached to a

collar about the neck of such animal or to a secure body harness a license tag; except when such dog is being handled in the course of an organized training or exhibition program.

- b) It shall be unlawful for any person to remove or cause to be removed, the collar, harness or the license tag from any registered dog without the consent of the owner, keeper or harbinger thereof.
 - c) Any dog running at large and found not wearing a collar or tag for the current year shall be deemed a stray animal and shall be seized
3. Duplicates. In case any dog tag is lost, a duplicate shall be issued by the City Auditor for a fee and upon presentation of a receipt showing payment of the license fee for the current period.
 4. Transfer. Dog tags shall not be transferable.
 5. Refund. No refunds shall be made on any dog license fee.
 6. Offenses involving. It shall be unlawful to counterfeit or attempt to counterfeit the tags or take from any dog a tag legally placed upon it by its owner with the intent to place it on another dog, or to place the tag upon another dog.

(E) Offenses

1. An owner of a dog commits an offense if:
 - a) The dog is not currently registered with the city under this article;
 - b) The dog is not wearing a collar or harness with a current registration tag issued by the Chief of Police securely attached to it; or
 - c) The owner fails to show a current registration receipt and registration tag for the dog upon request by the chief of police or a peace officer.
2. It is a defense to prosecution under Subsection (1) that:
 - a) the dog was under four months of age;
 - b) the dog was being held for sale by a retail pet store or for adoption by animal services or an animal welfare organization; or
 - c) the owner of the dog has resided in the city less than 30 days.

(F) Service Animal. No fee is required for the registration of a dog that is used as a service animal.

(G) Nonresidents. This chapter shall not apply to any nonresident owner or keeper of a dog while such nonresident is passing through the city, provided such dog or cat shall remain on a lease or otherwise effectively physically restrained as in a closed vehicle.

(H) Penalties. Any violation of this Ordinance shall be deemed an infraction punishable by a fine of \$50 per infraction.

(Reference: 13.0103, 13.0209)

ARTICLE 3 – Offense Against Property

Division 1. Property Destruction and Criminal Intrusion

13.0301 Criminal Mischief – Penalty

A person is guilty of an offense if that person:

- a) Willfully tampers with tangible property of another so as to endanger person or property; or
- b) Willfully damages tangible property of another.

Conduct is punishable as criminal mischief under this ordinance when pecuniary loss, if intentionally caused, is not in excess of one hundred dollars (\$100.00); if recklessly caused, is not in excess of two thousand dollars (\$2,000.00); and if the damages to tangible property of another are not by means of an explosive or a destructive device.

- c) The penalty for the offense of criminal mischief may not exceed a fine of **two thousand dollars (\$2,000.00)**, imprisonment from thirty (30) days, or both such fine and imprisonment. (Source: North Dakota Century Code sections 12.1-21-05 and 40-05-06)

13.0302 Tampering with or Damaging a Public Service

A person is guilty of an offense if that person causes a substantial interruption or impairment of a public communication, transportation, supply of water, gas, power or other public service by:

- a) Tampering with or damaging the tangible property of another;
- b) Incapacitating an operator of such service; or

- c) Negligently damaging the tangible property of another by fire, explosive or other dangerous means. (Source: North Dakota Century Code section 12.1-21-06).

13.0303 Consent as a Defense and Definition of “of another” for Criminal Mischief or Tampering with or Damaging a Public Service

For prosecution of criminal mischief under 13.0301 or tampering with or damaging a public Service under 13.0302.

- 1) Whenever it is an element of the offense that the property is of another, it is a defense to a prosecution under those sections that the other has consented to the actor’s conduct with respect to the property.
- 2) Property is that “of another” if anyone other than the actor has a possessory or proprietary interest therein. (Source: North Dakota Century Code sections 12.1-21-07 and 12.1-21-08(2)).

13.0304 Criminal Trespass

A person is guilty of an offense if, knowing that the person is not licensed or privileged to do so, that person, enters or remains in any place as to which notice against trespass is given by actual communication to the actor by the person in charge of the premises or other authorized person or by posting in a manner reasonably likely to come to the attention of intruders. (Source: North Dakota Century Code section 12.1-22-03 (3)).

Division 2. Theft and Related Offenses

13.0305 Consolidated Theft Offenses

- 1) Conduct denominated theft in Sections 13.0306 to 13.0308 constitutes a single offense designed to include the separate offenses heretofore known as larceny, stealing, purloining, embezzlement, obtaining money or property by false pretenses, extortion, blackmail, fraudulent conversion, receiving stolen property, misappropriation of public funds, swindling and the like.
- 2) A charge of theft under 12.0306 to 13.0308, which fairly apprises the defendant of the nature of the charges against the defendant, shall not be deemed insufficient because it fails to specify a particular category of theft. The defendant may be found guilty of theft under such charge if the defendant’s conduct falls under 13.0306 to 13.0308, so long as the conduct proved is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case that must be met. (Source: North Dakota Century Code section 12.1-23-01).

13.0306 Theft of Property

A person is guilty of theft if that person:

- a. Knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof;
- b. Knowingly obtains the property of another by deception or by threat with intent to deprive the owner thereof, or intentionally deprives another of his property by deception or by threat; or
- c. Knowingly receives, retains or disposes of property of another which has been stolen, with intent to deprive the owner thereof. (Source: North Dakota Century Code section 12.1-23-02).

13.0307 Theft of Services

A person is guilty of theft if:

- a. The person intentionally obtains services, known by the person to be available only for compensation, by deception, threat, false token or other means to avoid payment for the services; or
- b. Having control over the disposition of services of another to which the person is not entitled, the person knowingly diverts those services to his own benefit or to the benefit of another not entitled thereto.

Where compensation for services is ordinarily paid immediately upon their rendition, as in the case of hotels, restaurants, and comparable establishments, absconding without payment or making provision to pay is prima facie evidence that the services were obtained by deception. (Source: North Dakota Century Code section 12.1-23-03).

13.0308 Theft of Property Lost, Mislaid or Delivered by Mistakes

A person is guilty of theft if the person:

- a. Retains or disposes of property of another when that person knows it has been lost or mislaid; or
- b. Retains or disposes of property of another when that person knows it has been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property; and with intent to deprive the owner of it, he fails to take readily available and reasonable measures to restore the property of a person entitled to have it. (Source: North Dakota Century Code Section 12.1-23-04).

13.0309 Thefts Punishable Under City Ordinances

Theft under 13.0306 to 13.0308 may be punished as an offense against the City ordinances if the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that he was stealing, or which the actor could reasonably have anticipated to have been the property or services involved, does not exceed five hundred dollars (\$500.00) and if:

- a. The theft was not committed by threat;
- b. The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft;
- c. The defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of official duties;
- d. The property stolen is not a firearm, ammunition, explosive or destructive device, or an automobile, aircraft or other motor-propelled vehicle;
- e. The property does not consist of any government file, record, document or other government paper stolen from any government office or from any public servant;
- f. The defendant is not in the business of buying or selling stolen property and he does not receive, retain or dispose of the property in the course of that business;
- g. The property stolen does not consist of any implement, paper or other thing uniquely associated with the preparation of any money, stamp, bond or other document, instrument or obligation of the State of North Dakota;
- h. The property stolen does not consist of livestock taken from the premises of the owner;
- i. The property stolen does not consist of a key or other implement uniquely suited to provide access to property the theft of which would be a felony or was not stolen to gain such access.
- j. The property stolen is not a card, plate, or other credit device existing for the purpose of obtaining money property, labor, or services on credit, or is a debit card, electronic fund transfer card, code or other means of access to an account for the purpose of initiating electronic fund transfers. (Source: North Dakota Century Code section 12.1-23-05).

