Ordinances

City of

Mott

North Dakota

Ordinances Adopted:

September 8, 2014

ENACTING ORDINANCE

ORDINANCE NO. 1

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

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

Section 1. 2014 Revised Ordinances of Mott. This ordinance and the ordinances hereby adopted shall be known and cited as the 2014 Revised Ordinances of Mott.

Section 2. ENACTMENT. The 2014 Revised Ordinances of Mott, consisting of Chapters I to XXII, 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 Mott.

Section 3. REPEAL. All ordinances of the City adopted prior to the date of this enacting ordinance are hereby repealed except the following ordinances, which shall continue in full force and effect regardless of the fact that they are herein omitted: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 2014 Revised Ordinances of Mott 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.

9. The 2013 Zoning Ordinance for the City of Mott, North Dakota, together with all subsequent amendments.

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 2014 Revised Ordinances of Mott 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 2014 Revised Ordinances of Mott.

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 2014 Revised Ordinances of Mott, 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 $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.

_____
MAYOR

ATTEST:

_____
CITY AUDITOR

CITY SEAL

First Reading: August 11, 2014

Second Reading and Final Passage: September 8, 2014

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CHAPTER ONE

GOVERNMENT ORGANIZATION

ARTICLE 1 - Jurisdiction

1.0101 Over Persons and Property

The jurisdiction of the City of Mott, 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 and quarantine ordinances 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 Precincts

There shall be 3 precincts within the City to be known and designated as First Ward, Second Ward and Third Ward. The ward boundaries shall be as follows:

(1) The boundaries of the First Ward and the territory included therein shall be all that portion of the City of Mott, commonly known as East Mott, situated North and East of the Cannonball River, North of Third Street and lying West of the following line: starting at the north end of Iowa Avenue and running South along the centerline of Iowa Avenue to its intersection with the centerline of Fourth Street, then running East along the centerline of Fourth Street to its intersection with centerline of Illinois Avenue, then running South along the centerline of Illinois Avenue to its intersection with the centerline of Third Street.

(2) The boundaries of the Second Ward and the territory included therein shall first include all of that portion lying west and south of the Cannonball River, including that portion commonly known as West Mott (including the areas annexed). Second Ward shall also include the following: all of Swindler's First Addition and all of Annexations A, B and C. Second Ward shall finally include all of that area lying south of the following line: Beginning at a point on the Cannonball River in line with the centerline of Third Street, then East along the centerline of Third Street to the centerline of ND State Highway No. 8, then north along the centerline of said highway to its intersection with the centerline with Fourth Street, then east along the centerline of Fourth Street to its intersection with the centerline of Millionaire Avenue; then south along the centerline of Millionaire Avenue to the intersection with the centerline of ND Highway 21.

(3) The boundaries of the Third Ward and territory within said City to be included therein shall be as follows: All that portion of the City lying East of the east boundary line of Ward One and north of the north boundary of Ward Two, including those portions known as Meadow Lane First and Second additions.

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 NDCC Section 12.1-32-02 for the violation of a City ordinance, nor shall this section limit the use of deferred or suspended sentences pursuant to NDCC Chapter 12.1-32.

ARTICLE 2 - Governing Body - City Council

1.0201 Regular Meetings

The City Council shall meet regularly at the City Hall on the second Monday of each month at the hour of 7:00 PM unless some other time and place shall be specifically fixed by the council by resolution. The council shall meet in addition thereto, as often as required by Section 40-08-10 of the North Dakota Century Code.

1.0202 Special Meetings

Special meetings may be called at any time by the mayor or any two (2) members of the governing body to consider matters mentioned in the call of such meetings. Notice of any special meeting shall be given to each member of the governing body at least three hours before the time of the meeting.

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 shall be and 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 shall be and hereby are 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 six council members. The mayor and six (6) council members shall be elected as provided by law. (Source: North Dakota Century Code Sections 40-08-01,03)

1.0302 Term of Office of Council Members

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

1.0303 Mayor - Qualifications - Term

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

1.0304 When President and Vice President of a Council are Elected

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

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

If a vacancy occurs in the office of council member by death, resignation or otherwise, City Council may call a special City Election to fill such vacancy for the unexpired term or may, after fifteen days of the date of such vacancy appoint a person to fill such vacancy until the next City Election, at which election the unexpired term shall be filled. Upon petition of five percent of the electors, as determined by the total number of votes cast in the last general election, the council shall call a special election to fill a vacancy occurring more than six months before the next City Election, provided such petition has been submitted with in fifteen (15) days and before 4:00 p.m. of the fifteenth (15th) day of the date of such vacancy or of the vacancy being filled by appointment. If the petition is mailed, it shall be in possession of the council or its representative before 4:00 p.m. on the fifteenth (15th) day after the vacancy occurs or after the vacancy was filled by appointment. (Source: North Dakota Century Code Section 40-08-08)

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

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

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

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

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

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

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

1.0309 Mayor may Suppress Disorder and Keep Peace

The mayor may exercise within the City limits the powers conferred upon the sheriff to suppress disorder and

keep the peace. (Source: North Dakota Century Code Section 40-08-20)

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

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

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

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

1.0312 Ordinance or Resolution Signed or Vetoed by Mayor

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

1.0313 Message to Council

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

1.0314 Mayor May Call on 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 he and the City Council may deem necessary to preserve the peace of the City, and he shall appoint one of the number as chief of police. Such appointment shall be subject to approval of the council. (Source: North Dakota Century Code Section 40-08-27)

1.0316 Mayor May Administer Oath

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

ARTICLE 4 - Elective Officers Other Than Governing Body

1.0401 Municipal Judge

The office of Municipal Judge was abolished by the Ordinance dated October 4, 2004, titled "An Ordinance Transferring All Municipal Ordinance Cases to District Court and Abolishing of the Office of Municipal Judge, which ordinance and its related Court Services Contract with the State of North Dakota District Court, dated December 15, 2004, are hereby ratified and reenacted in their entirety.

ARTICLE 5 - Appointive Offices

1.0501 Appointive Officers in Council Cities - Appointment of More Than One Assessor

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

1. City Auditor;
2. City Assessor;

3. City Attorney;
4. City Engineer;
5. City Building Inspector;
6. 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.

1.0502 Term of Appointive Officers

The term of all appointive officers shall begin on July 1 after the regular election of city council members and shall continue for a term of two years until their successors have been appointed and qualified. Any person appointed to fill a vacancy shall hold his office for the unexpired term unless appointed as an "acting" officer. An acting officer shall serve at the pleasure of the governing body. Before entering upon the duties of their office, appointed officers shall take the oath and give the bond required by law.

1.0503 Appointive Officers - Removal Upon Hearing - Suspension Appointment and Removal of Temporary Officer

The provisions of Section 40-15-07 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Any person appointed to any office of a City operating under the council system of government and any employee of the City may be removed by a majority vote of all the members of the City Council, but no officer or employee shall be removed except for cause and unless charges are preferred against him and he is accorded an opportunity to be heard in his own defense. Within ten days after charges are filed against any such person in the office of the city auditor, the board shall proceed to hear and determine the case upon its merits. The president of the City Council, or the board, by a majority vote of its members, may suspend any officer or employee against whom charges have been preferred until the disposition of the charges. The president may appoint a person to fill any vacancy temporarily until charges against the incumbent of such office have been disposed of. Any person appointed by the president without confirmation may be removed by him when he deems it is for the best interests of the City.

1.0504 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 president or presiding officer or any two (2) members of the City Council. (Source: North Dakota Century Code Section 40-09-11) He shall also keep a full and complete record of all meetings of the City Council and shall keep a book titled as the "Ordinance Book" and shall record therein at length all ordinances of the City. He shall also keep a book titled as the "Special Assessment Book" in which he shall keep all records of special assessments. All such books shall have full and complete indexes of the contents thereof. He shall report to the City Council at the end of every month a list of all warrants, interest coupons, bonds or other evidence of indebtedness which may have been redeemed or paid by him during the month and he shall duly give to the Council a copy of his receipt therefore. He shall further handle all correspondence, permits and license and shall do and perform each, every and all duties and things prescribed for him to do by statutes of this state or by an ordinance, resolution or proper instruction of the City Council. (Source: North Dakota Century Code Section Chapter 40-16)

1.0505 General Duties of City Attorney

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

1.0506 General Duties of Other Appointive Officers

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

ARTICLE 6 - Special Provisions Regarding City Officers

1.0601 Bonds of Municipal Officers and Employees

The following officers and employees of the City shall be bonded in the sums as hereinafter set forth:

president of the City Council
city auditor
city council members
deputy city auditor
municipal judge
city assessor

Said officers or employees shall be bonded from the State Bonding Fund in accordance with the provisions of Section 40-13-02 and Chapter 26.1-21 of the North Dakota Century Code and in such amounts as are set by the laws of the state of North Dakota, the city council or the Commissioner of Insurance.

1.0602 Oaths of Municipal Officers

Every person appointed to any municipal office, before he enters upon the discharge of the duties thereof, shall take and subscribe the oath of office prescribed for civil officers and, except in the case of the auditor, shall file the same with the city auditor within 10 days after notice of 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 NDCC 44-02-01. (Source: North Dakota Century Code Section 40-13-03)

1.0603 Salaries of City Council Members

The salary of the president of the City Council and of the other members of the City Council shall be set by ordinance within the limitations set by NDCC Section 40-09-06.

1.0604 Salaries of City Officials and Appointive Officers

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

1.0605 Meals and Lodging - Amount Allowed

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

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

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

section shall be by receipt.

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

PERFORM DUTIES. Each officer shall:

1. Perform all duties required of his office by law or ordinance and such other duties not in conflict as may be required by the 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.

ARTICLE 7 - Purchasing and Disposition of Property

1.0701 Competitive Bidding Requirements

All purchase of and contracts for supplies and contractual services with a cost in excess of ten thousand dollars ($10,000.00) shall be based on competitive bids.

1.0702 Procedure

All supplies and contractual services except as otherwise provided herein, when the estimated cost thereof shall exceed $10,000.00 shall be purchased from the lowest responsible bidder after due notice inviting proposals. Due notice shall be given by advertising for the sale or purchase of the property or service by giving written notice in the official newspaper of the City for three (3) consecutive weeks and the opening of the bids so received not less than 21 days after the first publication thereof. The lowest responsible bidder shall be the bidder who, in addition to price, has the best ability, capacity and skill to perform the contract or provide the service required promptly or within the specified time without delay or interference. There shall also be considered character, integrity, reputation, judgment, experience and efficiency of the bidder, the quality of performance of previous contracts, sufficiency of financial resources and previous and existing compliance with state laws and City ordinances.

1.0703 Open Market Purchases - Emergency

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

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. Instruments affecting such conveyance, sale, lease or disposal shall be valid only when duly executed by the mayor and attested by the city auditor. Personal property shall be conveyed by a majority vote of all members of the 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 Section 2-02-15, NDCC. Said lease shall further be in compliance with regulations and directives appropriate federal agencies.

2. Conveyance of right of way for any state highway shall be as provided in Section 24-01-46, NDCC.

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, NDCC.

4. Conveyance of property to a municipal parking authority shall be as provided in Section 40-61-05, NDCC.
5. Lease of public buildings or portions thereof shall be as provided in Chapter 48-08, NDCC.

6. Granting of concessions for cafes, restaurants and confectioneries in public buildings or on public grounds shall be as provided in Chapter 48-09, NDCC.

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, NDCC.

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 shall be and 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 shall be and 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 shall be and are hereby incorporated by reference in this ordinance.

Biennial municipal elections shall be held on the second Tuesday in June in each even numbered year at such place or places as the City Council shall designate. The polls shall be opened and closed as provided by state law for the opening and closing of polls at primary, general and special elections. Ten days notice of the time and place of holding each election and offices to be filled thereat shall be given by the city auditor by publication in the official newspaper of the City as provided by Section 40-01-09.

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.

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 16.1-0505. The amounts determined to be due election officials at municipal elections shall be paid from the funds of the municipality holding the election. In the event a special municipal election is held on the same date as a statewide, district wide or countywide election, and if the same election officials perform services

for both elections, the City shall not be required to pay the elections officials, except for any extra officials necessary for such special municipal election.

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

The provisions of Section 40-21-06 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

No reference shall be made to a party ballot or to the party affiliation of a candidate in a petition to be filed or in behalf of a candidate for nomination to a public office in any incorporated City in this state.

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

The provisions of Section 40-21-07 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

A candidate for any public office in the City may be nominated by filing with the city auditor, at least sixty days and before four p.m. on the sixtieth day prior to the holding of the election, a petition signed by not less than ten percent of the number of qualified electors who voted for that office in the last City election. Qualified electors who sign such a petition shall reside within the ward or precinct in and for which such officer is to be elected, if the election is by wards, or within the corporate limits of the City if the officer is elected at large. If a petition is mailed, it shall be in the possession of the city auditor before four p.m. on the sixtieth day prior to the holding of the election. In no case shall more than three hundred signatures be required, and such signatures may be on separate sheets of paper. Each qualified elector who signs a petition shall add to the petition the petitioner's mailing address. If a City election is not held in conjunction with a state or county election, a candidate may be nominated by filing the required petition with the city auditor at least thirty-three days and before four p.m. on the thirty-third day before the holding of the election.

1.0807 Ballots in Municipalities - Makeup

The provision of Section 40-21-08 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The auditor of the City shall place only the names of the persons nominated upon the ballot. The auditor shall arrange the offices upon the ballot in the order in which they are named in the statutes. The auditor shall determine the arrangement of the names of the candidates upon the ballot by conducting a drawing within five days following the last day for the filing of the nomination papers. The city auditor shall set the date, time and location for conducting the drawing and shall give advance notice of the drawing to the candidates involved.

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

The provisions of Section 40-21-11 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

When necessary, the judges of election at a municipal election shall appoint clerks to fill vacancies. The judges and clerks of a municipal election shall take the same oath and have the same powers and authority as judges and clerks of general state elections.

1.0809 Counting Ballots - Returns - Canvass of Returns by Governing Body of Municipality - Agreement with the County

The provisions of Section 40-21-12 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The ballots case in a municipal election shall be counted and the returns of the election prepared by the election board immediately after the closing of the polls. The ballots and the returns of the election shall be returned to the city

auditor under seal within two days and before four p.m. on the second day after the election. Thereafter, the governing body of the municipality shall canvass the returns and declare the result of the election and cause a statement thereof to be entered in its books of minutes.

When a City election is held in conjunction with a state or county election, the City governing body shall enter into an agreement with the governing body of the county concerning the use of a single canvassing board, the sharing of election personnel, the printing of election materials, the publishing of legal notices and the apportioning of election expenses.

1.0810 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 as amended.

1.0811 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.

1.0812 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.

1.0813 Special Elections Conducted in Same Manner as General Elections

The provisions of Section 40-21-16 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Special municipal election to fill vacancies or for any other purpose shall be held and conducted by the inspectors and judges of election of several precincts in the same manner and the returns shall be made in the same form and manner as at regular municipal elections.

1.0814 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 coin flip in the presence of the governing body of the municipality and in such manner as it shall direct.

1.0815 Election At Large Of Council Member For Wards

All Council members in the Mott City Council shall be elected at large. There shall be two (2) council members elected from each ward, and each council member so elected must be a resident of that ward.

ARTICLE 9 - Records Management Policy

1.0901 Adoption of Policy

The management of records in the City shall meet with the provisions of the City Records Management Manual published by the Records Management Division of the North Dakota Information Technology Department, a copy of which is on file with the City auditor. That publication is hereby made a part of this chapter by reference with the exceptions of the sections hereinafter set forth affecting local conditions in the City, which are amended, deleted or added to, for use and application in the City, and the City hereby adopts said manual as so modified.

1.0902 Amendments, Deletions, Additions to City Records Management Manual

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

CHAPTER TWO

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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 Mott shall be "Be it ordained by the City Council of the City of Mott." 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 and in appropriating money. (Source: North Dakota Century Code Section 40-11-02)

2.0103 Yea and Nay Vote on Passage - When Required

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

2.0104 Reconsideration or Rescinding Vote

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

2.0105 Publication of Ordinances

The title and penalty clause of every ordinance imposing any penalty, fine, imprisonment or forfeiture for violation of its provisions after the final adoption of such ordinance, shall be published in one issue of the official paper of the municipality. (Source: North Dakota Century Code Section 40-11-06)

2.0106 Effective Date of Ordinances

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

2.0107 Effect of Repeal

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

2.0108 Enactment and Revision of Ordinances

The provisions of Section 40-11-09 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

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

The provisions of Section 40-11-10 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Any action brought to recover any fine, to enforce any penalty or to punish any violation of an ordinance of any municipality shall be brought in the corporate name of the municipality as plaintiff. A prosecution, recovery or acquittal for the violation of any such ordinance may not constitute a defense to any other prosecution of the same person for any other violation of any such ordinance, notwithstanding that the different claims for relief existed at the time of the previous prosecution and, if united, would not have exceeded the jurisdiction of the court.

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

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

In all actions for the violation of an ordinance, the first process shall be a summons, but a warrant for the arrest of the offender shall be issued upon the sworn complaint of any person that an ordinance has been violated and that the person making the complaint has reasonable grounds to believe the person charged is guilty of such violation. Any person arrested under a warrant shall be taken without unnecessary delay before the proper officer to be tried for the alleged offense.

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

The provisions of Section 40-11-12 of the North Dakota Century Code and all subsequent amendments shall be and 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.

2.0112 Costs of Prosecution

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

2.0113 Judgment of Conviction

In all trials for offenses under the ordinances of the City, if the defendant is found guilty, the municipal judge shall render judgment accordingly. It shall be a part of the judgment that the defendant stands committed until such judgment is

complied with, and, at the discretion of the municipal court, he may be required to work for the municipality at such labor as the defendant's strength and health will permit under the provisions of Section 40-18-12 of the North Dakota Century Code.

2.0114 Refusal to Work

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

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

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

2.0116 Deferring or Suspending Sentence

The municipal judge may, upon the conviction of any person of any offense against any of the ordinances of the City, then and there impose a sentence of imprisonment as may be regulated by such ordinances, or defer imposition of sentence or suspend the sentence imposed on such person for a period of not to exceed ninety (90) days from the date of such conviction. The municipal judge may, during such period, allow the defendant to go upon his own recognizance, or upon such bail as may be regulated by law or the ordinances of the City, or may suspend or defer such sentence upon such terms and conditions as the judge may prescribe. The municipal judge may, at or before the expiration of such period, have the defendant brought before him and commit such defendant or cause such sentence of imprisonment to be then and there imposed.

CHAPTER THREE

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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 commissioner. He 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 ordinance.

3.0102 Construction and Repair - Permits

It shall be unlawful to construct, reconstruct, alter, grade or repair any public street, sidewalk, driveway, curbs or gutters without having first secured a permit therefore, unless said work is performed by the City contractor. Applications for such permits shall be made to the 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 an amount determined by the City Council of Mott, 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 so to maintain such sidewalks, the city engineer or street commissioner shall direct him to make such repairs as may be necessary to restore such sidewalk to a safe condition. Should he fail, within a reasonable time, to follow the directions of the city engineer or street commissioner, the city engineer or street commissioner shall report the facts to the governing body, which shall 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 engineer or city auditor an application showing:

1. Name and address of the owner, or agent in charge, of the property abutting the proposed work area.

2. Name and address of the party doing the work.

3. Location of the work area.
4. Attached plans or sufficient sketches showing details of the proposed alterations.

5. Estimated cost of the alterations.

6. Such other information as the city engineer or street commissioner 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 commissioner 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 wit the elevations and grade therefore to be furnished by the city engineer and shall be constructed under his direction and supervision or under the direction and supervision of the street commissioner. All sidewalks shall meet the following requirements:

1. All sidewalks shall be constructed of concrete.

2. All sidewalks in residential areas shall be constructed not less than five (5) feet in width and shall have a minimum slope one-fourth (1/4) inch per foot from the inside edge toward the street.

3. All sidewalks shall be of concrete and of at least four (4) inches in thickness.

4. All sidewalks shall be laid out as follows:

   a. In locations where the right-of-way is sixty (60) feet or less the sidewalks shall be constructed on the property line.
   b. In locations where the right-of-way is greater than sixty (60) feet the sidewalk shall be constructed eighteen (18) inches out from the property line.
   c. In no case in the residential district shall the sidewalk be constructed adjacent to the curb unless right-of-way and topographic features require it.
   d. Notwithstanding any other provision herein all sidewalks shall be set out so that they are in conformity with existing sidewalks to which they may attaché.

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 which, and the manner in which driveways, curb and gutter, relaying of block walks and paving repairs shall be constructed shall be determined by the city engineer.

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 commissioner and shall conform to specifications filed with the city auditor by the city engineer or street commissioner 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 maintain and keep in good repair, for a period of two (2) years from date of final acceptance all sidewalks, driveways, curb and gutter and paving repairs so constructed by such contractor under the terms of such contract, and that in case of default under the part of such contractor to so maintain and keep such improvements in good repair made by him for the said period of two (2) years, or in case they shall within said time begin to crumble or disintegrate or become cracked or broken to such extent that, in the opinion of the city engineer or street commissioner, the same is not a satisfactory compliance with the specifications for the construction thereof, then the city engineer or street commissioner may direct that such sidewalks, driveways, curb and gutters or paving repairs be immediately repaired or re-laid in whole or in part as he shall deem best, and the contractor shall immediately cause the same to be repaired or failure so to repair or to relay the same, the City at any time within said two- (2) year period or thereafter, may cause the same to be repaired or re-laid, and the cost thereof whether done by the City directly or through a contract, may be recovered against said contractor and the surety upon such bond.

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 section shall be guilty of an offense and be fined not less than twenty-five dollars ($25.00), nor more than one thousand dollars ($1,000.00) 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 commissioner 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 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 Commissioner of Streets and Public Improvements, 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 of Mott, 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 governing body and, in addition thereto, 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, provided that when the specified load limits herein contained will cause damage to the city's paved streets, the governing body by resolution adopted, and made public, may lower said load limits for such period of time 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 from such sidewalk in front of or along a lot therein, the ice or snow therefrom within the same time above stated or refuses to sprinkle ashes or sand on the same within the time specified for removal in such manner as to make such sidewalk safe for travel of pedestrians thereon, the same may be removed by or under the direction of the city engineer or street commissioner 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.

3.0212 Assessments by Street Commissioner When Work is Done by City

Whenever the street commissioner 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, he 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 of the property chargeable with such expense, the actual cost and expense of such removal and a description of the lot, lots or parcels of land along or in front of which is the sidewalk or sidewalks from which snow or ice has been removed. (Source: 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 time 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 his certificate that the same is correct as confirmed by the City governing board and shall file said assessment list in his 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, 20)

3.0214 Street Cleaning - Snow Removal

Whenever, in the judgment of the governing body or the city engineer or street commissioner 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 commissioner the area and streets to be cleared of snow or ice or cleaned as aforesaid and the time during which such snow or ice removal and street cleaning and marking of streets shall be done and posting of such information in the area affected.

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 truck, automobile, 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, or without complying with the provisions of this article or in violation of or variance from the terms of any such permit.

3.0219 Guarding or Excavations and Openings

It shall be unlawful for any person within the City limits to leave or keep open, uncovered or unguarded any cellar door, pit, grating, vault or other subterranean passage opening from, into or upon any street, alley or sidewalk, or upon any private property if not suitably guarded.

