ORDINANCES

City of Cavalier
North Dakota

Ordinances Adopted:

_____, 2022

ENACTING ORDINANCE

ORDINANCE NO. 1

Adopting the 2022 Revised Ordinances of the City of Cavalier, North Dakota, and repealing all ordinances previously adopted with certain exceptions.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAVALIER, NORTH DAKOTA:

Section 1. 2022 Revised Ordinances of the City of Cavalier. This ordinance and the ordinances hereby adopted shall be known and cited as the 2022 Revised Ordinances of the City of Cavalier.

Section 2. ENACTMENT. The 2022 Revised Ordinances of the City of Cavalier, consisting of Chapters I to XIV, both inclusive, an original copy of which has been authenticated by the original signatures of the City's chief executive officer and auditor and which original is on file in the office of the City Auditor, are hereby adopted as the Ordinances of the City of Cavalier.

Section 3. REPEAL. All ordinances of the City adopted prior to the date of this enacting ordinance are hereby repealed except the following ordinance which shall continue in full force and effect regardless of the fact that they are herein omitted:

1. All existing ordinances granting franchises, if omitted from these revised ordinances.

2. All existing ordinances creating contract obligations on the part of the City, which obligations shall remain binding until fully performed by the City.

3. All existing ordinances establishing special improvement districts, or street grades.

4. All of the existing ordinances levying taxes for any years under the provisions of any law relating to the issuance of revenue bonds, municipal bonds, warrants, certificates of indebtedness, or other municipal obligations, whether general or special.

5. All salary and appropriation ordinances.

6. The incorporation herein of any of the ordinances of the City granting franchises shall not operate to repeal the same in their original form nor to extend the term of any franchise beyond that fixed in that ordinance granting the same which in reenacted herein.

7. Any and all other ordinances adopted in said Revised Ordinances of Cavalier by reference, although the same are not set forth in full therein.

8. All existing ordinances establishing, extending or reducing the city limits of the City, if omitted from these revised ordinances.

Section 4. EXISTING LICENSES AND PERMITS. All licenses and permits issued prior to the date on which this ordinance becomes effective shall continue in force for the remainder of the term for which the same were issued, without additional fees, but all licensees and permittees shall be governed by the provisions of the 2022 Revised Ordinances of Cavalier for the remainder of the terms of said licenses and permits, in the same manner and to the same extent as if said licenses and permits had been issued under the provisions of the 2022 Revised Ordinances of Cavalier .

Section 5. NEW LICENSES AND PERMITS. In the case of any license or permit not heretofore required and appearing for the first time in the 2022 Revised Ordinances of Cavalier , such license or permit shall be secured on or before the first day of the first month following the effective date of this ordinance, and the first fee therefore shall be pro-rated for the remainder of that term thereof on a monthly basis, provided, that the minimum fee for any such new license or permit shall be one dollar ($1.00).

Section 6. INVALIDITY OF PART. If any section, subsection, sentence, clause or phrase of these ordinances is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause, phrase or portion thereof. The governing body hereby declares that it would have passed these ordinances and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases may be declared invalid or unconstitutional.

Section 7. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and approval, and without publication.

_____
Lacey K. Hinkle, MAYOR

ATTEST:

_____
Kelli Truver, CITY AUDITOR

CITY SEAL

First Reading:

Second Reading and Final Passage:

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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 Cavalier, 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-half 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 Division of City into Wards

There shall be three (3) Wards within the City to be known and designated as: Ward 1, Ward 2, and Ward 3, and each of said wards shall consist of all that part of the City which lies within the boundaries as shown on the ward Map on file with the Cavalier City Auditor's office, and made a part hereof by reference, and the polling place in each ward shall be located at the Cavalier City Administration Building, 301 Division Avenue North, Cavalier, North Dakota.

1.0104 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 North Dakota Century Code 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 first Monday of each month at the hour of 7:00 p.m. unless some other time and place shall 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 (3) 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.)

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 six (6) council members shall be elected as provided by law. The City Council shall consist of two (2) members from each ward, voted on and elected by the entire city. (Source: North Dakota Century Code sections 40-08-01,03.)

1.0302 Term of Office of Council Members

Council members shall hold office for four (4) 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. (Source: North Dakota Century Code section 40-08-06.)

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 (4) 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 (15) 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 (5%) 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 (6) months before the next City Election, provided such petition has been submitted within 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 (15) 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 (5%) 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 (6) months prior to the next City Election, provided such petition is submitted within fifteen (15) 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 the mayor's 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 they 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 officer appointed by them whenever they are of the opinion that the interests of the City demands such removal, but they 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. Any action vetoed by the mayor may be overridden by the city council. (Source: North Dakota Century Code section 40-08-24.)

An ordinance or resolution adopted by the city council is not enacted until the ordinance or resolution is approved by the mayor or passed over the mayor's veto. An ordinance or resolution passed by the governing body of a city operating under the council form of government must be deposited in the office of the city auditor for the approval of the mayor. If the mayor approves the ordinance or resolution, the mayor shall sign the ordinance or resolution. An ordinance or resolution not approved by the mayor must be returned by the mayor with the mayor's objections in writing to the next regular or special meeting of the council occurring not less than five (5) days after the passage of the ordinance or resolution. The veto may extend to an entire ordinance or resolution or to any one or more items or appropriations contained in any ordinance or resolution making an appropriation. If a veto extends to only a part of an ordinance or resolution, the residue takes effect. If the mayor fails to return any ordinance or resolution with the mayor's objections within the time specified in this section, the mayor is deemed to have approved the ordinance or resolution. Any veto of an ordinance or resolution may be overridden by the city council, if two-thirds (2/3) of its members pass a motion to override the veto. Upon such action, the ordinance or resolution is effective notwithstanding the veto. The vote to pass an ordinance or resolution over the mayor's veto must be taken by yeas and nays and entered in the journal. (Source: North Dakota Century Code section 40-11-05.)

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 Male Inhabitants to Aid in Enforcing Ordinances

When necessary, the mayor may call on each male 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 the mayor and the City Council may deem necessary to preserve the peace of the City, and the mayor 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.)

1.0317 Restrictions on Members of Board

The provisions of section 40-08-09 of the North Dakota Century Code and all subsequent amendments are hereby incorporated by reference in this ordinance.

1. Except as provided herein, a member of the city council may not:

    a. Be eligible to any other office the salary of which is payable out of the city treasury;

    b. Hold any other office under the city government; and

    c. Hold a position of remuneration in the employment of the city.

2. A member of the city council may serve as an ambulance crew member employed by the city or under a contract with the city and be remunerated for those services or as a volunteer firefighter or ambulance crew member for the city and be compensated for attending training or responding to emergency calls or may be reimbursed for expenses incurred in attending training or in responding to emergency calls.

3. A member of the city council in a city having a population of five hundred or fewer may hold a position of remuneration in the employment of the city if no other qualified individual is available to hold the position of remuneration at an equal cost to the city. The decision to employ the member of the city council must receive the unanimous approval of the other members of the council, and the approval must be documented in the official minutes of the council. This subsection does not apply to appointed officer positions under Section 1.0501.

ARTICLE 4 - Elective Officers Other Than Governing Body

1.0401 Municipal Judge

There shall be elected each four (4) 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 Report 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.

1.0406 Victim Witness Fee

The municipal judge may assess a fee of not more than twenty-five (25) dollars as part of a sentence imposed on a defendant who pleads guilty to or is convicted of violating a municipal ordinance for which the maximum penalty that may be imposed by law for the offense includes imprisonment. The fee assessed under this section is in addition to any fine, penalty, costs, or administrative fee prescribed by law. The municipal judge may assess the fee when sentence is imposed or when sentence is suspended or imposition of sentence is deferred, unless the defendant is indigent and unable to pay the fee. All fees paid to the municipal court under this section shall be deposited in the general fund for allocation by the governing body to:

1. A private, nonprofit domestic violence assault program,

2. A victim and witness advocacy program of which the primary function is to provide direct services to victims of and witnesses to crime; or

3. The statewide automated victim information and notification system (SAVIN), administered by the North Dakota Attorney General.

(Source: North Dakota Century Code section 27-01-10.)

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; and
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 (1st) day of July succeeding their appointment unless otherwise provided by ordinance, and such officers shall hold their respective offices for two (2) 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 during the month and shall duly give to the council a copy of the 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 governing body of the city 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, keep a docket of all cases to which the city may be a party in any court of record in which must be entered briefly all steps taken in each such case and such docket must be open to public inspection at all reasonable hours, and perform all other duties prescribed by statutes of the state, or by an ordinance, resolution or proper instruction of the city council. (Source: North Dakota Century Code section 40-20-01.)

1.0505 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 accordance with the provisions of section 40-13-02 and chapter 26.1-21 of the North Dakota Century Code:

1. mayor
2. city auditor
3. municipal judge
4. city assessor; and
5. city administrator

1.0602 Oaths of Municipal Officers

Every person elected or appointed to any municipal office, before the person 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 ten (10) days after notice of his 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 or Resolution

The Mayor and Council Members of this City shall receive compensation as established by in such sums and amounts as may be fixed from time to time by resolution of the governing body. The salary of the municipal judge shall be set by resolution of the city governing body. (Source: North Dakota Century Code section 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 a day at the rates specified by federal law as stated in the most current United States General Services publication for mileage and per diem reimbursement.

Such persons engaged in travel outside of the state shall not claim a sum in excess of that allowed by federal law per day for meals and lodging expenses. Verification shall be provided as required by the City of Cavalier.

Mileage expenses shall be reimbursed at the rate provided for under federal law for officials and employees. 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 successor in office, all property, books and effects of every description in his

possession belonging to the City or appertaining to his office; and upon his refusal to do so, shall be liable for all damages caused thereby, and guilty of an infraction.

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 $500.00.

1.0610 Removal of Appointive Officers

Appointive officers may be removed and any vacancy may be filled in the manner provided by law. Acting officers may be removed at any time by the governing body.

ARTICLE 7 - Purchasing and Disposition of Property

1.0701 Competitive Bidding Requirements - Construction of Public Improvement

When the estimated costs for the construction of a public improvement is in excess of two hundred thousand dollars, competitive bidding is required. (Source: North Dakota Century Code sections 48-01.2-04, 48-01.2-02.1.)

If the estimated cost for construction of a public improvement is in excess of two hundred thousand dollars, plans, drawings and specifications for the improvement shall be procured from an architect or engineer. Plans, drawings, and specifications of an architect or engineer must be stamped

and sealed by the date of the initial bid advertisement. (Source: North Dakota Century Code sections 48-01.2-02, 48-01.2-02.1.)

"Construction" means the process of building, altering, repairing, improving, or demolishing any public structure or building or other improvement to any public property. The term does not include the routine operation or maintenance of existing facilities, structures, buildings, or real property or demolition projects costing less than two hundred thousand dollars. (Source: North Dakota Century Code section 48-01.2-01(4).)

"Public Improvement' means any improvement undertaken by a governing body for the good of the public and which is paid for with any public funds, including public loans, bonds, leases, or alternative funding, and is constructed on public land or within an existing or new public building or any other public infrastructure or facility if the result of the improvement will be operated and maintained by the governing body. (Source: North Dakota Century Code section 48-01.2-01(21).)

1.0702 Procedure

If the estimated cost for the construction of a public improvement is in excess of two hundred thousand dollars, the governing body shall advertise for bids by publishing for three (3) consecutive weeks. The first publication of the advertisement must be at least twenty-one (21) days before the date of the opening of bids. The advertisement must be published in the official newspaper of the political subdivision in which the public improvement is or will be located, in a daily newspaper having a general circulation in the area where the project is located, and in a trade publication, electronic plan service, builders exchange, or other industry-recognized method of general circulation among the contractors, building manufacturers, and dealers in this state, except the advertisement for a public improvement financed by special assessments need be published only once each week for two (2) weeks in the official newspaper with the first publication being at least fourteen (14) days before the bid opening. (Source: North Dakota Century Code sections 48-01.2-01, 48-01.2-02.1, 48-01.2-04.)

1.0703 Open Market Purchases - Emergency

When the City governing body declares an emergency situation exists, the governing body may contract for the construction of a public improvement without seeking bids. (Source: North Dakota Century Code section 48-01.2-04.)

"Emergency situation" means sudden generally unexpected occurrence that requires immediate action to protect public health, safety, or property and which ends when the immediate threat to public health, safety, or property ceases and services are restored. The term does not include a lack of planning on the part of the city council, architect, engineer, landscape architect, or contractor. (Source: North Dakota Century Code section 48-01.2-01(13).)

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 (10) 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-four (64) days and before four p.m. on the sixtieth (16th) day prior to the holding of the election, a petition signed by not less than ten percent (10%) 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 sixty-fourth (64th) 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 immediately 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 must be held and conducted by the inspectors and judges of election of several precincts in the same manner and the returns must 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 the 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 records retention schedules published by the Records Management Division of the North Dakota Information Technology Department, a copy of which is on file with the City auditor. The records retention schedules are 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 records retention schedules as so modified.

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CHAPTER TWO

ORDINANCES

ARTICLE 1 - Procedure

2.0101 Enacting Clause for Ordinances

The enacting clause for every ordinance adopted by the City of Cavalier shall be "Be it ordained by the City Council of the City of Cavalier." 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 Mayors Veto Power and Reconsideration After Veto

An ordinance or resolution adopted by the city council of a city operating under the council form of government is not enacted until the ordinance or resolution is approved by the mayor or passed over the mayor's veto. An ordinance or resolution passed by the governing body of a city operating under the council form of government must be deposited in the office of the city auditor for the approval of the mayor. If the mayor approves the ordinance or resolution, the mayor shall sign the ordinance or resolution. An ordinance or resolution not approved by the mayor must be returned by the mayor with the mayor's objections in writing to the next regular or special meeting of the council occurring not less than five days after the passage of the ordinance or resolution. The veto may extend to an entire ordinance or resolution or to any one or more items or appropriations contained in any ordinance or resolution making an appropriation. If a veto extends to only a part of an ordinance or resolution, the residue takes effect. If the mayor fails to return any ordinance or resolution with the mayor's objections within the time specified in this section, the mayor is deemed to have approved the ordinance or resolution. Any veto of an ordinance or resolution may be overridden by the city council, if two-thirds of its members pass a motion to override the veto. Upon such action, the ordinance or resolution is effective notwithstanding the veto. The vote to pass an ordinance or resolution over the mayor's veto must be taken by yeas and nays and entered in the journal

2.0104 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)

2.0105 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)

2.0106 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)

2.0107 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)

2.0108 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.

2.0109 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.

2.0110 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.

2.0111 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.

2.0112 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 nonpayment of fine or costs, or both, is his 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.

2.0113 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.

2.0114 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.

2.0115 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.

2.0116 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.

2.0117 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.

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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, curb or gutter 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 to be set by resolution of the City Council, which shall be set in accordance with the scope of the work. 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 Duty of Owner to Maintain

It shall be the duty of the owner of any property along which a sidewalk has been constructed to maintain the same in good repair and safe condition. Should any such owner fail to maintain such sidewalks, the city engineer or street superintendent shall direct the owner to make such repairs as may be necessary to restore such sidewalk to a safe condition. Should the owner fail, within a reasonable time, to follow the directions of the city engineer or street superintendent, the city engineer or street superintendent shall report the facts to the governing body, which may then proceed as provided in chapter 40-29 of the North Dakota Century Code.

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 three (3) feet in width and shall have a minimum slope one-fourth (¼) inch per foot from the inside edge toward the street.

3. All sidewalks shall be 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 or City Street Superintendent.

3.0110 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 twenty-five dollars ($25.00) nor more than five hundred dollars ($500.00).

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 chapter shall be guilty of an offense and be fined not less than twenty-five dollars ($25.00), 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 ashes or sand thereon within the time specified for removal in such manner as to make such sidewalk safe for the travel of pedestrians thereon, shall be deemed a compliance with the provisions of this article.

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 ashes or sand sprinkled thereon, and the necessary expenses shall be charged against the abutting property by special assessment in the manner prescribed by law. (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 known 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 of 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:

1. Excavation in asphalt or concrete pavement or surface: $100.00.

2. Excavation in brick pavement or surface: $100.00.

3. Excavation in oil treatment street surface: $100.00.

4. Excavation in untreated or unimproved street or surface: $100.00.

3.022 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 five hundred dollars ($500.00) if no pavement is involved, and the sum of one thousand dollars ($1,000.00) 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 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, said notice specifying and stating the description of the property so seized and held, the location of the place where the same was seized or taken by said City, and a further notice that said property will be sold at public auction, to the highest bidder for cash, not less than ten (10) days from and after the date of the publication of such notice and the hour, date and place where said sale will be held. If prior approval is obtained from the city 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(20).)

3.0304 Report of Abandoned Property Sale

At the time specified in said notice the said property shall be sold by the chief of police of the City or by any police officer designated by him, at public auction, to the highest bidder for cash. The officer making the sale shall make a report thereof to the city governing body. 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 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: See attached City of Cavalier Address Map at the end of Chapter 3.

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 (2½) 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 (5) 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 (2) of the members appointed to the first committee shall be for only one (1) year and the term of two (2) members of the first committee shall be for two (2) 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, plus such other officers as the members thereof deem necessary. Said officers are to be elected in 2022 and every three (3) years in January of each third (3rd) 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 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 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 with the city auditor. 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 18-01-06.

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 of the City of Cavalier contained within the City Limits shall be known as and constitute the fire limits of the City of Cavalier

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 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 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 Burning Regulations, Special Provisions

1. Government declared burning bans. No burning of any kind, including recreational burning, shall be permitted during a burn ban issued by the state, county, or city.

2. Open burning for purposes of maintaining dikes, ditches, or other landscape purposes may be authorized upon application to the fire chief, and subject to any conditions or restrictions imposed by the fire chief.

3. Recreational fires are permitted provided they:

    a. Are contained within a non-combustible fire ring, outdoor fire containment vessel or chimney, any of which being not larger than 36 inches in diameter; a fire extinguisher or other source for extinguishing the fire is readily available, and not within 25 feet from any structure or combustible materials on any adjacent property. Pits or holes dug in the ground without another form of noncombustible containment are not permitted.

    b. Have a fuel load of less than 2 feet in height

    c. Are under adult supervision until fire is extinguished. Adult property owners are responsible that all burning on their property complies with this section.

4. Community event fires are permitted for large outdoor gatherings provided that bonfires or barbeque pits greater than 36 inches in diameter are approved by the fire chief; event sponsors must abide by any requirements set forth by that department.

5. Campground fire pits are permitted at established campgrounds/sites and are subject to the regulations for size and distance from combustibles as set forth by that campground.

6. Commercially manufactured liquid gas fuel appliances utilizing an open flame are permitted and regulated by the manufacturer's requirements for distances from buildings and combustible materials

4.0304 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.

4.0305 Open Burning Prohibited

No person shall kindle, maintain, or burn any garbage or other refuse either openly or in containers within the City of Cavalier.

4.0306 Reports of Hotel or 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 reference by the city council, for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, that certain code known as the International Fire Code being particularly the 2018 Edition thereof and all subsequent revisions and additions thereto; save and except such portions as are hereinafter deleted, modified, or amended by ordinance. A copy of said code is on file in the office of the chief of the Cavalier Fire Department and the same is hereby adopted and incorporated as fully as if set out in

length herein, and from the date on which this ordinance shall take effect, the provisions thereof shall be controlling within the limits of the city, and within the extra-territorial zoning jurisdiction of the city.

4.0402 Amendments, Additions and Deletions Made in Fire Code

Reserved for future use.

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 without specific permission from the governing body.

4.0405 Storage of Liquified 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 or during a veteran's cemetery ritual.

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 (½) inch in diameter.

4.0504 Fireworks Defined and Sold

As used in this article, the term "fireworks" is defined in, and to be sold subject to the restrictions as set out in North Dakota Century Code section 23-15-01 and any subsequent amendments. (Source: North Dakota Century Code section 23-15-01).

4.0505 Fireworks Hours of Sale or Use

The lawful hours for the sale of fireworks and the use of fireworks within the city limits, or the city's jurisdictional boundaries, are between the hours of 8:00 a.m. and 11:00 p.m. An exception to this provision will be made for July 4th, when the hours will be 8:00 a.m. to 12:00 midnight.

4.0506 Fireworks - Retail Sale License

Any person desiring to engage in the retail sale of fireworks must first procure a license from the governing body of the city as provided in this section. Completed applications will be accepted by the city auditor on or before the first (1st) day of June of the year for which the license is desired. No person shall sell at retail within the city limits or the city's jurisdictional boundaries as set forth in section 40-06-01 of the North Dakota Century Code, any fireworks without first having obtained a license therefore as provided in this chapter.

An application for the retail sale of fireworks license shall state the specific premises upon which the fireworks shall be sold, and the specific location where fireworks will be stored when not for sale. The application shall be accompanied by a license fee of fifty dollars ($50.00) payable to the city and proof of a valid liability policy covering said premises. Unsuccessful applicants shall be so notified and their license fee returned.

The license for the lawful retail sale of fireworks is valid only for the year that it was applied in. No license granted within this chapter shall be transferable to any other individual or premise than that which is shown on the license.

4.0507 Fireworks - Retail Sale License Revocation and Termination

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

2. Where not otherwise provided, any license may be revoked by the city governing board at any time for cause. "Cause" shall include, but not limited to the following:

a. Violation of the laws or regulations of the state, or any of the ordinances of the city dealing with or pertaining to the business or trade licensed.

b. The willful making of any false statement as to a material fact in the application for license.

c. Permitting any disorderly or immoral practices upon the premises where the license is licensed to carry on the business or trade.

d. The death of a licensee.

e. When the licensee ceases business at the location licensed.

f. When the licensee ceases to be a legal and bona fide citizen of the state.

g. Any lapse in the policy of insurance provided to the city covering said premises.

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

4.0508 Posting of License

Any license issued for the retail sale of fireworks shall be posted in a conspicuous place on the premise for which the license was issued.

4.0509 Types of Fireworks

Any person operating a retail business and who has a valid retail license for the sale of fireworks as provided for in this chapter may offer for sale the items in accordance with section 23-151-01 of the North Dakota Century Code.

4.0510 Storage of Fireworks by a Business

1. Any person operating a retail business and who has a valid retail license for the sale of fireworks as provided for in this chapter shall provide an inventory record to the city detailing the quantity and location of fireworks being stored within the city limits or the city's jurisdictional boundaries. Fireworks that will be stored shall be in ready boxes and kept dry at all times. Except during the lawful dates of retail sale no fireworks shall be stored within 500 feet of a residential dwelling. Any premises used to store fireworks under this section shall be open to inspection by city officials or their designees upon reasonable notice.

2. Any person operating a wholesale business and who has a wholesale license to sell fireworks shall provide an inventory to the city detailing the quantity and location of fireworks being stored within the city limits or the city's jurisdictional boundaries. Fireworks that will bel stored shall be in ready boxes and kept dry at all times. Notwithstanding any other provisions of this ordinance no person operating a wholesale business for the sale of fireworks within the city limits or the city's jurisdictional boundaries shall store fireworks within 500 feet of a residential dwelling. Any premises used to store fireworks shall be open to inspection by city officials or their designees upon reasonable notice.

3. Storage of fireworks personal use exception. Except during lawful dates of retail sales, no fireworks can be stored within 500 feet of a residential dwelling. Persons who store fireworks for personal consumption are exempted from this requirement.

4.0511 Penalty

1. In case no other specific penalty is prescribed for the violation of any section or provision of this chapter, any person violating any of the provisions of this chapter shall, upon conviction thereof, be punished by a fine not to exceed $1,500 or by imprisonment not to exceed 30 days, or by both fine and imprisonment.

2. Any person violating section 4.0505 relating to use must be assessed a fine of not less than twenty-five dollars ($25.00) upon the first violation, and upon conviction thereof shall be punished by a fine of not less than fifty dollars ($50.00) upon a second violation and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100.00) for the third or subsequent violations.

4.0512 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 - Penalty for Violation of this Chapter

4.0601 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 day 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

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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, regulations, and policies for the department. Such rules, regulations, and policies when approved by the governing body, shall be binding on members of the department. Such rules, regulations and policies 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 subjection, "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 or other magistrate, and forthwith after taking the same, to report in writing the kind and amount thereof to the municipal judge or other magistrate.

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 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, and which take place outside of the city limits or of Pembina County. 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

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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 six (6) 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. Such persons shall be appointed by the county commission. (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 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. A shipping container shall not be considered an accessory structure and therefore shall not be utilized as such for periods in excess of sixty (60) days, without council approval in any residential zone.

2. "Alteration" as applied to a building or structure, is a change or rearrangement in the structural parts or in the existing 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 and 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 or her 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 boarding 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. “Other political subdivision” is a political subdivision not including another city, which would otherwise have zoning or subdivision regulation jurisdiction.

14. “Setback Building Line” is a building line back of the street line.

15. “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.

16. “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.

17. “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.

18. “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.

19. “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.

20. "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.

R-1	Residential District, Single Family
R-2	Residential District, Multi-Family
R-3	Residential District Mobile Home
C-1	Commercial
I-1	Industrial
A-1	Agricultural
P-1	Park

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 Cavalier" 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 R-2 residential district until such classification has been changed by an amendment to the zoning ordinances as prescribed by law.

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 may extend the application of the City's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:

One mile [1.61 kilometers] if the city has a population of fewer than five thousand. A city that has exercised its authority under this subdivision has joint zoning and subdivision regulation jurisdiction from one-half mile [.80 kilometer] to one mile [1.61 kilometers] with the other political subdivision.

6.0403 Joint Jurisdiction - Extraterritorial Zoning

Joint jurisdiction is jurisdiction in which the other political subdivision has jurisdiction to receive applications and issue permits and impose administrative fees for applications and permits. In addition, under this jurisdiction the other political subdivision may adopt, modify, and enforce any zoning designation or regulation and approve any subdivision plat or regulation. For a decision to be final, the other political subdivision shall give written notice to the city. The city may request negotiation as to any decision made by the other political subdivision under the other political subdivision's jurisdiction within thirty days of notice. If negotiation is not requested, the decision of the other political subdivision is final. If the governing body of the other political subdivision and the city do not come to an agreement as to the disputed zone or subdivision regulation within thirty days of request for negotiation, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor and two members of the governing body of the other political subdivision and two members of the governing body of the city. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies, the dispute must be resolved by the board of county commissioners. (Source: North Dakota Century Code section 40-47-01.1(2).)