13.0310 Defrauding Secured Creditors – Penalty

A person is guilty of an offense if he destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with intent to prevent collection of the

debt represented by the security interest or if he makes false statements at the time of sale as to the existence of security interests.

13.0311 Retail Theft – Shoplifting

- 1) Presumption. Any person concealing upon that person's person or among that person's belongings, or causing to be concealed upon the person or among the belongings of another, unpurchased merchandise displayed, held, offered or stored for sale in a retail mercantile establishment and removing it to a point beyond the last station for receiving payments in that retail mercantile establishment shall be prima facie presumed to have so concealed such merchandise with the intention of permanently depriving the merchant of possession or of the full retail value of such merchandise. (Source: North Dakota Century Code section 51-21-02)
- 2) Detention of Suspect – Procedure. Any peace officer or merchant who reasonably believes that a person has committed, or is in the process of committing theft may detain such person, on or off the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:
 - a) To require the person to identify himself;
 - b) To verify such identification;
 - c) To determine whether such person has in the person's possession unpurchased merchandise and, if so, to recover such merchandise;
 - d) To inform a peace officer of the detention of the person and surrender custody of that person to a peace officer;
 - e) In the case of a minor, to inform a peace officer, the parents, guardian or other private person interested in the welfare of that minor of this detention and to surrender custody of said minor to the person informed. (Source: North Dakota Century Code section 51-21-03)
- 3) Definitions. As used in this section, unless the context requires otherwise:
 - a) An item is "concealed" within the meaning of this section if, even though there is some notice of its presence, the item itself is not visible through ordinary observation.
 - b) "Full retail value" means the merchant's stated or advertised price of the merchandise.
 - c) "Merchandise" means any item of tangible personal property and specifically includes shopping carts.

- d) “Merchant” means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, franchisee or independent contractor or such owner or operator.
 - e) “Person” means any natural person or individual.
 - f) “Premises of a retail mercantile establishment” includes, but is not limited to, the retail mercantile establishment, any common use areas in shopping centers, and all parking areas set aside by a merchant, or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of said retail mercantile establishment.
 - g) “Retail mercantile establishment” means any place where merchandise is displayed, held, offered or stored for sale to the public.
 - h) “Shopping cart” means those push carts of the type or types which are commonly provided by grocery stores, drugstores or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store. (Source: North Dakota Century Code section 51-21-01)
- 4) Theft of unpurchased merchandise, displayed, held, offered or stored for sale in a mercantile establishment from that establishment when open for business is “shoplifting” for which the offender may be assessed a penalty upon conviction not exceeding one thousand, five hundred dollars (\$1,500.00) imprisonment of thirty (30) days, or both such fine and imprisonment. (Source: North Dakota Century Code section 40-05-06).

13.0312 Defenses and Proof as to Theft and Related Offenses

- 1) It is a defense to a prosecution under this Article that:
 - a) The actor honestly believed that he had a claim to the property or services involved which he was entitled to assert in the manner which forms the basis for the charge against him; or
 - b) The victim is the actor’s spouse, but only when the property involved constitutes household or personal effects or other property normally accessible to both spouses and the parties involved are living together. The term “spouse,” as used in this section includes persons living together as husband and wife.
- 2) It does not constitute a defense to a prosecution for conducts constituting an offense in violation of this article that:

- a) Stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed;
 - b) A facility or an opportunity to engage in such conduct, including offering for sale property not stolen as if it were stolen, was provided; or
 - c) Mere solicitation that would not induce an ordinary law-abiding person to engage in such conduct was made by a law enforcement officer to gain evidence against a person predisposed to engage in such conduct.
- 3)
- a) It is a prima facie case of theft under this Article if it is shown that a public servant or an officer, director, agent, employee of, or a person connected in any capacity with a financial institution has failed to pay or account upon lawful demand for money or property entrusted to him as part of his official duties or if an audit reveals a shortage or falsification of his accounts.
 - b) It is a prima facie case of theft under this Article if it is shown that a person, having successfully bid on and obtained an item at an auction, removed the item from the auction premises without paying or making provisions to pay for the item.
 - c) Proof of the purchase or sale of stolen property at a price substantially below its fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.
 - d) Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business, or without the usual induce of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen. (Source: North Dakota Century Code section 12.1-23-09).

13.0313 Definitions

In this Article:

- 1) “Dealer in property” means a person who buys or sells property as a business.
- 2) “Deception” means:
 - a) Creating or reinforcing a false impression, including false impressions as to fact, law, status, value, intention or other state of mind; but deception as to a person’s intention to perform a promise shall not be inferred from the fact alone that he did not substantially perform the promise unless it is part of a continuing scheme to defraud; or

- b) Preventing another from acquiring information which would affect his judgment of a transaction; or
 - c) Failing to correct a false impression which the actor previously created or reinforced, or which he knows to be influencing another to whom he stands in fiduciary or confidential relationship; or
 - d) Failing to correct an impression which the actor previously created or reinforced and which the actor knows to have become false due to subsequent events; or
 - e) Failing to disclose a lien, adverse claim, or other impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained or in order to continue to deprive another of his property, whether such impediment is or is not valid, or is or is not a matter of official record; or
 - f) Using a credit card, charge plate or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer (i.) where such instrument has been stolen, forged, revoked or canceled, or where for any other reason its use by the actor is unauthorized, and (ii.) where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument; or
 - g) Any other scheme to defraud. The term “deception” does not, however, include falsifications as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. “Puffing” means an exaggerated commendation of wares in communications addressed to the public or to a class or group.
- 3) “Deprive” means:
- a) To withhold property or to cause it to be withheld either permanently or under such circumstances that a major portion of its economic value, or its use and benefit, has, in fact, been appropriated; or
 - b) To withhold property or to cause it to be withheld with the intent to restore it only upon the payment of a reward or other compensation; or
 - c) To dispose of property or use it or transfer any interest in it under circumstances that make its restoration, in fact, unlikely.
- 4) “Fiduciary” means a trustee, guardian, executor, administrator, receiver or any other person acting in a fiduciary capacity, or any person carrying on fiduciary

functions on behalf of a corporation or other organization which is a fiduciary.