3.0220 Application for Excavation Permits

Applications for excavation permits shall be made to the 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 whom or which the work is being done, and shall contain an agreement that the applicant will comply with all ordinances and laws relating to the work to be done.

3.0221 Fees for Excavation Permits

The fee for the following excavations shall be established by the City Council by resolution:

1. Excavation in asphalt or Portland Cement concrete pavement or surface _____ $_____ per sq. ft.

2. Excavation in brick pavement or surface _____ $_____ per sq. ft.

3. Excavation in oil treatment street surface _____ $_____ per sq. ft.

4. Excavation in untreated or unimproved street or surface _____ $_____ per sq. ft.

3.0222 Bond - Excavations

No excavation permit shall be issued unless and until the applicant therefore has filed with the 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 such permit shall be issued unless and until the applicant therefore has deposited with the Auditor a cash deposit or bond in an amount to be determined by the City Council to insure the proper restoration of the ground and laying of the pavement if any. From this deposit shall be deducted the expense to the city of relaying the surface of the ground or pavement and of making the refill if this is done by the city or at its expense, and the balance shall be returned to the applicant without interest after the tunnel or excavation is completely refilled and the surface or pavement is restored.

3.0224 Making Excavations - Notice

It shall be unlawful to make nay 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 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.

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

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 commissioner or city engineer.

3.0226 Supervision of Excavation Work

The street commissioner or the city engineer shall from time to time inspect or cause to be inspected, all excavations and tunnels being made in or under any public street, alley or other public place in the City to see to the enforcement of the provisions of this article. Notice shall be given to him at least ten (10) hours before the work of refilling any such tunnel or excavation commences.

3.0227 City Parks

All city parks in the City of Mott shall have established hours of public access. City Park hours shall be set from time to time by resolution of the City Council. Notice of the same may be published in the official newspaper or posted at the public parks. Any variance from the above hours of use shall be under special permission granted by the Park Commissioner.

3.0228 City Buildings, Equipment and Vehicles - Smoking

Smoking is not permitted in City buildings, equipment and vehicles, except in designated smoking areas. The public official having general supervisory authority over any City buildings, equipment or vehicles may designate a smoking area by posting a sign in the smoking area which states "Designated Smoking Area." Any designated smoking area in a place of public assembly may not occupy more than fifty percent of the total area available to the public and must be situated to minimize smoke drift. (Source: North Dakota Century Code Section 23-12-10)

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 commissioner 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 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.

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 and within three (3) days after the date of said sale, the officer making the sale shall make a report thereof to the 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.

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 as 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.

ARTICLE 4 - House Numbering

3.0401 House Numbering Required

All lots, buildings and structures in the city shall be numbered in accordance to such plan as may be adopted by the City Council.

3.0402 Numbering on Houses

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

ARTICLE 5 - Mail Boxes

3.0501 Availability of Service to Residents

It is understood that the U.S. Post Office Department shall make available free postal delivery within the City of Mott, North Dakota, to residents who live further than a quarter of a mile from the post office building within said City.

3.502 Post Office Box Specifications and Regulations

Each single grouping of mail boxes shall be erected and located at least 75 feet distant from the street corners in each street, and that such location shall be with the approval and consent of the respective property owners adjacent to the berm or boulevard on which the mailbox grouping is erected.

1. All mail box groupings shall be located on the berm with the opening side of the mail boxes one (1) foot distant from the edge of the curb.

2. That the number of mail boxes at one location shall not exceed six (6) in number, and that the number of mail box locations on one block shall not exceed six (6) in number. That the size of each mail box shall be 8"x21 1/4x10 ½".

3. That all mail boxes at each location shall be of the same color. That the mail box stand for each group of mail boxes shall have the following size and dimensions: the bottom side of the mail boxes shall stand 3 1\2' above the level of the curb at each location, and that the stand supporting each mail box grouping shall consist of two (2) 4x4 posts 3 1\2' high.

3.0503 Operation

Patrons served by each mail box location shall pay for the cost of his mail box and collectively for the cost of the erection of the supporting stand. Further, patrons shall be responsible for the maintaining of their own mail box and supporting stand and also for maintaining the street access of the mail carrier to the mail box location and for their own access to such location, and this with reference to street snow removal and sidewalk snow removal, to the extent that the same is not a part of the snow removal and sidewalk snow removal, to the extent that the same is not a part of the snow removal service performed by the City of Mott.

3.0504 Permit Required

Before pre-constructing or installing a mail box group at any location, patrons served thereby shall first obtain from the City Auditor, a permit for such construction and location which permit shall be free of charge. such request for permit shall disclose to the City Auditor that such construction and location is in accordance with the specifications and regulations of this Ordinance.

CHAPTER FOUR

FIRE PROTECTION AND PREVENTION

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CHAPTER FOUR

FIRE PROTECTION AND PREVENTION

ARTICLE 1 - Organization and Regulation of the Fire Department

4.0101 Establishment of Fire Department

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

4.0102 Supervision by Fire Chief

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

4.0103 Volunteer Fire Department

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

4.0104 Officers of Fire Department

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

4.0105 Chief of Fire Department - Powers of

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. He 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.

4.0106 Duties of Fire Chief

The fire chief shall have the following duties and powers:

1. To keep records. The chief of the department shall cause to be kept, in books for that purpose, a full and complete record of the organization of the department, its membership, the respective positions held by the firemen in the department, vacancies, appointments and dismissals, and of all notices issued by the department, and of all its transactions, of all fires occurring in the City, and the cause thereof when ascertainable, of the time lost by firemen, and of all property placed in his charge, and all expenditures made by his order and shall keep such other books and records as shall be required in the department, and such books shall always be open to the inspection of any member of the governing body.

2. To command and control. It shall be the duty of the chief of the department 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 his department and the rules and regulations pertaining thereto. At all fires he shall have sole and absolute control and command over all persons connected with the fire department of the City.
3. To make reports. The chief of the fire department shall report at the end of each year and when required to do so to the City governing body. At the end of each calendar year, he shall make an annual report in writing. He shall report upon the condition of the fire department, the number of fires that have occurred in

the City since his last report, and during the year in his 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 so destroyed or injured, which report shall be filed in the office of the city auditor. The chief of the fire department 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 chief of the fire department shall, during the month of June in each year, make a complete itemized list and report of all property under his charge and belonging to the City, stating its condition. He shall also report as to such new apparatus or supplies as in his judgment may be needed to properly maintain his department.

5. To prepare a budget. To prepare a budget of the whole cost and expense of providing for and maintaining the fire department of the City during the succeeding fiscal year.

6. To keep property in good condition. To keep property in good condition to see that all apparatus and property committed to his care and the several buildings or portions thereof, are kept clean and in good sanitary condition.

7. To have charge of alarm system. To have charge of alarm systems of the City.

8. To control crowds at fires. The chief of the fire department may prescribe limits in the vicinity of any fire within which no persons, except those who reside therein, firemen and policemen, and those admitted by his order.

9. To order removal of property, when. To order the removal of property, whenever it shall become necessary for the preservation of such property from fire or to prevent the spreading of fire, or to protect adjoining property.

10. To command assistance. To command assistance from persons in attendance at any fire, not members of the fire department, for the extinguishing of fires.

11. To prescribe badge and uniform. To prescribe the badge and uniform to be worn by the members of the department.

4.0107 Fire Chief to Report New Equipment Needed

Whenever, in his 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 board as to the supplies, new apparatus and equipment that are needed for the efficient operation of this 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 his 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 chief or acting chief of the 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 wagon, street car, 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 team, wagon, cart, street car, railroad car, steam engine, automobile or other vehicle of any kind whatsoever, upon or over any hose belonging to the fire department while the same 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 tamper, meddle or interfere with any such fire alarm box; or intentionally cut, break, deface or remove any such box, or any of the wires or supports thereof, connected with the fire alarm system 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 written consent of the chief of the fire department.

4.0114 Entering Fire Department

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

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 chief of the fire department, 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 that portion of the City of Mott bounded by the following streets, avenues, alleys and lines is hereby defined and shall be known as the constitute the fire limits of the City of Mott.

1. That the fire district limits and fire district boundaries of the City of Mott shall include all areas and portions of said City, included within the Commercial and Industrial Zones of said City, and that the boundaries thereof shall be the boundaries of said Commercial and Industrial Zones.

2. That the provisions of this Section 2 shall not apply to the building and construction of dwelling houses or other buildings designed and used solely for human habitation.

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, Discovery, 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 Bonfires Prohibited - Exception

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

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 if such burning is prohibited by state law or proclamation.

4.0306 Reports of Hotel of Apartment Fires

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

ARTICLE 4 - Fire Prevention

4.0401 Adoption of Fire Code

The fire code presently in effect prior to the enactment of this Ordinance is hereby adopted and incorporated herein by reference. If no fire code has been heretofore adopted, the City shall adopt by resolution a suitable fire code immediately.

4.0402 Amendments, Additions and Deletions Made in Fire Code
(reserved)

4.0403 Enforcement of Fire Prevention Code

1. The fire prevention code shall be enforced by the fire department of the City under the supervision of the chief of the fire department.

2. The chief of the fire department may detail such members of the fire department as inspectors as shall from time to time be necessary.

4.0404 Storage of Flammable Liquids

No new bulk plants or tanks for storage of flammable liquids shall be permitted within the limits of the City except where permitted by the Zoning Ordinances and State and Federal law.

4.0405 Storage of Liquefied Petroleum

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

4.0406 Modifications of Fire Code

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

4.0407 Appeals from Decisions of Fire Chief

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

ARTICLE 5 - Firearms, Fireworks and Explosives

4.0501 Firearms not to be Furnished to Minors

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

4.0502 Exploding Firearms

It shall be unlawful for any person or persons to fire or discharge within the city limits of this City, any cannon, gun, fowling piece, pistol or other firearms of any description without the written permission of the City governing board which permit shall limit the time of such firing and be subject to revocation by the City governing board at any time after being granted. Provided, however, that nothing in this section shall be construed to apply to the firing of any gun or other firearms when done in cases of actual necessity or in the performance of lawful duty or by militia companies or veterans' organizations when on parade.

4.0503 Blank Cartridges, Pistols, Etc. - Manufacture, Use and Sale of

No person except a licensed dealer shall manufacture, use, sell or keep for sale within the City any blank cartridges, pistols, blank cartridge revolver or other blank cartridge firearms, blank cartridge caps containing dynamite or firecrackers exceeding three (3) inches in length and exceeding one-half (1/2) inch in diameter.

4.0504 Fireworks Defined

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

4.0505 Fireworks - Discharging of and Sale of

1. The sale of fireworks shall be permitted under those conditions and at those times as provided by the NDCC, as amended from time to time. The use, firing or discharging of any fireworks shall be permitted only at the following times:

From June 27th through July 3rd, between the hours of 10:00 a.m. and 10:00 p.m.
On the 4th of July, between the hours of 10:00 a.m. and 11:59 p.m.
On July 5th, between the hours of 12:00 a.m. and 10:00 p.m.
December 31st through January 1st, between 10:00 a.m. and 1:00 a.m.

2. Violations of this section are subject to a fine $25.00 for each occurrence.

4.0506 Exceptions to Fireworks Restriction

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

ARTICLE 6 - Adoption of Electrical Code

4.0601 Electrical Code Adopted

There is hereby adopted the laws and regulations and wiring standards of North Dakota adopted by the State Electrical Board and the whole thereof of which not less than one (1) copy shall be on file in the office of the city auditor of the City, and the same is hereby adopted as fully as if it were set out at length herein.

ARTICLE 7 - Penalty for Violation of this Chapter

4.0701 Penalty - Violations of Fire Protection and Prevention Chapter

Any person who shall violate any provisions of this chapter or fail to comply therewith or who shall violate or fail to comply with any order made thereunder or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder or any certificate or permit issued thereunder and from which no appeal has been taken or who shall fail to comply with such an order as affirmed or modified by the governing body or by a court of competent jurisdiction, within the time fixed herein, shall severally for each and every such violation and noncompliance respectively, be punishable by a fine of not more than one thousand dollars ($1,000.00) or by imprisonment for not to exceed thirty (30) days or by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each ten days that prohibited conditions are maintained shall constitute a separate offense.

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

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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 be the keeper of any city jail and shall have custody of all persons incarcerated therein, providing a jailer at all times when there is somebody incarcerated therein. The chief of police shall keep such records and make such reports concerning the activities of the department as may be required by statute or by the governing body. The chief shall be responsible for the performance by the police department of its functions and all persons who are members of the police department shall serve subject to the orders of the chief of police. The chief of police shall have the authority to administer oaths to police officers under the chief's supervision.

5.0104 Rules and Regulations

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

5.0105 Duties of Police - General

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

Within the City limits and for a distance of one and one-half (1 ½) 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 (1 ½) 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, and forthwith after taking the same, to report in writing the kind and amount thereof to the municipal judge.

5.0202 Arrested Persons

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

5.0203 Stolen, Abandoned, Lost Property

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

5.0204 Traffic Administration

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

5.0205 Witness Fees and Mileage of Municipal Police Officers

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

ARTICLE 3 - Miscellaneous

5.0301 False Alarms - Interference

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

5.0302 Right of Way

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

CHAPTER SIX

CITY OF MOTT ZONING ORDINANCE

The 2013 Zoning Ordinance for the City of Mott, North Dakota, together with all subsequent amendments are hereby adopted with change and shall be published separately.

CHAPTER SEVEN

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CHAPTER SEVEN

WATER AND SEWER

ARTICLE 1 - Utility Established

7.0101 Water and Sewer Department Established

There is hereby established and created within the City a department to be known as the City Water and Sewer Department. The department shall have general charge of all plants, systems, works, instrumentalities, equipment, materials, supplies, sewage disposal plants, lagoons, intercepting sewer, trunk connections, sewer and water mains, filtration works, pumping stations and all parts and appurtenances of the foregoing which are used or useful in connection with the collection, treatment and disposal of sewage, waste and storm sewers for the inhabitants of this City, subject to all ordinances, rules and regulations.

7.0102 City Water and Sewer Department to be Independent Agency

All of the business affairs of the said City Water and Sewer Department shall be conducted, insofar as is possible within the ordinances of the City, as a completely separate and distinct division of the City. Separate and distinct accounts shall be set up on the books of the city auditor. These accounts shall at all times reflect the true condition of the Water and Sewer Department, as distinct from the remaining business of the City and shall be so devised as to disclose the annual profit or loss of the department. The funds of the department shall be held in the custody of the city auditor and disbursed upon warrant in the same manner as other funds, but the Water and Sewer Department shall be given credit upon the books of the City for any and all funds paid by it into the City Treasury and shall be charged on the books of the City with all payments made by the City on its behalf. Transfers from the Water and Sewer Department to the General Fund or any other fund of the City shall not be made except upon order of the governing body (Source: North Dakota Century Code Section 40-33-12) nor shall transfer be made from City funds to the Water and Sewer Department without like order. Where bonds have now been, or may hereafter be issued against any water works improvement or sewage improvement, which constitute a general obligation of the City, the taxes levied for the payment of such bonds and interest shall be levied and expended for such purpose in the manner provided by law, until such time as it may be possible out of the proceeds of the Water and Sewer Department, after setting up a reasonable reserve for depreciation and new construction, to make payment of the bond requirements from the profits of the Water and Sewer Department. It is expressly declared to be the purpose of this ordinance that as soon as the same can be accomplished without undue burden to the water users of this City, the Water and Sewer Department shall be placed upon an entirely independent basis as a separate business enterprise.

7.0103 Scope of Utility

The properties of the City Water and Sewer Department and all future improvements, extensions and enlargements thereof, together with all cash and other assets held in the City's Water and Sewer Utility Fund and all moneys to be derived thereafter from the services, facilities, products and by-products of said utility, shall be and are hereby appropriated and dedicated to the purpose of insuring the public health, safety and welfare by furnishing and making available water and sewerage service to the City and its inhabitants and industries. Said utility shall at all times be under the management and control of the governing body of the City and shall by it be operated and maintained in such manner as to provide its service with maximum efficiency and at the minimum cost which is compatible with the plan of operation herein described.

7.0104 Service Charges - Use of

The City Water and Sewer Department shall at all times be so operated and maintained, and rates and charges for its services, facilities, products and by-products shall be such, as to make the utility self-supporting and self-perpetuating. Such charges from time to time imposed and collected shall be made and kept adequate to pay as incurred all costs of operation and maintenance of said utility and to establish and maintain reasonable operating reserves; to produce net revenues which shall be sufficient at all times to pay promptly the principal and interest due on all obligations of the City incurred for the improvement, extension and enlargement of said utility, to the extent that such obligations are according to

their terms payable from said net revenues, and to establish and maintain adequate reserves for the security of said obligations. Charges may be set to produce surplus net revenues, over and above current principal, interest and reserve requirements, in amounts sufficient to provide reasonable allowances for depreciation and replacement of the utility plus a reasonable return on the City's capital investment therein which surplus net revenues, when actually on hand, and to the extent that they are not required as a reserve for depreciation and replacement, may from time to time be appropriated by the governing board to pay or contribute to the cost of any other City functions, subject to the limitations now or hereafter prescribed by law.

The foregoing appropriations shall not, however, be deemed or construed to preclude the City from defraying any part or all of the expense of any improvement, enlargement or extension of the water and sewer utility by the levy of special assessments or taxes or the issuance of general obligation bonds, whenever and to the extent that such action is authorized in the manner provided by law and is deemed fair and equitable by the governing body.

7.0105 Policy on Improvements - Extensions

It is hereby declared to be the policy of the City, subject to such modifications as shall be deemed by the governing body to be required by special circumstances in individual cases, and subject to such modifications as may hereafter be made by ordinance amendatory hereof or supplemental hereto, that the cost of capital improvements, enlargements and extensions of said utility shall be paid in the following manner:

1. Where water mains not exceeding six inches or sanitary sewer mains not exceeding eight inches in diameter are installed adjacent to residential properties, and where water mains not exceeding eight inches or sewer mains not exceeding ten inches in diameter are installed adjacent to commercial properties, the total cost thereof shall be assessed against the properties abutting on such improvements, in sums proportionate to and not exceeding the total benefits determined to be derived therefrom by the respective properties. Water and sewer mains of the dimensions above described are referred to herein as "lateral" mains and other mains are referred to as "trunk" mains.

2. Where a trunk main is installed, the governing body upon advice of the city engineer shall estimate the probable cost of construction of a lateral main at the same time and place and such estimated cost shall be assessed against the properties abutting on such main and in the manner above provided.

3. Twenty percent (20%) of the cost of any sanitary sewer in excess of the estimated cost of a lateral sewer at the same time and place shall be assessed against all properties determined by the governing body to require the immediate construction of such main as a trunk sewer, including properties abutting thereon and properties served or capable of being served by lateral sewers connected thereto, in amounts proportionate to and not exceeding the benefits determined to be derived by said respective properties from such trunk sewer.

4. The total cost of storm sewers shall be assessed against properties within the area determined to be benefited thereby, in amounts proportionate to and not exceeding the benefits determined to be derived therefrom by the respective properties.

5. Where a portion of the benefits of any of the foregoing improvements is deemed to accrue primarily to the City at large, a portion not exceeding twenty percent (20%) of the cost thereof, as determined by the governing body, may be paid by the levy of ad valorem taxes upon all property within the City over the same period as the levies of assessments for such improvements, or any portion or all of such cost may be paid out of current funds duly provided in the budget, or from the proceeds of general obligation bonds duly authorized by the electors.

6. Such portion of the cost of any improvement, extension or addition to the utility as is not paid by special assessments and taxes levied and actually collected in respect thereof shall be paid from the net revenues of the utility.

7. Where due to any error or omissions or to any special circumstances a special assessment is not levied against any property benefited by an improvement at the time of the construction thereof in accordance with

the program described in this section, the City reserves the right to levy a supplemental special assessment upon such property or to impose and collect a special charge for the connection of such property with the utility system in such amount as shall be required to pay its just share of the assessable cost of such improvement.

7.0106 Utility Fund - Separate Accounts

All moneys received by the City in respect of the services, facilities, products and by-products furnished and made available by the City Water and Sewer Department, except collections of special assessments and taxes appropriated to improvement district funds and moneys borrowed for capital improvements, and all money, receipt and returns received from any investments of such earnings, shall be paid into the treasure of the City and kept in a special fund which shall be permanently maintained on the books of the City, separate and distinct from other funds, and designated as the Water and Sewer Utility Fund. In the records of this fund, all receipts and disbursements of money on account of or in connection with the utility shall be entered and reflected; but the moneys from time to time on hand therein shall always constitute public municipal funds and shall be deposited and their safekeeping secured like other City funds. Separate accounts within the Water and Sewer Utility Fund shall be permanently maintained for the purpose of segregating the revenues required to meet the several expenses and obligations of the utility, as provided below, and such revenues shall be administered and accounted for as follows:

1. Operation and Maintenance Account. There shall be credited at least once in each calendar month to the Operation and Maintenance Account of said fund, as a first lien and charge on the gross revenues of the utility such sum as shall be needed, over and above any credit balance then held therein, to pay all claims due which by accepted accounting practices constitute normal, reasonable and current expenses of operation and maintenance of the utility, and to pay such expenses estimated to accrue for a period of approximately one month, and to maintain a reasonable reserve for contingencies. Moneys in said account shall be used only to pay expenses of the foregoing type, and not for repairs or replacements or for capital improvements properly chargeable to replacement and depreciation reserves or surplus funds.

2. Principal and Interest Account. The Principal and Interest Account of the Fund shall continue to be maintained as provided in that resolution until the payment in full of the improvement warrants issued against said fund.

3. Revenue Bond Account. The net revenues of the utility are herein defined as the aggregate of all sums on hand in the Water and Sewer Utility Fund from time to time in excess of the current requirements defined in (1) and (2) above. The entirety of the said net revenues shall be credited each month to the Revenue Bond Account of the Water and Sewer Fund until there shall have been credited within said account, and thereafter so much of the net revenues as shall be necessary to maintain at all times, a reserve in an amount at least equal to the sum of the principal and interest payments due within each next succeeding twelve-month period upon all revenue bonds of the City heretofore or hereafter issued and made payable from said accounts. After this reserve has been created, there shall continue to be credited out of the net revenues to the Revenue Bond Account each month, over and above sums required to maintain such reserve, an amount not less than one-twelfth (1/12) of the sum of the principal and interest to become due on all such revenue bonds within the then next succeeding twelve months. Moneys in said account shall be used only for the payment of principal and interest as it becomes due on said revenue bonds, and the reserve shall be used for such purpose only when other moneys in the account are insufficient. All revenue bonds heretofore and hereafter issued and made payable from said account, subject to the limitations upon such issuance contained in Section (6) hereof, shall constitute a first lien and charge on the net revenues of said utility without preference or priority of one bond over any other. However, if at any time the moneys in the Revenue Bond Account should be insufficient to make all payments of principal and interest due on such revenue bonds, and cannot be made sufficient by transfer of moneys from the other accounts described below, the moneys available shall be first used to pay interest then accrued on all bonds payable from said account, and any excess moneys available shall be used to pay matured principal of such bonds in order of their maturity dates, provided that moneys available for payment of bonds maturing on the same date shall be prorated equally among such bonds.