6.0404 Extra Territorial Zoning Agreement

The city and the other political subdivision may enter a written agreement regarding the authority to receive applications and issue permits in the area subject to joint jurisdiction. (Source: North Dakota Century Code section 40-47-01.1(1)(c).)

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 zoning administrator 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 zoning administrator. 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, Multi-Family
R-3	Residential Districts, Mobile Home
C-1	Commercial Districts
I-1	Industrial Districts
A-1	Agricultural
P-1	Park

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 - Multi-Family

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

1. Multi-family dwellings.

2. All other uses permitted in a one-family district.

6.0604 R-3 - Residential Districts - Mobile Home

In a mobile home district, the following buildings and uses are permitted:

1. Mobile Homes are subject to the following restrictions:

   a. Mobile home parks shall contain a minimum of five (5) acres of land and a maximum of eight (8) mobile homes per gross acre.

   b. A minimum of ten percent (10%) of the gross site area shall be devoted to open space and recreational facilities.

   c. Each mobile home space shall be at least 40 feet wide and an area of 5,000 square feet.

   d. There shall be a minimum of 15 feet between structures.

   e. No building shall exceed 35 feet in height.

   f. Underground utility hookups shall be provided to each lot in the park. These utilities shall include water, sewer, electricity, telephone, and either gas or fuel oil for heating purposes.

   g. Off-street parking of one parking space for each mobile home unit shall be provided.

   h. All lots in the park shall be accessible at all times to emergency vehicles.

   i. Each mobile home shall have a setback of a minimum of ten feet within the park and 25 feet setback from other public roads adjoining the mobile home park.

   j. Where the park is served by private streets, those streets shall conform to the following:

      i. Where parking is to be allowed on both sides of the street, a driving surface of 24 feet within a 40 feet right-of-way shall be provided; and

      ii. Where parking is prohibited on both sides of the street, a driving surface of 24 feet within a 30 feet right-of-way shall be provided.

   k. Each mobile home space shall be provided with garbage stands and cans.

   l. All regulations of state agencies and departments relating to mobile homes shall be complied with.

   m. Accessory Buildings and uses incidental to and in conformance with the above use;

      i. Schools

ii. Churches and parish houses.

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, except as specifically prohibited in Section 6.0201 of this Article.

6.0606 C-1 - 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. Hotels, motels, tourist camps

11. Any accessory use customarily incident to a use herein listed.

12. A shipping container may be utilized in a commercial or industrial zone, provided it is located on the same, or an adjoining lot as an existing commercial business or industrial structure. If multiple shipping containers are present on any lot or lots as provided above, they shall be arranged in an orderly fashion, and painted a uniform color so as to alleviate to the extent possible the impact to surrounding properties.

6.0607 I-1 - Industrial

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

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

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

2. Uses prohibited. No dwelling or dwelling unit.

6.0608 A- 1 - Agricultural

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

Agricultural and agricultural buildings, except that confinement and feeding of livestock and poultry shall not be permitted within the zoning jurisdictional limits of the city; and

Single family dwellings, provided that such dwellings are accessory to an agricultural use and occupied by persons owning or employed upon the premises.

ARTICLE 7 - Area Districts

6.0701 Area Regulations - Residential Districts

There shall be no minimum lot area for single family or for to or more family units, but all applications for building permit must have a detailed plot plan, showing distances, and it shall be in the discretion of the City Council as to whether or not a building permit shall be issued, after taking into consideration the proximity of other structures in the immediate area, and on adjacent lots.

ARTICLE 8 - Yard Regulations

6.0801 Yard Regulations and Setbacks

In an R-1 or R-2 district, the minimum side yard for all dwellings, garages, and other buildings shall be five feet from the outside edge of the building projection, unless a greater or lesser amount is approved by the City Council upon petition for a building permit. If a lesser amount is petitioned for, notice of hearing on the petitions must be given to the adjoining property owners by certified mail.

In an R-1 or R-2 district, the minimum setback from the right of way of roads, and highways shall be in conformance with the prevailing unites on the same side of the street and in the same block as the unit under construction.

In C-1 or I-1 districts there shall be: No yard requirements and no setbacks. In C-1, no building shall be more than 60 feet in height. In I-1 districts, no building shall exceed 75 feet in height, unless the structure is within 150 of a residential district. In that case, the building or structure shall not exceed 45 feet in height.

6.0802 Fences, walls, and hedges

A wall, fence or hedge, not exceeding 8.0 feet in height measured from flat, natural ground height on both sides of the fence, may only occupy the required side or rear yard. No fence wall or hedge exceeding 4 feet shall be constructed in the front yard or beyond front of the front line of the structure or within the applicable 20 foot setback from the street, whichever is farther back, and no fence shall be constructed or built upon City right of way, or public property. Fences in the side or rear yard are allowed in all residential zones provided that:

a. The wall, fence, or hedge must be placed at least 1 foot or more away from a property line.

b. The wall, fence, or hedge may be placed upon the rear property line if the rear property line does not abut an alleyway, or does not abut a city easement for water, power, or other utilities. A wall, fence, or hedge, may be placed no closer than five (5) feet from the rear property line which abuts an alleyway, and no fence may be placed upon property covered by a city easement.

c. where fences shall enclose an area containing an electric, water or gas meter, a gate, with a bottom clearance of not less than three (3) inches, and latching hardware accessible from both sides, shall be provided for access. Construction of a fence which encloses an area containing an electric, water, or gas meter constitutes permission by the landowner for City of Cavalier municipal employees or other utility providers to enter the enclosed area for city purposes, such as reading meters etc.

d. Fences must be constructed of weather resistant material consisting of new wood, metal, or vinyl. Barbed wire fences are prohibited in any residential zone, and may only be utilized in a commercial or industrial zone as part of a chain link enclosure, and must be at least 6 feet from ground level.

e. Any fence or wall which is in a weakened or structurally deficient condition shall constitute a public nuisance, and may be abated as set forth in this code.

ARTICLE 9 - Enforcement

6.0901 Administrative Official

1. Administrative Official. Except as otherwise provided herein the zoning administrator 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 structure shall be erected, added to or structurally altered until a permit therefore has been issued by the zoning administrator. All applications for such permits shall be in accordance with the requirements herein and, unless upon written order of the Board of Adjustment, no such building permit or certificate of occupancy, shall be issued for any building where said construction, addition or alteration or use thereof would be in violation of any of the provisions of this chapter.

   a. Matter Accompanying Application. There shall be submitted with all applications for building permits two copies 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 and accessory buildings 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. One copy of such layout or plot plan shall be returned when approved by the zoning administrator together with such permit to the applicant upon the payment of a fee as set by the City Council.

3. Certificates of Occupancy

a. No land shall be occupied or used and no building hereafter erected, altered or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the zoning administrator, stating that the building or proposed use thereof complies with the provisions of this chapter.

b. No non-conforming use shall be maintained, renewed, changed or extended without a certificate of occupancy having first been issued by the zoning administrator therefore.

c. All certificates of occupancy shall be applied for coincident with the application for a building permit. Said certificate shall be issued within 60 days after the erection or alteration shall have been approved.

d. The zoning administrator shall maintain a record of all certificates and copies shall be furnished, upon request, to any person having a proprietary or tenancy interest in the building affected.

e. No permit for excavation for, or the erection or alteration of or repairs to any building shall be issued until an application has been made for the certificate of occupancy.

f. Under such rules and regulations as may be established by the Board of Adjustment and filed with the zoning administrator, a temporary certificate of occupancy for not more than thirty (30) days for a part of a building may be issued by the zoning administrator.

ARTICLE 10 - Board of Adjustment

6.1001 Creation of Board

1. Creation, Appointment and Organization. A Board of Adjustment, to be appointed by the City governing body, is hereby created. Said Board shall consist of five members for three-year terms. The Board shall elect a chairman from its membership, shall appoint a secretary and shall prescribe rules for the conduct of its affairs. (Source: North Dakota Century Code section 40-47-07)

2. Powers and Duties. The Board of Adjustment shall have all the powers and duties prescribed by law and by this chapter, which are more particularly specified as follows:

   a. Interpretation. Upon appeal from a decision by an administrative official, to decide any question involving the interpretation of any provision of this chapter, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.

   b. Variances. To vary or adapt the strict application of any of the requirements of this chapter in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, but in no other case. In granting any variance, the Board of Adjustment shall prescribe any conditions that it deems to be necessary or desirable. However, no variance in the strict application of any provision of this chapter shall be granted by the Board of Adjustment unless it finds:

      i. That there are special circumstances or conditions, fully described in the findings, applying to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the neighborhood, and that said circumstances or conditions are such that the

strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or building.

ii. That, for reasons fully set forth in the findings, the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the board is the minimum variance that will accomplish this purpose.

iii. That the granting of this variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. In addition to considering the character and use of adjoining buildings and those in the vicinity, the board, in determining its finding, shall take into account the number of persons residing or working in such buildings or upon such land and traffic conditions in the vicinity.

3. Procedure. The Board of Adjustment shall act in strict accordance with the procedure specified by law and by this chapter. All appeals and applications made to the Board shall be in writing, on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of the ordinance involved, and shall exactly set forth the interpretation that is claimed, the use for which the special permit is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. Every decision of the Board of Adjustment shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case. Each such resolution shall be filed in the office of the city auditor.

4. Notice and Hearing. No action of the Board shall be taken on any case until after due notice has been given to the parties and public hearing has been held.

5. Appeal of Decision. A decision of the board of adjustment may be appealed to the governing body by either the aggrieved applicant or by any officer or department of the city. The appeal must be filed with the city auditor within fifteen days after notice of the decision of the board of adjustment. The governing body shall fix a time, within thirty days, for hearing the appeal, and give due notice of the hearing to the parties.

6.1002 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 Board 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. No regulation, restriction, or boundary change may become effective until after a public hearing at which parities in interest and citizens shall have the right to be heard. Notice of the hearing must

be published once a week for two successive weeks before the time set for hearing in the official newspaper. The notice must contain the following items:

a. The time and place of the hearing.

b. A description of any property involved in any zoning change, by street address if streets have been platted or designated in the area affected.

c. A description of the nature, scope, and purpose of the proposed regulation, restriction, or boundary.

d. A statement of times at which it will be available to the public for inspection and copying at the auditor's office.

3. Establishment of Regulation, Restriction, or Boundary -Publication. Upon establishment of any regulation, restriction, or boundary hereunder, a certified copy shall be filed with the auditor and notice of the same shall be published in the official newspaper. The notice must state the nature, scope, and purpose of the regulation, restriction, or boundary and must state the times at which it will be available for viewing and copying at the auditor's office.

4. Final Report. The governing body, the zoning commission, and a board of adjustment shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the governing body, commission, or board.

5. 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 the area adjacent, extending one hundred fifty feet [45.72 meters] from the area to be changed, excluding the width of the streets,

The amendment shall not become effective except by the favorable vote of three fourths of all the members of the governing body of the city. Protests in writing must be filed with the city auditor prior to the time set for the hearing. (Source: North Dakota Century Code sections 40-47-04 and 40-47-05)

6.1003 Enforcement

The erection, construction, reconstruction, alteration, repair, conversion or maintenance of any building or structure or the use of any building, structure or land in violation of this 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 or 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 prevent 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

MUNICIPAL UTILITIES

ARTICLE 1 - UTILITY ESTABLISHED

7.0101 Municipal Utilities Department Established

There is hereby established and created within the City a department to be known as the Municipal Utilities 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 Municipal Utilities Department to be Independent Agency

All of the business affairs of the Municipal Utilities 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 Municipal Utilities 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 Municipal Utilities 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 Municipal Utilities 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 Municipal Utilities 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 Municipal Utilities Department, after setting up a reasonable reserve for depreciation and new construction, to make payment of the bond requirements from the profits of the Municipal Utilities 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 Municipal Utilities Department shall be placed upon an entirely independent basis as a separate business enterprise.

7.0103 Scope of Utility

The properties of the Municipal Utilities Department and all future improvements, extensions and enlargements thereof, together with all cash and other assets held in the City's Municipal Utilities 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 ensuring 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 Municipal Utilities 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 benefitted 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 benefitted 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 Municipal Utilities 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 Municipal Utilities 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 Municipal Utilities 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, created by resolution adopted _____, _____, 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 Municipal Utilities 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 Municipal Utilities 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 Municipal Utilities 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 Municipal Utilities 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 times be observed:

1. For the purpose of this section, whenever the net revenues of the utility hereinabove appropriated to the Improvement Warrant Account are pledged to pay a portion of the cost of any improvement to be financed by improvement warrants, such warrants and the interest accruing thereon shall be deemed to be payable from said net revenues in the same proportion as that part of the cost payable from said net revenues bears to the principal amount of such warrants. The portion of costs payable from net revenues shall be deemed equal to the principal amount of the warrants less the principal amount of the taxes and assessments 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 Municipal Utilities 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 Municipal Utilities 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 Municipal Utilities 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 therefrom 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 Municipal Utilities 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 of property damage which is or may become a charge against the revenues of the utility. The City will also cause all persons handling funds of the utility to be bonded in suitable amounts for the protection of the City and the holders of obligations of the utility, and the expense of all such insurance and bonds shall be accounted for as an operating cost of the utility. The City will use the proceeds of any such insurance and bonds to restore the loss or damage compensated thereby.

9. The City and its 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 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 Applicability of Chapter

Every consumer of water and every owner of premises served thereby and every occupant and tenant of premises served thereby and all other person whomsoever, shall be governed by and shall be subject to all of the provisions of this chapter and to all other ordinances of the city and to all resolutions, rules and regulations established under this chapter and such other ordinances, which pertain to the municipal water.

7.0202 City Water

The city shall maintain an acceptable water treatment facility and/or enter into such contracts as may be necessary, such that an adequate supply of potable water is delivered to its consumers.

7.0203 Fraudulent Appropriation of Water Prohibited

It shall be unlawful and prohibited for any person, firm or corporation to willfully make any connection with any meter, pipe, conduit, wire, line or other apparatus belonging to or connected with the municipal water system, for the purpose of taking, using, or wasting such water, or to willfully prevent any water meter from duly measuring or registering the quantity of water supplied, or to in any way interfere with its proper action or just registration, or to without the consent of the City Council willfully divert any water or in any way willfully use or cause to be used without the consent of the City Council any water manufactured by or distributed from the municipal water system or aid, agree with, employ or conspire with any other person to do any of these acts.

7.0204 Interfering with Water Apparatus Prohibited

It shall be unlawful and prohibited for any person to willfully destroy, injure, disconnect, displace, cut, break, deface, or in any way interfere with any meter, water line, valve, curbstop, instruments or machinery of any kind used in the construction or operations of the municipal water system, or to aid, agree with, employer conspire with any other person to do any of said acts.

7.0205 Cash Bond Deposit

1. The City Council may from time to time by resolution made during the regular, open and public proceeding thereof, establish a cash bond to be paid by any consumer requesting service from the municipal water system guaranteeing full payments of all bills for such services.

2. A record shall be kept of such deposits; and upon the termination of the service of services for which the deposit has been made if the account or accounts has been fully paid such deposit or deposits shall be refunded; but if any amount remains unpaid upon such account or accounts the amount of such deposit or deposits, as the case may be, shall be credited on such account or accounts.

7.0206 Permit Required for Service Connections

1. It shall be unlawful to make, or attempt to make, any connection to the municipal water system without first obtaining a permit thereof.

2. Any person desiring to provide to any premises or structure the service of the municipal water system shall make application therefor to the office of the City Auditor. Such application shall be made on a form provided by the City Auditor and must be accompanied by an application fee or cash bond deposit. The amount of application fee or cash bond deposit shall be set by the City Council by resolution. Within 30 days after the date appearing on the application, there shall be set by such office, and the applicant shall be advised of, the amount of any connection fee to be charged; such connection fee shall be paid before the requested permit will be issued. Such form may require the legal description of the property involved and any information, assurance, promise or waiver relevant to the purpose for which it is made and relevant to the requirements that must be satisfied and relevant to the reliability of the person for whose benefit the service is to be rendered. The applicant shall promise in such application that he will pay for or will be ultimately responsible for, the cost of all services applied for and provided, and all changes made in connection therewith; that he will abide by all of the provisions of this chapter and by all of the resolutions, rules and regulations established thereunder. In consideration of the benefits to be received he will not sue the city or municipal water system or any of the offices or employees of same for any loss or damage of any nature whatsoever that he may suffer directly or indirectly from any failure to provide any service or for any disconnection or interruptions thereof for any length of time, however long, and for any reason, such reason, however, being subject to the disconnection of services for failure to pay.

3. The Water Superintendent may make reasonable requirements for updating any service line, and/or service entrance prior to providing electrical service when, in the sole opinion of the Electrical Superintendent such updating is required in the interest of public safety.

7.0207 Continuing Service Not Guaranteed

Nothing in the ordinances of the city, and all resolutions, rules and regulations established thereunder, shall be interpreted or construed as guaranteeing proper or continuing or uninterrupted service by the municipal water system. By virtue of this section the city does not guarantee the same.

7.0208 Liability for Improper Service

Neither the municipal water system nor the city shall be liable or responsible for any loss or damage of any nature whatsoever directly or indirectly resulting from, any improper or disconnected or interrupted service for any reason whatever, regardless of the length of time thereof, or the time or times at which such may occur. No notice need be given by municipal utilities or by the city that any service has been; or is about to be disconnected, interrupted or provided improperly, except where such notice is specifically required.

7.0209 Requirements of Installation

1. In order to be connected to the City water system or, if connection has been previously made, in order to continue said service, the following requirements must be met:

   a. An underground service line of a minimum one inch inside diameter must be provided from the nearest water main to the meter.

   b. An operational quarter-turn shutoff must be installed within one foot on each side of the meter.

   c. A curbstop must be located and/or installed on the service line between the water main and the meter.

   d. In situations where the meter is installed in a crawl space or beneath a mobile home, or in any situation where, in the best judgment of the city, access to the meter is difficult, an access panel of at least 2 ft. x 3 ft. must be installed within three feet of the meter.

   e. The area immediately surrounding the meter and along the most convenient route thereto must be kept clear of debris, insulation, building materials, animals and their residue, and all other impediments to easy and sanitary access, to a width of four feet.

2. In the event service is being provided as of the date of adoption hereof, and the above requirements have not been fulfilled, the City Administrator may give written notice that such requirements must be fulfilled within thirty (30) days of the date of said notice and that service will be terminated for failure to comply.

3. Purpose

   The purpose of this Ordinance is to protect the public water system from contaminants or pollutants that could enter the distribution system by backflow from a customer's water supply system through the service connection.

4. Authority

   The authority to implement this program is contained in the following documents:

a. North Dakota Administrative Code 33.1-17-01-19 Protection of Public Water Systems

b. 2018 North Dakota Plumbing Code

c. 2018 Uniform Plumbing Code

The public water system shall have the authority to survey all service connections within the distribution system to determine if the connection is a cross-connection.

The public water system shall have the authority to control all service connections within the distribution system if the connection is a cross-connection.

The public water system may control any service connections within the distribution system in lieu of a survey if the service connection is controlled with an air gap or reduced pressure zone backflow prevention assembly.

The public water system may collect fees for the administration of this program.

The public water system shall maintain records of cross-connection surveys and the installation, testing and repair of all backflow prevention assemblies installed for containment and containment by isolation purposes.

Except as otherwise provided herein, the public water system shall administer, implement and enforce the provisions of this Ordinance.

5. Applicability

This Ordinance applies to all commercial, industrial and multi-family residential service connections within the public water system and to any persons outside the City who are, by contract or agreement with the public water system, users of the public water system. This Ordinance does not apply to single-family-residential service connections unless the public water system becomes aware of a cross connection at the single-family connection.

6. Definitions

a. "ACTIVE DATE" means the first day that a backflow prevention assembly or backflow prevention method is used to control a cross-connection in each calendar year.

b. "AIR GAP" is a physical separation between the free-flowing discharge end of a potable water supply pipeline and an open or non-pressure receiving vessel installed in accordance with standard ASME A112.1.2.

c. "BACKFLOW" means the undesirable reversal of flow of water or mixtures of water and other liquids, gases or other substances into the public water systems distribution system from any source or sources other than its intended source.

d. "BACKFLOW CONTAMINATION EVENT" means backflow into a public water system from an uncontrolled cross connection such that the water quality no longer meets the North Dakota Primary Drinking Water Regulations or presents an immediate health and/or safety risk to the public.

e. "BACKFLOW PREVENTION ASSEMBLY" means any mechanical assembly installed at a water service line or at a plumbing fixture to prevent a backflow contamination event, provided that the mechanical assembly is appropriate for the identified contaminant at the cross connection and is an in-line field-testable assembly.

f. "BACKFLOW PREVENTION METHOD" means any method and/or non-testable device installed at a water service line or at a plumbing fixture to prevent a backflow contamination event, provided that the method or non-testable device is appropriate for the identified contaminant at the cross connection.

g. "CERTIFIED CROSS-CONNECTION CONTROL TESTER OR REPAIRER" means a person who possesses a valid Backflow Prevention Assembly Tester certification from one of the following approved organizations: American Society of Sanitary Engineering (ASSE) or the American Backflow Prevention Association (ABPA), or equivalent certification organization as approved by the North Dakota Plumbing Board.

h. "CONTAINMENT" means the installation of a backflow prevention assembly or a backflow prevention method at any connection to the public water system that supplies an auxiliary water system, location, facility, or area such that backflow from a cross connection into the public water system is prevented.

i. "CONTAINMENT BY ISOLATION" means the installation of backflow prevention assemblies or backflow prevention methods at all cross connections identified within a customer's water system such that backflow from a cross connection into the public water system is prevented.

j. "CONTROLLED" means having a properly installed, maintained, and tested or inspected backflow prevention assembly or backflow prevention method that prevents backflow through a cross connection.

k. "CROSS CONNECTION" means any connection that could allow any water, fluid, or gas such that the water quality could present an unacceptable health and/or safety risk to the public, to flow from any pipe, plumbing fixture, or a customer's water system into a public water system's distribution system or any other part of the public water system through backflow.

l. "MULTI-FAMILY" means a single residential connection to the public water system's distribution system from which two or more separate dwelling units are supplied water.

m. "SINGLE-FAMILY" means:

   i. A single dwelling which is occupied by a single family and is supplied by a separate service line; or

   ii. A single dwelling comprised of multiple living units where each living unit is supplied by a separate service line.

n. "UNCONTROLLED" means not having a properly installed and maintained and tested or inspected backflow prevention assembly or backflow prevention method, or the backflow prevention assembly or backflow prevention method does not prevent backflow through a cross connection.

o. "WATER SUPPLY SYSTEM" means a water distribution system, piping, connection fittings, valves and appurtenances within a building, structure, or premises. Water supply systems are also referred to commonly as premise plumbing systems.

7. Requirements

a. Commercial, industrial and multi-family service connections shall be subject to a survey for cross connections. If a cross connection has been identified an appropriate backflow prevention assembly and or method shall be installed at the customer's water service connection within 60 days of its discovery. The assembly shall be installed downstream of the

water meter or as close to that location as deemed practical by the public water system. If the assembly or method cannot be installed within sixty (60) days the public water system must take action to control or remove the cross connection, suspended service to the cross connection or receive an alternative compliance schedule from the North Dakota Department of Environmental Quality.

b. In no case shall it be permissible to have connections or tees between the meter and the containment backflow prevention assembly.

   i. In instances where a reduced pressure principle backflow preventer cannot be installed, the owner must install approved backflow prevention devices or methods at all cross-connections within the owner's plumbing system.

c. Backflow prevention assemblies and methods shall be installed in a location which provides access for maintenance, testing and repair.

d. Reduced pressure principle backflow preventers shall not be installed in a manner subject to flooding.

e. Provisions shall be made to provide adequate drainage from the discharge of water from reduced pressure principle backflow prevention assemblies. Such discharge shall be conveyed in a manner which does not impact waters of the state.

f. All assemblies and methods shall be protected to prevent freezing. Those assemblies and methods used for seasonal services may be removed in lieu of being protected from freezing. The assemblies and methods must be reinstalled and then tested by a certified cross-connection control technician upon reinstallation.

g. Where a backflow prevention assembly or method is installed on a water supply system using storage water heating equipment such that thermal expansion causes an increase in pressure, a device for controlling pressure shall be installed.

h. All backflow prevention assemblies shall be tested at the time of installation and on an annual schedule thereafter. Such tests must be conducted by a Certified Cross-Connection Control tester or repairer.

i. The public water system shall require inspection, testing, maintenance and as needed repairs and replacement of all backflow prevention assemblies and methods, and of all required installations within the owner's plumbing system in the cases where containment assemblies and or methods cannot be installed.

j. All costs for design, installation, maintenance, testing and as needed repair and replacement are to be borne by the customer.

k. No grandfather clauses exist except for fire sprinkler systems where the installation of a backflow prevention assembly or method will result in a complete and permanent loss of function for the fire sprinkler system.

l. For new buildings, all building plans must be submitted to the public water system and approved prior to the issuance of water service. Building plans must show:

   i. Water service type, size and location

   ii. Meter size and location

   iii. Backflow prevention assembly size, type and location

iv. Fire sprinkler system(s) service line, size and type of backflow prevention assembly.

a. All fire sprinkling lines shall have a minimum protection of an approved double check valve assembly for containment of the system.

b. All glycol (ethylene or propylene), or antifreeze systems shall have an approved reduced pressure principle backflow preventer for containment.

c. Dry fire systems shall have an approved double check valve assembly installed upstream of the air pressure valve.

d. In cases where the installation of a backflow prevention assembly or method will compromise the integrity of the fire sprinkler system the public water system can chose to not require the backflow protection. The public water system will measure chlorine residual at location representative of the service connection once a month and perform periodic bacteriological testing at the site. If the public water system suspects water quality issues the public water system will evaluate the practicability of requiring that the fire sprinkler system be flushed periodically.

8. Inspection, Testing and Repair

a. Backflow prevention assemblies or methods shall be tested by a Certified Cross-Connection Control Technician upon installation and tested at least annually, thereafter. The tests shall be made at the expense of the customer.

i. Any backflow prevention assemblies or methods that are non-testable, shall be inspected at least once annually by a certified cross-connection control technician. The inspections shall be made at the expense of the customer.

b. As necessary, backflow prevention assemblies or methods shall be repaired and retested or replaced and tested at the expense of the customer whenever the assemblies or methods are found to be defective.

c. Testing gauges shall be tested and calibrated for accuracy at least once annually.