- 5) "Financial institution" means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.
- 6) "Obtain" means:
 - a) In relation to property, to bring about a transfer or purported transfer of an interest in the property, whether to the actor or another; or
 - b) In relation to services, to secure performance thereof.
- 7) "Property" means any money, tangible or intangible personal property, property (whether real or personal) the location of which can be changed (including things growing on, affixed to, or found in land and documents although the rights represented thereby have no physical location), contract right, chose-in-action, interest in or claim to wealth, credit or any other article or thing of value of any kind. "Property" also means real property, the location of which cannot be moved if the offense involves transfer or attempted transfer of an interest in the property.
- 8) "Property of another" means property in which a person other than the actor or in which a government has an interest without consent, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person or government might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another that has a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement. "Owner" means any person or a government with an interest in property such that it is "property of another" as far as the actor is concerned.
- 9) "Receiving," means acquiring possession, control or title, or lending on the security of the property.
- 10) "Services" means labor, professional service, transportation, telephone, mail or other public service, gas, electricity and other public utility services, accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or other property.
- 11) "Stolen" means property which has been the subject of theft or robbery or a vehicle which is received from a person who is then in violation of North Dakota Century Code Section 12.1-23-06.
- 12) "Threat" means an expressed purpose, however communicated, to:

- a) Cause bodily injury in the future to the person threatened or to any other person; or
- b) Cause damage to property; or
- c) Subject the person threatened or any other person to physical confinement or restraint; or
- d) Engage in other conduct constituting a crime; or
- e) Accuse anyone of a crime; or
- f) Expose a secret or publicize an asserted fact, whether true or false, tending to subject a person living or deceased, to hatred, contempt or ridicule or to impair another's credit or business repute; or
- g) Reveal any information sought to be concealed by the person threatened; or
- h) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- i) Take or withhold official action as a public servant, or cause a public servant to take or withhold official action; or
- j) Bring about or continue to strike, boycott or other similar collective action to obtain property or deprive another of his property which is not demanded or received for the benefit of the group which the actor purports to represent; or
- k) Cause anyone to be dismissed from his employment, unless the property is demanded or obtained for lawful union purposes; or
- l) Do any other act which would not in itself substantially benefit the actor or a group he represents but which is calculated to harm another person in a substantial manner with respect to his health, safety, business, employment, calling, career, financial condition, reputation or personal relationship.

Upon a charge of theft, the receipt of property in consideration for taking or withholding official action shall be deemed to be theft by threat regardless of whether the owner voluntarily parted with his property or he initiated the scheme.

13) "Traffic" means:

- a) To sell, transfer, distribute, dispense or otherwise dispose of to another

person; or

- b) To buy, receive, possess or obtain control of, with intent to sell, transfer, distribute, dispense or otherwise dispose of to another person. (Source: North Dakota Century Code section 12.1-23-10)

13.0314 Making or Uttering Slugs

- 1) A person is guilty of an offense if that person makes or utters a slug or slugs which do not exceed fifty dollars (\$50.00) in value with intent to deprive a supplier of property or service sold or offered by means of a coin machine or with knowledge that he is facilitating such a deprivation by another person.
- 2) In this section:
 - a) “Slug” means a metal, paper or other object which by virtue of its size, shape or any other quality is capable of being inserted, deposited or otherwise used in a coin machine as an improper but effective substitute for a genuine coin, bill or token;
 - b) “Coin machine” means a coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle designed (i.) to receive a coin or bill of a certain denomination or a token make for the purpose; and (ii.) in return for the insertion or deposit thereof, automatically to offer, provide, assist in providing, or permit the acquisition of property or a public or private service.
 - c) “Value” of the slugs means the value of the coins, bills or tokens for which they are capable of being substituted.

ARTICLE 4 – Offenses Against Public Order, Health, Safety and Sensibilities

Division 1. Riot

13.0401 Engaging in a Riot

- 1) A person is guilty of an offense if that person engages in a riot.
- 2) “Riot” means a public disturbance involving an assemblage of five (5) or more persons, which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government function. (Source: North Dakota Century Code sections 12.1-25-01(2) and 12.1-25-03)

13.0402 Disobedience of Public Safety Orders Under Riot Conditions

A person is guilty of an offense if, during a riot as defined in Section 13.0401(2) or which when one is immediately impending, he disobeys a reasonable public safety order to move, disperse or refrain from specified activities in the immediate vicinity of the riot. A public safety order is an order designated to prevent or control disorder, or promote the safety of persons or property, issued by the senior law enforcement official on the scene. (Source: North Dakota Century Code section 12.1-25-04).

Division 2. Disorderly Conduct

13.0403 Disorderly Conduct

- 1) An individual is guilty of violating the ordinances of this City, if with intent to harass, annoy or alarm another person or in reckless disregard of the fact that another is harassed, annoyed or alarmed by the individual's behavior, the individual:
 - a) Engages in fighting or in violent, tumultuous or threatening behavior;
 - b) Makes unreasonable noise;
 - c) In a public place, uses abusive or obscene language, or makes an obscene gesture;
 - d) Obstructs vehicular or pedestrian traffic, or the use of a public facility;
 - e) Persistently follows a person in or about a public place or places;
 - f) While loitering in a public place for the purpose of soliciting sexual contact, the individual solicits such contact;
 - g) Creates a hazardous, physically offensive, or seriously alarming condition by any act that serves no legitimate purpose; or
 - h) Engages in harassing conduct by means of intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person. (Source: North Dakota Century Code Section 12.1-31-01).

13.0404 Defense when Conduct Consist of Constitutionally Protected Activity

Ordinance 13.0403 does not apply to constitutionally protected activity. If an individual claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim, as a matter of law, and, if found valid, shall exclude evidence of the activity. (Source: North Dakota Century Code section 12.1-31-01 (2)).

Division 3. Gambling

13.0405 Gambling

- 1) It shall be an infraction to engage in gambling.
- 2) “Gambling” means risking any money, credit, deposit or other thing of value for gain, contingent, wholly or partially, upon lot, chance, the operation of gambling apparatus, or the happening or outcome of an event, including an election or sporting event, over which the person taking the risk has no control. Gambling does not include:
 - a) Lawful contests for skill, speed strength or endurance in which awards are made only to entrants or to the owners of entries; or
 - b) Lawful business transactions or other acts or transactions now or hereafter expressly authorized by law.
- 3) “Gambling apparatus” means any device, machine, paraphernalia or equipment that is used or usable in playing phases of any gambling activity, whether that activity consists of gambling between persons, or gambling by a person involving the playing of a machine. Gambling apparatus does not include an amusement game or device as defined in North Dakota Century Code Section 53-04-01, or an antique “slot” machine twenty-five (25) years old or older which is collected and possessed by a person as a hobby and is not maintained for the business of gambling.
- 4) This Ordinance shall not apply to gambling or games of chance conducted by a licensee under the authority of a valid license issued by the State of North Dakota.

Division 4. Sexual Offenses

13.0406 Prostitution

- 1) A person is guilty of the offense of prostitution if that person:
 - a) Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business;
 - b) Solicits another person with the intention of being hired to engage in sexual activity; or
 - c) Agrees to engage in sexual activity with another for money or other items of pecuniary value.
- 2) Testimony of a person against his or her spouse shall be admissible to prove offenses under this section involving the spouse’s prostitution.