4. Improvement Warrant Account. There shall also be maintained in said fund an Improvement Warrant Account, for the purpose of segregating net revenues required for the payment of any portion of the cost of improvements hereafter instituted, for which such revenues have been pledged in accordance with the provisions of Chapter 40-22 of the North Dakota Century Code. There shall be transferred from said account as required, to the fund of each improvement district for which such pledge has been made, sums sufficient, together with tax and assessment collections held in such funds, to pay when due the principal and interest on all improvement warrants drawn upon such funds for the financing of such improvements. Moneys sufficient for the requirements of said improvement district funds shall be credited and paid into the Improvement Warrant Account out of the net revenues remaining from time to time after provision for the current requirements of the Revenue Bond Account, and the lien and charge on said net revenues in favor improvement warrants for the payment of which such pledges have been made shall be subordinate only to the lien and charge on said net revenues in favor of revenue bonds payable from the Revenue Bond Account. In the event that moneys in the Improvement Warrant Account shall be insufficient for the making of all transfers required to be made to the several improvement district funds to which such pledges have been made, and cannot be made sufficient by the transfer of funds from the remaining accounts described below, the available moneys shall be apportioned first to the several improvement district funds in sums sufficient to pay interest then accrued on all warrants drawn on such district funds, and any remainder shall be applied in payment of matured principal of such warrants in order of the maturity dates thereof. As among warrants maturing on the same date, such available moneys shall be applied to the warrants of the several issues in proportion to the matured principal amount thereof for the payment of which taxes and assessments in the respective improvement funds are insufficient.

5. Replacement and Depreciation Account. There shall be maintained a Replacement and Depreciation Account, into which there shall be credited and paid as received, except as otherwise stated below, all net revenues in excess of the current requirements of the other accounts above described. In said account there shall be maintained such balances as the governing body shall from time to time determine to constitute an adequate reserve for depreciation and replacement of the utility, which reserve may be used to redeem prior to maturity obligations payable from the net revenues as and when the same become pre-payable according to their terms, or to replace worn out or obsolete properties of the utility, or to make extensions, enlargements or improvements thereto. Any moneys in said account determined to be surplus to the immediate requirements therefore may be invested or may be transferred to other City funds in the discretion of the Board, in the manner and subject to the limitations set forth in Section 40-33-12 of the North Dakota Century Code; and any acts amendatory thereof or supplemental thereto.

6. Moneys on Hand. The moneys on hand in any of the accounts of the Water and Sewer Utility Fund shall at all times be available and shall be used to the extent necessary to restore any deficiency in the funds on hand in any of the preceding accounts, in the order listed above, for the fulfillment of the requirements of such preceding accounts as herein defined.

7. Additional Accounts. The City also reserves the right to create additional accounts within the Water and Sewer Utility Fund for the purpose of segregating any surplus net revenues which may be pledged and appropriated to the payment of obligations hereafter issued to finance improvements, enlargements or extensions of said utility, other than the obligations made payable from the Revenue Bond Account and the Improvement Warrant Account, pursuant to the authority for such issuance reserved in Section 7.0107 hereof. Moneys on hand in any such account shall at all times be available for and used to the extent necessary to meet the current requirements of all of the foregoing accounts except the Replacement and Depreciation Account.

7.0107 <u>Provisions for Financing Capital Improvements</u>

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 Water and Sewer Utility Fund as stated in Section 7.0106 hereof.

6. Except as hereinbefore authorized, no obligation of any kind shall be issued and made payable from said net revenues unless the lien thereof is expressly made subordinate and junior to the lien and charge on said net revenues in favor of all revenue bonds and improvement warrants payable from the Revenue Bond Account

and the Improvement Warrant Account.

7.0108 Agreements with Bond and Warrant Purchasers

The City shall and does hereby covenant and agree with the original purchaser and each holder from time to time of each bond or warrant issued and made payable from the Revenue Bond Account or the Improvement Warrant Account, as follows:

1. It will complete all improvements financed by the issuance of such obligations with due diligence and with the greatest economy consistent with good workmanship and efficient results, and will do so without creating or permitting the creation of any liens or encumbrances on said utility or on the revenues thereof other than the liens and charges of said revenues expressly authorized in this article.

2. As long as any obligations payable from said accounts are outstanding, it will continue to own and operate said utility as a municipal utility, free from all competitions as to the services thereby provided and in good and efficient operating condition.

3. It will at all times maintain a schedule of rates, charges and rentals for all services, facilities, commodities and benefits furnished by said utility and will impose and collect the same in amounts at least sufficient to make the minimum payments into the respective accounts of the Water and Sewer Utility Fund as specified in Section 7.0106 hereof, and will revise such schedules in such manner and as often as needed to perform this covenant.

4. Under each such schedule, the City shall be obligated to pay and will pay from its other funds to the Water and Sewer Utility Fund a fair and equitable amount for any and all services, facilities, commodities and benefits furnished to the City or any of its departments by the utility.
5. It will at all times maintain books of account adequate to show all receipts and disbursements of the City respecting the utility, and application of such receipts to the purposes of the several accounts described in Section 7.0106 hereof, which books of account shall be open to inspection by the holder of any obligation payable from the Revenue Bond Account or the Improvement Warrant Account at any reasonable time. The City will furnish a certified transcript 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 Water and Sewer Utility Fund and of its several accounts during each fiscal year, and will furnish a copy of such statement to the original purchaser of each issue of bonds or warrants upon request.

7. Upon written demand of the holder of twenty percent (20%) or more of the bonds or warrants of any issue payable from the Revenue Bond Account or Improvement Warrant Account and then outstanding, it will cause an audit of the books of account of the utility to be made by a certified public accountant satisfactory to the holders of such obligations, the cost thereof to be paid as an operating expense of the utility and will furnish a copy of the report of any such audit to such party as shall be designated in such demand.

8. It will at all times keep the properties of said utility insured in reasonable amounts against loss or damage by fire, tornado and other risks for which similar properties are customarily insured by prudent owners, and will carry adequate public liability insurance, insuring against any claim of personal injury 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 are provide security for the holders of bonds issued hereunder are acknowledged to be a part of the City's contract with the holders of such obligations; provided that nothing herein shall be deemed to preclude the City from modifying the policies set forth in Section 7.0105 hereof with reference to any improvements constructed and financed after the effective date of such modification.

10. The holders of twenty percent (20%) or more in principal amount of each issue of bonds or warrants payable from the Revenue Bond Account or the Improvement Warrant Account and at the time outstanding shall be privileged, and are hereby empowered, to institute and maintain, on behalf of the holders of all outstanding obligations of the same issue, any suit or proceeding at law or in equity for the protection and enforcement of any covenant, agreement or stipulation herein provided to be performed or observed by the City or its governing body or any of its officers, whether or not any such obligations are then in default as to principal and interest. Each and all of the rights and remedies provided by Sections 40-35-15 and 40-35-19 of the North Dakota Century Code are hereby acknowledged to be available to the holders of such obligations.

ARTICLE 2 - Water Service

7.0201 Water System

All land, buildings, machinery, equipment, tools and apparatus, water mains, hydrants, service connections and all other property used for the purpose of furnishing a water supply to this City, and the inhabitants thereof, now owned or to be owned by this City, whether acquired by the issue of general obligation bonds, special assessment warrants or other obligations of this City, shall constitute and be known as the waterworks system.

7.0202 Superintendent of City Water and Sewer Department

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

7.0203 Same: Reports

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

7.0204 Application for Water Service and Service Connection Charge

Any party desiring water and sewer service from said utility for premises not heretofore connected with the system, and not subject to the provisions of Section 7.0205 set forth below, shall apply for a connection on a form provided by the City. Such application shall state an exact description of the premises to be served, and the uses, both general and special, to which the water is to be put, the nature of sewage to be discharged, and the estimated amount of water to be used for a quarter-annual period. Such application shall be filed with the city auditor, and the applicant shall thereupon pay to the city auditor, as a connection charge, the sum of $5.00 for a residential building, commercial building or multiple dwelling.

7.0205 Water Service - To Property Not Previously Assessed

No permit shall be issued for the making of any connection between any water or sewer line on any property which has not previously been benefited by existing water and/or sewer lines or whenever the owners of such property have not been assessed for such water and sewer lines, unless and until such person shall have paid or made a written statement with the City to pay in monthly installments within a maximum of fifteen (15) years an amount of money as may be therefore determined by the governing body. The amount of the payment shall be based on the area served and benefit resulting to the property involved. Within 30 days of the receipt of such application, the governing body shall determine the amount of money required to be paid before such connection shall be made and shall advise the applicant property owner of such determination. All such money paid and received pursuant to the provisions of this section shall be placed in the water and sewer utility fund and shall be expended in accordance with the purposes of such fund.

7.0206 Subsequent Connection to Premises

Any party, other than the original applicant, desiring service for premises where a connection has been made pursuant to Sections 7.0204 and 7.0205 hereof shall make written application therefore as in cases described in Section 7.0204 hereof, and if the connection charge for such premises has not been fully paid at such time, the applicant shall pay or agree to pay the remainder thereof in like manner and time as described in Section 7.0204 and 7.0205 hereof.

7.0207 Separate Connections for each Premise - Exception

Unless special permission is granted by the water and sewer utility superintendent, each premise shall have a separate and distinct water service connection and sewer service connection, and where permission is granted for branch service systems, each unit on the branch shall pay the fees as set in 7.0222.

7.0208 Service Outside City Limits - Prohibited - Exception

No application for water and/or sewer service outside the city limits of the City shall be approved and no person outside the corporate limits of the City shall hook up to or make connection with the city water and/or sewer system whether the same now is outside or inside the incorporated limits of the City. Water service outside the corporate limits of the City may be permitted pursuant to contractual agreement of the governing body arising in limited and extraordinary circumstances but shall be permitted only upon a resolution unanimously adopted by the governing body. (Source: North Dakota Century Code Section 40-33-13, 14)

7.0209 Service in Unplatted Areas

No application for water and/or sewer service shall be approved and no person shall hook up to or make connection with the City water and sewer system unless the area to be served by said water and/or sewer connection has been duly platted and the plat approved by the governing body and recorded in the County Register of Deeds Office.

7.0210 Water Service - Construction of - Maintenance of by Owner

The cost of original installation of all plumbing between the main and any service devices maintained by the consumer and all extensions made to such plumbing, as well as all repairs, shall be borne entirely by the consumer, although such plumbing and services as well as the meters shall at all reasonable times be subject to inspection by duly authorized representatives of the City. Any repairs found to be necessary by such representatives shall be made promptly, or the City will discontinue service.

Provided, however, the City shall be responsible for the repair and maintenance of all curb stops after such are installed. To fund curb stop repairs a $1.00 per month charge shall be added to each consumer's water fees. Such charges shall be maintained until the accumulated fees, to be set aside in a special fund for curb stop repair, total $5,000, at which time said $1.00 charge shall terminate. The $1.00 charge shall resume once the funds in the special fund are spent down to $2,500.

All services shall be constructed by licensed plumbers at the owner's expense, and each service shall be maintained by the owner. Services heretofore acquired by the issuance of special assessment warrants and assessed against

the property, or which may be acquired in the future in like manner, shall likewise be maintained by the owner. Services means the service line running from the point of connection with the City main to owner's premises.

7.0211 Water Meters - Checked - Fees

Every consumer of water shall provide a suitable place where a water meter can be installed and each consumer shall supply, maintain and change when necessary, the same, and if at any time the consumer desires to have the meter tested for accuracy, the same shall be done by the City and a fee of $10.00 charged therefore to the consumer if the meter registers 98% or more accurate. If the meter registers less than 98% accurate, it shall be replaced and the fee refunded.

7.0212 Unlawful to Use Water Not Metered - Unlawful to Tamper with Curb Cock

It shall be unlawful for any person to use water from any premises without the consent of the owner or to use water from the City water system except when drawn through a meter installed by the City. No person except an authorized representative of the City shall turn on or off or tamper with any curb cock.

7.0213 Defective Service - Consumers Duty to Report

All claims for defective service shall be made in writing and filed with the utility superintendent on or before the fifteenth day of the month next succeeding such defective service, or be deemed waived by the claimant. It shall be the duty of the utility superintendent to investigate the facts alleged in each claim and determine the amount, if any, which should be refunded to a claimant by reason of defective service and report such determination to the governing body. If a claim is approved by that body, such amount shall be allowed as credit on the following bill or paid as other claims, but no claim shall be made against the City for any fire or any injuries to the person or property of any consumer of water or sewer service under the provisions hereof.

7.0214 Users Consent to Regulations

Every person applying for water and sewer service from the municipal system, and every owner of property for which such application is made, shall be deemed by such application to consent to all the rules, regulations and rates contained in the resolution or ordinances of the City and to any modification thereof and to all new rules, regulations or rates duly adopted.

7.0215 Regulations Governing Service

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

1. Shutting Off Water - Who Authorized. No person except an authorized employee of the water department shall shut off or turn off the water at the curb cock to any premises without first obtaining permission from the water department.

2. City Reserves Right to Shut Off Water - Notice. In the case of making repairs or constructing new work, the City reserves the right to shut off the water at once and keep the same shut off as long as may be necessary to accomplish such purposes. Service may also be discontinued for nonpayment of bills or for disregard of rules and regulations affecting the service.

3. Non-liability of City for Deficient Supply or Quality of Water. It is expressly provided that the City shall in no event be or become liable to any consumer of water for a deficiency in the supply of water or the quality thereof, whether by shutting off the same to make repairs or to construct new work or for any other cause whatsoever.

4. Shutting Off Water - Charge for. The water department shall make a charge of $15.00 each for shutting off or turning on services.

5. Entrance and Access to Premises by Waterworks Employees. Authorized employees of the water and sewer department shall have free access to any premises supplied with water, at proper times, to inspect and ascertain the condition of the meters and fixtures, or for reading meters, and no owner or occupant shall refuse such employees such access. The water department shall have the right to enter any premises and remove the meter for the purpose of examination and test after first notifying the owner or occupant, and to shut off the water to premises where free access is prevented.

6. Fire Hydrants - Who May Open. No person except City employees in the performance of their official duties shall open or cause to be opened any fire hydrant without the written permission of the water superintendent.

7. If any water and/or sewer account becomes over sixty (60) days past due, the Auditor shall mail a letter by regular mail to the user's last known address, which letter shall state that the use will have ten (10) days from the date of the letter to pay the arrearage in full or else the service will be cut off. In order to reestablish the service, the user must pay the delinquent amount in full plus a $50.00 reconnect fee (Source: Ordinance No. 165).

7.0216 Connection to be Supervised by City Employees

In installing water and sewer service, all taps shall be driven, street excavations made, corporation cocks inserted, pipes installed from the main and the curb cock installed in an iron box to which the service is to be connected by the individual, his agent or employee under the supervision, direction and control of the water and sewer department. Ten feet spacing shall be allowed between all water and sewer lines in new connections to service. Failure to comply with this section shall be considered a disregard of the rules of the department and service to the affected property can be withheld or discontinued as the case may be.

7.0217 Service Pipes Specifications

All service pipes connected with the water and sewer utility shall be laid five feet and six inches below the established grades or as low as the street mains. All water and sewer pipes shall be of a material approved by the utility superintendent.

7.0218 Curb Cock Specifications

There shall be a curb cock in every service line attached to the water mains, the same to be placed as near as possible to the curb if on a street, or within one foot of the alley line if the main is located in the alley. Curb cocks shall be supplied with strong and suitable "T" handles and shall be enclosed in a substantial iron case covered with a tight fitting iron lid with the letter "W" cast upon it. There shall be one or more stops and waste cocks attached to every supply pipe at some point between the curb cock and the meter so that the water can be shut off and the house plumbing entirely drained. There shall be another such stop and waste cock in the pipe on the house side of the meter.

7.0219 Check Valves Required When Necessary

Check valves are hereby required on all water connections to stem boilers or any other connection deemed by the utility superintendent to require one. Safety and release valves shall be placed on all boilers or other steam apparatus connection with the water system where the steam pressure may be raised in excess of fifty pounds per square inch.

7.0220 Use of Water During Fire - Unlawful

It is hereby declared to be unlawful for any person in this City or any person owning or occupying premises connected to the utility to use or allow to be used during a fire any water from said utility except for the purpose of extinguishing said fire; and upon the sounding of a fire alarm, it shall be the duty of every such person to see that all water services are tightly closed and that no water is used, except for necessary household purposes during said fire.

7.0221 Waterworks Customers May Lay Larger Pipes with Hydrants - When

Whenever proprietors of lumber yards, manufactories, halls, stores, hotels, public buildings or regular customers from the water works wish to lay larger pipes with hydrants and hose couplings, to be used only in case of fire, they will be permitted to connect with the street main at their own expense, upon application for a permit to the city auditor, and under the direction of the City Council will be allowed the use of water, for fire purposes only, free of charge. No standpipe will be allowed on the premises where the water is not taken for other than fire purposes.

7.0222 Rates and Charges

Water and sewer rates shall be fixed from time to time by resolution of the governing body and the City reserves the right to change the rates from time to time as it deems best. The resolution fixing water and sewer rates and charges shall be kept on file in the office of the city auditor and shall be open for public inspection.

7.0223 Rates and Charges - Liability for

The owner or owners of all real property in the City furnished water or sewer service or service line repairs shall be responsible for the payment of any and all such charges regardless of who the occupant or tenant may be. Owners of premises where water or sewer service is supplied shall notify the water or sewer department or the city auditor in case any tenant moves from said premises, prior to such moving. On request of the owner or owners, the city auditor will bill or cause to be billed the occupant or tenant for such charges, but if such charges are not paid when due by the occupant or tenant, the owner or owners shall be responsible for such charges and they shall be assessed to the property served. It shall be the duty of the city auditor to certify to the county auditor such unpaid water or service charges that are unpaid in the same manner and at the same time as other assessments are certified, and they shall be assessed and collected in the same manner.

7.0224 Duty to Report to Auditor

Every owner or operator of a multiple dwelling unit shall file with the city auditor a report indicating the total number of units under his control. Every owner or operator of a mobile home park shall file with the city auditor a report indicating the total number of units in the park and shall further notify the city auditor of any changes in the number of units in the park if the number increases or decreases.

7.0225 Excavators

No person, firm or corporation shall excavate in or on any street, alley or other public place for the purpose of installing any water and/or sewer connection until they have complied with the provisions of Sections 3.0220 through 3.0227 of Chapter 3 of these ordinances.

7.0226 Restriction of Use of Water

The City governing body may from time to time declare that water may not be used for specific purposes or may only be used in certain parts of the City on certain days for certain purposes. The City shall have the right to prohibit the watering of lawns and gardens, the washing of cars or such other uses of the water as may be necessary to preserve for the general public an adequate supply of water for consumption and use by the general public.

ARTICLE 3 - Regulation of Sewer Use

7.0301 Purpose

It is the purpose of this article to provide ordinances regulating the use of public and private sewers and drains, private sewage disposal, the installation and connection of building sewers and the discharge of waters and wastes into the public sewer system and to provide penalties for violations thereof.

7.0302 Definitions

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

1. "BOD" (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20 degrees Centigrade, expressed in milligrams per liter.

2. "Building Drain" shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.

3. "Building Sewer" shall mean the extension from the building drain to the public sewer or other place of disposal, also called house connection.

4. "Combined Sewer" shall mean a sewer intended to receive both wastewater and storm or surface water.

5. "Easement" shall mean an acquired legal right for the specific use of land owned by others.

6. "Floatable Oil" is oil, fat or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection system.

7. "Garbage" shall mean the animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.

8. "Industrial Wastes" shall mean the wastewater from industrial processes, trade or business as distinct from domestic or sanitary wastes.

9. "Natural Outlet" shall mean any outlet, including storm sewers and combined sewer overflows, into a watercourse pond, ditch, lake or other body of surface or groundwater.

10. "May" is permissive (see "shall," Sec. 18).

11. "Person" shall mean any individual, firm, company, association, society, corporation or group.

12. "pH" shall mean the logarithm of the reciprocal of the hydrogen-ion concentration. The concentration is the weight of hydrogen ions, in grams, per liter of solution. Neutral water, for example, has pH value of 7 and a hydrogen-ion concentration of 10-7.

13. "Properly Shredded Garbage" shall mean the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than ½ inch (1.27 centimeters) in any dimension.

14. "Public Sewer" shall mean a common sewer controlled by a governmental agency or public utility.

15. "Sanitary Sewer" shall mean a sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters that are not admitted intentionally.

16. "Sewage" is the spent water of a community. The preferred term is "wastewater," Sec. 24.
17. "Sewer" shall mean a pipe or conduit that carries wastewater or drainage water.

18. "Shall" is mandatory (see "may," Sec. 10).

19. "Slug" shall mean any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration or flows during normal operation and shall adversely affect the collection system and/or performance of the wastewater treatment works.

20. "Storm Drain" (sometimes termed "storm sewer") shall mean a drain or sewer for conveying water, groundwater, subsurface water or unpolluted water from any source.

21. "Superintendent" shall mean the superintendent of wastewater facilities, and/or of wastewater treatment works, and/or of water pollution control of the City or an authorized deputy, agent or representative.

22. "Suspended Solids" shall mean total suspended matter that either floats on the surface of, or is in suspension in water, wastewater or other liquids, and that is removable by laboratory filtering as prescribed in "Standard Methods for the Examination of Water and Wastewater" and referred to as nonfilterable residue.

23. "Unpolluted Water" is water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

24. "Wastewater" shall mean the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and storm water that may be present.

25. "Wastewater Facilities" shall mean the structures, equipment and processes required to collect, carry away and treat domestic and industrial wastes and dispose of the effluent.

26. "Wastewater Treatment Works" shall mean an arrangement of devices and structures for treating wastewater, industrial wastes and sludge. Sometimes used as synonymous with "waste treatment plant" or "wastewater treatment plant" or "water pollution control plant."

27. "Watercourse" shall mean a natural or artificial channel for the passage of water either continuously or intermittently.

28. "Hearing Board" shall mean that board appointed according to the provisions of Section 7.0209.

7.0303 <u>Use of Public Sewers Required</u>

1. It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the City or in any area under the jurisdiction of the City any human or animal excrement, garbage or other objectionable waste.

2. It shall be unlawful to discharge to any natural outlet within the City or in any area under the jurisdiction of the City any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this ordinance.

3. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage.

4. The owner of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the City, and abutting on any street, alley or right-of-way in which there is now located or may in the future be located a public sanitary sewer, is hereby required at the owner's expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this ordinance, within sixty (60) days after date of official notice to do so, provided that said public sewer is within 200 feet (61 meters) according to the North Dakota plumbing code of the property line.

7.0304 <u>When Private Sewage Disposal Permitted</u>

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

2. Before commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit signed by the superintendent. The application for such permit shall be made on a form furnished by the City, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the superintendent. A permit and inspection fee of $15.00 shall be paid to the City at the time the application is filed.

3. A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the superintendent. The superintendent shall be allowed to inspect the work at any stage of construction, and in any event, the applicant for the permit shall notify the superintendent when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 72 hours of the receipt of notice by the superintendent.

4. The type, capacities, location and layout of a private wastewater disposal system shall comply with all recommendations and/or regulations of the North Dakota State Department of Health. No permit shall be issued for any private wastewater disposal system not meeting these conditions. No septic tank or cesspool shall be permitted to discharge to any natural outlet or to the ground surface.