9. Reporting and Recordkeeping

a. Copies of records of test reports, repairs and retests, or replacements shall be kept by the customer for a minimum of three (3) years.

b. Copies of records of test reports, repairs and retests shall be submitted to the public water system by mail, facsimile or e-mail by the testing company or testing technician.

c. Information on test reports shall include, but may not be limited to,

i. Assembly or method type

ii. Assembly or method location

iii. Assembly make, model and serial number

iv. Assembly size

v. Test date; and

vi. Test results including all results that would justify a pass or fail outcome

vii. Certified cross-connection control technician certification agency

viii. Technician's certification number

ix. Technician's certification expiration date

x. Test kit manufacturer, model and serial number

xi. Test kit calibration date

10. Right of Entry

    a. A properly credentialed representative of the public water system shall have the right of entry to survey all buildings and premises for the presence of cross-connections for possible contamination risk and for determining compliance with this section. This right of entry shall be a condition of water service in order to protect the health, safety and welfare of customers throughout the public water system's distribution system.

11. Compliance

    a. Customers shall cooperate with the installation, inspection, testing, maintenance, and as needed repair and replacement of backflow prevention assemblies and with the survey process. For any identified uncontrolled cross-connections, the public water system shall complete one of the following actions within one hundred twenty (120) days of its discovery:

        i. Control the cross connection

        ii. Remove the cross connection

        iii. Suspend service to the cross connection

    b. The public water system shall give notice in writing to any owner whose plumbing system has been found to present a risk to the public water system's distribution system through an uncontrolled cross connection. The notice and order shall state that the owner must install a backflow prevention assembly or method at each service connection to the owner's premises to contain the water service. The notice and order will give a date by which the owner must comply.

        i. In instances where a backflow prevention assembly or method cannot be installed, the owner must install approved backflow prevention assemblies or methods at all cross-connections within the owner's water supply system. The notice and order will give a date by which the owner must comply.

12. Violations and Penalties.

    a. Any violation of the provisions of this ordinance, shall, upon conviction be punishable as provided in all applicable statutes, laws, and regulations.

13. Conflict with other codes.

    a. If a dispute or conflict arises between the North Dakota Plumbing Code as adopted herein, and any plumbing, mechanical, building, electrical, fire or other code adopted by the State, then the most stringent provisions of each respective code shall prevail.

7.0210 Meters to Be Installed and Controlled by City and Service Lines

All consumers of water service shall be responsible for 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. All services shall be constructed by licensed contractors at the owners expense. All repairs to service lines and curb stop shall be the responsibility of the consumer. Plumbing and service lines as well as the meters owned by the city shall at all reasonable times be subject to inspection by authorized representatives of the city. Any repairs found to be necessary by such representatives shall be made promptly, or the city will discontinue service. Services means the service line running from the point of connection with the city main to the owners premises. All meters and metering devices to be installed hereafter shall be owned and maintained by the City of Cavalier. Replacement and repair of damage to said meters due to the negligence of the consumer will be at the expense of the consumer.

7.0211 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.

7.0212 Penalty

Any person found guilty of violating ordinance of the City of Cavalier for which no specific penalty is otherwise provided shall be punished by a fine of not more than $1,000 or by imprisonment not to exceed 30 days or by both such fine and imprisonment. The court shall have power to suspend the sentence and to revoke the suspension thereof. Each day any person, firm, association, or corporation shall violate any section or provisions of any articles shall constitute a separate offense.

ARTICLE 3 - SEWER

7.0301 Purpose

The purpose of this chapter shall be to generate sufficient revenue to pay all costs for the operation and maintenance of the complete wastewater system. The costs shall be distributed to all users of the system in proportion to each user's contribution to the total loading to the treatment works. Factors such as strength (BOD and TSS), volume, and delivery flow rate characteristics shall be considered and included as the basis for the user's contribution to ensure a proportional distribution of operation and maintenance costs to each user (or user class).

7.0302 Determining Total Annual Cost of Operation and Maintenance

The City Engineer shall determine the total annual costs of operation and maintenance of the wastewater system which are necessary to maintain the capacity and performance, during the service life of the treatment works, for which such works were 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.

7.0303 Determining Each User's Wastewater Contribution Percentage

1. The City Engineer shall determine for each user or user class the average daily volume of wastewater discharged to the wastewater system which shall then be divided by the average daily volume of all wastewater discharged to the wastewater system to determine each user's Volume

Contribution Percentage. The amount used as the total average daily volume of wastewater shall exclude infiltration and inflow. The City Engineer shall determine for each user or user class the average daily poundage of 5-day, 20°C. Biochemical Oxygen Demand (BOD) discharged to the wastewater system, which shall then be divided by the average daily poundage of all 5-day BOD discharged to the wastewater system to determine such user's BOD Contribution Percentage.

2. The City Engineer shall determine for each user or user class the average daily poundage of Total Suspended Solids (TSS) discharged to the wastewater system which shall then be divided by the average daily poundage of all total suspended solids discharged to the wastewater system, to determine such users' TSS Contribution Percentage. The Volume Contribution Percentage, BOD Contribution Percentage, and TSS Contribution Percentage for each user or user class shall be multiplied by the annual operation and maintenance costs for the total volume, the total 5-day, 20°C. BOD and the TSS, respectively.

7.0304 Determining a Surcharge System

Surcharge rate schedule for above normal strength wastes. The city will assess a surcharge rate for all nonresidential users discharging wastes with BOD and TSS strengths greater than the average residential user. Such users will be assessed a surcharge sufficient to cover the costs of treating such users' above normal strength wastes. Normal strength wastes are considered to be 200 ppm BOD and 250 ppm TSS. Such users will pay an additional user charge of $0.01 per 1,000 gallons for each 25 ppm or fraction thereof over 200 ppm of BOD and $0.005 per 1,000 gallons for each 25 ppm or fraction thereof over 250 ppm TSS.

7.0305 Surcharge Rate Scheduled for Above Normal Volume of Wastes

1. Residential users are considered to be one class of user and are hereby levied a charge of $1.50 per month. Nonresidential users with flows no greater than the average residential user's flow of 6000 gallons per month and with BOD and TSS no greater than the average residential users' strength will be levied the same charge of $1.50 per month as the average residential user.

2. Nonresidential users with volumes greater than the average residential user will pay an additional charge of $0.10 cents per 1,000 gallons per month for all flows greater than the average residential user's flow of 6000 gallons per month.

7.0306 Determining Wastewater Service Charge

Each nonresidential user's wastewater cost contributions, as determine in § 7.0303 and 7.0304, shall be added together to determine such user's annual wastewater service charge. Residential users may be considered to be one class of user and an equitable service charge may be determined for each user based upon an estimate of the total wastewater contribution of this class of user. The governing body may classify industrial, commercial, and other nonresidential establishments as a residential user, provided that the wastes from these establishments are equivalent to the wastes from the average residential user with respect to volume, TSS and BOD.

7.0307 Wastewater Facilities Replacement Fund

A reserve fund called the Wastewater Facilities Replacement Fund (WFRF) is hereby established within the Wastewater Utility Fund for the purpose of providing sufficient funds to be expended for obtaining and installing equipment, accessories and appurtenances during the useful life (20 years) of the wastewater treatment facilities necessary to maintain the capacity and performance for which such facilities are designed and constructed. The WFRF established within the Wastewater Utility Fund as an interest-bearing account shall be funded by a deposit of $1,500.00 per year.

7.0308 Review of Wastewater Service Charge

The city shall review the total annual cost of operation and maintenance as well as each user's wastewater contribution percentage not less than every two years, 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. The city will apply excess revenues collected from a class of users to the costs of operation and maintenance attributable to that class for the next year and adjust the rate accordingly. If a significant user, such as an industry, has completed in-plant modifications which would change that user's wastewater contribution percentages, the user can present at a regularly scheduled meeting of the governing body such factual information and the city shall then determine if the user's wastewater contribution percentages are to be changed. The city shall notify the user of its findings as soon as possible.

7.0309 Notification

Each user will be notified, at least annually, in conjunction with a regular bill, of the rate and that portion of the user charges which are attributable to wasterwater treatment services.

7.0310 Prohibited Discharges

1. No person shall discharge or cause to be discharged any unpolluted waters such as stormwater, surface water, groundwater, roof runoff, subsurface drainage, or cooling water to any sewer, except stormwater runoff from limited areas, which stormwater may be polluted at times, may be discharged to the sanitary sewer by permission of the Cavalier Municipal Utilities Department and the North Dakota State Department of Health.

2. Stormwater other than that exempted under division (A) above 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 Cavalier Municipal Utilities Department and the North Dakota State Department of Health. Unpolluted industrial cooling water or process waters may be discharged, on approval of the Cavalier Municipal Utilities Department, to a storm sewer, combined sewer, or natural outlet.

3. No person shall discharge or cause to be discharged any of the following described water or wastes to any public sewers. Each user which discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge of the treatment works shall pay for such increased costs.

    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 singly or by interaction with other wastes, to contaminate the sludge of any municipal system, 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 have an adverse effect on the waters receiving any discharge from the treatment works.

    c. 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, underground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garage grinders.

4. The following described substances, materials, waters or wastes shall be limited in discharged to municipal systems to concentrations or quantities which will not harm either the sewers the sludge

of any municipal system, the 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 Cavalier Municipal Utilities Department may set limitations lower than the limitations established in the regulations below if, in its opinion, such more severe limitations are necessary to meet the above objections. In forming its opinion as to the acceptability, the Cavalier Municipal Utilities Department 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, 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 Cavalier Municipal Utilities Department are as follows:

a. Wastewater having a temperature higher than 150°F. (65°C.).

b. Wastewater containing more than 25 milligrams per liter of petroleum oil, nonbiodegradable 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, 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, cooper, 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 Cavalier Municipal Utilities Department for such materials.

f. Any waters or wastes containing odor-producing substances exceeding limits which may be established by the Cavalier Municipal Utilities Department.

g. Any radioactive wastes or isotopes of such half-life or concentrations as may exceed limits established by the Cavalier Municipal Utilities Department in compliance with applicable state and 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 process employed, or are amenable to treatment only to such 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 hereinbefore, and which in the judgment of the Cavalier Municipal Utilities Department, 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 Cavalier Municipal Utilities Department 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 cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of this chapter.

6. If the Cavalier Municipal Utilities Department 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 Cavalier Municipal Utilities Department and the North Dakota State Department of Health. Grease, oil and sand interceptors shall be provided when, in the opinion of the Cavalier Municipal Utilities Department, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts as specified hereinbefore, 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 Cavalier Municipal Utilities Department and the North Dakota State Plumbing Code, and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors, the owner(s) 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 Cavalier Municipal Utilities Department. Any removal and hauling of the collected materials not performed by owner's personnel must be performed by currently licensed waste disposal firms.

7. Where pretreatment or flow-equalization facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

8. When required by the Cavalier Municipal Utilities Department, 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 Cavalier Municipal Utilities Department. The structure shall be installed by the owner at his expense, shall be maintained by him so as to be safe and accessible at all times.

9. The Cavalier Municipal Utilities Department may require a user of sewer services to provide information needed to determine compliance with this chapter. These requirements may include:

a. Wastewater's 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 or 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 municipal sewer.

10. All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this chapter 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 subject to approval by the Cavalier Municipal Utilities Department.

7.0311 Prohibition of Clear Water Connections

No person shall make connection of roof downspouts, exterior 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.

7.0312 Design and Construction of New Sewers and Connections

The size, slope, alignment, materials of construction of all sanitary sewers and sewer connections, and the methods to be used in excavating, placing of 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 of Cavalier and the State of North Dakota. In the absence of code provision or in amplification thereof, the materials and procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply.

7.0313 Service Lines to be Consumers Responsibility

All costs and expenses incidental to the original installation and connection of the sewer shall be the responsibility of the owner between the city main and any service devices maintained by the owner. All services shall be constructed by licensed contractors at the owners expense. All repairs to services shall be the responsibility of the owner. Service line shall at all reasonable times be subject to inspection by authorized representatives of the city. Any repair is found to be necessary by such representative shall be made promptly, or the city will discontinue service.

Services means the service line running from the point of connection with the city main to the owners premises.

ARTICLE 4 - GARBAGE

7.0401 Exclusive Franchise

It is hereby declared, that in the interest of insuring the health and welfare of the residents of the City of Cavalier and, further, in the interest of the general and uniform cleanliness of the same, the City of Cavalier, by and through the Cavalier Municipal Utilities, is the sole authorized collector of garbage within the city limits thereof. No other person, firm, organization or entity may collect garbage, whether recyclable or not, without license from the City Council.

7.0402 Definition of Garbage

The word *"GARBAGE*" as used herein is defined to be and include all offal, including both animal and vegetable matter, food or other fruit and vegetable matter, and all cans, bottles glassware, crockery, rags, waste, paper, floor sweepings and other combustible refuse, auto bodies, ashes, tree branches, broken bottles, stable manures, and all manner of refuse.

7.0403 Accumulation of Garbage Prohibited

1. No person or persons shall permit or suffer to accumulate in or about any yard, lot, place or premises, or upon any street, alley, sidewalk, or city property, or upon property adjacent to or

abutting upon, any lot, block, place or premises owned or occupied by him, or over which he has any control, within the city limits, any garbage as defined in §7.0402, nor suffer such yard, lot, place or premises to be or remain in such condition.

2. It shall be unlawful for any persons to throw or cause to be thrown or deposit any garbage of any description upon any street, alley, or public place in the city.

7.0404 Garbage Cans

1. Every owner or occupant of any house, hotel, café, building, apartment, flat, tenement, mobile home, and dwelling, in this city, where persons reside, board, lodge or work, or where animal food or vegetable food is accumulated, stored, kept for sale, prepared or served, shall provide and maintain in good order and in reasonable sanitary condition, a vessel or vessels for garbage. Such vessels shall have a capacity of not more than 96 gallons and shall be a commercially marketed product designed and marketed expressly as a garbage receptacle. Plastic trash bags are acceptable when securely tied and untorn. Commercial cans shall have a capacity of not more than three (3) yards, such vessel shall be water tight with a close fitting cover of acceptable materials and shall be placed on a concrete, or asphalt pad easily accessible to the garbage collection truck without necessity of moving said receptacle by manual or other means.

2. All wet garbage shall have the liquid drained off and be wrapped in paper or other combustible material before it is placed in garbage cans and garbage cans shall be washed sufficient times during the summer months to prevent odors and the breeding of flies.

3. All garbage receptacles other than commercial cans (dumpster) shall be placed, for collection, at the curb or if an alley, collection is the norm, than at the boundary of the alley.

7.0405 Use of Incinerators

No garbage as defined in §7.0402, shall be burned within the city limits, except by use of an incinerator that has been approved by the North Dakota Department of Health and has a valid permit for operation from the North Dakota Department of Health. The permit from the North Dakota Department of Health shall be filed with the City Auditor prior to commencing operation of the incinerator.

7.0406 Time and Frequency

The time and frequency of garbage pickups shall be determined, and may be changed, by resolution of the City Council, and may vary in the different areas of the city.

7.0407 Method of Collecting Fee

1. The rates and charges for collection of garbage, hereunder, shall be such as may, from time to time, be set by resolution of the City Council.

2. The garbage collection fee shall be billed each month. If the service charge so imposed for garbage disposal service is not paid when due, the indebtedness may be recovered in an action assessed against the premises served. All accounts shall be considered delinquent if not paid by the twentieth (20th) of the month following the month for which service is rendered. All unpaid accounts may be added to the real estate taxes for the premises at the end of each year., by certification to the County Auditor, by the City Auditor, of the amount due for each such premises.

3. No person, firm or corporation shall be permitted to refuse to accept the garbage collection and disposal service herein provided form and the failure of any person to receive such service shall not exempt such person from the payment of charges herein specified.

7.0408 Garbage Not Meeting Specifications

1. The garbage collectors shall not be required to pick up and haul away any garbage from any place, house or premises which does not meet the requirements set forth in this chapter.

2. No person, firm or corporation may:

   a. Place or cause to be placed any garbage upon any public or private property not owned by him or under his control save and accept with respect to recyclable property placed at the Cavalier Transfer Station, Airport Road.

   b. Place or cause to be placed an amount of garbage in or near receptacle in excess of that for which the receptacle was designed with the cover firmly in the closed position.

   c. Place or cause to be placed, for pickup, garbage other than as contained in receptacles defined in §7.0404, and when commercial receptacles are in use no other receptacle whether cans or bags may be used in addition thereto.

7.0409 Additional Garbage Service

Whenever extraordinary service is required to remove garbage, in addition to and exceeding regular and normal service, an additional charge may be imposed and added to the regular monthly service charge.

7.0410 Use of City Garbage Facilities

1. City garbage facilities are defined as all garbage receptacles, whether public or private, located within the city limits of the City of Cavalier including all receptacles described and allowed under §7.0404 Hereof and all receptacles located on the premises of the Cavalier Transfer Station, which includes the tree and leaf compost area at Airport Road, Cavalier, as well as the Cavalier Landfill located at 9863 143rd Avenue Northeast, Cavalier North Dakota.

2. No person, firm, corporation, or other entity, may deposit garbage at or near any City garbage facility, save and except, those currently receiving garbage collection services from the City of Cavalier and then, only to the extent such garbage is generated at the service address. All refuse or garbage generated from an address which does not have current garbage service shall be billed for an additional fee.

7.0411 Penalty

Every person, firm or corporation violating any of the provisions of this chapter shall, upon conviction thereof, be punished by a fine of not more than $100, and the City may, in addition obtain injunctive relief from a Court of competent jurisdiction. Every day during which a condition prohibited by this Chapter exists, constitutes a separate offense hereunder.

ARTICLE 5 - ELECTRICITY

GENERAL PROVISIONS

7.0501 Applicability of Chapter

Every consumer of electricity and every owner of premises served thereby and every occupant and tenant of premises served thereby and all other persons whomsoever, shall be governed by and shall be subject to all of the provisions of this chapter and to all other ordinances of the city and to all resolutions,

rules and regulations established under this chapter and such other ordinances, which pertain to the municipal electrical system.

7.0502 City Electric Plant

1. The city's electric plant shall be located at such place as may be designated by the City Council by a two-thirds vote of all duly elected alderman.

2. The city shall keep the present plant in a high state of efficiency, and when necessity requires, erect, build, equip and install additions thereto, and maintain and control the completed plant with all instruments, poles, wire and appurtenances thereto, for the generation and transmission of electricity to supply lights, not only for the streets, parks and public buildings, but also for commercial and residential purposes.

7.0503 Fraudulent Appropriation of Electricity Prohibited

It shall be unlawful and prohibited for any person to willfully make any connection with any meter, pipe, conduit, wire, line or other apparatus belonging to or connected with the municipal electrical system, for the purpose of taking, using or wasting such electricity or electric current, or to willfully prevent any electric meter from duly measuring or registering the quantity of electricity supplied or to in any way interfere with its proper action or just registration, or to without the consent of the City Council willfully divert any electrical current or power or in any way willfully use or cause to be used without the consent of the City Council any electricity manufactured by or distributed from the municipal electrical system or aid, agree with, employ or conspire with any other person to do any of these acts.

7.0504 Interfering with Electrical Apparatus Prohibited

1. It shall be unlawful and prohibited for any person to willfully destroy, injure, disconnect, displace, cut, break, deface, ground or in any way interfere with any pole, cable or wire erected, put up or strong or any electrical or other apparatus, lamps, transformers, switches, appliances, instruments or machinery of any kind used in the construction or operation of the municipal electrical system, or to aid, agree with, employ or conspire with any other person to do any of said acts.

2. It shall be unlawful for any unauthorized persons to open or break any seal or lock of any electrical apparatus which is owned and maintained by the City Light Department. Such action will constitute the following fines upon conviction:

Transformer/transclosure	$250.00
Electrical Meter Seal	$50.00
Load Management Control Box	$50.00

7.0505 Cash Bond Deposit

1. The City Council may from time to time by resolution made during the regular, open and public proceedings thereof, establish a cash bond to be paid by any consumer requesting service from the municipal electrical system guaranteeing full payments of all bills for such services.

2. A record shall be kept of such deposits; and upon the termination of the service or services for which the deposit has been made if the account or accounts has been fully paid such deposit or deposits shall be refunded; but if any amount remains unpaid upon such account or accounts the amount of such deposit or deposits, as the case may be, shall be credited on such account or accounts.

3. Such cash bond and/or deposit as is in effect on the effective date of this chapter shall be deemed to have been duly and properly established in accordance with the provisions of this section as of such effective date.

7.0506 Permit Required for Service Connection

1. It shall be unlawful to make, or attempt to make, any connection to the municipal electrical system without first obtaining a permit thereof.

2. Any person desiring to provide to any premises or structure the service of the municipal electrical system shall make application thereof to the office of the City Auditor. Such application shall be made on a form provided by the City Auditor and must be accompanied by an application fee or cash bond deposit. The amount of application fee or cash bond deposit shall be set by the City Council by resolution. Within thirty (30) days after the date appearing on the application, there shall be set by such office, and the applicant shall be advised of, the amount of any connection fee to be charged; such connection fee shall be paid before the requested permit will be issued. Such form may require the legal description of the property involved and any information, assurance, promise or waiver relevant to the purpose for which it is made and relevant to the requirements that must be satisfied and relevant to the reliability of the person for whose benefit the service is to be rendered. The applicant shall promise in such application that he will pay for or will be ultimately responsible for, the cost of all services applied for and provided, and all changes made in connection therewith; that he will abide by all of the provisions of this chapter and by all of the resolutions, rules and regulations established thereunder. In consideration of the benefits to be received he will not sue the city or municipal electrical system or any of the offices or employees of same for any loss or damage of any nature whatsoever that he may suffer directly or indirectly from any failure to provide any service or for any disconnection or interruption thereof for any length of time, however long, and for any reason, such reason, however, being subject to the disconnection of services for failure to pay.

7.0507 Continuing Service Not Guaranteed

Nothing in the ordinances of the city, and all resolutions, rules and regulations established thereunder, shall be interpreted or construed as guaranteeing proper or continuing or uninterrupted service by the municipal electrical system. By virtue of this section the city does not guarantee the same.

7.0508 Liability for Improper Service

Neither the municipal electrical system nor the city shall be liable or responsible for any loss or damage of any nature whatsoever directly or indirectly caused by, or directly or indirectly resulting from, any improper or disconnected or interrupted service for any reason whatever, regardless of the length of time thereof, or the time or times at which such may occur, when the disconnection of services is for failure to pay. No notice need be given by municipal utilities or by the city that any service has been, or is about to be disconnected, interrupted or provided improperly, except where such notice is specifically required.

INSTALLATION

7.0509 Requirements of Installation

Any nonresident user desiring to be connected with the transmission lines of the city shall construct or cause to be constructed from the farm or premises to be supplied with electrical current a single-phase primary transmission line to such point within the city limits as the superintendent of power shall direct and the nonresident user shall cause a transformer of a type and kind approved by the superintendent to be installed at such point on the line as the superintendent shall specify; provided, further, that the nonresident user shall also furnish such metering equipment as is required for metering on primary side, which metering equipment shall be installed at the city limits; provided, further that any nonresident user shall prior to any construction apply in writing to the City Council for approval to be connected to the municipal electrical system.

7.0510 Meters to Be Installed and Controlled by City

All meters and metering devices to be installed hereafter shall be installed, owned and maintained by the Light and Power Department. Consumers of electrical energy now owning meters may transfer ownership to the Department and after such transfer they shall be the property of and be maintained by the Department. Consumers of electrical energy who do not so transfer their meters shall maintain the same so as to accurately measure the current metered thereby.

7.0511 Accuracy of Meters

No electric meter shall be used which will not test within 2% plus or minus absolute accuracy at all loads within 5% and 150% of its rated capacity and shall be within the limits of 2% of inductive loads of any power factor. Such accuracy shall be determined by comparison with a rotating standard test meter.

7.0512 Service Lines to Be Consumer's Responsibility

1. All consumers of electrical energy shall be responsible for providing the necessary service lines from the nearest distribution line to the premises. Such service line shall be of an underground type for all new connections from the effective date of the ordinance from which this section was derived unless otherwise authorized in writing by the City Council. All connections must be done by a master electrician and approved by the superintendent. The consumer shall underground any existing overhead service lines upon notification from the department under the following conditions:

    a. The property owner where overhead electrical service lines exist and need to be undergrounded will be given at least 60 days' notice by the superintendent that his present overhead service must be undergrounded by a certain date. The consumer will then cause to have this service line undergrounded by an electrical contractor or the CMU will have the work done and billed to the consumer.

    b. The property owner who is directed to underground present overhead service lines will be reimbursed for part of costs as set forth hereafter. The property owner will bring the invoice from the electrical contractor which indicates the length of electrical wires undergrounded. The city will pay to the owner a sum to be computed by taking one-third of the quantity of line buried times the latest cost of wire to the CMU at that time. This sum will be paid to the property owner. If replacement of a meter socket is determined to be needed, a sum of $30 will be added to the reimbursement total.

    c. In those instances where the owner can prove an extreme hardship to pay the full cost of the undergrounding of his service lines, the City Council can authorize the work to be done by and through the city and the bill will be charged to the property owner's account to be paid back over a 12-month period without any interest charged. This arrangement must be made prior to the work being accomplished.

7.0513 Installation of Street and Security Lighting

Adequate street lighting shall be provided by the Municipal Utilities Department. Street lights will be installed on the corner of a block to provide adequate lighting at each intersection. In those instances where a consumer feels there is inadequate street lighting at a location other than an intersection he/she shall complete a request form provided by the Municipal Utilities Department. This request form requires the signatures of all consumers within the inadequate area. A copy of the completed form will then be given to the alderman of that particular ward, who then shall present it to the City Council for approval.

LOAD MANAGEMENT

7.0514 Necessity for Controls

It has become essential in order to maintain the cost of electrical energy at reasonable levels both for the city and to the consumers thereof, that high peaks of usage be avoided. It is therefore necessary that all consumers of the municipal electrical system be subject to controls designed to reduce excessive peak demand.

7.0515 Demand for Controls

All installations for the consumption of electrical energy purchased from the city shall be subject to such demand controls effected by such devices and at such times as the Council shall determine.