3) In this section:

- a) A “house of prostitution” is any place where prostitution is regularly carried on by a person under the control, management or supervision of another.
- b) An “inmate” is a prostitute who acts as such in or through the agency of a house of prostitution.
- c) “Sexual activity” means sexual act or sexual contact as those terms are defined in North Dakota Century Code section 12.1-20-02. (Source: North Dakota Century Code sections 12.1-29-03, 12.1-29-04, 12.1-29-05)

Division 5. Sunday Business or Labor

13.0407 Business or Labor on Sunday

- 1) Except as otherwise provided in this section, it is a class B misdemeanor for any person between the hours of twelve midnight and twelve noon on Sunday to engage in or conduct business or labor for profit in the usual manner and location, operate a place of business open to the public, or authorize or direct that person’s employees or agents to take action prohibited under this section. This subsection does not apply to any person who in good faith observes a day other than Sunday as the Sabbath, if that person refrains from engaging in or conducting business or labor for profit and closes the place of business to the public between the hours of twelve midnight and twelve noon on the day observed as the Sabbath. (Source: North Dakota Century Code Section 12.1-30-01)
- 2) Except for items sold at hobby shows, craft show, fairs, exhibits, occasional rummage sales including garage sales or other sales for which a sales tax permit is not required, and tourist attractions that derive at least fifty percent (50%) of their annual gross sales from seasonal or tourist customers, the sale or rental of any of the following items between the hours of twelve midnight and twelve noon on Sunday is prohibited:
 - a) Clothing other than work gloves and infant supplies;
 - b) Clothing accessories;
 - c) Wearing apparel other than that sold to a transient traveler under emergency conditions;
 - d) Footwear;
 - e) Headwear;
 - f) Home, business, office or outdoor furniture;

- g) Kitchenware;
- h) Kitchen utensils;
- i) China;
- j) Home appliances;
- k) Stoves;
- l) Refrigerators;
- m) Air conditioners;
- n) Electric fans;
- o) Radios;
- p) Television sets;
- q) Washing machines
- r) Dryers;
- s) Cameras;
- t) Hardware other than emergency plumbing, heating, cooling or electrical repair or replacement parts and equipment;
- u) Tools other than manually driven hand tools;
- v) Jewelry;
- w) Precious or semiprecious stones;
- x) Silverware;
- y) Watches;
- z) Clocks;
- aa) Luggage;
- bb) Motor vehicles other than the daily rental of vehicles by business whose sole activity is automobile rental;

- cc) Musical instrument;
 - dd) The sale of audio or video recordings, records or tapes. Rental of these items is permitted;
 - ee) Toys other than those customarily sold as novelties or souvenirs;
 - ff) Mattresses;
 - gg) Bed coverings;
 - hh) Household linens;
 - ii) Floor coverings;
 - jj) Lamps;
 - kk) Draperies;
 - ll) Blinds
 - mm) Curtains;
 - nn) Mirrors;
 - oo) Cloth piece goods;
 - pp) Lawnmowers;
 - qq) Sporting or recreational goods other than those sold or rented on the premises where sports or recreational activities are conducted;
 - rr) Paint and building and lumber supplies. (Source: North Dakota Century Code section 12.1-30-02)
- 3) Subject to the limitations of this subsection and subsection 2, a business specified in this section may operate in the business' usual manner, location, and for its usual purposes. The businesses authorized under this subsection to operate on Sunday include:
- a) Restaurants, cafeterias or other prepared food service organizations;
 - b) Hotels, motels and other lodging facilities;
 - c) Hospitals and nursing homes, including the sale of giftware on the

premises;

- d) Dispensaries of drugs and medicines;
- e) Ambulance and burial services;
- f) Generation and distribution of electric power, water, steam, natural gas, oil or other fuel used as a necessary utility;
- g) Distribution of gas, oil and other fuels;
- h) Telephone, telegraph and messenger services;
- i) Heating, refrigeration and cooling services;
- j) Railroad, bus, trolleys, subway, taxi and limousine services;
- k) Water, air and land transportation services and attendant facilities;
- l) Cold store warehouse;
- m) Ice manufacturing and distribution facilities and services;
- n) Minimal maintenance of equipment and machinery;
- o) Plant and industrial protection services;
- p) Industries where continuous processing or manufacturing is required by the very nature of the process involved.
- q) Newspaper publication and distribution;
- r) Newsstands;
- s) Radio and television broadcasting;
- t) Motion picture, theatrical and musical performances;
- u) Motor vehicle service stations that sell motor fuel and motor oil, and that customarily provide daily repair services or products for any of the following systems or parts of a motor vehicle:
 - i) Air conditioning system;
 - ii) Batteries;

- iii) Electrical system;
 - iv) Engine cooling system
 - v) Exhaust system;
 - vi) Fuel system;
 - vii) Tires and tubes;
 - viii) Emergency work necessary for the safe and lawful operation of the motor vehicle.
-
- v) Athletic and sporting events;
 - w) Parks, beaches and recreational facilities;
 - x) Scenic, historic and tourist attractions;
 - y) Amusement centers, fairs, zoos and museums;
 - z) Libraries;
 - aa) Educational lectures, forums and exhibits;
 - bb) Service organizations (USO, YMCA, etc.);
 - cc) Coin-operated laundry and dry-cleaning facilities;
 - dd) Food stores operated by an owner or manager in addition to not more than six employees working in the store at one time on a Sunday; (Note: the governing body of a city may, by ordinance increase the number of employees)
 - ee) Bait shops for the sale of live bait and fishing tackle;
 - ff) Floral nurseries;
 - gg) Christmas tree stands;
 - hh) Hobby shows, craft shows, fairs, exhibits;
 - ii) Occasional rummage sales, including garage sales or other sales for which a sales tax permit is not required;
 - jj) Community festivals licensed or authorized by the governing body of a city

or the board of county commissioners;

- kk) Premises licensed to dispense beer and alcoholic beverages within the limits prescribed in North Dakota Century Code Sections 5-02-05 and 5-02-05.1.
- ll) Credit apparel services, lodging and travel reservation services, and, notwithstanding subsection 2, telemarketing of goods and services. mm. Bingo halls and onsite food concessions between the hours of twelve midnight and one a.m. and within the hours permitted under 13.0408(1). (Source: North Dakota Century Code Section 12.1-30-03)

Division 6. Cruelty to Animals

13.0408 Cruelty to Animals

- 1) It is an offense for any person to:
 - a) Overdrive, overload, torture, cruelly beat, neglect or unjustifiably injure, maim, mutilate or kill any animal, or cruelly work any animal when unfit for labor;
 - b) Deprive any animal over which he has charge or control of necessary food, water or shelter;
 - c) Keep any animal in any enclosure without exercise and wholesome change of air;
 - d) Abandon any animal;
 - e) Allow any maimed, sick, inform or disabled animal of which he is the owner, or of which he has custody, to lie in any street, road or other public place for more than three (3) hours after notice;
 - f) No person shall willfully instigate, or in any way further, any act of cruelty to any animal or animals, or any act tending to produce such cruelty.
 - g) Cage any animal for public display except as allowed by North Dakota Century Code Section 36-21.1-02(8);
- 2) The word "animal" includes every living animal except the human race; the word "torture" or "cruelty" includes every act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering or death is cause or permitted. (Source: North Dakota Century Code sections 36-21.1-01 and 36-21-02)

Division 7. Alcohol Related Offenses

13.0409

Persons Less than Twenty-One (21) Years Prohibited – Exceptions

- 1) Any person under twenty-one (21) years of age manufacturing or attempting to manufacture alcoholic beverages, purchasing or attempting to purchase 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, except as provided in Subsection 2, 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 includes actual or constructive possession. Constructive possession means the power and capability to exercise dominion and control over the alcoholic beverage.
- 2) Except as permitted in this Section, any licensee who dispenses alcoholic beverages to a person under twenty-one (21) years of age, or who permits such a person to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of an offense, subject to the provisions of sections 5-01-08, 5-01-08.1 and 5-01-08.2 of the North Dakota Century Code. An individual under twenty-one (21) years of age may not remain in a restaurant where alcoholic beverages are being sold except if the restaurant is separate from the room 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 except as otherwise provided by North Dakota Century Code section 5-02-06. Any person who is nineteen years of age or older but under twenty-one years of age may be employed by the restaurant to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person twenty-one or more years of age, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages. Any establishment where alcoholic beverages are sold may employ persons from eighteen (18) to twenty-one (21) years of age to work in the capacity of musicians under the direct supervision of a person twenty-one (21) or more years of age. (Source: North Dakota Century Code sections 5-01-08 and 5-02-08).