5. At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in Section 7.0303 (4), a direct connection shall be made to the public sewer within sixty (60) days in compliance with this ordinance, and any septic tanks, cesspools and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.

6. The owner shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the City. All sludge or solids, to be disposed of from a septic tank, cesspool or other individual method of disposal shall be disposed of by a licensed septic tank pumper in accordance with Section 23-19-01 of the North Dakota Century Code.

7. No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the local health officer.

7.0305 <u>Building Sewers and Connections</u>

1. No unauthorized person shall uncover, make any connection with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the superintendent.

2. There shall be two (2) classes of building sewer permits: (a) for residential and commercial service, and (b) for service to establishments producing industrial wastes. In either case, the owner or his agent, shall make application on a special form furnished by the City. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the superintendent. A permit and inspection fee of $5.00 for a residential or commercial building sewer permit and $10.00 for an industrial building sewer permit shall be paid to the City at the time the application is filed.

3. All costs and expense incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

4. A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the

rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer. The City does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection.

5. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the superintendent, to meet all requirements of this ordinance.

6. The size, slope alignment, materials of construction of all sanitary sewers including building sewers, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City. In the absence of suitable code provisions, specifications of the state building and plumbing codes shall apply.

7. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

8. No person shall make connection of roof downspouts, foundation drains, areaway drains or other sources of surface runoff or groundwater to a building sewer, or building drain which in turn is connected directly or indirectly to a public sanitary sewer unless such connection is approved by the superintendent and the North Dakota State Department of Health.

9. The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City. All such connections shall be made gastight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the superintendent before installation.

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

11. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.

7.0306 <u>Use of Public Sewers</u>

1. No person shall discharge or cause to be discharged any unpolluted waters such as storm water, surface water, groundwater, roof runoff, subsurface drainage or cooling water to any building drain or sewer which in turn is connected directly or indirectly to the sanitary sewer unless such connection is approved by the superintendent and the North Dakota State Department of Health.

2. Storm water other than that exempted under Section 7.0306 (1) and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the superintendent and the North Dakota State Department of Health.

3. No person shall discharge or cause to be discharged any of the following described water or wastes to any public sewers:

   a. Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.
   b. Any waters containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of

the wastewater treatment plant.

c. Any waters or wastes having a pH lower than 5.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the wastewater works.
d. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers or other interference with the proper operation of the wastewater facilities such as, but not limited to ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc. either whole or ground by garbage grinders.

4. The following described substances, materials, waters or waste shall be limited in discharges to city systems to concentrations or quantities which will not harm either the sewers, wastewater treatment process or equipment, will not have an adverse effect on the receiving stream, or will not otherwise endanger lives, limb, public property or constitute a nuisance. The superintendent may set limitations lower than the limitations established in the regulations below if in his opinion such more severe limitations are necessary to meet the above objectives. In forming his opinion as to the acceptability, the superintendent will give consideration to such factors as the quantity of subject waste in relation to flows and velocities in the sewers, materials of construction of the sewers, the wastewater treatment process employed, capacity of the wastewater treatment plant, degree of treatability of the waste in the wastewater treatment plant and other pertinent factors. The limitations or restrictions on materials or characteristics of waste or wastewaters discharged to the sanitary sewer which shall not be violated without approval of the superintendent are as follows:

a. Wastewater having a temperature higher than 150 decrees Fahrenheit (65 degrees Celsius).
b. Wastewater containing more than 25 milligrams per liter of petroleum oil, non-biodegradable cutting oils or product of mineral oil origin.
c. Wastewater from industrial plants containing floatable oils, fat or grease.
d. Any garbage that has not been properly shredded (see Section 7.0302 (13). Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers.
e. Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances to such degree that any such material received in the composite wastewater at the wastewater treatment works exceeds the limits established by the superintendent for such materials.
f. Any waters or wastes containing odor-producing substances exceeding limits which may be established by the superintendent.
g. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the superintendent in compliance with applicable state or federal regulations.
h. Quantities of flow, concentrations or both which constitute a “slug” as defined herein.
i. Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only to such a degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
j. Any water or wastes which, by interaction with other water or wastes in the public sewer system, release obnoxious gases, form suspended solids which interfere with the collection system or create a condition deleterious to structures and treatment processes.

5. If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or posses the characteristics enumerated in 7.0306 (4), and which in the judgment of the superintendent, may have a deleterious effect upon the wastewater facilities, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the superintendent may:

a. Reject the wastes;
b. Require pretreatment to an acceptable condition for discharge to the public sewers;
c. Require control over the quantities and rates of discharge; and/or
d. Require payment to cover the added costs of handling and treating the wastes not covered by sewer

charges under the provisions of 7.0306 (11).

If the superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the superintendent and the North Dakota State Department of Health.

6. Grease, oil and sand interceptors shall be provided when, in the opinion of the superintendent, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts as specified in 7.0306 (4) (c), or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the North Dakota Plumbing Code and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors the owner shall be responsible for the proper removal and disposal by appropriate means of the captivated material and shall maintain records of the dates, and means of disposal which are subject to review by the superintendent. Any removal and having of the collected materials not performed by owner personnel must be performed by currently licensed waste disposal firms.

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

8. When required by the superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such structures, when required, shall be accessibly and safely located and shall be constructed in accordance with plans approved by the superintendent. The structure shall be installed by the owner at his expense and shall be maintained by the owner so as to be safe and accessible at all times.

9. The superintendent may require a use of sewer services to provide information needed to determine compliance with this ordinance. These requirements may include:

   a. Wastewaters discharge peak rate and volume over a specified time period.
   b. Chemical analyses of wastewaters.
   c. Information on raw materials, processes and products affecting wastewater volume and quality.
   d. Quantity and disposition of specific liquid, sludge, oil, solvent or other materials important to sewer use control.
   e. A plot plan of sewers of the user's property showing sewer and pretreatment facility location.
   f. Details of wastewater pretreatment facilities.
   g. Details of systems to prevent and control the losses of materials through spills to the City sewer.

10. All measurements, test and analyses of the characteristics of waters and wastes to which reference is made in this ordinance shall be determined in accordance wit the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association. Sampling methods, location, times, durations and frequencies are to be determined on an individual basis by the superintendent.

11. No statement contained in this section shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment.

7.0307 <u>Damage to Sewer Works Prohibited</u>

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the wastewater facilities. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

7.0308 Powers and Authority of Inspectors

1. The superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing pertinent to discharge to the community system in accordance with the provisions of this ordinance.

2. The superintendent or other duly authorized employees are authorized to obtain information concerning industrial processes that have a direct bearing on the kind and source of discharge to the wastewater collection system. The industry may withhold information considered confidential. The industry must establish that the revelation to the public of the information in question might result in an advantage to competitors.

3. While performing the necessary work on private properties referred to in Section 7.0308 (1), above, the superintendent or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company, and the company shall be held harmless for injury or death to the City employees, and the City shall indemnify the company against loss or damage to its property by City employees and against liability claims and demands for personal injury or property damage asserted against the company growing out of the gauging and sampling operation, except such as may be caused by negligence or failure of the company to maintain safe conditions as required in Section 7.0306 (8).

4. The superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the wastewater facilities lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

7.0309 Hearing Board

1. A hearing board, consisting of three (3) members, shall be selected as needed for arbitration of differences between the superintendent and sewer users on matters concerning interpretation and execution of the provisions of this ordinance by the superintendent.

2. One member of the board shall be selected to represent the City, one member shall be selected to represent the sewer used involved in the arbitration and the third member shall be acceptable to both parties and shall serve as the chairman in the arbitration.

7.0310 Penalties

1. Any person found to be violating any provision of this ordinance except Section 7.0307 shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

2. Any person who shall continue any violation beyond the time limit provided for in Section 7.0310 (1), shall be guilty of a misdemeanor, and on conviction thereof shall be fined in the amount not exceeding one thousand dollars ($1,000.00) for each violation. Each day in which any such violation shall continue shall be deemed a separate offense.

3. Any person violating any of the provisions of this ordinance shall become liable to the City for any expense, loss or damage occasioned the City by reason of such violation.

7.0311 Validity

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

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

ARTICLE 4 - Sewer Surcharge

7.0401 Purpose

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

2. The definitions set forth in Section 7.0302 of this chapter shall also apply to this article.

7.0402 Determining the Total Annual Cost of Operation and Maintenance

The City or the city engineer shall determine the total annual costs of operation and maintenance of the wastewater system which are necessary to maintain the capacity and performance, during the service life of the treatment works, for which such works are designed and constructed. The total annual cost of operation and maintenance shall include, but need not be limited to, labor, repairs, equipment replacement, maintenance, necessary modifications, power, sampling, laboratory tests and a reasonable contingency fund.

7.0403 Determining Each User's Wastewater Contribution Percentage

The City or the city engineer shall determine for each user's average daily volume of wastewater, which has been discharged to the wastewater system, which shall then be divided by the average daily volume of all wastewater discharged to the wastewater system, to determine such user's volume contribution percentage. The amount used as the total average daily volume of wastewater shall exclude infiltration and inflow. The City or the city engineer shall determine each user's average daily poundage of 5-day 20-degree Centigrade biochemical oxygen demand which has been discharged to the wastewater system which shall then be divided by the average daily poundage of all 5-day 20-degree Centigrade biochemical oxygen demand discharged to the wastewater system to determine each user's Biochemical oxygen demand contribution percentage.

The City or the superintendent or city engineer shall determine each user's average daily poundage of suspended solids that has been discharged to the wastewater system which shall then be divided by the average daily poundage of all suspended solids discharged to the wastewater system, to determine such user's suspended solids contribution percentage. Each user's volume contribution percentage, biochemical oxygen demand contribution percentage and suspended solids contribution percentage shall be multiplied by the annual operation and maintenance costs for the total volume, the total 5-day 20-degree Centigrade biochemical oxygen demand and the total suspended solids for the wastewater system, respectively.

7.0404 Determining a Surcharge System for Users with Above Normal Volume, BOD and TSS

The City or the city engineer will determine the average total suspended solids (TSS) and biochemical oxygen demand (BOD) daily loadings for the average residential user and residential user class. The City will assess a surcharge rate for all non-residential users discharging wastes with volume, 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 and/or volume. Normal strength wastes are considered to be 200 mg/1 BOD and 250 mg/1TSS.

7.0405 Surcharge Rate Schedule for Above Normal Volume of Wastes

Residential users are considered to be one class of user and are hereby levied a charge of $3.00 a month. Non-residential users with flows no greater than the average residential user's flow of 4,000 gallons per month and with BOD and TSS no greater than the average residential user's strength will be levied the same charge of $3.00 per month as the average residential user.

Non-residential users with volumes greater than the average residential user will pay an additional charge of 60 cents per 1,000 gallons per month for all flows greater than the average residential user's flow of 4,000 gallons per month.

7.0406 Surcharge Rate Schedule for Above Normal Strength Wastes

Any non-residential user with BOD and TSS greater than the average residential user's strength will pay a surcharge in accordance with the rates determined by the City or its engineer.

The City or the city engineer may determine the total suspended solids (TSS) and 5-day biochemical oxygen demand (BOD_5) daily loadings for the average residential user and/or user class or in lieu of such determination can consider the average residential strength wastes to be 200 mg/1 BOD_5 and 250 mg/1 TSS. The City will assess 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 users above normal strength wastes. Such users will pay an additional user charge of 60 cents per 1,000 gallons for each 25 mg/1 or fraction thereof over 200 mg/1 of BOD_5 and 50 cents per 1,000 gallons for each 25 mg/1 or fraction thereof over 250 mg/1 TSS.

7.0407 Determining Each User's Wastewater Service Charge

Each non-residential user's wastewater cost contributions as determined in Sections 7.0405 and 7.0406 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 on an estimate of the total wastewater contribution of this class of user. The governing body may classify industrial, commercial and other non-residential 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, suspended solids and 5-day 20-degree Centigrade biochemical oxygen demand. Each user's wastewater treatment cost contribution will be assessed in accordance with the attached rate schedule.

7.0408 Payment of the User's Wastewater Service Charge and Penalties

The City may submit an annual statement to the user for the user's annual wastewater service charge or one-twelfth of the user's annual wastewater service charge may be included with the monthly water and/or wastewater utility billing. The City shall add a penalty of 10 percent per month if the payment is not received by the City within sixty (60) days. Should any user fail to pay the user wastewater service charge and penalty within three (3) months of the due date, the City may stop the wastewater service to the property.

7.0409 Review of Each User's Wastewater Service Charge

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

7.0410 Wastes Prohibited from Being Discharged to the Wastewater System

The discharge of any waters containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any wastewater treatment process or to constitute a hazard in the receiving waters of the wastewater treatment plan is hereby prohibited.

ARTICLE 5 - Adoption of State Plumbing Code

7.0501 Adoption

To promote 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.

7.0502 Plumbing Code - Enforcement of Provisions

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

7.0503 Plumbing Code - Changes in Existing Installations

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

7.0504 Plumbing Code - New Installations

All plumbing work and all excavations in the public streets or alleys, the cutting and replacing of pavement, laying of water and sewer connections and connections to storm water sewers and all construction of private sanitary drains and cesspools within the corporate limits shall be undertaken and executed only by a master plumber or other persons as have obtained a general license for such work together with a permit for each separate job, provided that the tapping of water mains and the placing of corporate cocks therein shall be done only under the direction of city employees.

ARTICLE 6 - General Penalty Provision

7.0601 Penalty for Violation of Chapter

Any person, firm or corporation violating any of the provisions of this chapter shall be guilty of an infraction and, upon conviction thereof by a court of competent jurisdiction, shall be subject to a fine of not exceeding five hundred dollars ($500.00) for each violation.

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CHAPTER EIGHT

BUSINESS REGULATIONS AND 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 shall not feel authorized to grant any particular application for license or permit for any purpose not named by ordinance, the city auditor shall report such application to the next meeting of the governing board for their action thereon.

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 the first day of July and expire on the last day of June and the last day of December respectively.

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

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 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 nay 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's 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 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.

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

1. Violation of the laws of the State of North Dakota or any of the ordinances of the City dealing with or pertaining to the business or trade licensed.

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

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

4. The death of a licensee.

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

6. When the licensee ceases to be a legal and bona fide citizen of the State of North Dakota.

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

8.0107 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 officer, 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 of Mott or within one (1) mile of the municipal 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. "Goods, wares and merchandise" shall include food and drink but shall not include any livestock or agricultural product.

8.0202 License Required

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

8.0203 License Fee

The license fee to be required of all transient merchants for the transaction of such business within the City, is contemplated in and provided for in and by Section 51-04-09, North Dakota Century Code, is hereby fixed at the sum of $50.00 per day for each and every day during which any such transient merchants shall transact business in the City. The City Council may change the license fee from time to time by resolution.

8.0204 License - Application for

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

1. Applicant's name, present residence, present home address, present business address, and if a corporation, under the laws of what state the same is incorporated;

2. The name, present residence, present home address and present business address of the person or persons having the management or supervision of applicant's business during the time that it is proposed that it will be carried on in the City;

3. The residence, business address and type of business in which applicant has been engaged in the previous two (2) years;

4. The residence, business address and type of business in which the person having the management or supervision of applicant's business has been engaged in the previous two (2) years;

5. The place or places in the City, where it is proposed to carry on applicant's business, and the length of time during which it is proposed that said business shall be conducted;

6. The kind of business to be conducted;

7. The name and address of the auctioneer, if any, who will conduct the sale; and

8. A statement of the nature, character and quality of the goods, wares or merchandise to be sold or offered for sale by applicant in the City, the invoice value and quality of such goods, wares and merchandise, whether the same are proposed to be sold from stock in possession or by sample; at auction, by direct sale or by direct sale and by taking orders for future delivery; where the goods or property proposed to be sold are manufactured or produces, and where such goods or products are located at the time said application is filed.

8.0205 Bond

Before any license shall be issued to a transient merchant for engaging in business in this City, the applicant therefore shall file with the city auditor a bond running to the City in the sum of $1,000 executed by the applicant, as principal, and a responsible surety upon which service of process may be made in the State of North Dakota; said bond not to be revocable nor to terminate prior to passage of two years time after the expiration of the license issued pursuant thereto nor until due notice that the terms of the bond are to be canceled 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 and will pay all judgments rendered against the applicant for any violation of said ordinances or statutes, together with all judgments and costs that may be recovered against him by any person 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 his true and lawful agent with full power and authority to acknowledge service or notice of process for and on behalf of the applicant in respect to any matters connected with or arising out of the business transacted under the license and the bond given as required b 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 at his last known address, by registered mail, 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 against any person found to be violating the same. 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 thereunder to assist and promote such enforcement.

8.0210 Revocation

1. Any license issued pursuant to this article may be revoked by their governing body of the City, 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.

ARTICLE 3 - Hawkers and Peddlers

8.0301 Definitions

The word "person" as used herein shall include the singular and the plural and shall also mean and include any person, firm or corporation, association, club, co-partnership or society or any other organization. The words "hawker" and "peddler" as used herein shall 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 shall be 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 license therefore.

8.0303 Exceptions

No license shall be required for peddling, vending or marketing farm products raised in the State of North Dakota, fish, vegetables, fruits, nuts, cake, candy, ice cream or other light products or refreshments.

8.0304 License - Application for

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

1. Name, age and sex of the applicant;

2. Address (legal and local);

3. A brief description of the nature of the business and the goods to be sold;

4. If employed, the name and address of the employer, together with credentials establishing the exact relationship;

5. The length of time for which the right to do business is desired;

6. If a vehicle is to be used, a description of the same, together with license number; and

7. A statement as to whether or not the applicant has been convicted of any crimes, misdemeanors or violations of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefore.

8.0305 Fees

The license fee to be required of all hawkers and peddlers for the transaction of business within the City shall be in the sum of $25.00 per day for each day or portion of the day which any such hawker or peddler shall transact business in the City.

8.0306 Exhibition of License

Hawkers and peddlers are required to exhibit their licenses at the request of any citizen.

8.0307 Transfer

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

8.0308 Use of Streets

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

8.0309 Enforcement

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

8.0310 Revocation

1. Licenses issued under the provisions of this article may be revoked by the governing body of the City after notice and hearing for any of the following causes:

   a. Fraud, misrepresentation or false statement contained in the application for license;
   b. Fraud, misrepresentation or false statement made in the course of carrying on his business;
   c. Any violation of this article;
   d. Conviction of any crime or misdemeanor involving moral turpitude;
   e. Conducting the business of hawking or peddling in an unlawful manner or in such a manner as to constitute a breach of peace or constitute a menace to the health, safety or general welfare of the public.

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

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 Exceptions

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

8.0403 License Required

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

8.0404 License - Application for

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

1. Name, age and sex of the applicant;

2. Address (legal and local);

3. A brief description of the nature of the business and the goods to be sold;

4. If employed, the name and address of the employer, together with credentials establishing the exact relationship;

5. The length of time for which the right to do business is desired;

6. If a vehicle is to be used, a description of the same, together with license number; and

7. A statement as to whether or not the applicant has been convicted of any crimes, misdemeanors or violations of any municipal ordinance, the nature of the offense and punishment or penalty assessed therefore.

8.0405 Fees

The license fee to be required of all runners, solicitors and canvassers for the transaction of business within the City shall be in the sum of $5.00 dollars per day or $75.00 per year. Penalty for those violating these provisions shall be subject to a fine of not exceeding $100.00 dollars, or for imprisonment not more than thirty days, or both fine and imprisonment.

8.0406 Exhibition of License

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

8.0407 Transfer

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

8.0408 Use of Streets

No runner, solicitor or canvasser shall have any exclusive right to any location in the public streets nor shall any be

permitted a stationary location nor shall he be permitted to operate in any congested area where his operations might impede or inconvenience the public. For the purpose of this article, the judgment of a police office, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

8.0409 Enforcement

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

8.0410 Revocation

1. Licenses issued under the provisions of this article may be revoked by the governing body of the City after notice and hearing, for any of the following causes:

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

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

ARTICLE 5 - Solicitation Without Invitation

(This article may be used when the City does not wish to permit and license hawkers, peddlers, runners, solicitors and canvassers as provided in Articles 3 and 4 and in lieu thereof.)

8.0501 Solicitation Without Invitation Prohibited

The practice of going in and upon private residences or privately owned property in the City by solicitors, peddlers, hawkers, itinerant merchants, transient vendors of merchandise, photographers and magazine and periodical subscription agents, not having been requested or invited to do so by the owner or owners, occupant or occupants of such private residences or private property, for the purpose of soliciting orders for the sale of goods, wares and merchandise or for the purpose of disposing of or peddling or hawking the same or for the purpose of soliciting subscriptions to magazines or periodicals or for the purpose of taking photographs is hereby declared to be a nuisance and unlawful.

8.0502 Enforcement

The chief of police and all police officers in the City are hereby required and directed to suppress the same and to abate any such nuisance as described in 8.0501.

ARTICLE 6 - Alcoholic Beverages

8.0601 Definitions

For the purpose of this article:

1. "Alcoholic beverages" shall mean any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.

2. "Beer" shall mean any malt beverage containing more than one-half of one percent of alcohol by volume.

3. "Licensee" shall mean 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" shall mean any alcoholic beverage except beer.

5. "Person" shall mean and include 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" shall 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" shall 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" shall include 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" shall mean the sale of alcoholic beverages for use or consumption and not for resale.

10. "Off-sale" shall mean 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" shall mean 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.

8.0602 <u>Exceptions</u>

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 <u>License Required</u>

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

8.0604 <u>Licenses - Classes of - Fees</u> (Source: North Dakota Century Code Section 5-02-03)

The fees for annual on and off sale, or exclusive on sale or exclusive off sale, beer and liquor licenses and Sunday alcoholic beverage permits shall be set by the City Council by ordinance or resolution and conform with Section5-02-03 NDCC and later amendments thereto. The annual on and off sale liquor license shall be $875.00. The annual on and off sale beer license shall be $200.00. The license fee for a one year Sunday Alcoholic Beverage Permit shall be $35.00. Any license issued under this section shall not exceed a period of one year. License fees shall be prorated according to the date

of the license application.

8.0605 Licenses - Terms of and Limit of Number

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

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

3. The maximum number of commercial licenses which may be issued shall be limited to four (4). "Commercial Licenses" are those licenses issued to applicants or places engaged in the retail sale of alcoholic beverages in the regular and usual course of business for profit, as distinguished from a non-profit club or lodge license.

4. Licenses for the retail sale of alcoholic beverages may be issued to non-profit clubs, lodges and non-profit fraternal associations in addition to the four (4) commercial licenses at the discretion of the City Council.

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, the manager of the licensed premises and the officers, directors and stockholders must be legal residents of the United States and persons of good moral character. Corporate applicants must first be properly registered with the Secretary of State

3. If applicant is a co-partnership, all the members must be legal residents of the United States and of good moral character.

4. Applicant or manager must not have been convicted of a felony.

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 place of business is to be conducted by a manager or agent, said manager or agent must possess the same qualifications required of the licensee.

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 governing body of this City, 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 governing board. The application for approval shall be in writing and shall be filed with the board. At the time of hearing, the board shall in its discretion determine if said location is in harmony with the public interest and welfare of the community and shall consider among other things the following factors:

1. The convenience of police regulations.

2. Public health and sanitation.

3. Proximity of other licensed businesses.

4. Proximity of schools, churches, funeral homes, public buildings or buildings used by or for minors.

5. Any 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 governing body of the City has received the application as provided herein, they shall meet and consider the same. If they find that the applicant meets the qualifications for a license and are satisfied as to the completeness and the accuracy of the information contained in the application, they may grant the license. If they find that the applicant does

not meet with the qualifications or they are not satisfied as to the completeness or accuracy of the information, they may request that the applicant supply more verified information to the governing body or they may reject the application.