7.0516 Exceptions to Demand Controls

The Council, whenever it finds it is inconvenient and/or economically not feasible to compel a consumer, may grant exceptions to such compliance to this mandatory load management restrictions and compliance, if it is in the best interest of the city.

7.0517 Dual Heat

1. All future consumers of the municipal electrical system shall be subjected to compulsory load management requirements for electrical heating installations of the consumer, requiring a back-up heating system of either fuel oil, propane gas, natural gas, coal or wood burning furnace with sufficient capacity as determined by the Light and Water Department of the City to be adequate in capacity to serve the consumer's needs when the load management system interrupts the consumer's electrical heating system to reduce demand peak electrical consumption.

2. All future consumers of the municipal electrical system installing electrical heat shall make application with the Light and Water Department of the city for a permit to install electric heat.

Cross-reference:
See appendix following this chapter for application form for electric heat

RATES AND CHARGES

7.0518 Establishment of Rates, Fees and Penalties

1. Rates, applications, disconnection and reconnection fees, and penalties to be charged for and related to the service provided by the various departments of municipal utilities shall be established, and may be changed, from time to time, by resolutions of the City Council made during the regular, open and public proceedings thereof. No prior notice that any rate, fee or penalty is to be established or changed need be given to any person, except that the superintendent of municipal utilities shall be given written notice thereof at least 15 days prior to the day upon which the City Council proposes to establish or change such rates. A full and complete schedule of applicable and current rates, fees and penalties, shall be filed in, and shall be open to the public inspection during the regular office hours of, the office of the City Auditor and the business office of the municipal utilities.

2. Such rates, fees and penalties as are in effect on the effective date of this chapter shall be deemed to have been duly and properly established in accordance with the provisions of this section as of such effective date.

3. Any repairs related to the service provided by the various departments of municipal utilities, to a line, sewer or water main, or other equipment or transmission device, which are deemed necessary in the sole discretion of the city, for the continuation of services, shall constitute a "billable repair", and may be billed back to the benefitted landowner by the way of a surcharge placed upon their utility bill. If the benefitted landowner transfers the property prior to the "billable repair" being fully repaid, the amount remaining may be added to the real estate taxes, by certification to

the county auditor by the city auditor of the amount which remains due for that property. The landowner must bring any objections to the amount billed in this manner to the City Council in writing within 30 days of the original billing date. Failure to do so will waive any objections to the amount of the surcharge.

7.0519 Power Supply Cost Ride and Sales Tax; Energy Adjustment Clause

1. Power supply cost rider and sales tax. All rate schedules are subject to a power supply cost rider and to state sales tax if and when they should apply.

2. Energy adjustment clause (power supply cost).

   a. At the discretion of the city, by resolution of the City Council, energy charges may be adjusted to reflect actual increases or decreases in the per kilowatt cost of the city's purchased power, which may occur after the effective date of this chapter.

   b. Purchased power bills from Western Area Power Administration, Missouri Basin and/or any additional power source shall be added together to arrive at total cost of purchased power. The gross KWH available shall be those KWH billed by WAPA, MB and/or any other power supply (which shall include the city's generation). Total cost of power supply shall be divided by net KWH available (gross KWH times 100% - line loss) to arrive at average net cost of power supply delivered to the consumer.

7.0520 Billing Procedures for Electricity

1. All the rates are net, the gross being ten percent (10%) higher. In the event the current monthly bill is not paid within twenty (20) days from the date of the bill, the gross rates shall apply. If the utility bill is in the name of a tenant, the customer and the landowner shall be sent the past due notice.

2. Any consumer of electricity, whose bill or bills for electrical energy rendered under any and all of the schedules hereof remain unpaid for thirty-five (35) days after the date of the bill or bills, shall have his or her service disconnected in accordance with §7.0527. All unpaid accounts may be added to the real estate taxes for the premises at the end of each year, by certification to the County Auditor, by the City Auditor of the amount due for each such premises. If the utility bill is in the name of a tenant, the customer and the landowner shall be sent the disconnect notice.

3. Any consumer, whose service has been discontinued under the provisions of the preceding paragraph, shall not have his or her service reconnected until his or her account, with penalty, has been paid in full and until he or she has paid a reconnection charge of seventy-five dollars ($75.00).

4. A charge of five dollars ($5.00) shall be made for each new service connection effected by or made under the supervision of the power department.

5. A charge of twenty-five dollars ($25.00) shall be made for each service reconnection effected by or made under the supervision of the power department in cases where the disconnection was made at the request of the customer.

6. The consumer shall at all times use power in such a manner that its power factor shall be as near as one hundred percent (100%) as practical. At the option of the city, when the consumer's power factor during any hour is less than ninety-five percent (95%) lagging, the billing demand for the delivery point shall be increased by the following ratio:

   .95
   The lowest hourly power factor

(lagging) recorded in the
current billing month

7. The consumer's billing demand shall be the average of the months' registered demand, during the monthly demand interval equal to the city wholesale power supplier's highest system peak loads. Said billing demand shall be effective from April 1 of the current year until April 1 of the following year. Said billing demand will be determined from data recorded by the demand meter on the consumer's service.

7.0521 Method of Collecting Garbage Fee

1. The rates and charges for collection of garbage, hereunder, shall be such as may, from time to time, be set by resolution of the City Council.

2. The garbage collection fee shall be billed each month. If the service charge so imposed for garbage disposal service is not paid when due, the indebtedness may be recovered in an action assessed against the premises served. All accounts shall be considered delinquent if not paid by the twentieth (20th) of the month following the month for which service is rendered. All unpaid accounts may be added to the real estate taxes for the premises at the end of each year, by certification to the County Auditor, by the City Auditor, of the amount due for each such premises.

3. No person, firm or corporation shall be permitted to refuse to accept the garbage collection and disposal service herein provided form and the failure of any person to receive such service shall not exempt such person from the payment of charges herein specified.

7.0522 Cash Bond Deposit and Method of Collecting Water Fee

1. The City Council may from time to time by resolution made during the regular, open and public proceeding thereof, establish a cash bond to be paid by any consumer requesting service from the municipal utility system guaranteeing full payments of all bills for such services.

2. A record shall be kept of such deposits; and upon the termination of the service or services for which the deposit has been made if the account or accounts has been fully paid such deposit, or deposits shall be funded; but if any amount remains unpaid upon such account or accounts the amount of such deposit or deposits, as the case may be, shall be credited on such account or accounts.

3. The rates and charges for use of the City Water System, hereunder, shall be such as may, from time to time, be set by resolution of the City Council.

4. The City Water System rates and charges shall be billed each month. If the service charge so imposed for the City Water System service is not paid when due, the indebtedness may be recovered in an action assessed against the premises served. All accounts shall be considered delinquent if not paid by the twentieth (20th) of the month following the month for which service is rendered. All unpaid accounts may be added to the real estate taxes for the premises at the end of each year, by certification to the County Auditor, by the City Auditor, of the amount due for each such premises.

7.0523 Notification of and Method of Collecting Sewer Fee

1. Each user will be notified, as least annually, in conjunction with a regular bill, of the rate and that portion of the user charges which are attributable to wastewater treatment services.

2. The rates and charges for use of the City Wastewater Treatment Services, hereunder, shall be such as may, from time to time, be set by resolution of the City Council.

3. The City Wastewater Treatment Services, rates and charges shall be billed each month. If the service charge so imposed for City Wastewater Treatment Services service is not paid when due, the indebtedness may be recovered in an action assessed against the premises served. All accounts shall be considered delinquent if not paid by the twentieth (20th) of the month following the month for which service is rendered. All unpaid accounts may be added to the real estate taxes for the premises at the end of each year, by certification to the County Auditor, by the City Auditor, of the amount due for each such premises.

ADMINISTRATION AND ENFORCEMENT

7.0524 Manager, Electrical Department

1. There shall be appointed by the Mayor, and confirmed by the City Council, a Manager of the City Electrical Department, who shall be the superintendent of the municipal electrical system and who shall not be considered one of the city officers. The term of office of such Manager shall commence after such appointee has qualified and upon the day he/she undertakes the duties of such office and his/her terms shall continue until he/she has been removed for cause pursuant to the city's personnel policy and the laws of this state or until the office has been discontinued or until his/her resignation becomes effective, but no resignation shall take effect until a successor has qualified and undertakes the duties of such office. In the event such office is discontinued, any holder thereof shall be given written notice at least one month before the effective date thereof.

2. The Manager of the City Electrical Department shall have general supervision, management, and control of the municipal electrical system and shall prepare and keep a correct account with the different users of the amount of all electric current furnished for commercial and residential purposes, and shall be responsible for and account to the city for all machinery, materials and supplies, now on hand or hereafter purchased for the maintenance and operation of the municipal electrical system.

7.0525 Assistants

The Manager of the City Electrical Department shall, subject to the consent and approval of the City Council, employ such assistants as may be necessary for the proper maintenance and for the extension and efficient operation of the municipal electrical system.

7.0526 Inspection of Premises

The Manager of the City Electrical Department or other competent person delegated by the manager shall have the right at any time to enter any building in the discharge of official duties or for the purpose of reading meters or making tests of the electric appliances or apparatus therein contained, and for the purpose the Manager shall be given prompt access to all buildings, public and private, on application to the company or individual owning or in charge or in control of same.

7.0527 Right to Deny Service for Violations

If any consumer or prospective consumer violates any provision of this chapter, or of any of the resolutions, rules or regulations established thereunder, and if such violation either affects or is directly related to either the service provided or to be provided to such violator, or fails to pay the amount due when required, the Manager of the City Electrical Department may disconnect or refuse to provide the service so affected or so related. The Manager shall not arbitrarily or unreasonably withhold such service. Upon such refusal, or at least five (5) days before disconnecting the service, the Manager shall give written notice of his/her refusal, or of his/her intention to disconnect, to such prospective consumer or to such consumer and shall set forth reasons therefor. Such service shall not be reconnected or provided until the violation has

ceased and until the effects thereof have been removed or corrected and until, in the case of disconnection, a disconnection fee and reconnection fee have been paid.

7.0528 Right to Public Hearing

In the event any consumer or prospective consumer objects to a course of action taken by the Manager of the CMU under §7.0527, the consumer may file written objections thereto with the City Auditor. If such objections are filed within a five (5) day period in a matter involving disconnections, such affected or related service shall not be disconnected. Neither party shall bring a civil action, at law or equity, on account of such dispute until the City Council has made a ruling upon the merits thereof after a hearing thereon held during one of its regular meetings. Either party may give notice of such dispute to the Council at one of its regular meetings and at such meeting the time and date of hearing shall be set by the Council. If at or before the date of hearing, it is made to appear at a regular meeting of the Council that a party may be prejudiced by the Council not granting a continuance, the same shall be granted. If the objector or his/her representative does not appear on the date of hearing at or before the time set therefor, the Council may rule in favor of Manager of the City Electrical Department. The Council shall rule whether or not service may disconnect the affected or related service if such is in issue. If the Manager of the City Electrical Department may disconnect, it may act forthwith further notice to any person.

7.0529 Voluntary Disconnections

In the event any service provided by municipal electrical system is disconnected upon the request of the consumer thereof, there shall be paid to the city a disconnection fee, and the same shall not be reconnected until such fee, together with a reconnection fee shall have been paid.

7.0530 Penalty

Any person found guilty of violating ordinance of the City of Cavalier for which no specific penalty is otherwise provided shall be punished by a fine of not more than one thousand dollars ($1,000.00) or by imprisonment not to exceed thirty (30) days or by both such fine and imprisonment. The court shall have power to suspend the sentence and to revoke the suspension thereof. Each day any person, firm, association, or corporation shall violate any section or provisions of any articles shall constitute a separate offense.

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 five hundred dollars ($500.00) for each violation.

RESOLUTION ESTABLISHING WATER AND SEWER SERVICE CHARGES

APPENDIX A

SURCHARGE RATE SCHEDULE FOR ABOVE-NORMAL STRENGTH WASTES

The City or its engineer has determined that the average total suspended solids (TSS) and 5-day biochemical oxygen demand (BOD_5) daily loadings for the average residential user are 200 mg/1 BOD_5 and 250 mg/1 TSS. The City or its engineer has assessed a surcharge rate for all non-residential users discharging wastes with BOD and TSS strengths greater than the average residential user. The surcharge will be sufficient to cover the costs of treating such user's above-normal strength wastes. Such users will pay an additional service charge of _____ per 1,000 gallons for each 25 mg/1 or fraction thereof over 200 mg/1 of BOD_5 and _____ per 1,000 gallons for each 25 mg/1 or fraction thereof over 250 mg/1 TSS. (see Section 7.0406)

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CHAPTER EIGHT

BUSINESS REGULATIONSAND LICENSES

ARTICLE 1 - General Provisions

8.0101 Licenses

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

8.0102 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.

8.0103 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.

8.0104 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.

8.0105 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, 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.

8.0106 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 license may be proceeded against for any fine or penalty imposed thereby, and that person's license may be revoked or forfeited at 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.

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.

8.0107 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.

8.0108 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.

8.0109 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 one hundred (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, present telephone number and if a corporation, under the laws of what state the same is incorporated;

2. The name, present residence, present home address, present business address, and present telephone number 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 produced, 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 one thousand dollars ($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 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.

8.0212 Mobile Food Unit Definition

Whenever used in this chapter, the term Mobile Food Unit shall mean a vehicle or trailer equipped with facilities for cooking and selling food.

8.0213 Mobile Food Unit Requirements

Operators of mobile food units shall comply with the following requirements:

1. The building(s) or vehicle(s) in which the mobile food unit is to be conducted must meet local and state requirements regarding sanitation and safety.

2. No mobile food unit shall conduct business or offer product for sale or allowed to be sold in any residential area unless authorized by the city council.
3. No mobile food unit shall be parked within thirty (30) feet of an intersection for purposes of doing business except as otherwise authorized by the city council.

4. No mobile food unit shall be parked in such a manner as to create a traffic hazard to vehicles, bicyclists or pedestrians.

5. All mobile food units shall comply with all applicable ordinances related to the operation of motor vehicles.

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 5 – Food Trucks Vendors

8.0501 Food Truck Definition

A vehicle or trailer equipped with facilities for cooking and selling food:

8.0502 Food Truck Requirements

Operators of mobile food units shall comply with the following requirements:

1. The building(s) or vehicle(s) in which the mobile food unit is to be conducted must meet local and state requirements regarding sanitation and safety.

2. No mobile food unit shall conduct business or offer product for sale or allowed to be sold in any residential area unless authorized by the city council.

3. No mobile food unit shall be parked within thirty (30) feet of an intersection for purposes of doing business except as otherwise authorized by the city council.

4. No mobile food unit shall be parked in such a manner as to create a traffic hazard to vehicles, bicyclists or pedestrians.

5. All sales on any street by a mobile food unit shall be made on the curb side only and the vehicle should be parked within one (1) foot of the curb.

6. All mobile food units shall comply with all applicable ordinances related to the operation of motor vehicles.

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.

12. "Sparkling wine" means wine made effervescent with carbon dioxide.

13. "Wine" means the alcoholic beverage obtained by fermentation of agriculture products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four percent alcohol by volume.

(Source: 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 thereunder.

   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 and Number

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. The City may grant no more than 5 regular retail licenses, two club licenses, and two on-sale beer and wine license.

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

The fee for a regular retail license, which is authorized to sell on and off sale liquor and beer is one thousand six hundred fifty dollars ($1,650.00) per year.

The fee for an on-sale beer and wine license is four hundred dollars ($400.00) per year.

The fee for a Club license is three hundred dollars ($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 full annual payment shall be due and owing.

8.0606 License - Qualifications for

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 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 applicant must first be properly registered with the North Dakota Secretary of State.

4. 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. Taxes on property for which application for license is made must not be delinquent.

7. If applicant's business at the licensed location is to be conducted by a manager or agent, the manager or agent must possess the same qualifications required of the licensee. (Source: North Dakota Century Code section 5-02-02)

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 there are any delinquent taxes against the premises sought to be licensed.

6. Whether the applicant has ever engaged in the sale or distribution of alcoholic beverages prior to this application, and if so, the date and type of business and place where so engaged whether within or without the State of North Dakota, the date the applicant first began to operate.

7. Whether the applicant has ever had a license revoked or cancelled by a municipal, state or federal authority, and if so, the date of such cancellation, the place and authority canceling the same and the reason for such cancellation.

8. Whether the applicant has ever been convicted of the violation of any law of the United States or of any state, or of the violation of any local ordinance with regard to the manufacture, sale, distribution or possession of alcoholic beverages, and if so, the dates, names of place and courts in which said convictions were had.

9. Whether the applicant has ever had a license for the sale of alcoholic beverages revoked for any violation of state laws or local ordinances, and if so, the names of the bodies revoking such license, the dates of such revocation and the reasons assigned therefore.

10. 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.

11. 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.

12. Whether any other person than the applicant has any right, title, estate or interest in the leasehold or in the furniture, fixtures or equipment in the premises for which license is sought, and if so, the name and address of such person together with a statement of the interest so held.

13. Whether the applicant has any interest whatsoever directly or indirectly, in any other establishment dispensing alcoholic beverages, either at wholesale or retail, within or without the State 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.

14. The occupations that the applicant has followed during the past five years.

15. The names and addresses of at least three business references.

16. Whether the applicant is rated by any commercial agency, and if so, the name and address of said agency.

17. Whether the applicant is engaged in any other business or intends to be engaged in any other business than the sale of alcoholic beverages under the license for which application is made, and if so, the type of business, and if an employee, the name and address of the employer.

18. The classification of license applied for.

19. If the applicant is a lodge or 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.

20. A statement by the applicant that he consents to entry and inspection of the premises for which license is sought or any part thereof at any time by any police officer, sheriff or any peace officer of 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 licensee.

8. Interference with or proximity to residential property.

9. Interference with neighboring property.

10. Suitability of premises for sale of beer, liquor or alcoholic beverages.

11. Public convenience and necessity.

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 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. However, a license may be transferred, temporality, to another premises on a special event basis on such terms and conditions as the City Council may require.

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 without approval from the City Council 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 between two a.m. and eleven a.m. on Sundays, between the hours of two 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 two a.m. on Thanksgiving Day is guilty of an offense which is punishable by a fine of up to five hundred dollars ($500.00) and possible suspension or revocation of license. (Source: North Dakota Century Code section 5-02-05)

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.

8.0617 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 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.

An individual under twenty-one years of age may enter and remain on a licensed premise while alcohol is being sold or displayed at the discretion of the owner of the licensed premises, if:

1. The individual is accompanied by a parent or guardian who is twenty-one years of age or older. For purposes of this section, "guardian" means an individual who has the legal responsibility for the health and well-being of the individual under twenty-one (21) years of age;

2. The individual is on the premises to consume a meal or in an emergency situation; The premise serves at a tabletop, food that is prepared in a kitchen with at least an indoor grill;

3. The individual is not on the licensed premises after 10:00 p.m.; and

The owner of the licensed premises receives permission of the city governing body for individuals to be on the premises as allowed under this section and the licensed premises is located in a city with a population of one thousand five hundred (1,500) or fewer people. (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/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/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 Purchase from Licensed Wholesaler

No licensee hereunder shall purchase, have or possess any alcoholic beverages other than those purchased from a wholesaler duly licensed by the State 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, or any approved outdoor area, 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.

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 of drunkenness or disorderly conduct, or if any appeal is taken from such conviction then when such conviction be sustained by the higher court or courts.

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 five hundred dollars ($500.00). 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.

8.0630 Event Permit

1. The governing body of the city may by special permit authorize a qualified alcoholic beverage licensee to engage in the sale of alcoholic beverages at special events designated by the permit. A "qualified alcoholic beverage licensee" shall mean a holder of a licenses pursuant to this article. The permit may not be valid for a period greater than fourteen consecutive days and may include Sundays. The permit may be issued for a location other than the primary place of business of the license holder.

2. An application for a special permit must be filed by a licensee in the office of the city license officer. The application shall contain the following:

a. The name of the licensee;

b. The type of event for which the permit is desired;

c. The dates and times for which the permit is desired;

d. Whether the permit is requested for the sale of all alcoholic beverages, beer, wine, sparkling wine or any combination thereof;

e. The specific location at which the event will take place, including a diagram of the area to be licensed and specifically identifying where persons under twenty-one years of age may be present.

3. Applications submitted pursuant to this section must be submitted at least thirty (30) days prior to the first day of the event; however, the city governing body may, at its discretion, waive the thirty (30) day requirement.

4. The permit may authorize persons under twenty-one years of age to remain in the areas of the event, or a portion thereof, where beer, wine, or sparkling wine may be sold pursuant to the permit. However, this authorization is subject to the following conditions:

    a. The area where persons under twenty-one (21) years of age may remain must be specifically set forth in the permit.

    b. Only employees of the qualified alcoholic beverage licensee who are at least twenty-one (21) years of age may deliver and sell the beer, wine, or sparkling wine.

    c. No person under twenty-one (21) years of age within the area described in the permit may consume, possess or receive alcoholic beverages.

5. The fee for an event permit shall be established, and may be revised, by resolution enacted by the city governing body [Fee cannot exceed twenty-five dollars ($25.00)]. (Source: North Dakota Century Code section 5-02-01.1)

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 set from time to time by the City Council 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 to be determined by the City Council of 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 determined by the City Council 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 five hundred dollars ($500.00). 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.

ARTICLE 10 – Assemblies and Demonstrations

8.1000 Permit Required

A permit is required to organize, hold or participate in a parade or procession on the streets or alleys of the city.

8.1001 Permit Process

1. An applicant for a parade permit shall file an application with the city auditor containing the following information:

    a. The name and address of the applicant. If the applicant is an organization, the name and contact information for a contact person.

    b. The proposed route and the time and date of the parade including the time of commencement and the anticipated time of termination.

    c. The anticipated number of participants in the parade including the anticipated number of floats, motor vehicles, animals, or people. The applicant should also provide plans for staging and parking for parade participants for both the beginning and end of the parade.

    d. Plans for any necessary cleanup that might arise from the parade. The applicant is responsible for returning the parade route to its pre-parade condition. If an applicant fails to adequately clean up after a parade, the city shall perform the cleanup and bill the cost to the applicant.

    e. Such other relevant information as the chief of police may require to safeguard the parade participants and the public.

2. The chief of police shall work with the applicant to assure public safety and to minimize the impact on traffic movements and public convenience. After consultation with the chief of police, the parade permit shall be issued by the governing board.

8.1002 Picketing and Demonstrations

1. "Picketing" means the practice of standing, marching, sitting, lying, patrolling or otherwise maintaining a physical presence by one or more persons inside of, in front of, or about any premises. Picketers shall not block the access points of any property including the private sidewalk or driveway.

2. "Public sidewalk" shall mean that portion of the street right-of-way which is designated for the use of pedestrians and may be paved or unpaved.

3. "Street" shall mean the entire width of the public right-of-way, excluding the sidewalk, that is open to the use of the public as a street or alley, including the boulevard.

8.1003 Notice if Intent to Picket or Demonstrate

1. An individual intending to picket or demonstrate or the organizer of a group intending to picket or demonstrate, where the organizer knows that the picket or demonstrations will include a group of less than thirty (30) individuals, shall provide written notice to the city auditor of the picket or demonstration, including the planned time and location of the picket or demonstration.

2. The organizer of a picket or demonstration that the organizer knows, or should reasonably know, will include a group of thirty (30) or more individuals shall provide written notice of the intent to picket to the city auditor at least forty-eight (48) hours before the picket or demonstration is to begin. The notice shall contain the following information:

   a. The name, address, and contact telephone number of the organizer of the picket.

   b. The name of the organization sponsoring the picket.

   c. The location, date and time, including duration and intended daily hours of the picket.

   d. The organizer's best estimate of the number of individuals who will participate in the picket

8.1004 <u>Picketing Regulations</u>

1. Picketing may be conducted on public sidewalks in the city. Picketing may not be conducted on public sidewalks during times when a permit for a different use of that location has been issued by the city. Picketing may not occur on street medians or on streets used primarily for motor vehicle traffic unless so directed by the police. Picketing shall not be allowed on a street if an adjacent public sidewalk is available.

2. Picketing shall not disrupt, block, obstruct, or interfere with pedestrian or vehicular traffic or the free passage of pedestrian or vehicular traffic into any driveway, pedestrian entrance or other access to buildings which abut the public sidewalk.

3. Placards, flags, signs, or banners carried by picketers shall be of such a size as to allow safe and unobstructed passage of pedestrian or vehicular traffic.

4. If more than one group of picketers desire to picket at the same time and location, a police officer may, without regard to the purpose or content of the picket, assign each group a place to picket in order to reduce congestion and preserve public peace. Picketing time and location shall be generally on a first-to-notify basis.

5. Whenever the free passage of any street or public sidewalk in the city is obstructed by a crowd, congregation, meeting, assembly, demonstration, picket, or procession, or the conduct of two or more persons, the persons comprising the group shall disperse or move so as to remove the obstruction when directed to do so by a police officer. It is unlawful for any person to refuse to comply with a request by a police officer pursuant to this section.

6. Picketers shall be subject to all city, state, and federal laws, rules, and regulations.

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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 regulate 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

Except for a motorized scooter as set out below, No person upon roller skates, roller blades 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.

A motorized scooter is a footboard mounted between two tandem wheels with an upright steering bar attached to the front wheel. A motorized scooter is powered by an electric motor or a gas combustion engine and is operated with the operator standing on the foot board. A motorized vehicle that fails to meet all of the criteria of this section will be considered to be an off road vehicle or other motor vehicle and may not travel on public right of way as allowed by this section.

A motorized scooter may be operated as follows:

1. A motorized scooter may be operated on all roadway within the city of Cavalier EXCEPT MAIN ST W AND DIVISION AVENUES which are state highways, and must be operated in the same direction of travel as other vehicular traffic.

2. An operator of a motorized scooter must be 10 years old.

3. An operator of a motorized scooter under 18 years of age must wear a helmet.

4. No passengers shall be allowed on a motorized scooter. A motorized scooter shall not tow any person or object.

5. A motorized scooter shall not exceed a maximum of 15 mph
.
6. A motorized scooter shall not be operated during the hours between a half hour after sunset and a half hour before sunrise unless it is equipped with at least one head lamp, one tail lamp , and brakes all in working order which conform to the standards prescribed by the North Dakota Department of Transportation.