13.0410

Misrepresentation of Age – Obligations of Licenses

Any person who misrepresents or misstates that person's age or the age of any other person or who misrepresent that person's 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. 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. (Source: North Dakota Century Code section 5-01-08.1).

13.0411 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. (Source: North Dakota Century Code section 5-01-10).

13.0412 Public Intoxication – Assistance – Medical care

A peace officer has authority to take any apparently intoxicated person to the person's home, to a local hospital, to a detoxification center, or, whenever that person constitutes a danger to himself or others, to a jail for purposes of detoxification. A duly licensed physician of a local hospital or a licensed addiction counselor of a detoxification center has authority to hold that person for treatment up to seventy-two (72) hours. That intoxicated person may not be held in jail because of intoxication more than twenty-four (24) hours. An intoxicated person may not be placed in a jail unless a jailer is constantly present within hearing distance and medical services are provided when the need is indicated. Upon placing that person in a hospital, detoxification center, or jail, the peace officer shall make a reasonable effort to notify the intoxicated person's family as soon as possible. Any additional costs incurred by the city on account of an intoxicated person shall be recoverable from that person. (Source: North Dakota Century Code section 5-01-05.1).

13.0413 No Prosecution for Intoxication

No person may be prosecuted solely for public intoxication. Law enforcement officers may utilize standard identification procedures on all persons given assistance because of apparent intoxication. (Source: North Dakota Century Code section 5-01-05.2).

Division 8. Protection of Minors

13.0414 Objectionable Materials or Performance – Display to Minors-Definitions – Penalty

- 1) A person is guilty of an offense if that person willfully displays at newsstands or any other business establishment frequented by minors, or where minors are or may be invited as a part of the general public, any photograph, book, paperback book, pamphlet, or magazine, the exposed cover or available content of which exploits, is devoted to, or is principally made up of depiction's of nude or partially denuded human figures posed or presented in a manner to exploit sex, lust or perversion for commercial gain.
- 2) As used in this section:
 - a) "Nude or partially denuded human figures" means less than completely and

opaquely covered human genitals, pubic regions, female breasts or a female breast, if the breast or breasts are exposed below a point immediately above the top of the areola, or human buttocks; and includes human male genitals in a discernible turgid state even if completely and opaquely covered.

- b) “Where minors are or may be invited as a part of the general public” includes any public roadway or public walkway.
- c) The above shall not be construed to include a bona fide school, college, university, museum, public library or art gallery. (Source: North Dakota Century Code section 12.1-27.1-03.1)

Division 9. Regulation of Minors

13.0415 Curfew, General Regulations – Penalty

- 1) As used in this Section, unless the context or subject matter otherwise requires:
 - a) “Juvenile” for the purpose of this ordinance means a person less than sixteen (16) years of age.
 - b) “Parents” means the legally appointed father and/or mother, or the natural father and/or mother, or the person or persons in charge of or in control of said juveniles herein defined including a bona fide employer of said juvenile.
 - c) “Curfew hour” means the time of night, which is designated as nine (9) o’clock PM, except Friday and Saturday nights, which is ten (10) o’clock PM.
 - d) “Sounding of the curfew” means the sound emitted by a single blast of the fire siren, sounded at the curfew hour.
- 2) Each night of the year there shall be a sounding of the curfew at the curfew hour. It shall be unlawful for any juvenile as herein defined 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 o’clock AM of the following day unless accompanied by a parent as defined herein. Any juvenile violating this provision of this ordinance, in addition to the other punishments prescribed in this ordinance, shall be detained by the authorities until picked up by parent as defined herein.

It shall be unlawful for any parents to allow their juveniles as herein defined 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 o’clock AM of the following day unless accompanied by a parent as

herein defined.

- 3) A violation of this Section shall be an infraction. Any person violating any of the terms or provisions of this Article shall, upon conviction thereof, be punished by a fine not to exceed one thousand dollars (\$1,000.00).

ARTICLE 5 – Sentencing

13.0501 Classification of Offenses

Offenses against the ordinances of this city are divided into two (2) classes, as follows:

- 1) Offense, for which a maximum penalty of thirty (30) days imprisonment, a fine of one thousand, five hundred dollars (\$1,500.00) or both, may be imposed.
- 2) Infraction, for which a maximum fine of one thousand dollars (\$1,000.00) may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which he or she was convicted, been previously convicted of an offense classified as an infraction in state statutes or the ordinances of this or any other North Dakota city may be sentenced as though convicted of an offense. If the prosecution contends that the infraction is punishable as an offense, the complaint shall so specify unless the prosecution is unable with reasonable effort to learn of the prior conviction prior to execution of the complaint.
- 3) All violations of the provisions of the Ordinances of this city are offenses unless specifically labeled infractions or unless a different classification or punishment is specifically authorized.
- 4) The penalties listed shall not be construed to prohibit the utilization of the sentencing alternatives, other than a fine or imprisonment, provided by section 12-1-32-02 of the North Dakota Century Code and Section 13.0502, for the violation of a city ordinance, nor does this section limit the use of deferred or suspended sentences.

(Source: North Dakota Century Code sections 12.1-32-01 and 40-05-06).

13.0502 Sentencing Alternatives

- 1) Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
 - a) Payment of the reasonable costs of the person's prosecution;
 - b) Probation;

- c) A term of imprisonment, including intermittent imprisonment;
- d) A fine;
- e) Restitution for damages resulting from the commission of the offense;
- f) Restoration of damaged property or other appropriate work detail;
- g) Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction or mental disease or defect.
- h) Commitment to a sexual offender treatment program.

Sentences imposed under this subsection may not exceed in duration the maximum sentences of imprisonment provided in Section 13.0501 or as provided specifically in an ordinance defining an offense.

This subsection does not permit the unconditional discharge of an offender following conviction. This subsection shall not be construed to prohibit utilization of North Dakota Century Code section 40-18-13 relating to suspension of sentence, nor shall this subsection limit the conditions, which can be imposed on a probationer under Sections 13.0507, 13.0508, or 13.0509.

- 2) Credit against any sentence to a term of imprisonment must be given by the court to a defendant for all time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal.
- 3) A court may suspend the execution of all or a part of the sentence imposed. The court shall place the defendant on probation during the term of suspension.
- 4) A court, upon application or its own motion, may defer imposition of sentence. The court must place the defendant on probation during the period of deferment. An order deferring imposition of sentence is reviewable upon appeal from a verdict or judgment. In any subsequent prosecution, for any other offense, the prior conviction for which imposition of sentence is deferred may be pleaded and proved, and has the same effect as if probation had not been granted or the information or indictment dismissed under section 12.1-32-07.1 of the North Dakota Century Code.
- 5) A court may, prior to imposition of sentence, order the convicted offender committed to an appropriate licensed public or private institution for diagnostic testing for such period of time as may be necessary, but not to exceed thirty days. The court may, by subsequent order, extend the period of commitment for not to

exceed thirty additional days. The court may also order such diagnostic testing without ordering commitment to an institution. Validity of a sentence must not be challenged on the ground that diagnostic testing was not performed pursuant to this subsection.