8.0611 License - Limit to One Applicant

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

8.0612 License - Posting of

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

8.0613 License - Transfer of

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

8.0614 License Fees - Disposition of

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

8.0615 Hours and Time of Sale - Penalty

1. Anyone who dispenses or permits the consumption of alcoholic beverages on a licensed premises after one o'clock a.m. on Sundays, before eight o'clock a.m. on Mondays or between the hours of one o'clock a.m. and eight o'clock a.m. on all other days of the week or who so dispenses or permits such consumption after one o'clock a.m. on Thanksgiving Day, on Christmas Day, or after six o'clock p.m. on Christmas Eve is guilty of an offense.

2. No holder of any license for the sale of beer or intoxicating liquor, issued pursuant to any ordinance or ordinances of the City of Mott, shall permit any person or persons to be or remain, meet, congregate, or gather in any place covered by such license, during the time such place is to be closed for business under the terms of the ordinance pursuant to which such license is granted or according to the laws of the State of North Dakota.

3. No license holder, his agent, clerk, servant or employee shall be or remain in any place covered by such license during the time such place is to be closed for business under the terms and provisions of the Ordinance or Ordinances pursuant to which such license is granted, or according to the Laws of the State of North Dakota, except for fifteen minutes after the time for closing, and one hour before the time for opening; provided however that any such agent, clerk, servant, employee, or contractor employed in such place may enter and remain therein during the time it is closed for business, for such time as is necessary for making repairs, cleaning, and for doing such other acts as are necessary for the care of the stock, building and equipment, provided that the name or names of such persons and the time it is necessary for them to remain therein, are filed in writing in advance with the City Auditor and a copy thereof delivered to the City Mayor in advance.

4. Further any person who has been ordered to leave or vacate from said premises and who shall willfully remain therein thereafter, shall be guilty of a violation of this ordinance and upon conviction shall be subject to the provisions in this ordinance provided, exclusive however, of City officials, peace officers or other officials or inspectors lawfully within or entering said premises.

5. Any person, firm, association, partnership, corporation or other entity violating any of the provisions of this article shall, upon conviction thereof, be subject to the sanctions and penalties provided in Section 8.0629.

8.0616 Licensee's Responsibility

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

8.0616.1 Special Permits

1. Anyone licensed by the City governing body to sell alcoholic beverages may apply to the City governing body for a permit to sell alcoholic beverages under that license during the hours from twelve noon on Sundays to one a.m. on Mondays. The authority for issuing the permit rests solely with the City governing body. The fee for this permit shall be set by resolution of the City governing body.

   Anyone who dispenses, sells or permits the consumption of alcoholic beverages in violation of this ordinance, or who furnishes false or misleading information in applying for a permit is guilty of an offense which is punishable by a fine of up to $500.00. (Source: North Dakota Century Code Section 5-02-05.1)

   Anyone licensed by the City to sell alcoholic beverages may apply to the City for a permit to sell alcoholic beverages at events designated by the permit, all according to the provisions of NDCC 5-02-01.1.

2. Special Events Permits. The City Council may by special permit authorize an on-sale, off-sale, or on or off-sale alcoholic beverage licensee to engage in the sale of alcoholic beverages at special events on licensed premises as may be designated by the permit. The fee for this special permit shall be $25.00 but may be set at a lesser amount at the discretion of the City Council in individual cases. The permit shall not be valid for a period greater than three consecutive days. The City Council may establish rules as it may deem proper to regulate and restrict the operation of a special permit.

   When the special event involves a public dance or a wedding dance open to the public, the permit shall provide that the licensee shall not sell any alcoholic beverages unless a law enforcement office is present.

3. Special Permits for Private Groups.

   a. Special permits to serve beer, liquor, wine or alcoholic beverages in public buildings and other public facilities leased or used for social or business use by private groups without license fees or other charges therefore may be obtained upon compliance with the provisions of this Section.
   b. Qualification. The application for a permit authorized by this Article must be a temporary social or business use.
   c. Application must be a permit to:
      1. Serve without charge by the applicant, his or her guests as an act of hospitality.
      2. To serve without profit and at cost to those persons who are described in the application and who have contributed to the fund with which applicant has purchased the beer, wine, liquor or alcoholic beverages with mixes and incidentals to its service.
   d. Application of other law. Any person or organization operating under a special permit issued under this Article shall operate in compliance with all applicable provisions of this Code and City Ordinances relating to beer, wine, liquor, or alcoholic beverages except those relating to licenses for sale of beer, wine, liquor or alcoholic beverages.
   e. Application Form. Application for a permit authorized by the Provisions of this Article shall be made to the City upon forms furnished by it, and the applicant shall furnish any additional information required by them.
   f. Statement. The application for a permit under this Article must state that applicant will not sell at retail any beer, wine, liquor, or alcoholic beverages under such permit.
   g. Fee. The application fee for a permit under this section shall be $25.00 but may be set at a lesser amount at the discretion of the City Council.

h. Inspection of Premises. The applicant for a permit under this Section shall, by making such application, consent and agree that police officers may enter and inspect the leased premises or part thereof at any time to check compliance with City Ordinances.

3. Special Sunday Convention Alcoholic Beverage Permit.

   a. Special Permits Authorized. A Special Sunday Convention Alcoholic Beverage permit to sell alcoholic beverages at retail may be issued to a private club, lodge, restaurant, motel or hotel, as defined by City Ordinances or resolution and licensed as a retail alcoholic beverage establishment pursuant to Chapter 5-02 of the North Dakota Century Code; or to a publicly owned or operated facility that serves as the headquarters for a state, multi-state, or national event of a bona fide organization recognized by the governing body of the city.
   b. Application for Permit. The application for a Special Sunday Convention Alcoholic Beverage permit shall be made in writing and accompanied by a fee to be determined by the City Council.
   c. Use of Permit. Under the special permit, alcoholic beverages may be distributed and dancing may be permitted in those rooms of the private club, lodge, restaurant, motel or hotel, which have been specifically reserved for event activities. The City council may permit dancing and the distribution of alcoholic beverages between the hours of twelve noon on the specified Sunday and one a.m. on Monday. The general public may be permitted to participate in the consumption of alcoholic beverages distributed under the authority and conditions of the special permit. The private club, lodge, restaurant, motel, hotel, or publicly owned or operated facility granted the special permit shall enforce the requirements of this section and conditions established by the City Council under the permit.
   d. Local in Nature. The special Sunday event alcoholic beverage permit may not be granted to allow the distribution of alcoholic beverages at gatherings meetings which, in the opinion of the City Council, are primarily local in nature.

4. Local Approval of Sunday Beer and Wine Sales by Eating Establishments - Fee. The City Council may provide in any on-sale liquor or beer license the right of an eating establishment to dispense and sell beer and wine in conjunction with the sale of prepared meals on Sunday between the hours of 12:00 o'clock Noon and 9:00 o'clock P.M. for consumption only in that part of eating establishment habitually used for the serving of prepared meals. As used in this Section "eating establishment" means a restaurant or other commercial establishment that is licensed to engage in the sale of alcoholic beverages at retail pursuant to this Chapter 5-02 NDCC, and which derives fifty percent (50%) or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages. Where this Provision is made in an on-sale license, the governing body may require the licensee to pay an additional annual fee of not more than $150.00.

5. Application Form. The application for approval of Sunday beer and wine sales by eating establishments as provided above shall be made to the City Council upon forms furnished by it and the applicant shall furnish any additional information required by the City Council.

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, and such license shall be revoked upon conviction of any such violation. This section shall not apply to gambling or games of chance conducted by a licensee under the authority of a valid and subsisting permit issued by the City 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 accompanied by a parent or legal guardian. (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 agent or employee may require a statement in writing and signed by said person of such person's age. Any person who makes a false statement as to his or her age, or signs a name other than his own or her own to any such statement, shall be guilty of a violation of this article.

8.0622 Street Sales Prohibited

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

8.0623 Premises, Equipment of

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

8.0624 Closed or Screened Areas

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

8.0625 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 by him of such alcoholic beverages showing the name and license number of the wholesaler. Such records shall be retained in the possession of the licensee and shall be at all times open to inspection by any police officer or peace officer of the State of North Dakota.

8.0626 Toilets Required

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

8.0627 Deliveries - Off Licensed Premises

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

liquor or other alcoholic beverages to any purchaser or prospective purchaser.

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

8.0628 Termination or Revocation of Licenses

1. Licenses issued pursuant to this article shall be deemed canceled and revoked 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 governing body by personal representative of the decedent, the governing body shall consent 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 be 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 been revoked.
   g. When the licensee ceases to be a legal bona fide resident and citizen of the State of North Dakota.

2. License issued pursuant to this ordinance may, in the discretion of the governing body, be either revoked or suspended for such period of time as deemed appropriate, upon the following grounds:

   a. When the licensee has been convicted of violating any of the provisions of this article.
   b. When the business of the licensee at the location licensed shall be conducted in violation of health or sanitary regulations or other ordinances of the City.
   c. When the licensee, if an individual, or one of the partners, if the licensee be a partnership, or one of the officers or the manager if the licensee be a corporation, be convicted in the municipal court of the City of drunkenness or disorderly conduct, or if any appeal be 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 such license may also be canceled and revoked or suspended at any time by the governing body for any cause deemed by said 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 his business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through him.

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) for a first offense. After a second offense, the licensee shall be subject to a license suspension for a period up to thirty (30) days. After a third offense, the licensee's license shall be revoked.

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, menagerie, tent show, carnival or carnival show, continuous theatrical performance, shooting gallery or other like exhibition without first obtaining license from the City.

8.0702 Fees for

The fees to secure license to conduct the exhibitions mentioned in the foregoing section shall be set by the Mott City Council by resolution:

Any carnival, per day……$_____

Any circus, per day……...$_____

In addition to the above fees, any carnival or circus granted a license shall deposit with the city auditor cash bond in the amount of _____ guaranteeing that the premises upon which such carnival or circus is located shall be cleaned after the showing of such carnival or circus to the satisfaction of the city engineer and upon certification of the city engineer to the city auditor or if the City has no city engineer upon determination of the city auditor that the same has been done said cash deposit shall be returned to the licensee. Provided, further, that in additional to such fees, an additional fee in an amount from $_____ to $_____, to be fixed by the governing body, shall be paid at the time of obtaining license to provide for fire and police protection and additional policing in connection with the showing of such carnival or circus.

ARTICLE 8 - Regulating the Buying and Selling of Hides and Furs

8.0801 License

No person, firm or corporation shall buy, sell, barter or exchange hides or fur within the City of Mott, or in any manner engage in the business of buying, selling, bartering or exchange hides or fur therein without first obtaining a license therefore, provided, however, that any butcher having a regular established place of business in said City may buy and ship hides, but not fur without such license.

Any person, firm or corporation desiring to buy or sell hides or fur, or to engage in such business, shall first obtain from the City Council a license therefore, and pay an annual license fee of $15.00.

8.0802 Sanitation

Any person, firm or corporation who shall buy or sell hides or fur or engage in such business as hereinbefore provided, shall keep and maintain the place where such hides and fur are contained, in a clean and sanitary condition and as free from stench as such business will permit and to conform to any and all rules and regulations as may be prescribed by the Board of Health City Council or State, and upon failure to comply with this Section, the City Council may revoke such license and in case of such revocation, the license fee paid shall remain the property of the city.

The skinning of skunks or any other animal having an obnoxious odor, is within the city limits of the City of Mott, in all things is prohibited.

8.0803 Penalty

Any person, firm or corporation who shall violate any provision of this ordinance shall upon the conviction thereof be fined not more than $50.00 or by imprisonment in the city jail for not more than 30 days, or by both such fine and imprisonment in the discretion of the court.

ARTICLE 9 - Public Dances

8.0901 Definitions

1. "Public Dance" means any dance where the public may participate and is present primarily for the sole purpose of dancing and where the location of the dance has a capacity of at least 100 people.

2. "Public Dancing" means a room, place or space, which has a capacity of at least 100 people, open to the public patronage where dancing in which the public may participate is carried on and where the public is present primarily for the sole purpose of dancing.

8.0902 Permit for Public Dances

It shall be unlawful for any person, firm, association or corporation to give, hold or conduct a public dance unless the person, firm, association or corporation giving the same or in charge thereof shall first have procured a permit to give, hold and conduct such public dance as hereinafter provided.

8.0903 Who Shall Issue Permit

Permit must be procured from the City Council, and such permit may be issued for one or more public dances, or for a public dancing place for a period of not more than six (6) months at any one time, when a permit is issued to any firm, person, association or corporation, to conduct public dancing. Public dances may be conducted in such place only by the person, firm, association or corporation to whom such permit is issued. Such permit shall not be transferable.

8.0904 Manner of Obtaining Permit

Any person, firm, association or corporation desiring to conduct a public dance or a public dancing place shall make application for a permit to do so to the City Council. The application shall set forth the name of the person, firm, association or corporation in order to give, hold or conduct a public dance or public dancing place, the time or period for which the permit is desired, and a place where such public dance is to be conducted and held, the City Council shall make such inquiry and investigation as to the propriety of granting or refusing such permit as they deem necessary. No permit shall be issued to any person or corporation to conduct a public dance permit as they deem necessary. No permit shall be issued to any person or corporation to conduct a public dance or a public dancing place in any time when the same is likely to become a nuisance or detrimental to public morals. The application fee shall be twenty five and no/100 Dollars ($25.00) or such lesser amount as the City Council shall determine. The City Council may make any conditions or requirements for the issuance of the permit as it deems necessary.

8.0905 Hours of Closing

No public dance shall continue or be held or conducted by any one on any day between the hours of 2:00 o'clock A.M. and 6:00 o'clock A.M. All public dance halls and places for holding public dances in this City shall be closed at or before 2:30 o'clock A.M.

8.0906 Officers of the Law to Be in Attendance

The chief peace officer of the City shall police such public dances so that law and order are there maintained. The Chief peace officer shall determine the number, if any, of special officers needed to police the dance properly. The person conducting any such dance shall, before the dance is held, pay to such peace officer the expense of any special officer required for the proper policing at such public dance. No such dance may be permitted to proceed unless such officer or officers are present and fees therefore are paid. The holding of a dance without giving notice thereof to the peace officer of the City, and without making provisions for the policing thereof, is unlawful. No person, directly or indirectly is interested or concerned in the giving, holding or conducting of such public dance, or connected with the person conducting the same, is eligible to appointment under this Section of Special Officer.

8.0907 Removal and Revocation of Permit

The City Council may at any time revoke a permit for violation of any of the provisions of this chapter, and shall revoke the same upon conviction of the person to whom the same has been issued for violation of any of the laws of this

State. The City Council shall refuse to issue a permit and shall revoke a permit already issued where it appears that the place is or is not likely to become a public nuisance, or detrimental to public morals, or that the provisions of this Article or any of the laws of this State are being violated.

ARTICLE 10 - Validity

8.1001 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 other than those as to which it is held to be invalid, 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 11 - Penalty

8.1101 Penalty

Any person, firm, corporation, or association violating any of the terms, article, 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 and No/100 Dollars ($500.00), or by imprisonment not to exceed thirty (30) days, or by both such fine and imprisonment in the discretion of the court. The court shall have the power to suspend such sentence and to revoke the suspension thereof. The court may, in addition thereto, revoke the permit 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 thereof.

CHAPTER NINE

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CHAPTER NINE

TRAFFIC

ARTICLE 1 – Definitions

9.0101 Definitions

Words and phrases used in this chapter shall have the meaning and be defined as provided in the North Dakota Century Code in Title 39, and NDCC Section 39-01-01 and all subsequent amendments shall be and 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 this City and all of the state vehicle laws, to make arrests for traffic violations, to investigate accidents and to cooperate with the city traffic engineer and other officers of the City in the administration of the traffic laws and in developing ways and means to improve traffic conditions, and to carry out the traffic ordinances of this City.

9.0202 Records of Traffic Violations

1. The police department shall keep a record of all violations of the traffic ordinances of this City or of the state vehicle laws of which any person has been charged, together with a record of the final disposition of all such alleged offenses. Such record shall be so maintained as to show all types of violations and the total of each. Said record shall accumulate during at least a five-year period and from that time on the record shall be maintained complete for at least the most recent five-year period.

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, to arrest and to 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 thereat or in the immediate vicinity.

9.0302 Obedience to Traffic Ordinances

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

9.0303 Obedience to Police Officers or Firemen

No person shall willfully refuse to comply with any lawful order or direction of any police officer or fireman invested by law with authority to direct, control, or regulation traffic.

9.0304 Certain Non-motorized Traffic to Obey Traffic Regulations

1. Every person propelling any pushcart upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this ordinance and by the rules of the road portion of the state vehicle code, except those provisions which by their very nature can have no application.

2. Every person riding a bicycle or an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this ordinance, except those provisions of this ordinance which by their very nature can have no application.

9.0305 Use of Coasters, Roller Skates and Similar Devices Restricted

No person upon roller skates, or riding in or by means of any coaster, toy vehicle, or similar device, shall go upon any roadway except while crossing a street on a crosswalk and when so crossing such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. This section shall not apply upon any street while set aside as a play street as authorized herein.

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, town, district, or any other political subdivision or the state, subject to such specific exceptions as are set forth in this ordinance or in the state vehicle code.

9.0307 Emergency Vehicles

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

1. Authorized emergency vehicles. **Class A** authorized emergency vehicle shall mean:

   a. Vehicles of a governmental 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 to include special deputy sheriffs, or by the director of the department of correction and rehabilitation and the director's authorized agents who have successfully completed training in the operation of Class A authorized emergency vehicles;
   c. Vehicles clearly identifiable as property of the department of corrections and rehabilitation when operated or under the control of the director of the department of corrections and rehabilitation;
   d. Ambulances;

e. Vehicles operated by or under the control of the director, district deputy director, and district deputy game warden of the North Dakota Game and Fish Department;
f. Vehicles owned or leased by the United states Government 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 Parks and Recreation Department;
i. Vehicles operated or under the control of a licensed railroad police officer and used for law enforcement purposes; (Source: North Dakota Century Code Section 39-01-01)

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

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

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

   a. When the authorized emergency vehicle is in pursuit of or apprehension of a violator or a suspected violator requiring the use of these exemptions;
   b. When the Class A authorized emergency vehicle in being operated in response to a reported emergency involving a possible personal injury, death or damage to property, and when giving 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);
   c. In any instance when the head of the law enforcement agency deems advisable within the area of his 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).

4. No emergency vehicle shall 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 1 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.

7. The driver of Class B authorized emergency vehicles may:

   a. Park or stand, irrespective of the provisions of this chapter;
   b. Exceed the speed limit so long as he does not endanger life or property during the time of a local or national disaster;
   c. Disregard regulations governing direction of movement or turning in specified directions.

8. The exceptions herein granted to a Class B authorize emergency vehicle shall apply only when the authorized emergency vehicle is displaying an amber light visible under normal atmospheric conditions for a distance of five hundred feet (152.4 meters) in any direction, and

   a. When it is necessary for the authorized emergency vehicle to use these exemptions for the immediate protection of life or property;
   b. When an authorized emergency vehicle is stopped on a highway for the purpose of performing a duty as

required of the driver; or

c. When traveling at a speed slower than the normal flow of traffic. (Source: North Dakota Century Code Section 39-10-03.2)

9. **Class C** authorized emergency vehicles means:

a. Vehicles authorized by state and 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 personnel.

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. The division of disaster emergency services shall be responsible for promulgating the rules for the use of flashing blue lights in accordance with chapter 28-32 of the North Dakota Century Code. (Source: North Dakota Century Code Section 39-10-03.2)

9.0308 Operation of Vehicles on Approach of Authorized Emergency Vehicles

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

1. Upon the immediate approach of an authorized emergency vehicle displaying a visible flashing, revolving, or rotating blue, white, or red light, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb or the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

2. Whenever an emergency vehicle is parked or stopped at the scene of an emergency and is displaying a flashing, revolving, or rotating blue, white, or red light, approaching traffic shall move to the right-hand edge or curb of the roadway and shall stop, but once having stopped, traffic may proceed past the scene at its own risk when the roadway is clear, except when otherwise directed by a police officer.

3. This section shall not operate to relieve the driver of any authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highways.

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 at least on thousand dollars, shall immediately give notice of the accident to the local police department if the accident occurs within a municipality, otherwise to the office of the county sheriff or the state highway patrol. 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 shall be removed. (Source: North Dakota Century Code Section 39-07-12)

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

ARTICLE 4 – Traffic Control Devices

9.0401 Authority to Install

The city engineer or any person authorized by the 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 he may deem 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 NDCC 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 shall be and 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 shall be and are hereby incorporated by reference in this ordinance.

1. No person shall 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 shall 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 shall 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 shall 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.

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 shall be and are hereby incorporated by reference in this ordinance.

No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove 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 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 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 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 shall be and 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 shall have committed careless driving, and shall be assessed a fee of Thirty and No/100 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 shall be and are hereby incorporated by reference in this ordinance.

1. Subject to the provisions of 9.0501 and except in those instances where a lower speed is specified in this chapter, it presumably shall be lawful for the driver of a vehicle to drive the same at a speed not exceeding Twenty (20) miles an hour.

2. The director of the North Dakota Department of Transportation may designate and post special areas of state highways where lower speed limits shall apply.

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 prescribed shall be 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 shall be and 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 what 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 municipality shall 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 (16.09 kilometers) per hour.

6. Alterations to Speed Limit

   a. The speed limit on 1st Street and 5th Street shall be raised to 25 miles per hour. [Pursuant to Resolution dated April 11, 2011.

9.0504 <u>Speed Limitations Inapplicable to Whom – Liability of Exempt Driver for Reckless Driving</u>

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

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

9.0505 <u>Minimum Speed Limits</u>

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

1. No person shall drive a motor vehicle at such a slow speed 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. Whenever the state highway commissioner and the superintendent of the highway patrol, acting jointly, or the City, determine on the basis of engineering and traffic investigation that slow speeds on any highway or part of a highway impede the normal and reasonable movement of traffic, the commissioner and superintendent or the City may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law, and that limit shall be 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 shall be and are hereby incorporated by reference in this ordinance.

1. No person shall engage in exhibition driving of any vehicle on a highway, street, alley, sidewalk, or any public or private parking lot or area, nor shall 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 or 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 shall be and are hereby incorporated by reference in this ordinance.

The speed of any motor vehicle may be checked by the use of radio microwaves or other electrical device. The results of such checks shall be accepted a prima facie evidence of the speed of such motor vehicle in any court or legal proceedings where the speed of the motor vehicle is at issue. The driver of any such motor vehicle may be arrested

without a warrant under this section, provided the arresting officer is in uniform or displays the officer's badge of authority; provided that such officer has observed the record of the device, or has received a radio message from the officer who observed the speed of the motor vehicle recorded by the radio microwaves or other electrical device.