7. A motorized scooter shall not be operated on sidewalks within the City of Cavalier.

8. A motorized scooter may be operated on bike paths within the City of Cavalier.

A violation of this section shall result in a $10.00 fine for the first violation, $20.00 fine for the second violation, and a $30.00 fine for the third or subsequent violation of the section within a 12 month period.

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 North Dakota Century Code 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 and other emergency medical vehicles licensed under North Dakota Century Code chapter 23-27;

   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;

k. Vehicles operated under the control of the bureau of criminal investigation and used for law enforcement purposes;

j. Vehicles operated under the control of the state department of health in cases of emergencies. (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 is 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 airhorn. A firetruck, ambulance or 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 firetruck, ambulance, or 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 authorized 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. (Source: North Dakota Century Code section 39-10-03.2)

9.0308 <u>Operation of Vehicles on Approach of Authorized Emergency Vehicles - Penalty</u>

The provisions of North Dakota Century Code 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. If an authorized 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.

9.0309 Written Report of Accident

1. Immediate notice of accident. The driver of a vehicle involved in an accident resulting in injury to or death of any person or property damage to an apparent extent of at least four 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 operation 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 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 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 or 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 Section 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;

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. Differing limits may be established for different times of the day within highway construction zones which are effective when posted upon appropriate fixed or variable speed limit signs.

3. 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.

4. 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 <u>When Local Authorities May or Shall Alter Maximum Speed – Limits – Signs Posted</u>

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 as 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 reasonably 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.

9.0510 Registration and display of registration and tabs required.

The provisions of North Dakota Century Code chapter 39-04 relating to the requirement to register and to display current registration and all subsequent amendments are hereby incorporated by reference in this ordinance.

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 safety 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.

Through streets shall be as designated from time to time by the city council.

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 not 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 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, motorcycles, taxi cabs, trucks, or delivery trucks within the city limits of this City by any person who is not legally licensed to operate 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 or drive onto 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 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; or

    c. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon.

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-traveled 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 Section 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.

9.0917.1 Closing Road Because of Hazardous Conditions – Posting of Official Traffic-Control Devises- Entering Closed Road Prohibited

1. The City may close a road temporarily due to hazardous conditions for the protection and safety of the public. If such a closing is made, the City shall make every reasonable attempt to notify the public and, when practical, may post appropriate official traffic-control devices to advise motorists of the closing.

2. An individual, while operating a motor vehicle, may not knowingly enter a road closed which is posted with an appropriate traffic-control device at the point of entry.

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. If a vehicle approaches an intersection that has traffic-control signals that usually exhibit different colored lights and the signals are not lit, the driver of the vehicle shall stop and yield as required under subsection 2 of Section 9.0704.

3. 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 "SCHOOLBUS" 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 "SCHOOLBUS" 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”.

9.0920.1 Permitting use of Vehicle to Violate Section 9.0920

The provisions of North Dakota Century Code section 39-10-46.1 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The registered owner of a motor vehicle may not permit that motor vehicle to be operated in violation of section 9.0920. If a motor vehicle is seen violating section 9.0920, it is a disputable presumption that the registered owner of the motor vehicle permitted that violation. It is a defense to a charge of violating this section that the registered owner of the vehicle was not operating the vehicle, if that registered owner identifies the person authorized by that owner to operate the motor vehicle at the time of the violation of section 9.0920, or if that motor vehicle had been taken without the registered owner's permission. A person may not be charged both with violating this section and with violating section 9.0920. Violation of this section is not a lesser included offense of violation of section 9.0920.

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 or motorhome, as defined in section 39-01-01 of the North Dakota Century Code, if the consumption or possession occurs in the area of the house car or motorhome 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

The provisions of North Dakota Century Code section 39-06-44 and all subsequent amendments are hereby incorporated by reference in this ordinance.

An individual may not 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.

9.0933 Permitting Unauthorized Person to Drive

The provisions of North Dakota Century Code section 39-06-45 and all subsequent amendments are hereby incorporated by reference in this ordinance.

An individual may not 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.

9.0934 Use of Wireless Communications Device Prohibited

The provisions of North Dakota Century Code section 39-08-23 and all subsequent amendments are hereby incorporated by reference in this ordinance.

1. The operator of a motor vehicle that is part of traffic may not use a wireless communications device to compose, read, or send an electronic message.

2. Under this Section:

   a. "Electronic message" means a self-contained piece of digital communication that is designed or intended to be transmitted between physical devices. The term includes electronic mail, a text message, an instant message, a command or request to access a worldwide web page, or other data that uses a commonly recognized electronic communications protocol. The term does not include:

      i. Reading, selecting, or entering a telephone number, an extension number, or voice mail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a telephone or cellular phone call or using voice commands to initiate or receive a telephone or cellular phone call;

      ii. Inputting, selecting, or reading information on a global positioning system device or other navigation system device;

      iii. Using a device capable of performing multiple functions, such as fleet management systems, dispatching devices, phones, citizen band radios, music players, or similar devices, for a purpose that is not otherwise prohibited;

      iv. Voice or other data transmitted as a result of making a telephone or cellular phone call;

      v. Data transmitted automatically by a wireless communication device without direct initiation by an individual; or

      vi. A wireless communications device used in a voice-activated, voice-operated, or any other hands-free manner.

   b. "Traffic" means operation of a motor vehicle while in motion or for the purposes of travel on any street or highway and includes a temporary stop or halt of motion, such as at an official traffic-control signal or sign. The term does not include a motor vehicle that is lawfully parked.

3. This Section does not apply if a wireless communications device is used for obtaining emergency assistance to report a traffic accident, medical emergency, or serious traffic hazard or to prevent a crime about to be committed, in the reasonable belief that an individual's life or safety is in immediate danger, or in an authorized emergency vehicle while in the performance of official duties.

9.0935 Use of an Electronic Communication Device by Minor Prohibited

The provisions of North Dakota Century Code section 39-08-24 and all subsequent amendments are hereby incorporated by reference in this ordinance.

An individual at least sixteen and under eighteen years of age who has been issued a class D license may not operate an electronic communication device to talk, compose, read, or send an electronic message while operating a motor vehicle that is in motion unless the sole purpose of operating the device is to obtain emergency assistance, to prevent a crime about to be committed, or in the reasonable belief that an individual's life or safety is in danger.

9.0936 Failure to Maintain Control

The provisions of North Dakota Century Code section 39-08-25 and all subsequent amendments are hereby incorporated by reference in this ordinance.

1. An operator of a motor vehicle may not fail to maintain control of that motor vehicle. An individual is in violation of this section if that individual:

   a. Commits an offense under this title and, at the time of the offense, the individual was engaged in the operation of a motor vehicle while distracted; or

   b. Is determined to have been the operator of a motor vehicle that was involved in a reportable accident as defined in Section 9.0309 which resulted in property damage and, at the time the reportable accident occurred, the individual was engaged in the operation of a motor vehicle while distracted.

2. An individual may be issued a citation or summons for any other traffic offense that was committed by the individual in relation to the individual's commission of the traffic offense of failure to maintain control of a motor vehicle.

3. As used in this section, "operation of a motor vehicle while distracted" means the operation of a motor vehicle by an individual who, while operating the vehicle, is engaged in an activity that:

   a. Is not necessary to the operation of the vehicle; and

   b. Actually impairs, or would reasonably be expected to impair, the ability of the individual to safely operate the vehicle.

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 or 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

The provisions of North Dakota Century Code section 39-10.1-01 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

9.1202 Traffic Ordinances Apply to Persons Riding Bicycles

The provisions of North Dakota Century Code section 39-10.1-02 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

9.1203 Obedience to Traffic Control Devices

1. An individual 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. An individual 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. A group of individuals 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.

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 assess 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 Reserved

9.1214 Reserved

9.1215 Reserved

9.1216 Reserved

9.1217 Reserved

9.1218 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 ten dollar ($10.00) pick up fee shall be charged. The provisions of Chapter 3, Article 3 apply to abandoned bicycles.

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 Street on both sides of the street beginning at the intersection of the Burlington Northern railroad tracks and extending Easterly to the intersection of Main and Division Streets

West First Avenue North on both sides, Beginning at the intersection of West First Avenue North and Main Street and extending northerly to the intersection of West First Avenue North and Elizabeth Street.

West First Avenue North on the East side from Elizabeth Street to River Street

West First Avenue South on the East side from Mountain Street to Main Street

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 dollars ($20.00). (Source: North Dakota Century Code section 39-06.1-06)

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.

3. Without the consent of the owner or driver of a vehicle and if a vehicle or any personal property or cargo spilled from the vehicle is blocking the highway or is otherwise endangering public safety, a police officer may:

   a. Remove the vehicle or cause the vehicle to be removed from the highway; and

   b. Remove or cause to be removed any personal property or cargo that may have been spilled from the vehicle onto the highway.

4. If reasonable care is used in the removal process, a police officer and the police officer's employing agency, the department of transportation or an employee of the department of transportation, or a political subdivision or employee of a political subdivision authorized by a police officer is not liable in civil damages for loss or damage to any vehicle or to any personal property or cargo that may have spilled from a vehicle that is removed from a highway under this section.

5. The decision and method used to remove a vehicle or any personal property, or cause a vehicle or any personal property to be removed, is a discretionary decision under this section. In the event of a public necessity, a police officer, an employee of the department of transportation, or an employee of a political subdivision authorized by a police officer may take an action that may damage a vehicle or property removed under this section.

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. If a police officer finds a vehicle standing upon a highway in violation of Section 9.1402, the officer may remove the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the paved or main-traveled part of the highway to a place where the vehicle does not block the highway or otherwise endanger public safety.

2. If a police officer finds a vehicle unattended upon any highway and the vehicle may obstruct traffic or otherwise endanger public safety, the officer may have the vehicle moved to a location where it may be securely held.

3. A police officer may remove or cause to be removed any vehicle found upon a highway and move the vehicle to any location where the vehicle may be securely held if:

   a. A report has been made the vehicle has been stolen or taken without the consent of its owner;

   b. The owner or driver of the vehicle is unable to provide for its custody or removal; or

   c. The individual driving or in control of the vehicle is arrested for an offense and taken into custody and another individual is not available to lawfully operate the vehicle.

4. If a police officer finds a vehicle standing, stopped, or parked in a dangerous location or in violation of any official traffic-control device prohibiting or restricting the stopping, standing, or parking of any vehicle on state property, the officer shall place a written warning on the vehicle for the first offense and issue a traffic citation for a subsequent violation.

5. A police officer and the police officer's employing agency, the department of transportation or an employee of the department of transportation, or a political subdivision or employee of a political subdivision authorized by a police officer is not liable in civil damages for loss or damage to any vehicle removed from a highway or state property under this section, so long as reasonable care is used in the removal process.

6. The decision and method used to remove a vehicle or any personal property, or cause a vehicle or any personal property to be removed, is a discretionary decision under this section. In the event of a public necessity, a police officer, an employee of the department of transportation, or an employee of a political subdivision authorized by a police officer may take an action that may damage a vehicle or property removed under this section.

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 sign posted;

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. A mobility-impaired individual who displays prominently upon a motor vehicle parked by that individual or under that individual's direction and for that individual's use, the distinguishing certificate or license plates issued for mobility impaired individuals or a disabled veteran plate issued by the North Dakota Department of Transportation is entitled to courtesy in the parking of the motor vehicle. However, the city may prohibit, by ordinance, parking on any highway for the purpose of creating a fire lane or to provide for the accommodation of heavy traffic during morning and afternoon rush hours. The privileges extended to a mobility-impaired individual do not apply on a highway if parking is prohibited.

2. A mobility-impaired individual as used in this section includes an individual who uses portable oxygen; requires personal assistance or the use of crutches, a wheelchair, or a walker to walk two hundred feet [60.96 meters] without rest; is restricted by cardiac, pulmonary, or vascular disease from walking two hundred feet [60.96 meters] 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; has an orthopedic, neurologic, or other medical condition that makes it impossible for the person to walk two hundred feet [60.96 meters] without assistance or rest; or is a disabled veteran issued a plate by the North Dakota Department of Transportation.

3. A certificate issued by the North Dakota Department of Transportation must be hung from the rearview mirror of the motor vehicle whenever the vehicle is occupying a space reserved for the mobility impaired and is being used by a mobility-impaired individual or another individual for the purposes of transporting the mobility-impaired individual. No part of the certificate may be obscured. A fee of five dollars may be imposed for a violation of this subsection.

4. If a law enforcement officer finds that the certificate is being improperly used, the officer may report to the director of the North Dakota Department of Transportation any violation and the director may, in the director's discretion, remove the privilege. An individual who is not mobility impaired and who exercises the privileges granted a mobility-impaired individual under subsection 1 is guilty of an infraction for which a fine of one hundred dollars must be imposed.

5. If a public or private entity designates parking spaces for use by a motor vehicle operated by a mobility-impaired individual, those reserved spaces must comply with the requirements of the Americans with Disabilities Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36] and 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, each reserved space must be indicated by an official sign approved by the director bearing the internationally accepted symbol of access for the mobility impaired. The sign must indicate that unauthorized use of the space is a nonmoving violation for which a fee of one hundred dollars must be imposed. For particular events, a public or a private entity may reserve additional parking spaces for use by motor vehicles operated by a mobility-impaired individual. In that case, each temporarily reserved space must be indicated by a sign or other suitable means. A sign indicating that a space is reserved for the mobility impaired and blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space, unless the space is a temporary mobility-impaired parking space, is sufficient basis for the enforcement of this section. A law enforcement officer shall enforce this section in any parking lot or parking facility, whether publicly or privately owned.

6. If the designated mobility-impaired parking spaces are occupied or unavailable, a motor vehicle displaying the distinguishing certificate or license plates issued for mobility impaired individuals by the North Dakota Department of Transportation or a disabled veteran plate issued by the North Dakota Department of Transportation may park at an angle and occupy two standard parking spaces.

7. An individual may not stop, stand, or park any vehicle in any designated parking space that is reserved for the mobility impaired unless the vehicle displays a mobility-impaired identification certificate issued by the North Dakota Department of Transportation to a mobility-impaired individual. A mobility-impaired individual may not permit the use of a certificate issued under this section by an individual who is not mobility impaired when that use is not in connection with the transport of the mobility-impaired individual. The registered owner of a vehicle may not allow that vehicle to be used in a manner that violates this subsection. Proof of intent is not required to prove a registered owner's violation of this subsection. The registered owner, however, may be excused from a violation if the owner provides the citing authority with the name and address of the individual operating the vehicle at the time of the violation. A vehicle may temporarily use a space reserved for a mobility-impaired individual without a mobility-impaired certificate for the purpose of loading and unloading a mobility-impaired individual. A violation of this subsection is a nonmoving violation for which a fee of one hundred dollars must be imposed.

8. A motor vehicle licensed in another state which displays a special authorized vehicle designation issued by the licensing authority of that state for vehicles used in the transportation of a mobility-impaired individual must be accorded the same privilege provided in this section for similar vehicles licensed in this state if the laws of the other state provide the same privileges to North Dakota motor vehicles displaying the special identifying certificate authorized in this section.

9. An entity that violates the requirements of Subsection 5 is guilty of an infraction if the entity does not comply with Subsection 5 within sixty days after receiving official notification of the violation.

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 obstructs 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

The provisions of North Dakota Century Code section 39-21-41.2 and all subsequent amendments are hereby incorporated by reference in this ordinance.

1. If a child, under eight years of age, is present in a motor vehicle, that motor vehicle must be equipped with at least one child restraint system for the child. However, a child under the age of eight who is at least fifty-seven inches [1.45 meters] tall is not required to use a child restraint system, but must be correctly buckled in a safety belt. 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, the child must be properly secured in the child restraint system in accordance with the manufacturer's instructions. While the motor vehicle is moving, each child of eight 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 safety belt. Use of child restraint systems and safety belts is not required in motor vehicles that were not equipped with safety belts when manufactured. If a child is being transported in an emergency situation, this section does not apply.

2. Violation of this section 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.

9.1703 Use of Safety Belts – Enforcement

The provisions of North Dakota Century Code sections 39-21-41.4 and 39-21-41.5 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

9.1704 Drawbar or Connection Between Vehicles - Precautions Required

The provisions of North Dakota Century Code section 39-21-44.2 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The drawbar or other coupling device between vehicles, one of which is towing or drawing the other on a highway, must include safety chains connecting the vehicles. The drawbar or other coupling device, and the safety chains, must be of a design, strength, and construction so as to prevent the unintentional uncoupling of the vehicles. The safety chain requirement of this section does not apply to:

1. A fifth-wheel coupling device; or

2. A vehicle towing an implement of husbandry or an implement of husbandry towing a vehicle, when operated at a speed not exceeding twenty-five miles [40.23 kilometers] per hour.

9.1705 Modification of Motor Vehicle

The provisions of North Dakota Century Code section 39-21-45.1 and all subsequent amendments are hereby incorporated by reference in this ordinance.

1. An individual who operates a registered motor vehicle on a highway may not modify that vehicle unless the modification meets the following requirements:

   a. Any modifying equipment must meet any other requirement applicable to a vehicle under North Dakota Century Code chapter 39-21.

   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 be branded with a United States Department of Transportation tire identification number.

   c. The maximum body height permitted for a motor vehicle is forty-two inches [106.68 centimeters]. Measurement of body height is made from a level ground surface to the floor of the cargo area.

2. An individual may not operate a registered motor vehicle on a highway unless the motor vehicle is equipped with front and rear bumpers. The height of the bumper must not exceed twenty-seven inches [68.58 centimeters] and this measurement is made from a level ground surface to the highest point on the bottom of the bumper. A horizontal drop bumper may be used to comply with this subsection and must be at least three inches [7.62 centimeters] in vertical width; extend the entire horizontal body width; and be horizontal, load bearing, and attached to the vehicle frame to effectively transfer impact when engaged.

3. Vehicles owned by law enforcement agencies, the military, firefighting agencies, and ambulances may be modified without regard to this section.

9.1706 Scope and Effect of Equipment Requirements – Penalty

The provisions of North Dakota Century Code section 39-21-46 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

ARTICLE 18 - Motorcycle Equipment

9.1801 Purpose

The provisions of North Dakota Century Code chapter 39-27-01 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.

9.1802 Manufacturer's or Distributor's Certification

The provisions of North Dakota Century Code section 39-27-02 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

9.1803 Frame-Chassis Requirements

The provisions of North Dakota Century Code section 39-27-03 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

9.1804 Brakes

The provisions of North Dakota Century Code section 39-27-04 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

9.1805 Brakes on Motor-Driven Cycles

The provisions of North Dakota Century Code section 39-27-04.1 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

9.1806 Tires, Wheels and Rims

The provisions of North Dakota Century Code section 39-27-05 and all subsequent amendments are hereby incorporated by reference in this ordinance.

1. Motorcycle tires must be of pneumatic design with a minimum width of two and twenty-five hundredths (2 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 (½) 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.

9.1807 Steering and Suspension Systems

The provisions of North Dakota Century Code section 39-27-06 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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 midpoint of the front or rear wheel track distance must be within one inch of the single front or single rear wheel track distance 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. The handlebars must provide a minimum of eighteen (18) inches between grip after final assembly.

6. Handlebars must be equipped with handgrips consisting of a material and surface patter 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.

9.1808 Fuel Systems

The provisions of North Dakota Century Code section 39-27-07 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

9.1809 Exhaust Systems - Prevention of Noise

The provisions of North Dakota Century Code section 39-27-08 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

9.1810 Mirrors

The provisions of North Dakota Century Code section 39-27-09 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

9.1811 Fenders

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

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.

9.1812 Seat or Saddle

The provisions of North Dakota Century Code section 39-27-11 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

9.1813 Chain Guard

The provisions of North Dakota Century Code section 39-27-12 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

9.1814 Vehicle Stand

The provisions of North Dakota Century Code section 39-27-13 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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 as equipped.

9.1815 Glazing

The provisions of North Dakota Century Code section 39-27-14 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

9.1816 Horn

The provisions of North Dakota Century Code section 39-27-15 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

9.1817 Speedometer and Odometer

The provisions of North Dakota Century Code section 39-27-16 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

9.1818 Lighting Equipment

The provisions of North Dakota Century Code section 39-27-17 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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 taillamp 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.

9.1819 Lighting Equipment on Motor-Driven Cycles

The provisions of North Dakota Century Code section 39-27-17.1 and all subsequent amendments are hereby incorporated by reference in this ordinance.

1. The headlamp or headlamps upon every motor-driven cycle may be of the single-beam or multiple-beam type.

2. 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 feet [30.48 meters] when the motor-driven cycle is operated at any speed less than twenty-five miles [40.23 kilometers] per hour and at a distance of not less than two hundred feet [60.96 meters] when the motor-driven cycle is operated at a speed of twenty-five or more miles [40.23 or more kilometers] per hour, and at a distance of not less than three hundred feet [91.44 meters] when the motor-driven cycle is operated at a speed of thirty-five miles [56.33 kilometers] per hour.

3. In the event the motor-driven cycle is equipped with a multiple-beam headlamp or headlamps the upper beam must meet the minimum requirements set forth above and may not exceed the limitations set forth in subsection 1 of North Dakota Century Code section 39-21-20 and the lowermost beam must meet the requirements applicable to a lowermost distribution of light as set forth in subsection 2 of North Dakota Century Code section 39-21-20.

4. 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 [7.62 meters] ahead, projects higher than the level of the center of the lamp from which it comes.

9.1820 Passenger Seat

The provisions of North Dakota Century Code section 39-27-18 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

9.1821 Footrests

The provisions of North Dakota Century Code section 39-27-20 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

9.1822 Highway Bars

The provisions of North Dakota Century Code section 39-27-21 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

9.1823 Equipment Approval

The provisions of North Dakota Century Code section 39-27-22 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

ARTICLE 19 - Lighted Lamps Required

9.1901 When Lighted Lamps are Required

The provisions of North Dakota Century Code section 39-21-01 and all subsequent amendments are hereby incorporated by reference in this ordinance.

Subject to the exceptions for parked vehicles, every vehicle upon a highway within this state must display lighted headlamps, taillamps 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 these devices.

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 any other Drugs or Substances not to Operate Vehicle - Penalty

The provisions of North Dakota Century Code sections 39-08-01, 39-08-01.1, 39-08-01.2, 39-08-01.3, 39-08-01.4, 39-08-01.5 and all subsequent amendments are hereby adopted as if fully set out in this ordinance.

9.2102 Reserved - Combined with Section 9.2101

9.2103 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.

9.2104 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.

9.2105 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.

9.2106 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.

9.2107 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, an individual who operates a motor vehicle on a highway or on public or private area to which the public has a right of access for vehicular use in this state while that individual's operator's license is suspended or revoked in any jurisdiction is guilty of a class B misdemeanor for the first, second or third offense within a five (5) year period. Any subsequent offense within the same five (5) year period is a class A misdemeanor.

2. If the 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 a 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. A court may dismiss a charge under this Section upon motion by the defendant if the defendant's operator's license is reinstated within sixty (60) days of the date of the offense and the defendant provides the court satisfactory evidence of reinstatement.

4. 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 destroyed by law enforcement. If a period of suspension has been extended under subsection 6 of 39-06-17 of the North Dakota Century Code, the court may order the number plates destroyed under this subsection. The offender shall deliver the number plates to the court without delay at a time certain as ordered by the court following a conviction. The court shall deliver the number plates to law enforcement and notify the North Dakota Department of Transportation of the order. An offender who does not provide the number plates to the court at the appropriate time is subject to revocation of probation.

5. The municipal judge may order impoundment or distribution of motor vehicle number plates in the manner provided in Subsection 4.

9.2108 Operation of Snowmobiles and Off Highway Vehicles

The provisions of North Dakota Century Code section 39-24-01 and 39-29-01 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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 or off highway vehicle.

2. "Operator" means every person who operates or is in actual physical control of a snowmobile or off highway vehicle.

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 road, street, alleyway or highway improved, designed or ordinarily used for vehicular travel.

5. "Snowmobile" means a self-propelled vehicle intended for off-road travel primarily on snow, having a curb weight of not more than one thousand two hundred pounds [544.31 kilograms], driven by track or tracks in contact with the snow, steered by a ski or skis in contact with the snow, and which is not wider than forty-eight inches [121.92 centimeters]. The term does not include an off-highway vehicle as defined in chapter 39-29 of the North Dakota Century Code converted to operate on tracks.

6. "Off Highway Vehicle" means a vehicle as defined in 39-29-01 (2a) and 39-29-01 (2b).

9.2109 Rules for Operation of Snowmobiles and Off Highway Vehicles

The provisions of North Dakota Century Code section 39-24-09 and 39-29-01 and all subsequent amendments are hereby incorporated by reference in this ordinance.

1. No person may operate a snowmobile or off highway vehicle 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 or off highway vehicle shall be operated at any time within the right of way of any interstate highway except for emergency purposes.

2. No person may operate a snowmobile or off highway vehicle upon the roadway, shoulder, or inside bank or slope of any road, street, alleyway, or highway within the City of Cavalier, except as hereafter provided:

    a. A resident of the City of Cavalier may operate a snowmobile or off highway vehicle on street rights-of-way, by the most direct route from his or her residence to the city limits or to a route designated in (b) below, and for the purposes so designated.

    b. A person may operate a snowmobile or off highway vehicle on the right shoulder of the following streets and alleyways for the purpose of passing through the city or obtaining services within the city: Division Avenue, East Main Street, Elizabeth Street, and the alleyway connecting West Main Street to Elizabeth Street, which said alleyway lies immediately East of the Burlington Northern Santa Fe railroad right-of-way.

3. A snowmobile or off highway vehicle 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 or off highway vehicle 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.

4. No snowmobile or off highway vehicle 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.

5. The emergency conditions under which a snowmobile or off highway vehicle 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.

6. It is unlawful for any person to drive or operate any snowmobile or off highway vehicle 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.

7. It is unlawful for any person to operate a snowmobile or off highway vehicle pursuant to Chapter 39-24 and 39-29 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 or 39-29-09 (6) of the North Dakota Century Code.

8. When snowmobiles or off highway vehicles 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 or off highway vehicles 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 or off highway vehicles.

9. It is unlawful for any person to operate a snowmobile within a highway right of way as defined in subsection 38 of section 24-01-01.1 of the North Dakota Century Code between April 1 and November 1 of any year.

10. No snowmobile or off highway vehicle 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.

11. No person under the age of eighteen(18) years may operate, ride or otherwise be propelled on a snowmobile or off highway vehicle as defined in 39-29-01 (2a) (2b) or (2c) unless the person wears a safety helmet meeting the United States Department of Transportation standards.