- 6) All sentences imposed must be accompanied by a written statement by the court setting forth the reasons for imposing the particular sentence. The statement must become part of the record of the case.
- 7) If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing, unless, upon motion of the defendant, the court orders the term to commence at some other time. (Source: North Dakota Century Code section 12.1-32-02).

13.0503 Procedure for Trial of Infraction – Incidence

- 1) Except as provided in this subsection, all procedural provisions relating to the trial of criminal cases as provided in the statutes or rules relating to criminal procedure shall apply to the trial of a person charged with an infraction. A person charged with an infraction is not entitled to be furnished counsel at public expense nor to have a trial by jury unless the person may be subject to a sentence of imprisonment under subsection 2 of 13.0501.
- 2) Except as provided in North Dakota Century Code Title 12.1 or the ordinances of this city, all provisions of law and rules of criminal procedure relating to offenses shall apply to infractions, including, but not limited to, the powers of law enforcement officers, the periods for commencing action and bringing a case to trial, and the burden of proof.
- 3) Following conviction of an infraction, the offender may be sentenced in accordance with subsection 1 of 13.0502, except that a term of imprisonment may not be imposed except in accordance with subsection 3 of 13.0506 or subsection 2 of 13.0501.
- 4) If an ordinance provides that conduct is an infraction without specifically including a requirement of culpability, no culpability is required.
- 5) Except as provided in this Section, Sections 13.0501 or 13.0502, or as the context may otherwise indicate differentiation between the infraction classification and the offense classification, the term “offense” refers to all violations of the ordinances of this city including infractions. (Source: North Dakota Century Code section 12-32-03.1)

13.0504 Special Sanction for Organizations

When an organization is convicted of an offense, the court may, in addition to any other

sentence which may be imposed, require the organization to give notice of its conviction to the persons or class of persons ostensibly harmed by the offense, by mail or by advertising in designated areas or by designated media or otherwise. (Source: North Dakota Century Code section 12.1-32-03).

13.0505 Factors to be Considered in Sentencing

The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations regarding the desirability of sentencing an offender to imprisonment.

- 1) The defendant's criminal conduct neither caused nor threatened serious harm to another person or his property.
- 2) The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property.
- 3) The defendant acted under strong provocation.
- 4) There were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant's conduct.
- 5) The victim of the defendant's conduct induced or facilitated its commission.
- 6) The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury, which was sustained.
- 7) The defendant has no history of prior delinquency or criminal activity, or has led a law-abiding life for a substantial period of time before the commission of the present offense.
- 8) The defendant's conduct was the result of circumstances unlikely to recur.
- 9) The character, history and attitudes of the defendant indicate that he is unlikely to commit another crime.
- 10) The defendant is particularly likely to respond affirmatively to probationary treatment.
- 11) The imprisonment of the defendant would entail undue hardship to himself or his dependents.
- 12) The defendant is elderly or in poor health.
- 13) The defendant did not abuse a public position of responsibility or trust.

- 14) The defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise cooperated.

Nothing herein shall be deemed to require explicit reference to these factors in a presentence report or by the court at sentencing. (Source: North Dakota Century Code section 12.1-32-04).

13.0506 Imposition of Fine – Response to Non-Payment

- 1) The court, in making a determination of the propriety of imposing a sentence to pay a fine, shall consider the following factors:
 - a) The ability of the defendant to pay without undue hardship;
 - b) Whether the defendant, other than a defendant organization, gained money or property as a result of commission;
 - c) Whether the sentence to pay a fine will interfere with the defendant's capacity to make restitution;
 - d) Whether a sentence to pay a fine will serve a valid rehabilitative purpose.
- 2) The court may allow the defendant to pay any fine or costs imposed in installments. When a defendant is sentenced to pay a fine or costs, the court shall not impose at the same time an alternative sentence to be served in the event that the fine or costs are not paid.
- 3) If the defendant does not pay any fine or costs imposed, or make any required partial payment, the courts, upon motion of the prosecuting attorney or on its own motion, may issue an order to show cause why the defendant shows that his default is excusable, the court may, after hearing, commit him to imprisonment until the fine, or costs or both, are fully paid or discharged by labor as provided in North Dakota Century Code section 40-18-12.

The court may not commit a person under this section when the sole reason for his nonpayment is his indigence. An order of commitment under this subsection shall not be for a period in excess of thirty (30) days. As used in this subsection, "fine" does not include a fee established pursuant to section 9.2208 of these ordinances. (Source: North Dakota Century Code sections 12.1-32-05 and 40-11-12)

13.0507 Incidents of Probation

- 1) Unless terminated as provided in subsection 2, the period during which a sentence to probation shall remain conditional and be subject to revocation is two (2) years.
- 2) The court may terminate a period of probation and discharge the defendant at any

time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.

- 3) Notwithstanding the fact that a sentence to probation can subsequently be modified or revoked, a judgment, which includes such a sentence, constitutes a final judgment for all other purposes. (Source: North Dakota Century Code section 12.1-32-06.1)

13.0508 Conditions of Probation – Revocation

- 1) The conditions of probation must be such, as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commit another offense during the period for which the probation remains subject to revocation.
- 2) When imposing a sentence to probation, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:
 - a) Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip the defendant for suitable employment;
 - b) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose;
 - c) Attend or reside in a facility established for the instruction, recreation or residence of persons on probation;
 - d) Support the defendant's dependents and meet other family responsibilities;
 - e) Make restitution or reparation to the victim of the defendant's for the damage or injury, which was sustained, or perform other reasonable assigned work. When restitution, reparation or assigned work is a condition of probation the court shall proceed as provided in Section 13.0509;
 - f) Pay a fine imposed after consideration of the provisions of Section 13.0506;
 - g) Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription.
 - h) Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.
 - i) Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.

- j) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.
 - k) Report to a probation officer at reasonable times as directed by the court or the probation officer.
 - l) Submit to a medical examination or other reasonable testing for the purpose of deterring the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
 - m) Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
 - n) Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.
 - o) Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted or one year, whichever is less.
 - p) Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed for the defendant. When reimbursement of indigent defense costs and expenses is imposed as a condition of probation, the court shall proceed as provided in subsection 4 of section 12.1-32-08 of the North Dakota Century Code.
 - q) Provide community service for the number of hours designated by the court.
 - r) Refrain from any subscription to, access to, or use of the Internet.
- 3) When a defendant is sentenced to probation, the defendant must be given a certificate explicitly setting forth the conditions on which the defendant is being released.
- 4) The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the period for which the sentence remains conditional. If the defendant violates a condition at any time before the expiration or termination of the period, the court may continue the defendant on the existing probation with or without modifying or enlarging the conditions, or may revoke the probation and impose any other sentence that was available under Section 13.0502 at the time for the initial sentencing.

- 5) Jurisdiction over a probationer may be transferred from the court that imposed the sentence to another court of this state, with the concurrence of both courts. Retransfer of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection may exercise all powers permissible under this chapter over the defendant. (Source: North Dakota Century Code section 12.1-32-07).

13.0509 Restitution or Reparation – Procedures

- 1) Before imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount thereof. At or following the hearing, the court shall make determinations as to:
 - a) The reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action;
 - b) The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property;
 - c) The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitation purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which may not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. Any payments made pursuant to court order must be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, unless the court directs otherwise, be filled, transcribed, and enforced by the person entitled to the restitution or reparation in the same manner as civil judgments rendered by the courts of this state may be enforced.

- 2) The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim. (Source: North Dakota Century Code section 12.1-32-08).