9.0509 Care Required in Operating Vehicle

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

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

ARTICLE 6 – Turning Movements

9.0601 Required Position and Method of Turning

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

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

1. Right turns. Both the approach for a right turn and a right turn must be made as close as practicable to the right-hand curb or edge of the roadway;

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

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

9.0602 Vehicle Turning Left

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

1. The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction unless such movement can be made in safely and without interfering with other traffic.

2. No vehicle shall 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 shall be and 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 or 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 shall be and 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 shall be and 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 of 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 shall be and are hereby incorporated by reference in this ordinance.

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

9.0702 Through Streets Designated

The following streets and parts of streets are hereby declared to be through streets for the purpose of this chapter shall be designed by City Council by Resolution.

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 shall be and 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 and 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 shall 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 even 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 the North Dakota Century Code Section 39-10-68 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

No driver shall 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 he 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 shall be and 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 (15.24 meters) but not less than fifteen (15) feet (4.57 meters) from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall 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 (402.34 meters) 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 shall 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 shall drive any vehicle past any human flagman at a railroad crossing until the flagman signals that the way is clear to proceed.

ARTICLE 8 – Operators

9.0801 Operators – Who Prohibited

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

ARTICLE 9 – Miscellaneous Driving Rules

9.0901 When Traffic Obstructed

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle the driver is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed. (Source: North Dakota Century Code Section 39-10-68)

9.0902 Driving Through Funeral or Other Procession

No driver of a vehicle shall 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 shall be and are hereby incorporated by reference in this ordinance.

1. Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

    a. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
    b. When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;
    c. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

2. Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall 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 shall 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 shall be and 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 shall be and 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 shall be and 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 shall be and 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 shall be and are hereby incorporated by reference in this ordinance.

1. No vehicle shall be driven to the left side of the roadway under the following conditions:

    a. When approaching or upon the crest of a grade or a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;
    b. When approaching within one hundred (100) feet of or traversing any intersection or railroad grade crossing; or
    c. When the view is obstructed upon approaching within one hundred (100) feet of any bridge, viaduct or tunnel.

2. The foregoing limitations shall not apply upon a one-way roadway, nor under the conditions described in 9.0906 nor to the driver of a vehicle turning left into or from an alley, private road or driveway.

9.0912 No-Passing Zones

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

1. The director of the North Dakota Department of Transportation and local authorities 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 shall be and 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 shall be and 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 shall be and 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 shall be and 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 shall be and are hereby incorporated by reference in this ordinance.

The director of the North Dakota Department of Transportation may by order, and the City 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, 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 shall disobey the restrictions stated on such signs.

9.0918 Vehicle Entering Roadway

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

1. When two vehicles approach or enter an intersection not controlled by an official traffic-control device from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right. If the intersection is T-shaped and not controlled by an official traffic-control device, the driver of the vehicle on the terminating street shall yield to the vehicle on the continuing street or highway.

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

9.0920 Overtaking and Passing School Bus

The provisions of North Dakota Century Code Section 39-10-46 and all subsequent amendments shall be and 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 39-21-18, and the driver may not proceed until the school bus resumes motion, the driver is signaled by the school bus driver to proceed, or the flashing red lights and the stop sign on the control arm are no longer actuated.

2. Every school bus shall bear upon the front and rear thereof plainly visible signs containing the word "SCHOOL BUS" in letters not less than eight (8) inches (20.32 centimeters) in height. When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or for a school sanctioned activity, all markings thereon indicating "SCHOOL BUS" shall 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 (91.44 meters) nor more than five hundred (500) feet (152.4 meters) from

the point where school children are to be received or discharged from the bus.

4. Every school bus must be equipped with a stop sign on a control arm and red visual signals meeting the requirements of North Dakota Century Code Section 39-21-18, which may only be actuated by the driver of the school bus whenever the vehicle is stopped on the highway to receive or discharge school children.

5. The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

6. Every school bus must bear on the rear of the bus a plainly visible sign containing the words "THIS SCHOOL BUS STOPS AT ALL RAILROAD CROSSINGS".

9.0921 Unattended Motor Vehicle

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

The driver of any vehicle other than one on official business may not follow any fire apparatus traveling in response to a fire alarm closer than five hundred (500) feet or stop such vehicle within five hundred (500) feet of any fire apparatus stopped in answer to a fire alarm.

9.0927 Crossing Fire Hose

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

1. No person may throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, rubbish, or any other substance likely to injure any person, animal or vehicle.

2. Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

3. Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

9.0929 Driving Through Safety Zone Prohibited

The provisions of North Dakota Century Code Section 39-10-64 and all subsequent amendments shall be and 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 shall be and 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 shall be and 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 shall be 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 shall be deemed to be within the area occupied by the driver and passengers. This section does not prohibit the consumption or possession of alcoholic beverages in a house car, as defined in Section 9.0101, if the consumption or possession occurs in the area of the house car used as sleeping or living quarters and that area is separated from the driving compartment by a solid partition, door, curtain or some similar means of separation; however, consumption is not authorized while the house car is in motion. Any person violating the provisions of this section must be assessed a fee of Fifty and No/100 Dollars ($50.00); however the licensing authority shall not record the violation against person's driving record unless the person was the driver of the motor vehicle at the time that the violation occurred.

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

9.0932 Permitting Unauthorized Minor to Drive

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

9.0933 Permitting Unauthorized Person to Drive

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

9.0934 Compression Brakes Prohibited

1. No person shall use motor vehicle brakes within the city limits that are in any way activated or operated by the compression of the engine of that motor vehicle or any unit or part thereof. It shall be an affirmative defense to prosecution under this section that the compression brakes were applied in an emergency and were necessary for the protection of person and/or property.

2. This section shall not apply to motorcycles or vehicles of a municipal fire department, whether or not responding to an emergency.

3. As used in this section the term "compression brakes" means the use of the engine to retard the forward motion of a motor vehicle by compression of the engine.

4. A person who violates this ordinance shall be subject to a fine of $250.00.

9.0935 Prohibiting Texting While Driving

1. No person shall operate a motor vehicle on any highway, street or alley within the city limits while using a wireless communication device to read, view, write, compose or send an electronic message or electronic information.

2. The prohibition imposed under this section shall not apply to a person operating a motor vehicle who is: a) A law enforcement, fire department, or an emergency services professional performing official duties. b) Reporting an emergency or criminal or suspicious activity to law enforcement or other emergency authorities. c) Summoning medical or other emergency assistance. d) Using a GPS device for navigation purposes. e) Using a voice activated or other hands free wireless communication device. f) Lawfully parked.

3. As used in this section: a) Electronic information shall mean email, text messaging and internet access from a wireless communications device. b) Electronic message shall mean communication in the form of electronic text or electronic images transmitted or intended to be transmitted between physical devices. c) Wireless communication device shall mean a hand-held cellular telephone, computer, personal digital assistant or any device with texting, email and/or internet capability.

4. The penalty for a violation of this section is a fine of fifty dollars.

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 shall be and are hereby incorporated by reference in this ordinance.

1. A pedestrian shall obey the instructions of any official traffic control device specially applicable to him, unless otherwise directed by a police officer.

2. Pedestrians are subject to traffic-control and pedestrian-control signals as provided for in 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 shall be and 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 shall 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 shall be and 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 shall be and 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 shall be and 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 shall be and 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 shall be and 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 shall be and 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 shall be and 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 a guide 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 shall be and 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 shall be and

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 shall be and are hereby incorporated by reference in this ordinance.

1. No person may stand in a roadway for the purpose of soliciting a ride.

2. No person may stand in a roadway for the purpose of soliciting employment, business or contributions from the occupant of any vehicle.

3. No person may stand on or in proximity to a street or highway for the purpose of soliciting watching of guarding of any vehicle while parked or about to be parked on a street or highway.

ARTICLE 11 – Regulations for Motorcycles

9.1101 Traffic Laws Apply to Persons Operating Motorcycles or Motorized Bicycles

The provisions of North Dakota Century Code Section 39-10.2-01 and all subsequent amendments shall be and 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 shall be and 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 shall be and

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. Subsection 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 shall be and 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 shall be and 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 passengers.

9.1106 Equipment for Motorcycle Riders

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

1. No person under the age of eighteen (18) 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 shall be and are hereby incorporated by reference in this ordinance.

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

ARTICLE 12 – Regulations for Bicycles

9.1201 Effect of Regulations

1. It is a violation of this ordinance 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 ordinance.

3. These regulations applicable to bicycles apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein. (Source: North Dakota Century Code Section 39-10.1-01)

9.1202 Traffic Ordinances Apply to Persons Riding Bicycles

Every person riding a bicycle upon a roadway is granted all of the rights and is subject to all of the duties applicable to the driver of a vehicle by this ordinance, except as to special regulations in this article and except as to those provisions of this ordinance which by their nature can have no application. (Source: North Dakota Century Code Section 39-10.1-02)

9.1203 Obedience to Traffic Control Devices

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

2. Whenever authorized signs are erected indicating that no right or left or U turn is permitted, no person operating a bicycle may disobey the direction of any such sign, except where such person dismounts from the bicycle to make any such turn, in which event such person shall then obey the regulations applicable to pedestrians.

9.1204 Riding on Sidewalks

1. The chief of police or authorized person may erect signs on any sidewalk or roadway prohibiting the riding of bicycles thereon by any person and when such signs are in place no person may disobey the same.

2. Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing such pedestrian.

9.1205 Riding on Roadways and Bicycle Paths

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

1. Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadways as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

2. Persons riding bicycles upon a roadway may not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

3. Whenever a usable path for bicycle riders has been provided adjacent to a roadway, bicycle riders shall use such path and may not use the roadway.

9.1206 Clinging to Vehicles

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

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

9. 1213 License Required

No bicycle may be operated within the City without first obtaining a license to operate the same and the payment of the annual license fee.

9.1214 License Application – Penalty

Application for a bicycle license shall be made upon a form provided by the City and shall be made to the chief of police. An annual fee of _____ shall be paid to the City before each license, or renewal thereof, is granted. All licenses are due January first of each year and delinquent April first of each year. The owner of a bicycle purchased after January first of any year shall apply for a license within ninety days from the date of purchase. Failure to pay the license fee within the time prescribed in this section subjects the owner to a penalty of _____ or the taking up of the bicycle, which may be held until license fee and penalty are paid.

9.1215 Issuance of License

1. The chief of police, upon receiving proper application therefore, is authorized to issue a bicycle license which shall be effective until the next succeeding first day of _____, regardless of the time of issuance.

2. The chief of police shall not issue a license for any bicycle when he knows or has reasonable grounds to believe that the applicant is not the owner of, or entitled to the possession of such bicycle.

3. The chief of police shall keep a record of the number of each license, the date issued, and a record of all bicycle license fees collected.

9.1216 Renewal of License

Upon the expiration of any license, the same may be renewed upon application and payment of the same fee as upon an original application.

9.1217 Revocation of License

The municipal judge, upon application of the chief of police, may revoke any license issued hereunder, after hearing thereon, notice of which hearing shall be given to the licensee at least two (2) days before such hearing. A license may be revoked for any fraud or false representation in obtaining the same, for any violation of terms of this ordinance, and for the violation of any ordinance of this City or the laws of the State of North Dakota.

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 _____ pick up fee shall be charged. If not licensed, the owner shall purchase a current year's license in addition to the pick up fee before the bicycle is returned to the owner.

ARTICLE 13 – Angle Parking

9.1301 Angle Parking

The city engineer or other person authorized by the governing body 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

In the business district the parking of such vehicles shall be angular as indicated by parking signs or by lines marked on the pavement by the chief of police.

9.1303 Close to Curb

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

9.1304 Method of Parking - Penalty

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

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

9.1401 Parking Prohibited - All 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 shall be and are hereby incorporated by reference in this ordinance.

1. Upon any highway outside of a business or residence district no person shall 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 shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

9.1403 Officers Authorized to Remove Illegally Stopped Vehicles

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

1. Whenever any police officer finds a vehicle standing upon a highway in violation of any of the provisions of

Section 9.1402, such officer is hereby authorized to move such vehicle, or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or main-traveled part of such highway.

2. Whenever any police officer finds a vehicle unattended upon any highway, bridge or causeway, or in any tunnel where such vehicle constitute an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety.

3. Any police officer is hereby authorized to remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon a highway when:

   a. A report has been made that such vehicle has been stolen or taken without consent of its owner;
   b. The person or persons in charge of such vehicle are unable to provide for its custody or removal; or
   c. When the person driving or in control of such vehicle is arrested for an alleged offense for which the officer is required by law to take the person arrested before a proper magistrate without unnecessary delay.

9.1404 <u>Stopping, Standing or Parking Prohibited in Specified Places</u>

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

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

1. On a sidewalk;

2. In front of a public or private driveway;

3. Within an intersection;

4. Within ten (10) feet of a fire hydrant;

5. On a crosswalk;
6. Within ten (10) feet of a crosswalk at an intersection;

7. Within fifteen (15) feet upon the approach to any flashing beacon, stop sign or traffic-control signal located at the side of a roadway;

8. Between a safety zone and the adjacent curb or within fifteen (15) feet of points on the curb immediately opposite the ends of a safety zone, unless the North Dakota Department of Transportation or the City indicates a different length by signs or markings;

9. Within fifteen (15) feet of the nearest rail of a railroad crossing;

10. Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of said entrance when properly signposted;

11. Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;

12. On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

13. Upon any bridge or other elevated structure upon a highway or within a highway tunnel; or

14. At any place where official signs prohibit stopping.

No person shall move a vehicle not lawfully under his 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 shall be and are hereby incorporated by reference in this ordinance.

1. Except as otherwise provided in this section, 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 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 repairing such vehicle necessitated by an emergency.

9.1407 Stopping - Parking - Congested - Hazardous Places

The city engineer or other person designated by the 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 his 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 shall be and are hereby incorporated by reference in this ordinance.

1. Any mobility-impaired person who displays prominently upon an automobile parked by that person or under that person's direction and for that person's use, a distinguishing certificate or insignia for mobility-impaired persons issued by the North Dakota Department of Transportation shall be entitled to courtesy in the parking of the automobile. Provided, however, that the City may prohibit parking on any street or highway for the purpose of creating a fire lane, or to provide for the accommodation of heavy traffic during morning and afternoon rush hours, and the privileges extended to such impaired persons do not apply on streets or highways where and during such times as parking is prohibited.

2. A mobility-impaired person as used in this section includes any person who uses portable oxygen; requires personal assistance or the use of crutches, a wheelchair, or a walker to walk two hundred feet without rest; is restricted by cardiac, pulmonary or vascular disease from walking two hundred feet without rest; has a forced expiratory volume of less than one liter for one second or an arterial oxygen tension of less than sixty millimeters to mercury on room air while at rest and is classified III or IV by standards for cardiac disease set by the American Heart Association; or has an orthopedic, neurological or other medical condition that makes it impossible for the person to walk two hundred feet without assistance or rest.
3. If a law enforcement officer finds that a mobility-impaired certificate or insignia is being improperly used, the officer may report to the director of the North Dakota Department of Transportation. Any person who is not mobility-impaired and who exercises the privileges granted a mobility-impaired person under subsection 1 shall be guilty of an infraction.

4. Whenever any public or private entity designates parking spaces for use by motor vehicles operated by mobility-impaired persons, those reserved spaces must be indicated by blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space. In addition to blue paint, the space reserved must be indicated by an official sign approved by the director of the North Dakota Department of Transportation. The City may enforce the provisions of this subsection in any parking lot or parking facility that is generally open to the public, whether publicly or privately owned.

5. A person may not stop, stand or park any vehicle in any designated parking space which is reserved for the mobility-impaired unless the vehicle displays a mobility-impaired identification certificate or insignia issued by the director of the North Dakota Department of Transportation. For a violation of this subsection, there

will be a fee in the amount of one hundred dollars ($100.00).

ARTICLE 15 - Reserved Parking Areas

9.1501 Reserved Parking Areas

No person, firm or corporation shall, when signs are erected giving notice thereof, park or leave standing, either attended or unattended, any motor vehicle on street areas which are reserved for the following temporary uses: loading and unloading, bus parking, guest parking, taxi parking, emergency parking, no parking, police or fire use.

The chief of police may establish from time to time areas for loading and unloading, bus parking, guest parking, taxi parking, emergency parking, no parking or police and fire use on such public streets in such places and in such number as the chief shall determine or as the governing body may specifically designate to be of greatest benefit and convenience to the public. These areas shall be designated by appropriate signs.

ARTICLE 16 - Time Limit Parking Zones

9.1601 Time Limit Parking Zones

When signs are erected giving notice thereof, no person, firm or corporation shall park or leave standing, either attended or unattended any motor vehicle for more than the amount of time posted.

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

ARTICLE 17 - Equipment of Vehicles

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

1. Every motor vehicle shall be equipped with a windshield. No person shall 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 shall be so constructed as to be controlled or operated by the driver of the vehicle.

3. Every windshield wiper upon a motor vehicle shall be maintained in good working order.

4. A person may not operate a motor vehicle with any object or any material displayed, affixed or applied on the front windshield or on any side window where that material alters the color or reduces the light transmittance, or reduces the clear and unobstructed view through the windshield or window. This subsection does not apply to windows behind the driver or to tinted windows or windshields in compliance with the Federal Motor Vehicle Safety Standards.

9.1702 Child Restraint Devices - Evidence

1. If a child, under four years of age, is present in any motor vehicle, that motor vehicle must be equipped with at least one (1) child restraint system for each such child. The child restraint system must meet the standards adopted by the United States Department of Transportation for those systems (49 CFR 571.213). While the motor vehicle is in motion, each such child must be properly secured in the child restraint system in accordance with the manufacturer's instructions. If a child who is at least four and at most seventeen years of age is present in a motor vehicle, unless properly secured in an approved child restraint system, the child

must be buckled in a seatbelt whenever the car is moving. Use of child restraint systems and seatbelts is not required in motor vehicles that were not equipped with seatbelts when manufactured.

2. Violation of this ordinance is not, in itself, evidence of negligence. The fact of a violation of this section is not admissible in any proceeding other than one charging the violation. (Source: North Dakota Century Code Section 39-21-41.2)

9.1703 Use of Safety Belts - Enforcement

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

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

9.1704 Drawbar or Connection Between Vehicles - Precautions Required

The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, shall be of such design, strength and construction so as to prevent the unintentional uncoupling of the vehicles. (Source: North Dakota Century Code Section 39-21-44.2)

9.1705 Modification of Motor Vehicle

Except as otherwise provided in this ordinance, a person may not operate upon a public highway a motor vehicle of a type required to be registered under the laws of this state with a weight of seven thousand (7,000) pounds (3175.14 kilograms) or less with alterations or changes from the manufacturer's original design of the suspension, steering or braking system of the motor vehicle. The weight must be computed on the basis of the unmodified and unloaded weight of the motor vehicle, and without regard to any ballast that may be placed in the vehicle. As to bumpers, motor vehicle height and permitted modifications, the following requirements also apply:

1. The motor vehicle must be equipped with front and rear bumpers.

2. The maximum body height permitted for a motor vehicle is forty-two (42) inches (106.68 centimeters). Measurement of body height is made from a level ground surface to the floor of the cargo area.

3. The maximum bumper height permitted is twenty-seven (27) inches (68.58 centimeters). Measurement of bumper height is made from a level ground surface to the highest point on the bottom of the bumper.

4. The vehicle may be modified in accordance with the following:

   a. Any modifying equipment must meet specialty equipment marketing association standards.
   b. If tires placed on a motor vehicle have a diameter greater than that of the tires on the motor vehicle as manufactured, those tires must comply with Department of Transportation requirements.
   c. The maximum outside diameter permitted for tires if forty-four (44) inches (111.76 centimeters).
   d. A horizontal drop bumper may be used to comply with the bumper height requirement of subsection 3. The horizontal bumper must:
      i. Be at least three (3) inches (7.62 centimeters) in vertical width;

ii. Extend the entire horizontal body width; and
iii. Be horizontal, load bearing and attached to the vehicle frame to effectively transfer impact when engaged.

e. The maximum lift permitted in the suspension system is four (4) inches (10.16 centimeters).

5. A person charged with violating this ordinance has the burden of proceeding to show that the modifications are permitted under this section.

6. Vehicles owned by law enforcement agencies, the military, fire fighting agencies and ambulances may be modified without regard to this ordinance. (Source: North Dakota Century Code Section 39-21-45.1)

9.1706 Scope and Effect of Equipment Requirements - Penalty

1. It is unlawful for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which the actor knows to be in such unsafe condition as to endanger any person, or which the actor knows does not contain those parts or is not at all times equipped with lamps and other equipment in proper condition and adjustment as required in this chapter, or which the actor knows is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this ordinance. Unless otherwise specifically provided in this chapter or in section 39-06.1-08 or 39-06.1-09 of the North Dakota Century Code, any person who, in violation of this ordinance, drives, or any owner who causes or knowingly permits to be driven upon a highway, any vehicle or combination of vehicles which that person knows is unsafe or improperly equipped is guilty of an infraction.

2. Nothing contained in this ordinance may be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter.

3. The provisions of this ordinance with respect to equipment on vehicles do not apply to implements of husbandry, road machinery, road rollers or farm tractors except as specifically made applicable.

4. The provisions of this ordinance with respect to equipment required on vehicles do not apply to motorcycles or motor-driven cycles, except as specifically made applicable.

5. The provisions of this ordinance do not apply to vehicles moved solely by human power, except as specifically made applicable. (Source: North Dakota Century Code Section 39-21-46)

9.1707 Alteration Of Odometers or Other Mileage Recorders - Penalty

A person may not willfully, as defined in Section 12.1-02-02, North Dakota Century Code, alter a motor vehicle odometer or other mileage recorded, hour meter on tachometer or other hour recorded for the purpose of deceiving another. Violation of this section is a class C felony if the person has previously been convicted of violating this section, or if the person has violated this section with respect to more than one vehicle, and a class B misdemeanor in all other cases. (Source: North Dakota Century Code Section 39-21-51).

ARTICLE 18 - Motorcycle Equipment

9.1801 Purpose

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

It is the purpose of this chapter to establish performance and equipment requirements for the manufacture, sale and safe operation of a motorcycle upon public highways, and to furnish administrators with a guide for registration

eligibility and continued conformity as related to motorcycles. (Source: North Dakota Century Code Section 39-27-01)

9.1802 Manufacturer's or Distributor's Certification

1. The manufacturer or distributor shall provide a certification of the fact that a motorcycle or class of motorcycles is designed and manufactured for use upon public highways and complies with the performance and equipment requirements of this chapter, and the rules and regulations promulgated hereunder.

2. The certificate shall be incorporated on the manufacturer's statement of origin (MSO) upon transfer of vehicle ownership. (Source: North Dakota Century Code Section 39-27-02)

9.1803 Frame-Chassis Requirements

1. The motorcycle frame-chassis, including the suspension components and engine mountings, must be of substantial construction, capable of supporting the combined weight of all vehicle components and riders for which the vehicle is designed, and withstand normal road shocks and operational stresses without constituting a hazard to the riders or other users of the highway.

2. The wheelbase may not be less than forty (40) inches (101.6 centimeters). (Source: North Dakota Century Code Section 39-27-03)

9.1804 Brakes

1. Every motorcycle must have either a split service brake system or two (2) independently actuated service brake systems in accordance with rules adopted by the director of the North Dakota Department of Transportation. Brakes must act on the front and rear wheels.

2. Every motorcycle must meet the requirements for brake system effectiveness, fade and partial systems as specified in rules adopted by the director of the North Dakota Department of Transportation.