12. A vehicle as defined by 39-29-01(2)(c) may be operated within the city of Cavalier so long as:

    a. The vehicle is registered as required in 39-29-04.

    b. The vehicle carries a valid policy of liability insurance carrying the minimum coverages required for vehicles operated within the State of North Dakota.

    c. The vehicle complies with the equipment provisions contained in 39-29-09.1 of the North Dakota Century Code.

    d. The drive carries a valid operator's license.

9.2110 <u>Operation of Motor Vehicle, Tractor or Other Vehicle Prohibited on Flood Protective Works - Exception – Penalty</u>

The provisions of North Dakota Century Code section 39-10-65 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

9.2111 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.

9.2112 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.

An individual licensed to operate a motor vehicle shall have the operator's license in the individual's immediate possession at all times when operating a motor vehicle and shall physically surrender the operator's license, upon demand of any court, police officer, or a field deputy or inspector of the department. However, an individual charged with violating this section may not be convicted or assessed any court costs if the individual produces in court or in the office of the arresting officer a valid operator's license issued to that individual that is not under suspension, revocation, or cancellation at the time of the individual's arrest.

9.2113 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. If a city ordinance or state criminal traffic violation, 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 or, if a state noncriminal traffic violation, notify the person of the right to request a hearing when posting bond by mail.

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 of the North Dakota Century Code. 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 9.2207, 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 9.2107.

   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.

   h. 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

The provisions of North Dakota Century Code section 39-06.1-02 and all subsequent amendments are hereby incorporated by reference in this ordinance.

1. An individual cited, in accordance with Sections 9.2201 and 9.2202, other than an offense listed in Section 9.2207, is deemed to be charged with a noncriminal offense.

    a. The individual may appear before the designated official and pay the statutory fee for the violation charged at or before the time scheduled for a hearing.

    b. If the individual has posted bond, the individual may forfeit bond by not appearing at the designated time.

2. If the individual is cited for a traffic violation under state law and posts bond by mail, the bond must be submitted within fourteen days of the date of the citation and the individual cited shall indicate on the envelope or citation whether a hearing is requested. If the individual does not request a hearing within fourteen days of the date of the citation, the bond is deemed forfeited and the violation admitted. If the individual requests a hearing, the court for the county in which the citation is issued shall issue a summons to the individual requesting the hearing notifying the individual of the date of the hearing before the municipal judge in accordance with Section 9.2205.

3. Upon appearing at the hearing scheduled in the citation or otherwise scheduled at the individual's request, the individual may make a statement in explanation of the individual's action. The municipal judge may at that time waive, reduce, or suspend the statutory fee or bond, or both. If the individual cited follows the foregoing procedures, the individual is deemed to have admitted the violation and to have waived the right to a hearing on the issue of commission of the violation.

4. The bond required to secure appearance must be identical to the statutory fee established by Section 9.2208.

5. 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 director:

    a. Admission of the violation; and

    b. In speeding violations, whether the speed charged was in excess of the lawful speed limit by more than nine miles [14.48 kilometers] per hour and the miles [kilometers] per hour by which the speed limit was exceeded.

6. Under this Section, a citing police officer may not receive the statutory fee or bond.

9.2205 <u>Administrative Hearing - Procedures - Appeals - Stay Orders</u>

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. An individual cited for a traffic violation, other than an offense listed in Section 9.2207, who does not follow one of the procedures set forth in Section 9.2204, 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 individual'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 an individual cited for a traffic violation, other than an offense listed in Section 9.2207, 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 municipal judge 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 an individual is aggrieved by a finding that the individual committed the violation, the individual 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 is 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 municipal judge. 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 municipal judge 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.

      iv. 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. An individual 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 municipal judge the finding is affirmed, costs may be assessed at the discretion of the trial judge.

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 an individual 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, and the official having jurisdiction shall report such fact to the director of the North Dakota Department of Transportation within ten (10) days after the date set for the hearing. Failure to appear at the time designated, after signing a promise to appear, if signing is required by law, or failure 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 charged violation.

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 9.2204 and 9.2205 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 Section 39-08-04 of the North Dakota Century Code and Sections 9.2104, 9.2105 and 9.2106.

5. Driving while license or driving privilege is suspended or revoked in violation of Section 9.2107.

6. Violating subdivisions b and c of subsection 5 of Section 9.2109.

7. Operating an unsafe vehicle in violation of subsection 2 of section 39-21-46 of the North Dakota Century Code.

8. Causing an accident with an authorized emergency vehicle or vehicle operated by or under the control of the department of transportation in violation of subsection 5 of Section 9.0308.

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 noncriminal 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 for:

   a. A violation of Sections 9.0308 (Operation of Vehicles on Approach of Authorized Emergency Vehicles) and 9.0707 (Obedience to Signal Indicating Approach of Train), a fee of fifty dollars ($50.00).

   b. A violation of Subsection 1 of Section 9.1002 (Pedestrians' Right-of-way in Crosswalks), a fee of fifty dollars ($50.00).

   c. A violation of Section 9.1702 (Child Restraint Devices), a fee of twenty-five dollars ($25.00).

   d. A violation of Sections 9.0934 (Use of Wireless Communications Device Prohibited) and 9.0936 (Failure to Maintain Control), a fee of one hundred dollars ($100.00).

   e. A violation of subsection 2 of Section 9.0917.1 (Closing Road Because of Hazardous Conditions – Posting of Official Traffic-Control Devises- Entering Closed Road Prohibited), a fee of two hundred fifty dollars ($250.00).

   f. A violation of Section 9.0928 (Garbage, Glass, Etc. on Highways Prohibited), a fee of one hundred dollars ($100.00).

   g. A violation of Section 9.0501 (Basic Rules), a fee of thirty dollars ($30.00).

   h. A violation of Section 9.0509 (Care Required in Operating Vehicle), a fee of thirty dollars ($30.00).

   i. A violation of Section 9.0920 (Overtaking and Passing Schoolbus) and 9.0920.1 (Permitting use of Vehicle to Violate Section 9.0920), a fee of one hundred dollars ($100.00).

3. Except as provide in subsection 4, 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 $1.00/each mph over 5 mph over limit
11 - 15	$ 10.00 plus $1.00/each mph over 10 mph over limit
16 - 20	$ 15.00 plus $2.00/each mph over 15 mph over limit
21 – 25	$ 25.00 plus $3.00/each mph over 20 mph over limit
26 - 35	$ 40.00 plus $3.00/each mph over 25 mph over limit
36 - 45	$ 70.00 plus $3.00/each mph over 35 mph over limit
46 +	$100.00 plus $5.00/each mph over 45 mph over limit

4. On a highway on which the speed limit is a speed higher than fifty-five (55) miles [88.51 kilometers] an hour, for a violation of Section 9.0502, a fee established as follows:

Miles Per Hour Over Lawful Speed Limit	Fee

1 - 10	$ 2.00/each mph over limit
11 +	$ 20.00 plus $5.00/each mph over 10 mph over limit

.....

5. On a highway on which the speed limit is posted in excess of sixty-five (65) miles [104.61 kilometers] an hour, for a violation of section 9.0502, a fee of five dollars ($5.00) for each mile per hour over the limit.

6. For a violation of a school zone speed limit under subdivision b of subsection 1 of Section 9.0502, a fee of forty dollars ($40.00) for one through ten miles per hour over the posted speed; and forty dollars ($40.00), plus one dollar ($1.00) for each additional mile per hour over ten miles per hour over the limit unless a greater fee would be applicable under this section.

7. For a violation of a highway construction zone speed limit under subsection 2 of Section 9.0502, a fee of eighty dollars ($80.00) for one through ten miles per hour over the posted speed; and eighty dollars ($80.00) plus two dollars ($2.00) for each mile per hour over ten miles per hour over the limit, unless a greater fee would be applicable under this section. The fee in this subsection does not apply to a highway construction zone unless individuals engaged in construction are present at the time and place of the violation and the posted speed limit sign states "Minimum Fee $80".

9.2209 <u>"Nonmoving Violation" Defined</u>

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 <u>"Moving Violation" Defined</u>

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 <u>General Penalty for Violation of Chapter</u>

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 <u>Notification of Parents or Guardians of Juvenile Traffic Offenders</u>

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 dollars ($1,500.00) or by imprisonment not to exceed thirty (30) days, or both.

CHAPTER TEN

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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, 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.

10.0305 Nuisance

Failure to comply with the provisions of Sections 10.0302, 10.0303 and 10.03004, 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.

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 City upon monthly or quarterly bills from the City. 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).

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 provisions 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. Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.

2. Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.

3. Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, are more than one and one half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location.

4. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location.

5. Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

6. Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one half of that specified in the Building Code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the Building Code for such buildings.

7. Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.

8. Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.

9. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

10. Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one third of the base.

11. Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or members or 50 percent damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.

12. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become (i) an attractive nuisance to children; (ii) a harbor for vagrants, criminals or immoral persons; or as to (iii) enable persons to resort thereto for the purpose of committing unlawful or immoral acts.

13. Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction, as specified in the Building Code, or of any law or ordinance of this state or jurisdiction relating to the condition, location or structure of buildings.

14. Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member or portion less that 50 percent, or in any non-supporting part, member or portion less that 66 percent of the (i) strength, (ii) fire-resisting qualities or characteristics, or (iii) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.

15. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the health officer to be unsanitary, unfit for human habitation or is such a condition that is likely to cause sickness or disease.

16. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the fire marshal to be a fire hazard.

17. Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.

18. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

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 50 percent damaged or decayed or deteriorated from its original value or structure, of where the cost of reconstruction or restoration shall be in excess of 50 percent of the value of the building, it shall be demolished, and in all cases where a building cannot be repaired so that it will no longer exist 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 city ordinance or state statute, 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 provided in this ordinance or under state law.

10.0404 Duties of Building Inspector

The building inspector, as designated by the City governing body, shall:

1. Inspect or cause to be inspected periodically, 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.

3. 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.

4. 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 County Recorder, 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)

5. 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.

6. Report to the City governing body any noncompliance with the "notice" provided for in subsection 4 and 5 hereof.

7. Appear at all hearings conducted by the City governing body and testify as to the conditions of "dangerous buildings".

8. 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 County Recorder. 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 governing body 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 County Recorder, 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 County Recorder 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 County Recorder 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".

10.0406 Failure to Comply with Decision of the City Governing Body

If the owner, occupant, mortgagee or lessee fails to comply with the order of the City governing body 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 governing body 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 or 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 five

hundred dollars ($500.00) 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 five hundred dollars ($500.00) 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 an infraction and upon conviction shall be fined not exceeding five hundred dollars ($500.00) 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 governing body 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

In cases, except emergency cases, where the owner, occupant, lessee or mortgagee is absent from the City, all notice or orders provided for herein shall be sent by registered or certified mail to the owner, occupant, mortgagee, lessee and all other persons having an interest in said building as shown by the land records of the County Recorder 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, Police and Health Departments

All employees of the fire, police and health departments shall make written reports to the building inspector of all buildings or structures which are, may be or are suspected to be “dangerous buildings” as herein defined.

10.0411 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
Cavalier, North Dakota

APPENDIX 10-2

IN THE MATTER OF A "DANGEROUS BUILDING" LOCATED IN THE CITY OF CAVALIER, NORTH DAKOTA, WITH AN ADDRESS OF

_____

NOTICE AND ORDER

You are hereby notified that the undersigned, building inspector of the City of Cavalier, North Dakota, acting pursuant to Article 4, Chapter 10 of the Ordinances of the City of Cavalier, 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 _____, NORTH DAKOTA UNDER ARTICLE 4, CHAPTER TEN

NOTICE OF HEARING

You are hereby notified that the building inspector of Cavalier, 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 CAVALIER, NORTH DAKOTA

By _____
Mayor

ATTEST:

_____,
City Auditor

CHAPTER ELEVEN

ANIMALS AND FOWL

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11.0102 Dangerous Animals
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CHAPTER ELEVEN

ANIMALS AND FOWL

ARTICLE 1 – General Regulations

11.0101 Animal Neglect, Abuse and Cruelty – Penalty

No person may neglect any animal, abuse any animal or cruelly treat any animal in the City as defined in sections 36-21.2-01, 36-21.2-02 and 36-21.2-03 of the North Dakota Century Code. Any person who violates this Section is guilty of an offense. (Source: North Dakota Century Code sections 36-21.2-01, 36-21.2-02 and 36-21.2-03)

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 or any other person 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 five hundred dollars ($500.00). 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 Definitions

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AT LARGE. Off the premises of the owner and not in the immediate presence and under the control of the owner or a member of his/her immediate family.

CAT. Either a male or female cat.

DOG. Either a male or female dog.

OWNER. Any person or persons, firm, association or corporation owning, keeping, or harboring a dog or cat.

DANGEROUS ANIMAL shall mean: Any animal known to its owner or harborer to have a propensity, tendency, or disposition to attack, bite, cause injury or to otherwise endanger the safety of or menace human beings or domestic animals; or

1. Any animal which attacks, bites, or injures a human being or other domestic animals one (1) or more times without provocation; or

2. Any animal which, when unprovoked, in a vicious or terrorizing manner approaches any person in an apparent attitude of attack upon the streets, sidewalks, or any public grounds or places; or

3. Any animal owned or harbored primarily or in part for purposes of fighting or any animal trained for fighting; or

4. Any animal certified by a doctor of veterinary medicine licensed within the State of North Dakota, after observation thereof, as posing a danger to human life or property if not kept in the manner required by this chapter; or

5. Any animal which has been determined to be dangerous by any municipal court proceeding under this chapter.

6. Notwithstanding the foregoing, no animal may be found or declared dangerous if an injury or damage is sustained by a person who, at the time such injury or damage being sustained, was committing a willful trespass or other tort upon premises occupied by the owner or keeper of the animal, or was teasing, abusing, or assaulting the animal or was committing or attempting to commit a crime.

7. Notwithstanding the foregoing, no animal may be found or declared dangerous if an injury or damage was sustained by a domestic animal which at the time such injury or damage being sustained, it was teasing, taunting, abusing or assaulting the animal.

8. Notwithstanding the foregoing, no animal may be declared dangerous if the animal was protecting or defending a human being within the immediate vicinity of the animal from an attack or assault.

11.0202 License Required

No dog or cat shall be permitted to be or remain in the city without being licensed as hereinafter provided if over one month of age. No license or renewal license shall be issued for a dog or cat over six months of age unless it has been inoculated against rabies. Each currently licensed dog or cat as of the date of passage of this ordinance will continue to carry a valid license until June 30, 2014, at which time it will expire. Thereafter each dog and cat license in the City of Cavalier will expire on June 30th of each calendar year. Licenses required under this section must be renewed on a yearly basis, and must be renewed prior to expiration.
(Ord. passed 12- -93) Penalty, see § 90.99.

11.0203 Fees

All dogs and cats kept in the city shall be registered as to sex, breed, name, and address of the owner and name of the animal. At the time of such registration the owner shall obtain a license for such dog or cat and shall pay a fee for each animal which shall be determined from time to time by the City Council. It shall be the duty of the owner to cause such license tag to be securely attached around the animal's neck and kept there at all times during the license period. The City Council will from time to time determine the cost of the renewal license required under §11.0202.

11.0204 Rabies Inoculation

It shall be the duty of the owner or person in custody of any dog or cat kept in the city to have the dog or cat inoculated against rabies at least once each year if the vaccine used was Phenalized vaccine, or approved vaccine, and within three years if the vaccine used was Avianized vaccine, or approved vaccine, and no license shall be issued for any dog or cat unless the applicant exhibits a certificate of a veterinarian showing compliance with this section.

11.0205 Dogs or Cats at Large Nuisance

Any dog or cat running or being at large in or upon any of the streets, public ways, public property, or upon the private premises of any other person than the owner or keeper of such dog or cat, shall be deemed and considered to be a public nuisance. Excessive, continuous, or untimely barking, molesting passers-by, chasing vehicles, habitually attacking other domestic animals, trespassing upon school grounds, or damaging property by a dog is to be considered a public nuisance. Habitually attacking

other domestic animals, trespassing upon school grounds, or damaging property by a cat is to be considered a public nuisance. Further, any dog or cat without a valid license and collar is a public nuisance.
(Ord. passed 12- -93) Penalty, see § 90.99.

11.0206 Impounding Animal

It shall be the duty of each police officer to apprehend each and every dog or cat running or being at large and to impound such dog or cat in the city pound or other suitable place provided by the city for the impounding of dogs or cats, including impounding such dog or cat at the Park River Veterinary Clinic, Park River, North Dakota or other suitable veterinary facility. The Chief of Police or police officer upon receiving any dog or cat shall make a complete registry, entering the breed, color and sex of such dog or cat, whether licensed, and the place and time of taking. If licensed, he shall enter the name and address of the owner and number of the license tag.
(Ord. passed 12- -93)

11.0206 Redeeming Impounded Dog or Cat

Not later than three days after the impounding of any dog or cat, the owner, if known, shall be notified by the Police Chief or other member of the Police Department, or by any agent thereof by personal, telephone, or written notice in order to permit such owner to redeem; and if the owner of the dog or cat is unknown, then within three days after the impounding of any dog or cat, the Police Chief shall cause to be posted for at least three days at three or more conspicuous places in the city a notice describing the dog or cat and the place and time of taking. In addition, a notice describing the dog or cat and the place and time of taking shall be posted at the City Auditor's office of the City of Cavalier, North Dakota. If within three days after notifying the owner, if known, or the original posting of the notices as aforesaid if the owner is unknown, the owner may claim the dog or cat. Should the dog or cat be impounded at the Park River Veterinary Clinic, Park River, North Dakota, or other suitable veterinary facility, and claimed by the owner, the owner shall be responsible for payment to the facility of all fees and costs incurred by the facility in keeping the dog or cat. If not so redeemed by the owner within three days after having been notified or within three days after the posting of the notice as aforesaid, then the Police Chief or a member of the Police Department shall cause the dog or cat to be destroyed, or in the discretion of the Police Chief the dog or cat may be delivered to any person not a resident of the city upon payment of the fees and costs of the veterinary facility, or to any resident of the city upon payment of the fees and costs of the Park River veterinary facility plus payment of the standard license fee.

11.0207 Disposition of Unclaimed or Diseased Dogs and Cats

It shall be the duty of the Police Department to keep or cause to be kept each dog or cat so impounded for a period of six days, after which, if it remains unclaimed, it shall be destroyed; provided, however, if any impounded dog or cat appears to be suffering from rabies or other infectious or dangerous disease, or should any impounded dog or cat be known to have bitten a human being to the extent of breaking the skin, then the dog or cat shall not be forthwith destroyed nor released for at least fourteen (14) days from the date of such biting in order to determine whether or not the dog or cat is so infected.

11.0208 Dangerous Animals Muzzling

Whenever it becomes necessary to safeguard the public from the dangers of an alleged dangerous animal, while any court proceeding is pending against said alleged dangerous animal's owner, the mayor may issue a proclamation ordering each person owning, keeping, or harboring said animal in the City of Cavalier to confine it securely on the person's premises and such animal shall wear a muzzle of sufficient strength to prevent its biting any person. If the owner fails to comply with said issued proclamation by the mayor, the Chief of Police shall impound the animal for the duration of the court proceeding and any fees generated from impoundment of the owner's animal will be sole responsibly of the animal's owner to pay. Any dog noticeably infected with rabies or displaying vicious propensities shall be killed by any police officer without notice to the owner. The provisions of this section shall not apply to K-9 or other dogs

owned by any police department or any law enforcement agency or officer which are used in the performance of police work.

11.0209 Prohibition and Control of Dangerous Animals

Except as permitted hereinafter, it shall be unlawful for any person to own, keep or harbor a dangerous animal within the city limits. Any animal classified to be dangerous from any court proceeding shall be ordered out of the City of Cavalier's corporate limits by the Cavalier Municipal Judge. The provisions of this article shall not apply to K-9 or other dogs owned by any police department or any law enforcement agency or officer which are used in the performance of police work. Penalty 90.99

11.0210 Return to Owner if Known

Notwithstanding the provisions of § 11.0205, if any dog or cat is found at large and its owner can be identified and located, such animal need not be impounded but may, instead, be taken to the owner. In such case, the Police Chief or other policeman may proceed against the owner for a violation of this subchapter.

11.0211 Leash Requirement

1. All dogs shall be kept under restraint; provided, however, that all dogs owned or used by local, state or federal governmental bodies, while in active duty or during training, and under the supervision of a peace officer, shall be exempt from the provisions of this section. Penalty 90.99

2. No person having the custody or control of any dog shall permit the dog to be within or upon any street, sidewalk, public park, public place, bike path, greenway, or upon any private land belonging to another without the dog being effectively restrained-from reaching any street, sidewalk, public park, public place, or any private land belonging to another.

The provisions of this section shall not apply to dogs used in active law enforcement duty or during training under the supervision of an authorized law enforcement officer.

11.0212 Duty of Animal Owners to be Responsible

1. It shall be the duty of every owner of any animal, or anyone having any animal in his or her possession or custody, to exercise reasonable care and to take all necessary steps and precautions to protect other people, property, and animals from injuries or damage which might result from their animals' behavior, regardless of whether such behavior is motivated by mischievousness, playfulness, or ferocity. Penalty 90.99

2. It shall be the duty of every owner of any animal, or anyone having any animal in his or her possession or custody, to take all necessary steps to clean up any feces deposited by the animal while off the animal owner's property. It shall be unlawful for any dog or cat owner or person in possession of any dog or cat to fail to remove without delay any feces left by such cat or dog on any public street, sidewalk, other public areas, or the private property of another within the corporate limits of the City of Cavalier.

3. In the event that the owner or keeper of any animal is a minor, the parent or guardian of such minor shall be responsible to ensure that all provisions of this article are complied with. Penalty

11.0213 Penalty

Unless otherwise stated in this chapter any owner violating any of the terms or provisions of this chapter shall, upon conviction, be punished by a fine not to exceed one thousand dollars ($1,000.00) and/or imprisonment for a period not to exceed thirty (30) days. Any owner violating §§11.0204, 11.0209 11.0211 shall be punished by a fine of not less than fifty dollars ($50.00) upon the first violation, and upon

conviction thereof shall be punished by a fine of not less than one hundred twenty-five dollars ($125.00) upon a second violation and upon conviction thereof shall be punished by a fine of not less than two hundred fifty dollars ($250.00) for the third or subsequent violations.

CHAPTER TWELVE

PUBLIC NUISANCES

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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.

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, other than those which shall be used from time to time to promote those special or holiday events sponsored by retail businesses.

4. Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m., or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office, or in any dwelling, hotel or other type of residence, or of any persons in the vicinity.

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.

6. Noise control upon braking or slowing. The driver of any vehicle, including but not limited to motor carriers, trucks, semi trailers and tractors, shall not cause their vehicle to brake or slow by any method which increases the noise emissions levels of the engine, including but not limited to the method commonly known as "jake braking" wherein engine compression is used to slow the vehicle in lieu of applying the clutch to brakes.

7. A violation of this Section shall be an infraction. The first offense shall incur a fine of not less than fifty dollars ($50.00). The second offense within a two (2) year period shall incur a fine of not less than one hundred dollars ($100.00). A third or subsequent offense within a two (2) year period shall incur a fine of not less than two hundred fifty dollars ($250.00).

ARTICLE 4 – Lot Clearing

12.0401 Definitions

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

1. "Abandoned motor vehicle" means any motor vehicle, as defined in section 39-01-01 of the North Dakota Century Code, regardless of model years of age of the motor vehicle, that has remained for a period of 48 hours or more on public property illegally or lacking vital component

parts, or has remained for a period of 48 hours or more on private property without the consent of the owner or occupant of such property or in an inoperable condition such that it has no substantial potential further use consistent with its usual functions unless it is kept in an enclosed garage or storage building. It also means a motor vehicle voluntarily surrendered by its owner to a person duly licensed under section 39-26-10 of the North Dakota Century Code. An antique automobile and other motor vehicles to include parts cars and special interest vehicles, may not be considered an abandoned motor vehicle within the meaning of this article. (Source: North Dakota Century Code section 39-26-02(1))

2. "Antique motor vehicle" means any motor vehicle, which is at least forty (40) years old and has a current license pursuant to section 39-04-10.4 of the North Dakota Century Code.

3. "Building materials" includes, without limitation, lumber, bricks, concrete or cinder blocks, plumbing materials, electric wiring or equipment, heating ducts or equipment, shingles, mortar, concrete or cement, nails, screws, or any other materials used in constructing any structure.

4. "Collector" means the owner of one or more special interest vehicles who collects, purchases, acquires, trades, or disposes of special interest vehicles or parts thereof for the person's own use in order to restore, preserve, and maintain a special interest vehicle or antique vehicle. (Source: North Dakota Century Code section 39-26-02(2))

5. "Department" means the city police department, the city street department, a state-licensed peace officer, or the state or county health department.

6. "Junk" includes, without limitation, parts of machinery or motor vehicles, tires, unused furniture, stoves, refrigerators, or other appliances, remnants of wood, metal, or other castoff material of any kind, whether or not the same could be put to any reasonable use.

7. "Junk automobile" includes, without limitation, any motor vehicle, as defined in section 39-01-01 of the North Dakota Century Code, regardless of the age of the motor vehicle, which is not licensed for use upon the highways of the state for a period in excess of thirty (30) days, and shall include, whether licensed or not, any motor vehicle which is inoperative for any reason for a period in excess of thirty (30) days, provided that there is excepted from this definition unlicensed but operative vehicles which are kept as the stock in trade of a regularly licensed and established new or used automobile dealer.

8. "Parts car" means a motor vehicle generally in nonoperable condition which is owned by the collector to furnish parts to restore, preserve, and maintain a special interest vehicle or antique vehicle. (Source: North Dakota Century Code section 39-26-02(5))

9. "Special interest vehicle" means a motor vehicle which is at least twenty (20) years old and which has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists. (Source: North Dakota Century Code section 39-26-02(6))

10. "Trash or rubbish" includes any and all forms of debris not herein otherwise classified.

11. "Vital component parts" means those parts of a motor vehicle that are essential to the mechanical functioning of the vehicle, including, but not limited to, the motor, drive train, and wheels. (Source: North Dakota Century Code section 39-26-02(8).