13.0510 Merger of Sentences – Sentencing for Multiple Offenses

- 1) Unless the court otherwise orders, when a person serving a term of commitment is

committed for another offense or offenses, the shorter term or the shorter remaining term shall be merged in the other term. When a person on probation or parole for an offense committed in this city is sentenced for another offense or offenses, the period still to be served on probation or parole shall be merged in any new sentence of commitment or probation. When the court merges sentences under this subsection it shall forthwith furnish the penal facility in which the defendant is confined under sentence with authenticated copies of its sentence, which shall cite the sentences being merged. If the court has imposed a sentence, which is merged pursuant to this subsection, it shall modify such sentence in accordance with the effect of the merger.

- 2) A defendant may not be consecutively sentenced to more than one year. (Source: North Dakota Century Code section 12.1-32-11).

ARTICLE 6 – Penalties

13.601 Penalty for Violation of Chapter

Any person who is convicted of violating or of failing to comply with any of the provisions of the ordinances contained in this chapter for which a penalty is not specifically set forth, may be punished by a fine of not more than one thousand, five hundred (\$1,500.00) or by imprisonment not to exceed thirty (30) days, or both. (Source: North Dakota Century Code Section 40-05-06)

CHAPTER FOURTEEN

FRANCHISE

ARTICLE 1 – Grant of Franchises

14.0101 Power to Grant

14.0102 Compliance with Applicable Laws and Ordinances

14.0103 Indemnification

14.0104 Insurance

CHAPTER FOURTEEN

FRANCHISE

ARTICLE 1 – Grant of Franchises

14.0101 Power to Grant

The City governing body may grant to any person, association, corporation, or limited liability company firm a franchise or special right or privilege to operate or do business in the City, but such franchise shall be subject to the provisions of this article. (Source: North Dakota Century Code Section 40-05-01(57))

14.0102 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 by resolution or ordinance provide.

14.0103 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 or costs, including attorney's fees, expenses of investigation and litigation of claims and suits thereon which may result from the activities of the grantee of the franchise in the City.

14.0104 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 two hundred fifty thousand dollars (\$250,000.00) for any one person, property damage, personal injury, or death, and five hundred thousand dollars (\$500,000.00) for any single occurrence resulting in property damage, personal injury, or death. The City may demand proof of such insurance coverage through an insurance company licensed to do business in the State of North Dakota. (Source: North Dakota Century Code section 32-12.1-03)

ARTICLE 2 – Cable TV Franchise Ordinance

14.0201 Definitions

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not consistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

- 1) “City” is the City of Kulm, North Dakota.
- 2) “Company” is Dickey Rural Services, Inc., its successors and assigns.
- 3) “Council” is the City Council (Commission or other body in which the legislative power vests) of the City of Kulm, North Dakota.
- 4) “Person” is any person, organization, firm, partnership, association, corporation or company of any kind.
- 5) “System” means a cable TV system of cables, wires, and other equipment used to be used to receive television, radio, or other signals and transmit them to a subscriber’s fee.

14.0202 Grant of Authority

There is hereby granted by the City to the Company the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, new plats annexed, in the city, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the City of a cable television system for the reception, sale, and distribution of cable television signals.

a) Non-exclusive Grant. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, public ways and places under the same terms and conditions to any person for the purposes herein set forth at any time during the period of this Franchise.

14.0203 Compliance with Applicable Laws and Ordinances

The Company shall at all times during the life of this Franchise be subject to all lawful exercise of the police power by the City.

14.0204 Company Liability – Indemnification

It is expressly understood and agreed by and between the Company and the City that the Company shall hold the City harmless from all lose sustained by the City on account of any valid and lawful suit, judgment, execution claim, or demand whatsoever, resulting from negligence on the part of the Company in the construction, operation, or maintenance of its television system in the City. The City shall notify the Company within five (5) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any alleged negligence on the part of the Company.

14.0205 Service Standards

The Company shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible, such interruptions, insofar as possible, shall be preceded by notice. The Company shall maintain and operate its system and render efficient service in accordance with the rules and regulations as are set forth by this Ordinance or by the Federal Communications Commission.

14.0206 Safety Requirements

- 1) The Company shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- 2) The Company shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Electrical Safety Code Promulgated by the National Bureau of Standards and the National Electrical Code of the National Board of Fire Underwriters, and in such manner that they will not interfere with any existing installation of the City or of a public utility serving the City.
- 3) All structures and all lines equipment, and connections in, over, under and upon the streets, sidewalks, alleys, and public ways or places of the City, wherever situated or located, shall at all times be kept and maintained by the Company in a safe and suitable condition, and in good repair.

14.0207 Company Rules

The Company shall have the authority to promulgate such rules, regulations, terms and conditions necessary to enable the Company to exercise its rights and perform its obligations under this Franchise, and to assure uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of the laws of the State of North Dakota.

14.0208 Conditions on Street Occupancy

- 1) Use. All transmission and distribution structures, lines and equipment erected by the Company within the City shall be so located as to cause minimal interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alley or other public ways and places.
- 2) Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Company shall at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway or of any street or alley disturbed in the same condition as existed prior to the disturbance.

- 3) Relocation. In the event the City shall deem it necessary, for its own purpose, to utilize any portion of its streets, alley and other public places occupied by the Company by virtue of this agreement, the said Company, at the request of the City and upon reasonable advance notice (not less than thirty days), shall remove its system, at its own expense, to a suitable location approved by the City.
- 4) Placement of Fixtures. The Company shall not place poles or other fixtures where the same will interfere with any existing gas, electric or telephone fixture, water hydrant or main, and all such poles and fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in the alley shall be placed close to the line of the lot abutting on said alley, and then in such a manner as to not unreasonably interfere with the usual travel on said streets, alleys and public ways.
- 5) Temporary Removal of Wire. The Company shall, on the request of any person holding a building moving permit issued by the City or other reasonable request, temporarily raise or lower its wires to permit the moving of buildings, tree removal, demolition of structures, or other work. The expense of such removal, raising or lowering of wires, shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.
- 6) Tree Trimming. The Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City so as to prevent the branches of trees from coming in contact with the wires and cables of the Company. All trimming to be done at the expense of the Company.

14.0209 Territorial Area Involved

This Franchise is related to the present territorial limits of the City and to any area annexed by the City during the term of this Franchise. The Company shall provide service to any permanent structure receiving City sewer and water service upon request and agreement with owner of said structure.

14.0210 Preferential or Discriminatory Practices Prohibited

The Company shall not, as to rates, charges, service, facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage, providing that nothing in this Franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer within such classification would be entitled.

14.0211 City Rights in Franchise

- 1) City Rules. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, and not in conflict with the rights herewith granted, and shall not be in conflict with the laws of the State of North Dakota, the United States of America, and or the rules and regulations of the Federal Communications Commission.
- 2) Inspection. The City shall have the right to inspect all construction or installation work performed subject to the provisions of this Ordinance as it shall find necessary to insure compliance with governing ordinances.
- 3) Emergency Use of Facilities. In the case of any city-wide emergency or disaster, the grantee shall make its facilities available to the City for emergency use.

14.0212 Rates

Rates charged by the Company for service hereunder shall be fair and reasonable and set in accordance with the Cable Communications Policy Act of 1984, the Telecommunications Act of 1996, and the Federal Communications Commission, and any amendments thereto.