3. All linkage, cables, pivots and bearings must be free of excess (high) friction, with the front wheel brake cable so located and secured as not to become pinched between fork and frame members when wheel is turned completely to the right or left.

4. Brake actuating devices must be in an accessible location, unencumbered by vehicle components, and so positioned that adequate leverage and safe operation is ensured. Service brake system controls and operation requirements must be in accordance with rules adopted by the director of the North Dakota Department of Transportation. A suitable mechanism shall be provided for the purpose of automatically returning the actuating devices to normal position upon release.

5. Motorcycle brakes must be capable of being adjusted automatically or manually with means provided to prevent unintentional adjustment.

6. Each three-wheel motorcycle must be equipped with a parking brake of a friction type with a solely mechanical means to retain engagement. (Source: North Dakota Century Code Section 39-27-04)

9.1805 Brakes on Motor-Driven Cycles

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

9.1806 Tires, Wheels and Rims

1. Motorcycle tires must be of pneumatic design with a minimum width of two and twenty-five hundredths (2 25/100) inches (57.15 millimeters) designed for highway use.

2. Tires on two-wheel motorcycles and the front tire on a three-wheel motorcycle must have a load capacity rating at least equal to their respective gross axle weight ratings (GAWR). Each tire on the rear axle of a three-wheel motorcycle must have a load capacity rating at least equal to one-half (1/2) the rear axle gross axle weight rating (GAWR).

3. Wheel rim diameters may not be less than ten (10) inches (25.4 centimeters) and shall otherwise comply with applicable state standards, as promulgated by the registrar of motor vehicles. Two-wheel motorcycles using low pressure tires are exempt from this subsection, if the inflated height of the tire is twenty (20) inches (508 millimeters) or greater. (Source: North Dakota Century Code Section 39-27-05)

9.1807 Steering and Suspension Systems

1. Motorcycle steering and suspension systems must be designed and engineered to provide the operator with the means of safely controlling vehicle direction under all maneuvers required for normal and safe operation.

2. The rear wheel of a two-wheel motorcycle must track behind a front wheel within one (1) inch (2.54 centimeters) with both wheels in a vertical plane when the vehicle is operating on a straight course. On a three-wheel motorcycle, the two wheels mounted on the rear axle must have a wheel track distance no less than thirty (30) inches (76.2 centimeters) and the mid-point of the rear wheel track distance shall be within one (1) inch (2.54 centimeters) of the front wheel track when the vehicle is proceeding on a straight course. The vehicle must be equipped with an adjustment feature that will provide proper wheel tracking.

3. The steering head must be provided with a bearing or similar device that will allow the steering shaft to turn freely in rotational motion only.

4. All motorcycles, except three-wheel motorcycles, must meet the following specifications in relationship to front wheel geometry:

   Maximum Rake: 45 degrees - Trail: 14 inches
   (35.56 centimeters) positive

   Minimum Rake: 20 degrees - Trail: 2 inches
   (5.08 centimeters) 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 (45.36 kilograms) applied to each handgrip in any direction. Handlebar grips must be located no more than fifteen (15) inches (38.1 centimeters) above the unoccupied seat with the handlebars located in a straight-ahead position and shall be capable of vertical adjustment. The handlebars must provide a minimum of eighteen (18) inches (45.72 centimeters) 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. (Source: North Dakota Century Code Section 39-27-06)

9.1808 Fuel Systems

1. All fuel system components, including the tank, pump, tubing, hoses, clamps, etc. must be securely fastened to the motorcycle so as not to interfere with vehicle operation and be leak proof when the vehicle is in its normal operating attitude.

2. Fuel lines must be positioned in a manner to prevent their contact with the engine head, manifold, exhaust system or other high temperature surfaces or moving components. The fuel system must be adequately vented and provided with a fuel shutoff valve located between the fuel supply and the engine. (Source: North Dakota Century Code Section 39-27-07)

9.1809 Exhaust Systems - Prevention of Noise

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

9.1810 Mirrors

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

9.1811 Fenders

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

9.1812 Seat or Saddle

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

9.1813 Chain Guard

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

9.1814 Vehicle Stand

All motorcycles designed with two wheels must be equipped with a retracting vehicle stand to permit the vehicle to remain in an upright stored position without outside assistance. The stand may be of a side or center type, and shall be of substantial construction to hold the vehicle to equipped. (Source: North Dakota Century Code Section 39-27-13)

9.1815 Glazing

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

1. The glazing material must comply with the standards promulgated by rule of the director of the North Dakota Department of Transportation.

2. The metal support must be of a material which shall bend rather than fragment under impact.

3. Covering material, other than glazing, must be beaded at the edges to prevent fraying. (Source: North Dakota Century Code Section 39-27-14)

9.1816 Horn

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

9.1817 Speedometer and Odometer

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

9.1818 Lighting Equipment

1. Every motorcycle must be equipped with lamps, reflective devices and associated equipment as required by and in compliance with standards promulgated by regulation of the registrar of motor vehicles.

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. (Source: North Dakota Century Code Section 39-27-17)

9.1819 Lighting Equipment on Motor-Driven Cycles

The headlamp or headlamps upon every motor-driven cycle must be of the single-beam or multiple-beam type but no either event must comply with the requirements and limitations as follows:

1. Every headlamp or headlamps on a motor-driven cycle must be of sufficient intensity to reveal a person or a vehicle at a distance of not less than one hundred (100) feet (30.48 meters) when the motor-driven cycle is operated at any speed less than twenty-five (25) miles (40.23 kilometers) per hour and at a distance of not less than two hundred (200) feet (60.96 meters) when the motor-driven cycle is operated at a speed of twenty-five (25) or more miles (40.23 or more kilometers) per hour and at a distance of not less than three hundred (300) feet (91.44 meters) when the motor-driven cycle is operated at a speed of thirty-five (35) miles (56.33 kilometers) per hour.

2. 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 in Subsection 1of Section 39-21-20, North Dakota Century Code, and the lowermost beam shall meet the requirements applicable to the lowermost distribution of light as set forth in Subsection 2 of Section 39-21-20, North Dakota Century Code.

3. In the event the motor-driven cycle is equipped with a single-beam lamp or lamps the lamp or lamps must be so aimed that when the vehicle is loaded none of the high-intensity portion of light, at a distance of twenty-five (25) feet (7.62 meters) ahead, shall project higher than the level of the center of the lamp from which it comes. (Source: North Dakota Century Code Section 39-27-17.1)

9.1820 Passenger Seat

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

9.1821 Footrests

Footrests must be provided for each designated seating position. Each footrest for a passenger must be so designated and constructed to support a static weight of two hundred fifty (250) pounds (113.40 kilograms) applied at the center of the foot pedal. Footrests must be so located to provide reasonable accessibility for the passenger's feet. Footrests must fold rearward or upward when not in use if the footrest protrudes beyond the width of the handlebars. (Source: North Dakota Century Code Section 39-27-20).

9.1822 Highway Bars

If a motorcycle is so equipped, highway bars must have a maximum width of twenty-six (26) inches (66.04 centimeters); shall be located less than fifteen (15) inches (38.1 centimeters) from the foot controls and may not interfere with the operation of the foot controls.

9.1823 Equipment Approval

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

ARTICLE 19 - Lighted Lamps Required

9.1901 When Lighted Lamps are Required

Subject to exceptions with respect to parked vehicles, every vehicle upon a highway within this state must display lighted lamps and illuminating devices as required in this chapter 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 (304.8 meters) 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 (304.8 meters) ahead.

Stop lights, turn signals and other signaling devices must be lighted as prescribed for the use of such devices. NDCC 39-21-01).

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

9.2001 Load Restrictions Upon Vehicles Using Certain Roadways

The City Council may, pursuant to its authority under Section 39-12-01 NDCC, designate by resolution different classes of streets subject to different limitations as to vehicle weight and loads. Class One streets shall be those designated as part of the City's truck route. Class Two streets shall be comprised of all other streets, highways and roads within the city limits.

When signs are erected giving notice thereof, no person shall 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 except those streets designated as Class One or "truck route" streets. However, such vehicles may be operated off of the designated truck route for the purposes of delivering or picking up materials, provided the most direct route from the truck route to the destination and back is taken.

9.2002 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.

9.2003 Restrictions Upon Use of Streets by Certain Vehicles

1. The city traffic engineer or authorized person may determine and designate those heavily traveled streets upon which shall be prohibited the use of the roadway by motor-driven cycles, bicycles, horse-drawn vehicles or other non-motorized traffic and shall erect appropriate signs giving notice thereof.

2. When signs are so erected giving notice thereof, no person may disobey the restrictions stated on such signs.

9.2004 Penalties

1. The maximum penalty for any person violating any of the provisions of this ordinance shall, upon conviction thereof be a fine of not more than $300.00. Persons found violating Section 9.2001 shall also pay for the cost of weighing their vehicle if such weighing establishes weight in excess of the maximum indicated weight.

2. Savings Clause. If any portion of this ordinance shall be judged unconstitutional or contrary to the laws of the State of North Dakota, such section shall not invalidate the remaining portions of this ordinance, and is hereby expressly declared that the remaining portions of this ordinance would have been adopted notwithstanding the invalid portions thereof, and such portions not declared unconstitutional or contrary to the laws of the State of North shall remain in full force and effect.

3. Repeal of Conflicting Ordinance. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

4. Effective Date of Ordinance. This ordinance shall be in force and take effect from and after its passage as provided by law.

(Source: Ordinance No. 164)

ARTICLE 21 - Criminal Traffic Violations

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

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

1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:

    a. That person has an alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle.
    b. That person is under the influence of intoxicating liquor.
    c. That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.
    d. That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.

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

2. A person violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period, of a class A misdemeanor for a third offense in a five-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence.

3. Upon conviction, the court may order the motor vehicle number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director of the North Dakota Department of Transportation who must retain them for the period of suspension or revocation, subject to their disposition by the court.

4. A person convicted of violating this ordinance must be sentenced in accordance with this subsection.

    a. For a first offense, the sentence must include both a fine of at least two hundred fifty dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.
    b. For a second offense within five years, the sentence must include at least five days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service; a fine of at least five hundred dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
    c. For a third offense within five years, the sentence must include at least sixty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
    d. For a fourth or subsequent offense within seven years, the sentence must include one hundred eighty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively and a fine of one thousand dollars.
    e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 of the North Dakota Century Code.
    f. For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section must be considered a prior offense if such offense was committed within the

time limitations specified in this subsection.

g. If the penalty mandated by this section includes imprisonment or placement upon conviction of a violation of this ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment or placement under this section. (Source: North Dakota Century Code Section 39-08-01)

9.2102 Prior Offenses

For purposes of this article, Article 9.22, and Chapter 39-20, North Dakota Century Code, a previous conviction does not include any prior violation of Article 9.2101 if the offense occurred prior to July 1, 1981. (Source: North Dakota Century Code Section 39-08-01)

9.2103 Reckless Driving - Penalty

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

1. Except as provided in Chapters 39-16 and 39-16.1 and Section 39-06.1-11 of the North Dakota Century Code, any person who drives a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state while that person's license or privilege so to do is suspended or revoked is guilty of a class B misdemeanor for the first, second or third offense within a five-year period. Any subsequent offense within the same five-year period is a class A misdemeanor.

2. If a suspension or revocation was imposed for violation of Section 39-08-01 of the North Dakota Century Code or equivalent ordinance or was governed by Section 39-06-31 or Chapter 39-20, the sentence must be at least four (4) consecutive days' imprisonment and such fine as the court deems proper. The execution of sentence may not be suspended or the imposition of sentence deferred under Subsection 3 or 4 of Section 12.1-32-02 of the North Dakota Century Code. Forfeiture of bail is not permitted in lieu of the defendant's personal appearance in open court for arraignment on a charge under this subsection.

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

4. The municipal judge may order impoundment of motor vehicle number plates in the manner provided in Subsection 3.

9.2108 Operation of Snowmobiles

1. Definitions:

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

1. "Dealer" means every person, partnership, corporation or limited liability company engaged in the business of buying, selling or exchanging snowmobiles or who advertises or holds out to the public as engaged in the buying, selling or exchanging of snowmobiles or who engages in the buying of snowmobiles for resale.

2. "Operate" means to ride in or on and control the operation of a snowmobile.

3. "Operator" means every person who operates or is in actual physical control of a snowmobile.

4. "Owner" means a person, other than a lienholder, having the property in or title to a snowmobile entitled to the use or possession thereof.

5. "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.

6. "Register" means the act of assigning a registration number to a snowmobile.

7. "Registrar" or "Director" means the director of the Department of Transportation of this state as provided in Section 24-02-01.3 of the North Dakota Century Code.

8. "Roadway" means that portion of a highway improved, designed or ordinarily used for vehicular travel.

9. "Snowmobile" means a self-propelled vehicle designed for travel on snow, ice or a natural terrain and steered by skis or runners. (Source: North Dakota Century Code Section 39-24-01)

9.2109 Rules for Operation of Snowmobiles

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

2. A snowmobile may make a direct crossing of a street or highway provided:

   a. The crossing is made at an angle of approximately ninety (90) degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

   b. The snowmobile is brought to a complete stop before crossing the shoulder or main traveled way of the highway;

   c. The driver yields the right of way to all oncoming traffic which constitutes an immediate hazard; and

   d. In crossing a divided highway, the crossing is made only at an intersection of such highway with another public street or highway.

3. No snowmobile may be operated unless it is equipped with at least one (1) headlamp, one tail lamp and brakes, all in working order, which conform to standards prescribed by rule of the director pursuant to the authority vested in the director by state law.

4. The emergency conditions under which a snowmobile may be operated other than as provided by this article shall be such as to render the use of an automobile impractical under such conditions at such period of time and location.

5. It is unlawful for any person to drive or operate any snowmobile in the following ways which are declared to be unsafe and a public nuisance:

   a. At a rate of speed greater than reasonable or proper under all the surrounding circumstances.

   b. In a careless, reckless or negligent manner so as to endanger the person or property of another or to cause injury or damage to such person or property.

c. While under the influence of intoxicating liquor or a drug as defined in Section 39-24.1-01 of the North Dakota Century Code, or a combination thereof.

d. Without a lighted headlamp and tail lamp when required for safety.

e. In any tree nursery or planting in a manner which damages or destroys growing stock.

f. Without a manufacturer-installed or equivalent muffler in good working order and connected to the snowmobile exhaust system.

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

6. It is unlawful for any person to operate a snowmobile pursuant to Chapter 39-24 of the North Dakota Century Code without having in possession a valid driver's license or permit, except as provided by section 39-24-09.1.

7. When snowmobiles are operated within the right of way of any road, street or highway of this state pursuant to this chapter, during times or conditions that warrant the use of lights, such snowmobiles shall travel in the same direction as the direction of motor vehicles traveling on the side of the roadway immediately adjacent to the side of the right of way traveled by the snowmobile.

8. It is unlawful for any person to operate a snowmobile within a highway right of way as defined in subsection 37 of section 24-01-01.1 of the North Dakota Century Code between April 1 and November 1 of any year.

9. No snowmobile may be operated at any time within the right of way of any highway within this state while towing a sled, skid or other vehicle, unless the sled, skid or other vehicle is connected to the snowmobile by a hinged swivel and secure hitch.

10. No person under the age of eighteen years may operate, ride or otherwise be propelled on a snowmobile unless the person wears a safety helmet meeting United States department of transportation standards.

9.2110 Operation of Motor Vehicle, Tractor or Other Vehicle Prohibited on Flood Protective Works - Exception - Penalty

1. Unless authorized by the authority in charge thereof, no person shall operate a motor vehicle, tractor or other vehicle upon or across any flood protective works, including but not limited to, any dike or flood protective works constructed by a state or federal agency or by any municipality or local subdivision of the state.

2. Any person violating the provisions of this section shall be liable to any person suffering injury as a result of the violation; and in addition, shall be guilty of a class B misdemeanor. (Source: North Dakota Century Code Section 30-10-65)

9.2111 Driving Without a License

No person shall 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 shall be and are hereby incorporated by reference in this ordinance.

Every licensee shall have the licensee's operator's license or permit in the licensee's immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of any district court, municipal court, a patrolman, peace officer or a field deputy or inspector of the State Highway Department. However, no person charged with violating this section may be convicted or assessed any court costs if the person produces in court, to the chief of police or in the office of the arresting officer an operator's license or permit theretofore issued to that person and valid and not under suspension, revocation or cancellation at the time of the person's arrest.

9.2113 Penalty

The provisions of North Dakota Century Code Section 39-12-21 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Any driver of a vehicle who refuses to stop and submit the vehicle and load to a weighing when directed to do so by any police officer or any agent of this state having police powers relating to motor vehicles is guilty of an offense.

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 shall be and 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 Section 39-07-09 and Section 39-20-03.1 or 39-02-03.2 may:

1. Take the name and address of the person;

2. Take the license number of the person's motor vehicle; and

3. Issue a summons or otherwise notify that person in writing to appear at a time and place to be specified in the summons or notice.

A halting officer employed by any political subdivision of the state may not take a person into custody or require that person to proceed with the officer to any other location for the purpose of posting bond, where the traffic violation was a non-criminal offense under Section 39-06.1-02. The officer shall provide the person with an envelope for use in mailing the bond.

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

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

The time to be specified in the summons or notice provided for in 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, such 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, regarding 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 shall be and are hereby incorporated by reference in this ordinance.

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

1. The halting officer has good reason to believe the person guilty of any felony or if the person is halted and charged with any of the offenses listed in Section 39-06.1-05 of the North Dakota Century Code, but not listed in subsection 2; or

2. The halting officer, acting within the officer's discretion, determines that it is inadvisable to release that person upon a promise to appear and if the person has been halted and charged with any of the following offenses

   a. Reckless driving.

   b. Driving in excess of speed limitations established by the state or by local authorities in their respective jurisdictions.

   c. Driving while license or driving privilege is suspended or revoked for violation of NDCC Section 39-06-42, or an equivalent ordinance.

   d. Operating a modified vehicle.

   e. Driving without liability insurance in violation of NDCC Section 39-08-20.

   f. Failing to display a placard or flag, in violation of any rule implementing NDCC Section 39-21-22, while transporting explosive or hazardous materials.

   g. Operating an unsafe vehicle in violation of subsection 1 of NDCC Section 39-21-45.

Any person cited, in accordance with the provisions of Sections 39-07-07 and 39-07-08 of the North Dakota Century Code, for a traffic violation under state law or municipal ordinance, other than an offense listed in Section 39-06.1-05 of the North Dakota Century Code, is deemed to be charged with a non-criminal offense. The person may appear before the designated official and pay the statutory fee for the violation charged at or before the time scheduled for a hearing. If the person has posted bond in person or by mail, the person may forfeit bond by not appearing at the designated time. If the person appears at the time scheduled in the citation, the person may make a statement in explanation of the person's action, and the official may at that time waive, reduce or suspend the statutory fee or bond, or both. If the person cited follows the foregoing procedures, the person is deemed to have admitted the violation and to have waived his right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the official designated in the citation must be identical to the statutory fee established by Section 39-06.1-06 of the North Dakota Century Code. Within ten (10) days after forfeiture of bond or payment of the statutory fee, the official having jurisdiction over the violation shall certify to the licensing authority:

1. Admission of the violation; and

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

This section shall not be construed as allowing a halting officer to receive the statutory fee or bond, unless he is otherwise authorized by law to do so. (Source: North Dakota Century Code Section 30-06.1-02)

9.2205 Administrative Hearing - Procedures - Appeals - Stay Orders

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

1. A person cited for a traffic violation, other than an offense listed in Section 39-06.1-05 of the North Dakota Century Code, who does not follow one of the procedures set forth in Section 39-06.1-02, may request a hearing on the issue of commission of the violation charged. The hearing must be held at the time scheduled in the citation, or at the time scheduled in response to the person's request or at some future time, not to exceed ninety (90) days later, set at that first appearance.

2. At the time of a request for a hearing on the issue of commission of the violation, the person charged shall deposit with the official having jurisdiction an appearance bond equal to the statutory fee for the violation charged.

3. If a person cited for a traffic violation, other than an offense listed in Section 39-06.1-05 of the North Dakota Century Code, has requested a hearing on the issue of the commission of the violation charged and appears at the time scheduled for the hearing, and the state or City, as the case may be, does not appear or is not ready to prove the commission of a charged violation at the hearing, the official shall dismiss the charge.

4. If the official finds that the person had committed the traffic violation, the official shall notify the licensing authority of that fact, and whether the person was driving more than nine (9) miles (14.48 kilometers) 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 nay way, nor be admissible as evidence in any court, civil, equity or criminal, except in an action or proceeding involving that person's driving license or privilege.

5. a. If a person is aggrieved by a finding that he committed the violation, the person may, without payment of a filing fee, appeal that finding to the district court for trial anew. If, after trial in the appellate court, the person is again found to have committed the violation, there shall be no further appeal. Notice of appeal under this subsection must be given within thirty (30) days after a finding of commission of a violation is entered by the official. Oral notice of appeal may be given to the official at the time that the official adjudges that a violation has been committed. Otherwise, notice of appeal shall be in writing and filed with the official, and a copy of the notice must be served upon the prosecuting attorney. An appeal taken under this subsection may not operate to stay the reporting requirement of subsection 4, nor to stay appropriate action by the licensing authority upon receipt of that report.

   b. The appellate court upon application by the appellant may:

      i. Order a stay of any action by the licensing authority during pendency of the appeal, but not to exceed a period of one hundred twenty (120) days;

      ii. Order a stay and that the appellant be issued a temporary restricted driving certificate by the licensing authority to be effective for no more than one hundred twenty (120) days; or

      iii. Deny the application.

      An application for a stay or temporary certificate under this subdivision must be accompanied by a certified copy of the appellant's driving record, for the furnishing of which the licensing authority

may charge a fee of two dollars ($2.00). Any order granting a stay or a temporary certificate must be forwarded forthwith by the Clerk of Court to the licensing authority, which shall issue a temporary certificate in accordance with the order in the manner provided by law. A court may not make a determination on an application under this subdivision without notice to the appropriate prosecuting attorney. A person who violates or exceeds the restrictions contained in any temporary restricted driving certificate issued pursuant to this subdivision is guilty of a traffic violation and must be assessed a fee of twenty dollars ($20.00).

c. If the person charged is found not to have committed the violation by the appellate court, the Clerk of Court shall report that fact to the licensing authority immediately. If an appeal under this subsection is from a violation of a City ordinance, the city attorney shall prosecute the appeal. In all other cases, the appropriate state's attorney shall prosecute the appeal.

6. The state or the City, as the case may be, must prove the commission of a charged violation at the hearing or appeal under this section by a fair preponderances of the evidence. Upon an appeal under subsection 5, the court and parties shall follow, to the extent applicable, the North Dakota rules of Civil Procedure. If on the appeal from the finding of the official the finding is affirmed, costs may be assessed at the discretion of the trial judge.

7. As used in Sections 39-06.1-02, 39-06.1-03 and 39.06.1-04 of the North Dakota Century Code, the word "official" means a municipal judge or a magistrate or other qualified person appointed by the presiding judge of the judicial district, to serve as such official for all or a specified part of the judicial district.