12.0402 <u>Storage or Accumulation of Trash, Rubbish, Junk, Contrary to Public Health and Safety</u>

It is hereby determined that the storage or accumulation of trash, rubbish, junk, junk automobiles, abandoned motor vehicles, building materials, and the maintenance of blighted structures

upon private property within the city tends to result in blighted and deteriorated neighborhoods, the increase in criminal activity, the spread of vermin and disease, and is contrary to the public peace, health, safety and general welfare of the community. (Source: North Dakota Century Code section 39-26-01)

12.0403 Unlawful to Store or Accumulate Trash, Rubbish, Junk

It shall be unlawful for any person to store, or permit the storage or accumulation of, trash, rubbish, junk, junk automobiles, or abandoned motor vehicles on any private property in the city except within a completely enclosed building, or upon the business premises of a duly licensed junk dealer, junk buyer, dealer in used auto parts, dealer in second-hand goods or junk gatherer.

Such storage or accumulation of trash, rubbish, junk, junk automobiles, or abandoned vehicles on any private property in the city is hereby declared to be a nuisance and shall be abated in the manner described in this Article.

12.0404 Storage or Accumulation of Building Materials Prohibited

It shall be unlawful for any person to store or permit the storage or accumulation of building materials on any private property, except in a completely enclosed building, or except where such building materials are part of the stock in trade of a business located in said property, or except when such materials are being used in the construction of a structure on the property in accordance with a valid building permit issued by the city and such construction is completed within a reasonable time.

Such storage or accumulation of building materials on any private property in the city is hereby declared to be a nuisance and shall be abated in the manner described in this Article.

12.0405 Vehicle Removal

The City may remove or cause to be removed any junk automobile or abandoned vehicle, or parts of either, from any unenclosed private property after having notified in writing the owner or occupant of the property of its intention to do so at least forty-eight (48) hours prior to the removal. The notice shall be served personally upon the owner or occupant of the property if occupied, or may be posted in a conspicuous place upon vacant or unoccupied property. The junk automobiles or abandoned vehicles or parts of either, shall be removed to the automobile pound and disposed of in accordance with law. Such removal by the police department shall not excuse or relieve any person of the obligation imposed by this chapter to keep his property free from storage or accumulation of junk automobiles or abandoned vehicles, or parts of junk automobiles or abandoned vehicles, or parts of either, nor from the penalties for violation thereof. (Source: North Dakota Century Code section 39-26-02)

12.0406 Conditions When Junk or Abandoned Vehicle May be Sold Immediately

When a junk automobile or an abandoned motor vehicle is more than seven (7) model years of age, is lacking vital component parts, and does not display a license plate currently valid in the state or any other state or foreign country, it is immediately eligible for disposition and must be disposed of to a scrap iron processor licensed under section 39-26-10 of the North Dakota Century Code and is not subject to the notification, reclamation, or title provisions of this article. Any license plate displayed on any such vehicle must be removed and destroyed prior to the purchaser taking possession of the vehicle. (Source: North Dakota Century Code section 39-26-05)

12.0407 Notice to Owners of Abandoned Vehicle

1. When an abandoned motor vehicle does not fall within the provisions of Section 12.0406, the city taking it into custody shall give notice of the taking within ten (10) days. The notice must set forth the date and place of the taking, the year, make, model, and serial number of the abandoned

motor vehicle and the place where the vehicle is being held, must inform the owner and any lienholders or secured parties of their right to reclaim the vehicle under section 12.0408, and must state that failure of the owner or lienholders or secured parties to exercise their right to reclaim the vehicle is deemed a waiver by them of all right, title, and interest in the vehicle and a consent to the disposal of the vehicle pursuant to Section 12.0409.

2. The notice must be sent by certified mail, return receipt requested, to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned. Published notices may be grouped together for convenience and economy. (Source: North Dakota Century Code section 39-26-06)

12.0408 Right of Owner to Reclaim Abandoned Vehicle

1. The owner, secured parties, or a lienholder of an abandoned motor vehicle has a right to reclaim such vehicle from the city taking the motor vehicle into custody upon payment of all towing and storage charges resulting from taking the vehicle into custody within thirty (30) days after the date of the notice required by Section 12.0407.

2. Nothing in this chapter may be construed to impair any lien of a garage keeper under the laws of this state or the right of a lienholder or secured parties to foreclose. For the purposes of this section, "garage keeper" is an operator of a parking place or establishment, an operator of a motor vehicle storage facility, or an operator of an establishment for the servicing, repair, or maintenance of motor vehicles. (Source: North Dakota Century Code section 39-26-07)

12.0409 Disposal of Vehicle – Disposition of Proceeds

1. An abandoned motor vehicle not more than seven (7) model years of age taken into custody by the city and not reclaimed under Section 12.0408 must be sold to the highest bidder at public auction or sale, following reasonable published notice thereof. The purchaser must be given a receipt in a form prescribed by the North Dakota Department of Health which shall be sufficient title to dispose of the vehicle. The receipt also entitles the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership. The license plates displayed on an abandoned vehicle must be removed and destroyed prior to the purchaser taking possession of the vehicle.

2. From the proceeds of the sale of an abandoned motor vehicle, the city may reimburse itself for the cost of towing, preserving, and storing the vehicle, and for all notice and publication costs incurred under this chapter. Any remainder from the proceeds of a sale must be held for the owner of the vehicle or entitled lienholder or secured parties for ninety (90) days and then must be delivered to the administrator of the North Dakota state abandoned property office in accordance with chapter 47-30.1 of the North Dakota Century Code. (Source: North Dakota Century Code section 39-26-08)

12.0410 Disposal of Vehicles Not Sold

When no bid has been received for an abandoned motor vehicle, the unit of government may dispose of it pursuant to contract under Section 12.0411. (Source: North Dakota Century Code section 39-26-09)

12.0411 Contract for Disposal

The city may contract with any qualified licensed scrap iron processor, licensed by the North Dakota Department of Health, for collection, storage, incineration, volume reduction, transportation, or

other services necessary to prepare abandoned motor vehicles and other scrap metal for recycling or other methods of disposal. Such contract may authorize the contracting scrap iron processor to pay to the owner of any abandoned motor vehicle an incentive payment for such vehicle if it is voluntarily surrendered and delivered to the scrap iron processor. For the purposes of this section, an owner of an abandoned motor vehicle includes only a person who has owned and operated the vehicle for the person's personal or business use. (Source: North Dakota Century Code section 39-26-10)

12.0412 Restrictions on Storage of Vehicles by Collector

A collector may store unlicensed, operable or inoperable, vehicles and parts cars, including antique motor vehicles, junk automobiles, and abandoned motor vehicles, and special interest vehicles, on the collector's property provided such vehicles and parts cars are kept in an outdoor storage area which is maintained in such a manner that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, trees, shrubbery, or other appropriate article. (Source: North Dakota Century Code section 39-26-13)

ARTICLE 5 – Noxious Weeds and Tall Grasses

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 reoebs, and Humenophysa pubescens), dodder, or any similar unwanted vegetation over eight inches (8") in height.

Whenever used in this chapter the term *tall grasses* shall mean and include any area with thirty percent (30%) of land covered with growing grass that exceeds eight inches (8") in length

12.0502 Weeds and Tall Grasses Prohibited

No owner of any lot, place or area within the city or the agent of such owner, shall permit on such lot, place or area and the one-half of any road or street lying next to the lands or boulevards abutting thereon noxious weeds or other deleterious, unhealthful growths and tall grasses.

All weeds and long grass growing within the limits of the city are hereby declared to be a common nuisance and it shall be the duty of every person owning, occupying, or in charge of any premises, lot, or parcel of land in said city to keep such premises, lot, or parcel of land, including the legal bounds of adjacent rights-of-way such as adjacent berms and ditches, free from all weeds and long grass and to cut and destroy the same at all times during the growing season. An area having more than thirty percent (30%) of grass plants in excess of eight inches (8") in length shall be deemed a violation of this section. For the purposes of this article, “noxious weeds” shall mean any species of plant or vegetation recognized by the North Dakota State Weed Board as noxious weed.

12.0503 Notice to Destroy

It shall be the duty of the health officer to cause to be published in the official newspaper, a public notice of § 12.0502. Such notice shall be published once each May and again in July.

It shall be the duty of all property owners, occupants, or persons having control over private property to remove noxious or other weeds, and to maintain the growth of grass on such property so that it does not exceed eight inches (8") in length. These requirements apply to areas along and upon any railroad, street, highway, alley, public place or along or upon any vacant or other lot or place within the city. An area having more than thirty percent (30%) of grass plants in excess of eight inches (8") in length shall be deemed a violation of this section.

The City Health Officer is hereby authorized and empowered to notify in writing the owner of any such lot, place, or area within the city or the agent of such owner, to cut, destroy, and/or remove any such noxious weeds or tall grasses found growing, lying, or located on such owner's property or upon the one-half on any road or street lying next to the lands or boulevards abutting thereon in excess of eight inches (8") in length. Such notice shall be written and displayed or certified mail addressed to the owner or agent of the owner at his last known address and shall give such owner or his agent a maximum of forty-eight (48) hours to cut or destroy the noxious weeds or tall grasses.

Notice of violation. Notice of violation of this article shall be mailed to the registered property owner as shown in the property tax records maintained in the city assessor's office, upon any agent of the property owner, and upon any occupant of the property when appropriate. The owner, agent, tenant, or person in charge of the property shall take appropriate action to cut and/or keep down the growth of any noxious or other weeds, and maintain all grasses not to exceed eight inches (8") in height, as directed by the health officer within the specified period of time. If the property owner, tenant, or agent fails to take such appropriate action within the time period as directed by the health officer, the health officer shall have authority to cut or mow any noxious or other weeds and grasses. If the property owner, occupants, or persons having control over private property fail to cut the noxious weeds or other weeds and grasses, the health officer may cause the weeds and grasses to be cut and the actual expenses of cutting shall be certified to the county auditor, and all of the expenses shall be charged against the land of the landowner and shall become a part of the taxes to be levied against the land for the ensuing year and shall be collected in the same manner as other real estate taxes are collected, and placed to the credit of the respective subdivisions entitled thereto.

12.0504 Action Upon Non-Compliance

Upon the failure, neglect, or refusal of any owner or agent to cut, destroy and/or remove noxious weeds or tall grasses growing, lying or located upon the owner's property or upon the one-half (½) of any road or street lying next to the lands or boulevards abutting thereon, after receipt of the written notice provided for in 12.0503 or within forty-eight (48) hours 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 tall grasses or to order their removal by the City.

12.0505 Cost Assessed to Property

Whenever any individual, firm, or corporation owning, occupying, or in charge of any premises, lot, or parcel of land within the limits of the city, shall neglect or refuse to comply with the provisions of this article, then it shall be the duty of the health officer to proceed forthwith to cause such nuisance to be abated by cutting or destroying said weeds and long grass, and in all cases shall proceed to assess and collect the expenses of the abatement of such nuisance upon the premises, lot, or parcel of land upon which the same may be found, or on which such expenses may be chargeable as in the case of expenditures for building sidewalks, or by suit in the name of the city against the owner, occupant, or agent in charge of such premises, lot, or parcel of land, and it shall be the duty of the health officer to report the amount of the expenses thereof to the city council in writing and a description of the premises lot, or parcel of land chargeable therewith, the name of the owner when known, and the name of the occupant of such premises, if occupied, or the name of the person in charge of such premises, lot, or parcel of land. In addition to suit in the name of the city against the owner, occupant, or agent in charge of such premises, lot, or parcel of land, the cost of abating such weeds and long grass, if not paid prior to the first day of November of each year, shall be certified to the county auditor as a special assessment against the property affected. Amounts charged for cutting or other abatement of weeds and long grass shall be determined by a resolution of the city council in accordance with the equipment/labor rate schedule. (Source: North Dakota Century Code section 40-05-01.1)

ARTICLE 6 – General Penalty Provision

12.0601 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 five hundred dollars ($500.00) for each violation, and a separate violation may be deemed committed on each day the violation is permitted to exist.

ARTICLE 7- Nuisances- Abatement

12.0701 Authority to Examine Premises

Any person designated by the governing body shall have authority to enter into and examine at any time all buildings, lots and premises of any description within the city, for the purpose of ascertaining the condition thereof, or determining if there has been a violation of any of the provisions of this chapter, or if a nuisance, source of filth or cause of sickness exists on such property, so far as the public health may be affected thereby.

12.0702 Notice to Abate or Remove

In all cases in which any person designated by the city council shall find a violation of any of the provisions of this chapter or shall deem it necessary for the protection of the public health, to abate or remove any nuisance, source of filth, or cause of sickness which shall be found on private property, it shall cause a notice in writing to be served on:

1. The property owner;

2. The person in charge of the property, including any agent, occupant, lessee, contract purchaser, or person other than the owner having possession, exercising dominion or control of the property; and/or

3. The person who creates, causes, permits, suffers, continues, or maintains a nuisance.

For abating or removing the nuisance, source of filth, or cause of sickness, and requiring such person, at such person's own expense, to abate or remove the nuisance, source of filth, or cause of sickness found to exist, and to put the property into good sanitary condition within a reasonable time to be fixed by the person designated by the city council, not less than twenty-four (24) hours or not exceeding thirty (30) days after service of such notice.

12.0703 Notice to Abate or Remove – Failure to Comply

If the owner or occupant refuses or neglects to comply with such notice in accordance with Section 12.0702, or if such nuisance, source of filth or cause of sickness exists on the property of the owner of which cannot be found, the person designated by the governing body shall cause the removal of such nuisance, source of filth or cause of sickness, and shall put the said property in good sanitary condition.

12.0704 Authorized Persons to Enter Abatement Orders

The person designated by the governing body shall have authority hereunder to enter orders to fill or drain any lot or piece of ground upon which stagnant water has accumulated, or to cut and remove any noxious or other weeds, or to remove any animal or vegetable refuse matter or any putrid or unwholesome substance, or any outhouses, privies, vaults or other structures prohibited by this chapter, or do whatever in the person’s judgment is necessary to put any building, place or property into a good sanitary condition.

12.0705 Abatement of Nuisance Costs

1. An accurate account of the costs incurred to abate or remove the nuisance with reference to each lot or parcel of ground shall be kept and paid by the city. Such costs, however, shall be certified by the person designated by the governing body to the city auditor and shall be assessed as follows:

   a. Against the lot or parcel of land upon which the work to abate or remove the nuisance has been done. (Source: North Dakota Century Code section 40-05-01.1)

   b. Against each person responsible for abating the nuisance.

2. In addition to being assessed against the lot or parcel of land upon which the work has been done, each person responsible for abating or removing the nuisance shall be served with a statement of the costs to be assessed, and each shall be liable for such costs incurred in abating or removing the nuisance by the city. Such costs may be recovered by a suit at law or equity, or any other manner provided by law.

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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

1. Any person other than the driver of a motor vehicle who willfully fails or refuses to stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police or peace officer, when given a visual or audible signal to stop, is guilty of a class B misdemeanor for a first or second offense and a class A misdemeanor for a subsequent offense.

2. A signal complies with this section if the signal is perceptible to the driver and:

   a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or

   b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office. (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 Weapons

General Definitions

As used in this title, unless the context otherwise requires:

1. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches [12.7 centimeters] or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal

knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance. "Dangerous weapon" does not include a spray or aerosol containing CS, also known as ortho-chlorobenzamalonitrile; CN, also known as alpha-chloroacetophenone; or other irritating agent intended for use in the defense of an individual, nor does the term include a device that uses direct contact to deliver voltage for the defense of an individual.

2. "Direct supervision of an adult" means that an adult is present in such close proximity so as to be capable of observing and directing the actions of the individual supervised.

3. "Firearm" or "weapon" means any device which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such device, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon. For a felon who is not sentenced under section 12.1-32-09.1, the term does not include a firearm or weapon that is a rifle that has a barrel sixteen inches [40.64 centimeters] or longer or a shotgun that has a barrel eighteen inches [45.72 centimeters] or longer and which is one of the following:

   a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured before 1899.

   b. A replica of any firearm described in subdivision a, if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

   c. A muzzleloading rifle or muzzleloading shotgun that is designed to use black powder, or a black powder substitute, and cannot use fixed ammunition.

4. "Gaming site" means any room or premises licensed by the attorney general or by a city or county governing body to conduct legal gaming operations.

5. "Government building" means a building which is owned, possessed, or used by or leased to the state of North Dakota, or any of its political subdivisions.

6. "Handgun" means any firearm that is not designed to be fired from the shoulder, which has a barrel less than sixteen inches [40.64 centimeters] long, and which is capable of firing, by the energy of an explosive in a fixed metallic cartridge, an exposed projectile through a rifled bore. The term includes all firearms that are designed to be readily modified between rifle and pistol forms, if in compliance with the National Firearms Act [26 U.S.C. 5801-5872].

7. "Law enforcement officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.

8. "Machine gun, submachine gun, or fully automatic rifle" means a firearm, mechanism, or instrument not requiring that the trigger be pressed for each shot, and having a reservoir, belt, or other means of storing and carrying ammunition which can be loaded Page No. 1 into the firearm, mechanism, or instrument and fired therefrom at a rate of five or more shots to the second.

9. "Plain view" means the handgun is placed in such a location or carried in such a position as to be easily discernible by the ordinary observation of a passerby. In a motor vehicle, this includes being placed on the seat, dashboard, or in a gunrack as long as the handgun is not covered or is in any other way concealed from view.

10. "Rifle" means any firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each pull of the trigger.

11. "Secured" means the firearm is closed into the trunk or nonpassenger part of the vehicle; placed into a closed and secure carrying device; rendered inoperative by the use of a trigger, hammer, cylinder, slide, or barrel-locking device that renders the firearm incapable of firing until the device is unlocked and removed; or so disassembled or disabled as to be rendered incapable of firing.

12. "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches [40.64 centimeters] in length and any firearm made from a rifle, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].

13. "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches [45.72 centimeters] in length and any firearm made from a shotgun, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].

14. "Shotgun" means a firearm designed or redesigned, made or remade, and intended to be fired with one hand below or behind and one hand in front of the breach, which uses the energy of the explosive in a fixed shotgun shell to fire through a smooth or a rifled bore either a number of ball shot or a single projectile for each single pull of the trigger.

15. "Silencer" means any device for or attached to any firearm which will silence or deaden the sound or natural report of the firearm when it is discharged.

16. "Unloaded" means the chamber of the firearm does not contain a loaded shell. If the firearm is a revolver, then none of the chambers in the cylinder may contain a loaded shell. Handguns with a removable magazine or clip must have the magazine or clip removed from the firearm if the magazine or clip contains any loaded shells.

13.0203 Forfeiture of Dangerous Weapon or Firearm by Person Arrested and Convicted of Crime

Any firearm or dangerous weapon used or possessed while in the commission of a felony or a misdemeanor involving violence or intimidation must be seized and, upon conviction and by motion, forfeited to the jurisdiction in which the arrest was made or the jurisdiction in which the charge arose. Except as provided in chapter 29-01 for stolen property, the forfeited firearm or dangerous weapon may be, pursuant to court order, sold at public auction, sold or traded to other law enforcement agencies or authorized firearm dealers, retained for use, or destroyed.

13.0204 Possession of a Firearm or Dangerous Weapon at a Public Gathering -Penalty - Application

1. An individual who possesses a firearm or dangerous weapon at a public gathering is guilty of a class B misdemeanor. For the purpose of this section, "public gathering" includes athletic or sporting events, schools or school functions, churches or church functions, political rallies or functions, musical concerts, and individuals in publicly owned parks where hunting is not allowed by proclamation and publicly owned or operated buildings.

2. This section does not apply to:

    a. A law enforcement officer;

b. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty;

c. A competitor participating in an organized sport shooting event;

d. A gun or antique show;

e. A participant using a blank cartridge firearm at a sporting or theatrical event;

f. A firearm or dangerous weapon carried in a temporary residence or motor vehicle;

g. A student and an instructor at a hunter safety class;

h. Private security personnel while on duty;

i. A state or federal park;

j. An instructor, a test administrator, an official, or a participant in educational, training, cultural, or competitive events involving the authorized use of a dangerous weapon if the event occurs with permission of the person or entity with authority over the function or premises in question;

k. An individual possessing a valid class 1 concealed weapons license from this state or who has reciprocity under section 62.1-04-03.1 authorizing the individual to carry a dangerous weapon concealed if the individual is in a church building or other place of worship and has the approval to carry in the church building or other place of worship by a primary religious leader of the church or other place of worship or the governing body of the church or other place of worship. If a church or other place of worship authorizes an individual to carry a concealed weapon, local law enforcement must be informed of the name of the authorized individual; and

l. A municipal court judge, a district court judge, a staff member of the office of attorney general, and a retired North Dakota law enforcement officer, if the individual maintains the same level of firearms proficiency as is required by the peace officer standards and training board for law enforcement officers. A local law enforcement agency shall issue a certificate of compliance under this section to an individual who is proficient.

3. This section does not prevent any political subdivision from enacting an ordinance that is less restrictive than this section relating to the possession of firearms or dangerous weapons at a public gathering. An enacted ordinance supersedes this section within the jurisdiction of the political subdivision.

13.0205 Discharge of Firearm within City - Penalty – Application

A person who discharges a firearm within a city is guilty of a class B misdemeanor. This section does not apply to the lawful discharge of firearms by law enforcement officers, by citizens in defense of person or property, or by participants in lawful activities in which discharge of firearms is a recognized part of the activity, including shooting galleries and ranges.

13.0206 Use of Firearm by Certain Minors Prohibited – Penalty

Any parent, guardian, or other person having charge or custody of any minor under fifteen (15) years of age who permits that minor to carry or use in public any firearm of any description loaded with powder and projectile, except when the minor is under the direct supervision of the parent, guardian, or other person authorized by the parent or guardian, is guilty of a class B misdemeanor.

13.0207 Carrying Loaded Firearm in Vehicle - Penalty – Exceptions

An individual may not keep or carry a loaded firearm in or on any motor vehicle in this state. An individual violating this section is guilty of a class B misdemeanor. This prohibition does not apply to:

1. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations while possessing the firearm issued to the member by the organization and while on official duty.

2. A law enforcement officer, except while the officer is engaged in hunting or trapping activities with a rifle or shotgun.

3. An individual possessing a valid North Dakota concealed weapons license or a valid license issued by another state authorizing the individual to carry a firearm or dangerous weapon concealed if that state permits a holder of a valid North Dakota concealed weapons license to carry a firearm or dangerous weapon concealed in that state without obtaining a similar license from that state, except while that individual is in the field engaged in hunting or trapping activities.

4. An individual in the field engaged in lawful hunting or trapping of nongame species or fur-bearing animals.

5. A security guard or private investigator properly licensed to carry firearms.

6. An individual possessing a valid special permit issued pursuant to section 20.1-02-05.

13.0208 Harassment

1. A person is guilty of an offense if, with intent to frighten or harass another, the person:

   a. Communicates in writing or by electronic communication a threat to inflict injury on any person, to any person's reputation, or to any property;

   b. Makes a telephone call anonymously or in offensively coarse language;

   c. Makes repeated telephone calls or other electronic communication, whether or not a conversation ensues, with no purpose of legitimate communication; or

   d. Communicates a falsehood in writing or by electronic communication and causes mental anguish.

2. Any offense defined herein and committed by use of electronic communication may be deemed to have been committed at either the place at which the electronic communication was made or at the place where the electronic communication was received.

3. A person is guilty of an offense if the person initiates communication with a 911 emergency line, public safety answering point, or an emergency responder communication system with the intent to annoy or harass another person or a public safety agency or who makes a false report to a public safety agency.

   a. Intent to annoy or harass is established by proof of one or more calls with no legitimate emergency purpose.

   b. Upon conviction of a violation of this subsection, a person is also liable for all costs incurred by any unnecessary emergency response.

4. Any offense defined herein is deemed communicated in writing if it is transmitted electronically, by electronic mail, facsimile, or other similar means. Electronic communication means transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic, or photo-optical system. (Source: North Dakota Century Code section 12.1-17-07)

ARTICLE 3 – Offense Against Property

13.0301 Criminal Mischief – Penalty

A person is guilty of an offense if that person:

1. Willfully tampers with tangible property of another so as to endanger person or property; or

2. 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. The penalty for the offense of criminal mischief may not exceed a fine of one thousand dollars ($1,000.00), 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:

1. Tampering with or damaging the tangible property of another;

2. Incapacitating an operator of such service; or

3. 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

1. a. An individual is guilty of an offense if, knowing that that individual is not licensed or privileged to do so, the individual enters or remains in any place as to which notice against trespass is given by actual communication to the actor by the individual in charge of the premises or other authorized individual or by posting in a manner reasonably likely to come

to the attention of intruders. The name of the person posting the premises must appear on each sign in legible characters.

b. Even if the conduct of the owner, tenant, or individual authorized by the owner varies from the provisions of subdivision a, an individual may be found guilty of violating subdivision a if the owner, tenant, or individual authorized by the owner substantially complied with subdivision a and notice against trespass is clear from the circumstances.

2. a. An individual, knowing the individual is not licensed or privileged to do so, may not enter or remain in a place as to which notice against trespass is given by posting in a manner reasonably likely to come to the attention of intruders. A violation of this subdivision is a noncriminal offense.

b. A peace officer shall cite an individual who violates subdivision a with a fine of two hundred fifty dollars ($250.00) for each violation.

c. The peace officer citing the individual shall:

i. Take the name and address of the individual; and

ii. Notify the individual of the right to request a hearing if posting bond by mail.

d. The peace officer may not take the individual into custody or require the individual to proceed with the peace officer to any other location for the purpose of posting bond. The officer shall provide the individual with an envelope for use in mailing the bond.

e. An individual cited may appear before the designated official and pay the statutory fine for the violation at or before the time scheduled for hearing.

f. If the individual has posted bond, the individual may forfeit bond by not appearing at the designated time.

g. If the individual posts bond by mail, the bond must be submitted within fourteen days of the date of the citation and the individual cited shall indicate on the envelope or citation whether a hearing is requested. If the individual does not request a hearing within fourteen days of the date of the citation, the bond is deemed forfeited and the individual is deemed to have admitted to the violation and to have waived the right to a hearing on the issue of commission of the violation. If the individual requests a hearing, the court for the county in which the citation is issued shall issue a summons to the individual requesting the hearing notifying the individual of the date of the hearing before the designated official.

h. Upon appearing at the hearing scheduled in the citation or otherwise scheduled at the individual's request, the individual may make a statement in explanation of the individual's action. The official may at that time waive or suspend the statutory fine or bond.

i. A citing peace officer may not receive the statutory fine or bond.

j. The bond required to secure appearance before the judge must be identical to the statutory fine established in subdivision b.