14.0213 Publication Costs

The Company shall assume the entire cost of publication of this Franchise if such publication is required by law. Such amount is payable upon the grantee's filing of acceptance of this Franchise.

14.0214 Term of Franchise

This Franchise shall continue and remain in full force and effect for a period of twenty (20) years from the date upon which this ordinance shall become effective as provided by law.

14.0215 Separability

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by and Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

14.0216 Effective Date of Franchise

This Ordinance and the Franchise granted herein shall become effective upon approval by the City Council.

14.0217 Ordinances Repealed

All Ordinances or parts of Ordinances in conflict with the provision of this Ordinance are hereby repealed.

ARTICLE 3 – Electric Energy Distribution Ordinance

14.0301 Definitions

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.

14.0302 Franchise Rights

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 and use the streets, alleys and public grounds of the Municipality as not, or hereafter constituted, for the purpose of constructing, maintaining, and operating, within, upon, in and under the same, an electric distribution system for transmitting and distributing electric energy for public and private use.

14.0303 Reasonable Rates

Grantee shall maintain an efficient distribution system for furnishing electric energy for public and private use at such reasonable rates as may be approved the Public Service Commission of the state wherein said Municipality is located and under such orders, rules or regulations as may be issued by any federal or state agency having jurisdiction thereof.

14.0304 Exclusivity

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.

14.0305 Police Power

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.

14.0306 Indemnification

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.

14.0307 Right to Assign

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.

14.0308 Acceptance of Franchise

Within thirty (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.

14.0309 Full Force and Effect

This franchise shall continue and remain in full force and effect.

CHAPTER FIFTEEN

BUILDING CODE

ARTICLE 1 – General Building Code

15.0101 Adoption of Code

15.0102 Amendments, Deletions, Additions to Code

15.0103 Clarification of Code

15.0104 Fees

CHAPTER FIFTEEN

BUILDING CODE

15.0101 Adoption of Code

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 North Dakota 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. (Source: North Dakota Century Code chapter 54-21.3)

15.0102 Amendments, Deletions, Additions to Code

Sec. _____ shall be amended to read as follows:

Sec. _____ shall be deleted.

Sec. _____ shall be added to said code to read as follows:

15.0103 Clarification of Code

For the purpose of clarifying the Building Code adopted above.

- 1) "Municipality" or "City" shall mean the City of Kulm.
- 2) Any reference to fire limits within the City shall mean the fire limits set out in Chapter Four.

15.0104 Fees

Fees under the Building Code shall be as follows:

(Note: A suggested building permit fee schedule can be found in the North Dakota State Building Code. For the current version, contact the North Dakota Division of Community Services at the North Dakota Department of Commerce.)

CHAPTER SIXTEEN

ELECTRICAL CODE

ARTICLE 1 - Adoption of Electrical Code

16.0101 Electrical Code Adopted

ARTICLE 2 – Permits

16.0201 Permit Required

16.0202 Permit, Application for

16.0203 Permit, Grant of

16.0204 Work by Licensed Electrician

16.0205 Work by Licensed Electrician, When Not Required

16.0206 Uses of License by Another

16.0207 Return of Permit - Work Completed

16.0208 Inspection of Work

16.0209 Fees for Permits

ARTICLE 3 - Supervision of Work

16.0301 Supervision of Work

16.0302 Powers

16.0303 Existing Installations

16.0304 Defective Work

CHAPTER SIXTEEN

ELECTRICAL CODE

ARTICLE 1 – Adoption of Electrical Code

16.0101 Electrical Code Adopted

There is hereby adopted the rules for electrical wiring and equipment as adopted by the State Electrical Board and any future updates, and amendments to those rules, a copy of which is 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 with the following exceptions:

(See North Dakota Century Code section 43-09-21)

ARTICLE 2 – Permits

16.0201 Permit Required

No person shall begin any electrical work for which a permit is required until that person has made application for a building permit to the city building inspector, city auditor, or person designated by the City and the permit has been granted. All electrical work shall be performed in strict compliance with the laws of the State of North Dakota, and the provisions of this article, together with such rules and regulations as the City shall make from time to time for the execution of the same.

16.0202 Permit - Application For

Any person desiring to perform any electrical work within the corporate limits shall make application for a permit to carry on such work. Application shall be in a form containing such information regarding the proposed work, as the City shall prescribe.

16.0203 Permit - Grant of

When, after due consideration and examination, it appears that the provisions of this article are complied with, the permit asked for shall be issued.

16.0204 Work by Licensed Electrician

All electrical work hereafter to be installed in any building within the corporate limits shall

be undertaken and executed only by persons holding a master electrician's license or a Class B electrician's license where applicable as provided in the laws of the State of North Dakota. (See North Dakota Century Code section 43-09-14)

16.0205 Work by Licensed Electrician, When Not Required

No permit or application for a permit shall be required for the installation of electrical wiring for electrical installations made upon their own property by public service corporations, which hold franchises from the City for the manufacture and distribution of electric power.

16.0206 Uses of License by Another

No person holding a master electrician's license or a Class B electrician's license shall allow the use of his name, or any permit granted to him, by any other person.

16.0207 Return of Permit – Work Completed

Within five (5) days after the completion of any electrical work, the permit under which the work was executed shall be returned by the holder thereof to the city inspector, city auditor, or person designated by the City with a notation thereon of such completion.

16.0208 Inspection of Work

Upon completion of the work, which has been authorized by the issuance of an electrical permit, it shall be the duty of the master electrician to request an inspection of his work by the city inspector. Such inspection shall be requested and conducted before the electrical work is covered by other building components.

In a case where such work includes a new or altered electrical service, the utility company shall not make any connection unless the service entrance bears a notice signed by the city inspector that said wiring has been inspected and approved by the city inspector.

ARTICLE 3 – Supervision of Work

16.0301 Supervision of Work

All electrical installations now existing or hereafter to be made, altered or repaired in or upon any building in the City shall be under the supervision of the city inspector who shall require such work to comply with this article and City ordinances.

(NOTE: North Dakota Century Code section 43-09-13.2 requires a person employed by a political subdivision to inspect electrical installations to be licensed as a journeyman or master electrician. The requirement does not apply to an inspector employed as of July 2, 1989.)

16.0302 Powers

The city inspector shall have the right during reasonable hours to enter any building in the discharge of duties, or for the purpose of making any inspection or test of the electrical installation or electrical equipment contained therein. The city inspector is hereby empowered to disconnect or order the discontinuance of electrical service to any electric wiring or equipment found to be defectively installed or otherwise not in conformity with the provisions of this article until the wiring or equipment shall have been made safe.

16.0303 Existing Installations

All existing electrical installations and devices on any premises or upon any building or structure in the City shall be subject to inspection by the city inspector and if in the opinion of the city inspector a hazard exists the owner shall be notified with an order requiring that the hazard be corrected. In the case where the owner fails to comply with the city inspector's order, the service to the premises, structure or building shall be disconnected.

16.0304 Defective Work

The city inspector is hereby given authority to order the removal and replacement, or the alteration of any installation or portion thereof for which a permit has been obtained, should it be determined upon inspection of the installation that it has been executed in violation of any of the provisions of this Article. It shall thereafter be unlawful for any person in any way to use such installation, or to supply the power thereto, until the same has been made to conform to the provisions of this Article. No permit for any other work shall be issued to any applicant who has executed any work in violation of the provisions of this Article until such work has been made to conform to those provisions.