3. An individual is guilty of an offense if that individual remains upon the property of another after being requested to leave the property by a duly authorized individual. (Source: North Dakota Century Code section 12.1-22-03)

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:

1. 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;

2. 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

3. 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:

1. 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

2. 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:

1. Retains or disposes of property of another when that person knows it has been lost or mislaid; or

2. 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 13.00306 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/she was stealing, or which the actor could reasonably have anticipated to have been the property or services involved, does not exceed two hundred fifty dollars ($250.00) and if:

1. The theft was not committed by threat;

2. The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft;

3. 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;

4. The property stolen is not a firearm, ammunition, explosive or destructive device, or an automobile, aircraft or other motor-propelled vehicle;

5. 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;

6. 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;

7. 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;

8. The property stolen does not consist of livestock taken from the premises of the owner;

9. 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;

10. 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.

11. The property stolen is not a prescription drugs as defined in section 43-15.3-01 of the North Dakota Century Code, except when the quantity stolen is five or fewer capsules, pills or tablets. (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, franchise 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 dollars

($1,000.00), 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 reasonably believed that the actor had a claim to the property or services involved which the actor 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.

13.0315 Throwing objects

It shall be unlawful for any person in the city to throw and stone, snowball, or any other object or projectile upon or at any vehicle, building, tree, or other public or private property, or upon or at any person in any public or private way or place or enclosed or unenclosed ground. Any person violating this section shall be assessed a fee of $50.00

ARTICLE 4 – Offenses Against Public Order, Health, Safety and Sensibilities

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, the person 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)

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, knowingly exposes that individual's penis, vulva, or anus, 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 the contact;

   g. Creates a hazardous, physically offensive, or seriously alarming condition by any act that serves no legitimate purpose;

   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; or

   i. Uses a fixed optical device that enhances or records a visual occurrence to view through any window of another person's property; or uses a surveillance camera to capture an image from the dwelling or accessory structure of another person; however, an individual using a surveillance camera has seven days from notice by a law enforcement officer to direct or shield the camera so as to not capture an image from another person's dwelling or accessory structure before there is an offense.

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))

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 devise, 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.

13.0406 Prostitution

1. An adult is guilty of the offense of prostitution if that adult:

   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)

13.0406.1 Hiring an Individual to Engage in Sexual Activity

An individual who hires or offers or agrees to hire another individual with the intention of engaging in sexual activity is guilty of an offense. (Source: North Dakota Century Code section 12.1-29-06)

13.0406.2 Offender Education Program

A sentence for an offense under Section 13.406.1 may include an order for the offender to participate in an offender education program on the negative consequences of the commercial sex industry, including health and legal consequences and the impact on communities, survivors, spouses, and children. The court may order the offender to pay the cost of the offender education program. (Source: North Dakota Century Code section 12.1-29-06)

13.0407 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 eighteen 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.

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

    a. The individual is accompanied by a parent or guardian who is twenty-one (21) years of age or older. For purposes of this section, “guardian” means an individual who has the legal responsibility for the health and well-being of the individual under twenty-one (21) years of age;

    b. The individual is on the premises to consume a meal or in an emergency situation;

c. The premise serves at a tabletop, food that is prepared in a kitchen with at least an indoor grill;

d. The individual is not on the licensed premises after ten p.m.; and

e. The owner of the licensed premises receives permission of the local licensing authority for individuals to be on the premises as allowed under this section and the licensed premises is located in a city with a population of one thousand five hundred (1,500) or fewer people.

4. For purposes of this section, an individual is not twenty-one (21) years of age until 8:00 a.m. on that individual's twenty-first (21st) birthday. (Source: North Dakota Century Code sections 5-01-08 and 5-02-06)

13.0408 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)

13.0409 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)

13.0410 Public Intoxication – Assistance – Medical Care

A peace officer may take any apparently intoxicated individual to the individual's home, to a local hospital, to a detoxification center, or, whenever that individual constitutes a danger to that individual or others, to a jail. A tier 1b mental health professional, as defined under section 25-01-01 of the North Dakota Century Code, of a local hospital may hold that individual for treatment up to seventy-two hours. That intoxicated individual may not be held in jail because of intoxication more than twenty-four hours. An intoxicated individual may not be placed in a jail unless a jailer is constantly monitoring the individual and medical services are provided if the need is indicated. Upon placing that individual in jail, or if the individual is admitted to a hospital or detoxification center, upon admission, the peace officer shall make a reasonable effort to notify the intoxicated individual's family as soon as possible. Any additional costs incurred by the city, county, ambulance service, or medical service provider on account of an intoxicated individual are recoverable from that individual. (Source: North Dakota Century Code section 5-01-05.1)

13.0411 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)

13.0412 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)

13.0413 <u>Curfew, General Regulations – Penalty</u>

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 juvenile herein defined including a bona fide employer of said juvenile.

   c. "Curfew hour" means the time of night, which is designated as 9:00 p.m., except Friday and Saturday nights, which is 11:00 p.m.

   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 a.m. 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 a.m. of the following day unless accompanied by a parent as herein defined.

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 five hundred dollars ($500.00).

13.0414 <u>Smoking in Public</u>

1. Smoking in Public Indoor Workplaces Prohibited.

a. The provisions of Sections 23-12-09 through 23-12-11 of the North Dakota Century Code as now enacted, are hereby adopted, except as provided in Section b, and shall govern the regulation of smoking in public places and places of employment as if set out in this Chapter.

b. The exemptions from the prohibition of smoking in public places set forth in Section 23-12-10 (2) f, g, and h, as set out below, are deleted, and smoking is also prohibited in those places within the city limits:

    f. Bars.

    g. Any place of public access rented or leased for private functions from which the general public and children are excluded and arrangements for the function are under the control of the function sponsor.

    h. Separately enclosed areas in truck stops which are accessible only to adults.

c. Any business in which smoking is not permitted may construct a smoking shelter for customers or employees to smoke outside the enclosed premises for which smoking is prohibited. Provided, if the smoking shelter has a roof, at least three walls of the smoking shelter must provide an opening of at least twenty-five percent (25%) of the surface area of each such wall. No other wall, fence, roof overhang or other obstruction of any kind may be located within five (5) feet of the openings if they have the effect of blocking the free flow of air through the required openings. The percentage of the opening is calculated based on the surface area below the ceiling. Combination glass/screen windows or doors that may be "open" or "closed" will not be counted toward the open space of a shelter. If one wall of the shelter is also a wall for the business, that wall must be a solid wall with no opening other than a solid door, which door must be closed at all times except for people entering or exiting the shelter. In addition, if the shelter has a roof and is attached to the business, a power ventilator must be installed in the shelter at its highest point and used whenever smoking is occurring in the shelter. A proper building permit must be obtained for each shelter. If the smoking shelter area is added to the licensed liquor premises, customers may bring alcoholic beverages and food into the shelter, but no service of alcoholic beverages or food will be allowed in the smoking shelter. At least one entrance of a licensed liquor premises must not require a customer to go through a smoking shelter to enter the licensed premises.

d. Smoking is permitted on outdoor patios, terraces, decks, courtyards, sidewalks, or porches of a bar, provided it is not on public property or right of way, and smoke does not enter any area where smoking is prohibited. The outdoor patio, terrace, deck, courtyard, sidewalk, or porch must comply with all building codes. Alcoholic beverages or food are allowed to be consumed, but not served, on the outdoor patio, terraces, deck, courtyard, sidewalk, or porch, provided it is included as part of the licensed premises of the bar.

2. <u>Penalty</u>

a. An individual who smokes in an area in which smoking is prohibited by this Chapter is guilty of an infraction and assessed a penalty of fifty dollars ($50.00) for the first violation, each additional violation within one (1) year will have a penalty increasing in fifty dollars ($50.00) increments for each additional offense up to a maximum of five hundred dollars ($500.00).

b. An owner or other person with the general supervisory responsibility over a public place or place of employment who willfully fails to comply with this chapter is guilty of an infraction, subject to a fine not to exceed one hundred dollars ($100.00) for the first violation, to a fine not to exceed two hundred dollars ($200.00) for the second violation within one (1) year, and a fine not to exceed five hundred dollars ($500.00) for each additional violation within one (1) year of a preceding violation.

13.0415 Marijuana

It is unlawful for any person to possess one ounce (1 oz.) (twenty eight and thirty-five thousandths (28.35) grams) of marijuana. or less as defined by North Dakota Century Code within the city limits of Cavalier, North Dakota.

13.0415.1 Unlawful Possession of Marijuana Paraphernalia

It is unlawful to possess marijuana paraphernalia as defined by North Dakota Century Code 19-03.1 within the city limits of Grafton, North Dakota

13.0415.2 Medical Marijuana Defense

It shall be a defense to a prosecution under this section that a person is lawfully allowed to use marijuana for medical purposes as permitted and licensed by the State of North Dakota, and or medically appropriate paraphernalia. The person in possession of the above items shall provide to the officer, upon request, satisfactory evidence, including written or electronic proof of a permit or license as set out above, to demonstrate the legal right to possess the items included in this section. If unable to comply with the request, that person may be charged with a violation of this section. If that person produces satisfactory evidence, within fourteen (14) days, including written or electronic proof of an appropriate permit from the State of North Dakota, in effect at the time of the alleged violation of this section to the office of the court under which the matter will be heard, that person may not be found in violation of these subsections.

13.0415.3 Marijuana - Penalty Provisions.

Any person, firm, or corporation, violating any provisions of this ordinance by possessing less than one-half (½) ounce {14.175 grams} of marijuana shall be deemed guilty of an infraction a misdemeanor, and upon conviction thereof, shall be subject to a maximum fine of one thousand dollars ($1,000.00). Any person firm, or corporation, violating this ordinance by possessing at least one-half (½) ounce {14.175 grams}, but not more than five hundred (500) grams of marijuana is guilty of a class B misdemeanor, and upon conviction thereof, shall be subject to a fine, or imprisonment, or both, in accordance with the general penalty provision of this Code (§1-14). Each day such violation is committed, or permitted to continue, shall constitute a separate offense, and shall be punished as such hereunder.

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 or Class B Misdemeanor, for which a maximum penalty of thirty (30) days imprisonment, a fine of one thousand dollars ($1,500.00), or both, may be imposed.

2. Infraction, for which a maximum fine of five hundred dollars ($500.00) may be imposed. Any person convicted of an infraction who has, within one (1) year prior to commission of the infraction of which he/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 as a result of the criminal charge for which the sentence was imposed or as a result of the conduct on which such charge was based. "Time spent in custody" includes 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. The total amount of credit the defendant is entitled to for time spent in custody and any credit for sentence reduction under sections 12-44.1-32 or 12-54.1-01 of the North Dakota Century Code the defendant is entitled to must be stated in the criminal judgment.

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 12.1-32-03.1)

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 indigency. 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 if 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 defendants 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. When the restitution ordered by the court under subsection 1 is the result of a finding that the defendant issued a check or draft without sufficient funds or without an account, the court shall impose as costs the greater of the sum of ten dollars or an amount equal to twenty-five percent of the amount of restitution ordered. The costs imposed under this subsection, however, may not exceed one thousand dollars. The state-employed clerks of district court shall remit the funds collected as costs under this subsection to the state treasurer for deposit in the restitution collection assistance fund. The funds deposited into the restitution collection assistance fund are appropriated to the judicial branch on a continuing basis for the purpose of defraying expenses incident to the collection of restitution, including operating expenses and the compensation of additional necessary personnel. The state's attorneys and county-employed clerks of district court shall remit the funds collected as costs under this subsection to the county treasurer to be deposited in the county general fund.

3. 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.

4. a. Under section 12.1-32-07 of the North Dakota Century Code, the court may order that the defendant reimburse indigent defense costs and expenses as a condition of probation. Unless it finds that there is no likelihood that the defendant is or will be able to pay attorney's fees and expenses, the court, in its judgment of conviction, and in any order or amended judgment following a revocation or other post judgment proceeding, shall notify the defendant, the defendant's probation officer, and the prosecuting attorney of the presumed amount of costs and expenses to be reimbursed, as determined by the commission on legal counsel for indigents, and of the right to a hearing on the reimbursement amount. The

reimbursement amount must include an application fee imposed under section 29-07-01.1 of the North Dakota Century Code if the fee has not been paid before disposition of the case and the court has not waived payment of the fee. If the defendant or prosecutor requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the actual amount of attorney's fees and expenses must be shown. In determining the amount and method of reimbursement, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.

b. A defendant who is required to reimburse indigent defense costs and expenses as a condition of probation and who is not willfully in default in that reimbursement may at any time petition the court that imposed the condition to waive reimbursement of all or any portion of the costs and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.

c. If at any time the court finds that the defendant is able to reimburse costs and expenses and has willfully failed to do so, the court may continue, modify, or enlarge the conditions of probation or revoke probation as provided in subsection 6 or 7, as applicable, of section 12.1-32-07 of the North Dakota Century Code.

5. If the court finds that the defendant is unable to pay a fine, supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations, the court may order the defendant to perform reasonable assigned work in lieu of all or part of a fine, a supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations. The defendant may not perform reasonable assigned work in lieu of restitution or reparations unless the person entitled to restitution or reparations has consented in writing or on the record.

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

13.0601 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 dollars ($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
14.0105 Polar Franchise

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 one million dollars ($1,000,000.00) 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)

14.0105 Polar Franchise

The Polar franchise granted pursuant to the authority of the previous ordinances is hereby in all things ratified.

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 Cavalier
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

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)

CHAPTER SEVENTEEN

PLUMBING CODE

ARTICLE 1 – Adoption of State Plumbing Code

17.0101 Adoption

CHAPTER SEVENTEEN

PLUMBING CODE

ARTICLE 1 - ADOPTION OF STATE PLUMBING CODE

17.0101 Adoption

To promote and protect the public health there is hereby adopted the State Plumbing Code, which has been adopted by the State Plumbing Board and approved by the State Health Department, consisting of rules and regulations governing plumbing work, and the whole thereof, of which not less than 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.

CHAPTER EIGHTEEN

PERSONNEL POLICIES

ARTICLE 1 – Personnel Policies and Procedures

18.0101 Adoption of Policies

CHAPTER EIGHTEEN

PERSONNEL POLICIES

ARTICLE 1 – Personnel Policies and Procedures

18.0101 Adoption of Policies

The personnel policies and procedures of the City shall be as set out in the City Policy Manual and any future amendments to that manual, a copy of which is on file with the city auditor. Those policies are hereby adopted and made a part of this chapter by reference.

CHAPTER NINTEEN

TAXATION

ARTICLE 1 – Sales Tax

19.0101 Definitions
19.0102 Sales Tax Imposed
19.0103 Use Tax Imposed
19.0104 Exemptions
19.0105 Maximum Tax Imposed
19.0106 Contract with State Tax Commissioner
19.0107 Collection and Administration
19.0108 Corporate Officer Liability
19.0109 Dedication of Tax Proceeds
19.0110 Capital Improvement – Economic Development Budget
19.0111 Cavalier Economic Development Advisory Committee (CEDAC)
19.0112 Duties
19.0113 Termination
19.0114 Option for Continuation
19.0115 Effective Date

CHAPTER NINTEEN

TAXATION

ARTICLE 1 – Sales Tax

19.0101 Definitions

All terms as defined in North Dakota Century Code 57-39.2 and 57-40.2, including any future amendments, are adoptedby reference. All references to the North Dakota Century Code include amendments adopted by the Legislature of the State of North Dakota.
(Ord. passed 7-17-94)

19.0102 Sales Tax Imposed

1. Except as otherwise provided in this chapter, a tax of one percent (1%), and a supplemental tax of five-tenths percent (.5%), is imposed upon the gross receipts of retailers from all retail sales within the corporate limits of the city. Further, there is imposed an additional supplemental tax of five-tenths percent (.5%) Such sales tax shall parallel the State of North Dakota sales and use tax law. All of the exemptions applicable for state sales and use tax apply to the Cavalier sales and use tax including exemptions for tax exempt entities (schools, counties, state agencies, etc.).

2. Such sales tax shall be applied to the following:

   a. Tangible personal property, consisting of goods, wares or merchandise.

   b. Communications services.

19.0103 Use Tax Imposed

Except as otherwise provided in this chapter, a use tax of 1% and a supplemental use tax of .5% plus an additional .5% use tax is imposed on the storage, use or consumption in the City of Cavalier on:

1. The purchase price of tangible personal property purchased at retail for storage, use or consumption within the city.

2. The fair market value of tangible personal property which was not originally purchased for storage, use or consumption in the city, at the time which it is brought into this city.

3. Alcoholic beverages and tobacco products which are stored, used or consumed in this city,as provided in North Dakota Century Code 40-05.1-06.

4. The purchase price of tangible personal property used by a contractor or subcontractor to fulfill a contract as set forth in North Dakota Century Code 57-40.2-03.3. This tax applies only to bids awarded on or after October 1, 1994.

(Ord. passed 7-17-94, amended 9-15-98)

19.0104 Exemptions

All sales, storage, use or consumption of tangible personal property which are exempt from imposition and consumption of the sales or use tax of the state of North Dakota are specifically exempt from the provisions of this chapter. In addition to the exemptions provided by state law, the Cavalier tax ordinance provides exemptions for sales of natural gas, gross receipts from the sales of farm machinery and farm machinery repair parts.

(Ord. passed 7-17-94)

19.0105 Maximum Tax Imposed.

No single transaction involving one or more items is subject to a tax in excess of thirty-seven and 50/100 Dollars ($37.50). (Ord. passed 7-17-94, amended 8-11-98)

19.0106 Contract with State Tax Commissioner

The City Auditor is hereby authorized to contract with the Tax Commissioner for administration and collection of taxes imposed by this chapter. The City Auditor has all powers granted the Commissioner and in the absence of a valid contract with the Commissioner or failure of the Commissioner to perform the delegated duties, s23shall perform these duties in place of the Commissioner.
(Ord. passed 7-17-94)

19.0107 Collection and Administration.

The Tax Commissioner and City Auditor shall have the powers enumerated in the provisions of North Dakota Century Code chapter 57-39.2 and 57-40.2 relating to the collection and administration of the state sales and use tax, including all administrative rules adopted by the Tax Commissioner. The Tax Commissioner is authorized to establish rate tables integrating the tax imposed by this chapter with other state, county and city taxes.

19.0108 Corporate Officer Liability

Officers of any corporation required to remit taxes imposed by this chapter are personally liable for the failure of the corporation to file required returns or remit required payments. The dissolution of a corporation shall not discharge an officer1s liability for a prior failure of the corporation to make a return or remit the tax due. The tax, penalty and interest due may be assessed and collected pursuant to the provisions adopted by this chapter.
(Ord. passed 7-17-94)

19.0109 Dedication of Tax Proceeds

All revenues raised and collected under this chapter shall be dedicated to capital improvements, and economic development. However, revenues raised from the supplemental .5 percent tax, referenced as such in sections 34.02 and 34.03 hereof, shall be dedicated to the retirement of refunding improvement bonds sold in conjunction with Street Improvement Project 98-1 until said bonds are fully retired. The proceeds from the additional supplemental .5 percent tax shall be dedicated to the support of the Pembina County Memorial Hospital until it sunsets December 31, 2026 or unless extended by the city council prior to that date.

19.0110 Capital Improvement - Economic Development Budget

The city council shall, from time to time but no less than on an annual basis, determine, by dollar amount or percentage of the whole, that portion of the annual sales tax proceeds, over and above that previously dedicated, to be used for capital improvements and that portion to be used for economic development.

1. That portion of undedicated sales tax proceeds which the city council determines shall be expended for capital improvements shall be paid into the general fund for incorporation into current andfuture budgets.

2. That portion of undedicated sales tax proceeds which the city council determines shall be expended for economic development shall be paid into a fund known as the Cavalier

Growth Fund to be administered by the Cavalier Economic De'4Iopment Advisory Committee with the approval of the citycouncil.
(Ord. passed 12-05-98)

19.0111 Cavalier Economic Development Advisory Committee (CEDAC)

There is hereby established, a committee to be known as the Cavalier Economic Development Advisory Committee whose purpose it shall be to oversee the application for and disbursement of funds from the Cavalier Growth Fund. Said Committee shall consist of the City Administrator, City Auditor, and Cavalier Area Chamber of Commerce Executive Director, who shall be permanent members; and six members appointed by the city council to serve three (3) year rotating terms with two (2) members appointed at the regular meeting of the City Council in January of each year. The initial Committee shall consist of two (2) members having four (4) year terms; two (2) members having three (3) year terms; and two (2) members having two (2) year terms in orderto establish the rotation.
(Ord. passed 12-05-98)

19.0112 Duties

The Cavalier Economic Development Advisory Committee shall have the following duties:

1. Promulgate such standards and application forms as it deems necessary to adequately advise the city council on the merits of expending Growth Fund balances for particular economic development requests.

2. Develop criteria for assessing applications for funding.

3. Solicit and process applications for economic development funding.

4. Make recommendation to the city council on the merits of each application for funding.

5. Submit names to the city council, as necessary, for membership on the Committee.

6. Report to the council, periodically, regarding funding of on-going projects, pending applications and such other activities as the council may request.

7. Meet at least monthly to review applications, discuss on-going projects and for any/all other purposes relevant to its mandate.

(Ord. passed 12-05-98)

19.0113 Termination

The supplemental .5% tax imposed herein shall terminate midnight, December 31, 2013.
(Ord. passed 7-17-94, amended 8-11-98, amended 8-02-99)

19.0114 Option for Continuation
(Ord. passed 7-17-94, repealed 08/02/99)

19.0115 Effective Date

This chapter shall take effect and be in force from and after final passage, and due publication according to law. The tax will be implemented on October 1, 1994, and the supplemental .5% tax will beimplemented on October 1, 1998.
(Ord. passed 7-17-94, amended 8-11-98)

APPENDIX

COMMENTS

Section

1.0104 In most cases, the fine or penalty for the violation of City ordinances, regulations, or resolutions shall not exceed one thousand dollars, and the imprisonment shall not exceed thirty days for one offense. For violation of ordinances regulating the operation or equipment of motor vehicles or regulating traffic, see North Dakota Century Code sections 39-06.1-05, 39-06.1-06, and 40-05-06.

In 1972, the United States Supreme Court expanded the Sixth Amendment right to counsel of Gideon V. Wainwright to all cases in which the defendant could be imprisoned if found guilty of the charge against. See, Argersinger v. Hamlin, 407 US 25. As a result of this decision, municipalities are now required to provide free legal counsel to all indigent violators of municipal ordinances, if the penalty that can be imposed for such violation is imprisonment.

1.0201 The public is entitled to have the City governing body meet at the times specified by statute or by legal ordinance so as to prevent the City governing body from doing business in any secret meetings. (See North Dakota Century Code sections 40-06-02 and 44-04-19 to 44-04-21)

2.0101 Rules of Construction

In the construction of this code and of all ordinances, it is the intention of the drafters that the following rules shall be observed unless such construction would be inconsistent with the manifest intent of the City governing body:

1. General Rule. All words and phrases shall be construed and understood according to the common and approved usage of the language, except technical words and phrases and such others as may have acquired a peculiar and appropriate meaning.

2. Gender – Singular and Plural. Every word in any code provision or ordinance using the masculine gender includes females as well as males; and every word using the singular number only including several persons or things as well as to one person or thing; and every word importing the plural includes the singular, except when a contrary intention plainly appears.

3. Tenses. The use of any verb in the present tense shall include the future when applicable.

4. Joint Authority. All words purporting to give a joint authority to three or more City officers or other persons shall be construed as giving such authority to a majority of such officers or other persons unless it shall be otherwise expressly declared in the law giving the authority.

5. Delegation of Authority. Whenever a provision requires the head of a department or other officer of the City to do some act or perform some duty, it shall be construed to authorize subordinates to do the required act or to perform the required duty unless the terms of the provision designate otherwise.

6. Computation of Time. The time which an act is to be done as provided in any code provision or ordinance or in any order issued pursuant to any ordinance, when expressed in days, shall be computed by excluding the first day and including the last, except that if

the first day be a Sunday or a holiday it shall be excluded; and when any such time is expressed in hours the whole of Sunday, from midnight, shall be excluded.

7. Overlapping Provisions. Where any provision of this Code imposes greater restrictions upon the subject matter than any general provisions imposed by this Code, the provision imposing the greater restriction or regulation shall be applicable.

For rules of interpretation as to ordinance construction, refer to North Dakota Century Code chapter 1-02.

3.0108 The requirements for sidewalks (length, width and distance) are provided for example only. Local requirements should be utilized when adopting or drafting this ordinance.

4.0401 Incorporation by reference of a national fire code is a valid exercise of municipal authority, as long as such incorporation is prospective. For more information about national fire codes, contact the state fire marshal.

8.0101 Business license fees established by municipalities are imposed as an incident of the municipal police power to protect the health, safety, morals and general welfare of the populace. (See North Dakota Century Code chapter 40-05) Such fees are not in and of themselves revenue-raising devices, but rather are regulatory devices to allow for the control of businesses and occupations which have potentially harmful or detrimental effects on the general public.

8.0103 and 8.0610 The granting or denying of a business license is a discretionary rather than a ministerial act and as such cannot be delegated by the City governing body unless criteria are laid out in such a way that it becomes a ministerial act and does not require anyone to make any decisions requiring independent judgment.

9.0503 An ordinance altering state speed limits within a city does not become effective until such speed limits are properly posted as required by North Dakota Century Code section 39-09-03.

CERTIFICATE

STATE OF NORTH DAKOTA)
) ss
COUNTY OF PEMBINA)

The undersigned city auditor of the City of Cavalier, hereby certifies to be the City Auditor of the City of Cavalier, and as such is the custodian of the Ordinance Book of the City;

It is further certified that the foregoing is a true and accurate copy of the revised ordinances of 2022, duly enacted by the governing body of the City of Cavalier, the first reading being had at the meeting on _____ and the second reading and final passage had at the meeting on _____ and passed on a roll call vote as shown in the records kept of said meeting.

Dated this _____ day of _____, 2022.

_____
Kelli Truver, City Auditor
City of Cavalier, North Dakota.