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

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

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

9.2207 Offenses Excepted

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

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

1. Driving or being in actual physical control of a vehicle in violation of Section 9.2101.

2. Reckless driving or aggravated reckless driving in violation of Section 9.2103.

3. A violation of Chapter 12.1-16 of the North Dakota Century Code resulting from the operation of a motor vehicle.

4. Leaving the scene of an accident in violation of Sections 39-08-04, 39-08-05, 4, 39-08-07, 39-08-08 of the North Dakota Century Code, or equivalent ordinances.

5. Driving while license or driving privilege is suspended or revoked in violation of Section 39-06-42 of the North Dakota Century Code, or an equivalent ordinance.

6. Violating subdivisions b and c of subsection 5 of Section 39-24-09 of the North Dakota Century Code.

7. Operating a modified motor vehicle in violation of Section 39-21-45.1 of the North Dakota Century Code.

8. Driving without liability insurance in violation of Section 39-08-20 of the North Dakota Century Code.
9. 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.

10. Operating an unsafe vehicle in violation of subsection 1 of Section 39-21-46 of the North Dakota Century Code.

9.2208 Amount of Statutory Fees

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

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

1. For a nonmoving violation as defined in Section 9.2209, a fee of any amount not to exceed twenty dollars ($20.00).

2. For a moving violation as defined in Section 9.2210, a fee of twenty dollars ($20.00), except no fee may be imposed for a violation of Section 9.1702.

3. For a violation of Section 9.0502 a fee established as follows:

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

4. For a violation of Section 9.0501, or an ordinance defining careless driving, a fee of thirty dollars ($30.00).

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

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

9.2209 "Nonmoving Violation" Defined

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

For the purpose of 9.2208, a "nonmoving violation" means Sections 9.0924, 9.0932, 9.0933 or the provisions of ARTICLE 13, ARTICLE 14, ARTICLE 15 OR ARTICLE 16.

9.2210 "Moving Violation" Defined

The provisions of North Dakota Century Code Section 39.06.1-09 and all subsequent amendments shall be and 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, except those sections for which a specific penalty is provided and those sections which are specifically listed in 9.2009.

9.2211 General Penalty for Violation of Chapter

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

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

9.2212 Notification of Parents or Guardians of Juvenile Traffic Offenders

The municipal judge or municipal court clerk shall notify the parent or guardian of any juvenile appearing before the court on a traffic offense of the charge as contained in the citation, the penalty attached to the offense and the time and place of any court hearing on the matter.

ARTICLE 23 - Sections not Adopted

The sections of Title 39 of the North Dakota Century Code not expressly adopted in ARTICLE 1 through ARTICLE 22, 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 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 ($1,000.00) or by imprisonment not to exceed thirty (30) days, or both.

CHAPTER TEN

HEALTH

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CHAPTER TEN

HEALTH

ARTICLE 1 – Board of Health

10.0101 Members

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

10.0102 Regulations

The Board of Health may make rules regarding any nuisance, source of filth, and any cause of sickness which are necessary for public health and safety. The Board of Health shall appoint a local health officer. (Source: North Dakota Century Code Section 23-35-08).

ARTICLE 2 – Local Health Officer

10.0201 Duties of Local Health Officer – Term

1. A local health officer shall serve a term of five years, subject to removal for cause by the governing body or the district board of health. The health officer must be a physician licensed to practice medicine in this state and need not be a resident of the public health unit. The appointee shall qualify by filing the constitutional oath of office in the manner provided for the members of the board of health. If the state health officer finds a local health officer is failing to perform the duties of the position, the state health officer may report the case to the governing body. At the next meeting of the governing body or district board of health, the governing body or district board of health, 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.

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 five hundred dollars ($500.00) or by imprisonment not to exceed thirty (30) days or both such fine and imprisonment. (Source: North Dakota Century Code Section 23-35-13)

ARTICLE 3 – Garbage, Refuse, Rubbish

10.0301 Definitions

For the purpose of this article the following words shall have the meanings given herein:

1. "Ashes" is the residue from burning wood, coal, coke or other combustible materials.

2. "Garbage" is putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

3. "Refuse" is all putrescible and non-putrescible solid wastes (except body wastes) including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and solid market and industrial wastes.

4. "Rubbish" is non-putrescible solid wastes (excluding ashes) consisting of both combustible and non-combustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.

10.0302 Accumulation of Refuse Prohibited

No person shall permit or allow to accumulate in or about any yard, lot, place or premises; or upon any street or sidewalk, adjacent to or abutting upon any lot, block or place, or premises owned and occupied by that person, any and all refuse, nor allow such yard, lot, place or premises to be or remain in such condition.

10.0303 Containers

All garbage and rubbish shall be placed by the person upon whose premises the same shall have been produced or accumulated, in watertight containers, which shall be protected against the access of flies and rodents.

Containers shall be placed in the alley of those lots having access to any alley and along the curb if no alley is accessible. The City may specify where containers shall be placed along the alley or street the convenience of collection.

10.0304 Burning

No garbage, refuse or rubbish shall be burned within the City or in disposal grounds maintained by the City.

10.0305 Nuisance

Failure to comply with the provisions of Sections 10.0302, 10.0303 and 10.03004, shall constitute a public nuisance and be punishable as such under the terms of Chapter Twelve 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 Water Department of the City upon monthly or quarterly bills from the Water Department. If the garbage and rubbish charge so established is not paid when due, such sum may be recovered by the City, in an action at law against the owner or occupant, or both, of the property so served.

The proceeds from the collection of the fees and charges shall be placed in the solid waste management fund, and all of the expense of the City, in the purchase and maintenance of equipment and in the collection and disposal of garbage and rubbish, shall be paid out of the solid waste management fund.

10.0309 Fees – Payment – Collection by Franchised Contractor

In the event the City elects to franchise a contractor to perform the collection services contemplated by this section, collection of fees, limited as set out in this section, are to be made by the contractor. Failure to pay fees billed by the contractor within thirty (30) days of billing and reporting of the failure to pay to the City shall release the contractor from collection responsibility regarding the delinquent premises. On being notified of delinquencies the City may avail itself of any or all of the collection provision of Section 10.0308.

10.0310 Disposal of Refuse not Collected by the City

All other wastes as defined, and not included under garbage, rubbish and ashes, may be disposed of by the person creating such waste, by hauling such waste for disposal to such points as are designated or approved by the City health officer.

10.0311 Supervision

The collection, removal and disposal of garbage and rubbish under the provisions of this article shall be under the supervision, direction and control of the public works superintendent with the assistance of the City health officer. The public works superintendent shall, unless there is a franchised contractor, appoint such employees as shall be necessary to carry out the purposes of this article, which appointments shall be subject to the approval of the 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 nonsupporting 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 nonsupporting part, member or portion less that 50 percent, or in any nonsupporting 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 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 all cases where a building cannot be repaired so that it will no longer exist in violation to the terms of this article it shall be demolished. In all cases where a "dangerous building" is a fire hazard existing or erected in violation of the terms of this article or any ordinance of the City or statute of the State of North Dakota, it shall be demolished.

10.0403 Dangerous Buildings – Nuisances

All "dangerous buildings" within the terms of Section 10.0401 of this article are hereby declared to be public nuisances and shall be repaired, vacated or demolished as provided in this ordinance or under state law.

10.0404 Duties of Building Inspector

The building inspector shall:

1. Inspect or cause to be inspected semi-annually, all public buildings, schools, halls, churches, theaters, hotels, tenements, commercial, manufacturing or loft buildings for the purpose of determining whether any conditions exist which render such places a "dangerous building" within the terms of Section 10.0401 of this article.

2. Inspect any building, wall or structure about which complaints are filed by any person to the effect that a building, wall, or structure is or may be existing in violation of the terms of this article.

3. Inspect any building, wall or structure reported (as hereinafter provided for) 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 Register of Deeds of the County of Hettinger, 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.

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 Council any noncompliance with the "notice" provided for in subsection 4 and 5 hereof.

7. Appear at all hearings conducted by the Mott City Council 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 Register of Deeds of the County of Hettinger. It is unlawful to remove this notice until such notice is complied with."

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 Register of Deeds, 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.

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 Register of Deeds 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 Register of Deeds 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 to demolish said building given by any person authorized by this article to give such notice or order shall be guilty of an infraction and upon conviction thereof shall be fined not exceeding 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 above 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 Section 10.0404, subsection 8 thereof 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 herein 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 Register of Deeds 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

IN THE MATTER OF "DANGEROUS BUILDINGS' LOCATED
AT _____, North Dakota
UNDER ARTICLE 4, CHAPTER TEN

NOTICE OF HEARING

You are here by notified that the building inspector of _____, 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 _____, NORTH DAKOTA

By _____
Mayor

ATTEST:

_____
City Auditor

APPENDIX 10-2

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

_____

NOTICE AND ORDER

You are hereby notified that the undersigned, building inspector of the City of _____, North Dakota, acting pursuant to Article 4, Chapter 10 of the Ordinances of the City of_____, 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

This is a suggestion as to the warning sign that should be printed in red.

WARNING

Whereas it has been determined by appropriate inspection that the dwelling or building to which this notice is attached does not comply with Ordinances of the City of _____, all persons are hereby warned that it is unlawful to rent, lease, let, occupy or permit the use or occupancy of this dwelling or building, for dwelling purposes or as a place of employment for human beings, or to remove or molest this notice.

_____
City Health Officer

_____, North Dakota

ARTICLE 5—Noise Regulation

10.0501. Declaration of Purpose and Intent.

1. Having determined that the exposure of its citizens to excessive noise creates the risk of physiological and psychological harm, the City of Mott hereby declares the necessity of controlling the level of noise within the community. The necessity for the provisions and prohibitions contained in this article is therefore declared as a matter of legislative determination and public policy.

2. It is further declared that the provisions and prohibitions of this article are for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the city and its inhabitants.

3. This ordinance makes use of the zoning classifications and districts contained in the city's zoning ordinances, as they presently exist or may be amended from time to time. However, this ordinance is enacted separately and independently of said zoning ordinances and shall not be considered an extension or part thereof, nor shall it be considered to modify said zoning ordinances.

10.0502 Definitions.

For the purpose of this article, certain words and phrases are defined as follows:

1. "dB (A)" means the A-weighted sound level in decibels, as measured with a sound level meter that meets the requirements for a type 1, 2, S1A or S2A in American National Standard Specification for Sound Level Meters ANSI S1.4.

2. "Noise" means any sound.

3. "Noise Disturbance" means any loud, unnecessary or unusual noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city.

4. "Person" means any person, partnership, association, joint venture, corporation or other entity, public or private.

5. "Real Property Boundary" (or "property boundary") means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person.

6. "Land Use District" means the zoning districts identified in the 2013 Zoning Ordinance for the City of Mott, North Dakota, as it may be amended from time to time. "Residential" shall include the R-1, R-1A, R-2, MH-1 and MH-2 classifications.

10.0503. General Prohibition of Noise Disturbance.

1. No person shall make, continue, or cause to be made or continued, any noise disturbance.

2. The standards which shall be considered in determining whether a violation exists under this section include, but are not limited to, the following:

a. The volume of the noise.
b. The intensity of the noise.
c. Whether the nature of the noise is usual or unusual.
d. Whether the origin of the noise is natural or unnatural.
e. The volume and intensity of the background noise, if any.

f. The proximity of the noise to residential sleeping facilities.
g. The nature and zoning of the area into which the noise emanates.
h. The density of inhabitation of the area into which the noise emanates.
i. The time of day or night the night occurs.
j. The duration of the noise.
k. Whether the noise is recurrent, intermittent or constant.
l. Whether the noise is produced by a commercial or noncommercial activity.

3. The noise need not exceed the decibel levels in Section 10.0505 to be in violation of this section.

10.0504 Specific Prohibitions. The following acts, or the causing thereof, are declared to be in violation of this ordinance.

1. Animals and Birds. Owning, possessing or harboring any animal or bird which frequently or for continued durations, howls, barks, yelps, squawks or makes other sounds which create a noise disturbance across a residential real property boundary.

2. Loading and Unloading. Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, or similar objects between the hours of 10 p.m. and 7 a. m. the following day in such a manner as to cause a noise disturbance across a residential real property boundary. This subsection does not apply to garbage pickup activities or agricultural hauling, loading or unloading and city street sweeping.

3. Television Sets, Musical Instruments, Radios, CD players and Similar Devices. Operating, playing of any television, musical instrument, radio, CD player, sound amplifier, or similar device which produces, reproduces or amplifies sound bet ween the hours of 10 p.m. and 7 a.m. the following day in such a manner as to create a noise disturbance across a residential real property boundary.

10.0505 General Decibel-Based Limitations.

It is also unlawful for any person to project a sound or noise onto another property which exceeds the limits set forth for the receiving land use category in the following Table 1, when measured at or within the property boundary of the receiving property. Sound or noise projecting from one land use district into another land use district with a different noise level limit may not exceed the limits of the district into which the noise or sound is projected.

TABLE 1
Noise Level Limits for Land Use Districts

	Land Use District				
	Residential	Commercial	Recreational	Industrial	Agricultural
Maximum number of dB(A) Permitted from 7:00 a.m. until 10:00 p.m. daily	55	65	55	80	80
Maximum number of dB(A) permitted from 10:00 p.m. until 7:00 a.m. daily of the following day	50	60	50	75	75

10.0506 Exemptions

The following sounds are exempt from the provisions of this article at all times:
A. Noises caused by motor vehicles used for highway maintenance or noises caused in the performance of emergency work for the immediate safety, health or welfare of the community or of individuals of the community, or to restore property in a safe condition following a public calamity. B. Sounds created by bells, chimes, or carillons not operating for more than five minutes in any hour. C. Sounds originating from aircraft flying in accordance with or pursuant to applicable Federal Laws or regulations. D. Sounds created by safety and protective devices, such as relief valves, where noise suppression would defeat the safety release purpose of the device. E. Sounds created by fire alarms and emergency equipment operated by law enforcement, fire fighters and aid personnel. F. Sounds originating from parades and other events to which the general public is solicited to attend without charge and sounds originating from league or school sponsored athletic events. G. Non-commercial public speaking and public assembly activities conducted on any public space or right-of-way. H. The unamplified human voice.

10.0507 Enforcement/Penalties

1. The City police department shall be authorized to administer and enforce the provisions of this article. All written and signed noise complaints shall be investigated by the City police department.

2. Any person violating any provision of this article shall be guilty of an infraction, for which the maximum penalty is a fine not to exceed $500.

3. Each day of violation of any provision of this ordinance shall constitute a separate offense.

4. Violations under Section 10.0505 shall be established by means of a sound level meter that meets the requirements for type 1, 2, S1A or S2A in American National Standard Specification for Sound Level Meters ANSI S1.4.

10.0508 Variances

1. The City Council shall have the authority, consistent with this section, to grant special variances, including extensions of time to comply, which may be requested. Any person seeking a special variance pursuant to this section shall file an application with the City Auditor. The application shall contain information which demonstrates that bringing the source of sound or activity for which the special variance is sought into compliance with this ordinance would constitute an unreasonable hardship on the applicant, the community or on other person. Notice of an application for a special variance shall be published for two consecutive weeks in the official newspaper, with the last publication occurring at least 1 week before the schedule hearing before the City Council. Notice of an application shall also be mailed by applicant to adjacent property owners and residents.

2. Any person who claims to be adversely affected by the allowance of the special variance may file a statement with the City Council containing any information to support his claim and speak against the application at the hearing. In determining whether to grant or deny the application, the City Council shall balance the hardship to the applicant, the community, and other persons of not granting the spcial variance against the adverse impact on the health, safety and welfare of the persons and property affected.

3. Any variance granted by the City Council shall contain all the conditions under which the variance has been granted and shall specify a reasonable time that the variance is effective.

CHAPTER ELEVEN

ANIMALS AND FOWL

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CHAPTER ELEVEN

ANIMALS AND FOWL

ARTICLE 1 – General Regulations

11.0101 Cruelty – Penalty

No person shall cruelly treat any animal in the City in any way. Any person who inhumanly beats, underfeeds, overloads or abandons any animal shall be deemed guilty of an offense for which the maximum penalty shall be a fine of five hundred dollars ($500.00), thirty (30) day imprisonment, or both such fine and imprisonment. (Source: North Dakota Century Code Section 36-21.1-02)

11.0102 Dangerous Animals

It shall be 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 shall also be 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 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 shall 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 shall be 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 make 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, or unwholesome.

11.0107 Keeping of Certain Animals Prohibited

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

11.0109 Noises

It shall be unlawful to harbor or keep any animals, which habitually disturbs the peace by loud noises at any time of the day or night.

11.0110 Penalty

Any person who shall violate 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 shall be released to the owner.

ARTICLE 2 – Dogs and Cats

11.0201 License Required

No dog or cat shall be permitted to be or remain in the City without being licensed as herein after provided if over one month of age. It shall be the duty of the owner or keeper of any dog or cat kept within the City to have the dog or cat inoculated against rabies and proof thereof is shown to the person issuing the license.

11.0202 Licensing Procedure and Terms

All dogs and cats shall be registered as to sex, breed, name and addressees of owner and name of dog. Licenses shall be issued by the chief of police on an annual basis as hereinafter more fully provided. The person paying the license fee shall receive a receipt therefore and a metal tags or badge with which to mark the animal. It shall be the duty of the owner or keeper to cause such license tag or badge to be securely attached around the animal's neck and kept there at all times during the license period.

11.0203 License Fee

The license fee shall be three dollars ($3.00) annually for each male dog or cat and each spayed female dog or cat; six dollars ($6.00) for each female dog or cat not spayed. The owner of any spayed female dog or cat shall present to the chief of police a letter or certificate signed by a licensed veterinarian to the effect that such dog or cat has been spayed; or such other evidence as the chief of police shall require. If the license fees as provided in this section are not paid in addition to the fees provided for in this section a penalty of five dollars ($5.00).

11.204 License: When Due and Payable

Every owner or keeper of a dog, cat or animal within the limits of the City of Mott shall annually, on or before the 1st day of June, cause the same to be registered, numbered, described and licensed for one year from the 1st day of June to the ensuing year in the office of the City Auditor.

11.0205 Dog or Cat Running at Large Prohibited

It shall be unlawful for the owner or keeper of any dog or cat to permit the same to run at large in the City at any time. A dog or cat shall not be considered running at large if attended and on a leash or when in the confines of the owner's or keeper's premises.

11.0206 Disposition of Unlawful Dogs or Cats

Any unlicensed dog or cat or any dog or cat running at large may be taken up by any police officer and impounded at the City dog pound, or such other place as may be designated by the governing body. The dog or cat shall be held for two days. If during such period of two days the owner shall claim the animal, he shall pay the Chief of Police, the license fee and any penalty thereon required for said animal, plus the sum of two dollars ($2.00) for the taking of said dog and fifty cents ($.50) per day for the care of said animal while in custody. If not so redeemed within two days, the official in charge of the City Pound shall destroy the animal, or in his discretion he shall be authorized to deliver the same to any person not a resident of the City of Mott upon payment of the fees for taking and keeping plus payment of the standard license fee, without penalty, for such animal. When an animal so taken shall bear a tag for a previous year from which it is possible to ascertain the owner of the animal, personal, telephoned or written notice shall be given to the owner of such animal, in order to permit him to redeem it. The Chief of Police shall be authorized whenever in his judgment it shall be practical or expedient , to give published notice of the number of dogs available at the Dog Pound for disposition as hereinbefore provided.

11.0207 Return to Owner if Known

Notwithstanding the provisions of Section 11.0206, if a dog or cat is found at large and its owner can be identified and located, such dog or cat need not be impounded but may, instead, be taken to the owner. In such case the policeman or other officer may proceed against the owner or keeper for violation of this article.

11.0208 Noisy Dog or Cat Prohibited

It shall be unlawful to keep or harbor within the City any dog or cat that disturbs the peace by habitually howling, barking, whining, meowing or making other disagreeable noise. Any person wishing to file a complaint shall be required to give his name and address and sign a complaint.

11.0209 Nuisance – When

Any licensed dog or cat, any dog or cat running at large, any dog or cat disturbing the peace, or any dog or cat molesting passers by, chasing vehicles or trespassing upon private property is hereby declared to be a nuisance.

11.0210 Penalty

Any person violating any provision of this article shall be guilty of an infraction and be fined not to exceed five hundred dollars ($500.00).

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CHAPTER TWELVE

PUBLIC NUISANCES

ARTICLE 1 – Sanitary Nuisances

12.0101 Residence – When Sewer and Water Required

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

The term "proper connections" when used in this section shall be construed to mean connections with the water mains and sanitary sewers which are equipped and furnished with proper valves and fittings so as to enable such water connections to be used at all times. Sanitary toilets and drains and such equipment shall at all times be kept in repair and in a manner 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. Radios phonographs, etc. The using, operating or permitting to be played, used or operated, any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of 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. Loudspeakers, amplifiers for advertising. 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 commercial advertising or attracting the attention of the public to any building or structure.

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

5. Schools, courts, churches, hospitals. The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while the same are in use, or adjacent to any hospital, which unreasonably interferes with the workings of such institution, or which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed indicating that a school, hospital, or court is in the vicinity.

ARTICLE 4 – Automobiles – Personal Property

12.0401 Automobiles, Personal Property – When a Nuisance

Unsheltered storage of old, used, stripped, junked and other automobiles not in good, safe operating condition, and of any other vehicles, machinery implements and/or equipment and personal property of any kind which is no longer safe for the purposes for which it was manufactured, for a period of thirty (30) days or more (except in a licensed junk yard) within the City, and any motor vehicle, animal and article of personal property which constitutes an obstruction to, hazard or detriment to public traffic, snow removal operations, public safety and public health, or which may be abandoned or unclaimed within the City, is hereby declared to be a nuisance and shall be abated in the manner prescribed in this article.

12.0402 Abatement Required by Owners

The owner, owners, tenants, lessees and/or occupants of any lot within the corporate limits of this City upon which such storage is made, and also the owner, /owners and /or lessees of the property involved in such storage (all of whom are hereinafter referred to collectively as "owners"), shall jointly and severally abate the nuisance by the prompt removal of the personal property into completely enclosed buildings authorized to be used for storage purposes, if within the corporate limits of the City, or otherwise to remove it to a location outside of corporate limits.

12.0403 Abatement Required – Penalty for Failure

If the owners allow a nuisance to exist or fail to abate a nuisance they, and each of them upon conviction thereof, shall be fined not more than five hundred dollars ($500.00) for each infraction and a separate infraction shall be deemed committed on each day during or on which the nuisance is permitted to exist.

12.0404 Removal and Impoundment by City

The police department may remove or cause to be removed to the City Hall, or any other place within the City selected for storage purposes, any personal property described in 12.0401, and may impound and retain the same until the expense of removal, storage and impounding is paid, together with the amount of any fine, costs, bail or other claims of the City against the owner, or any other person lawfully entitled to the possession thereof.

12.0405 Removal and Impoundment – When Sold

If not reclaimed and redeemed by the true owner or the person lawfully entitled to the possession thereof within a

period of thirty (30) days after impounding, any article of personal property described in 12.0401 may be sold and disposed of by the police department in the manner hereinafter provided. Notice that such property will be sold shall be published once, at least (6) days prior to the sale, in the official newspaper. Such notice shall specify a description of the property to be sold and the time and place of sale. Any sale may be postponed or discontinued by public announcement at the time of the sale where there are not bidders or when the amount offered is grossly inadequate, or for other reasonable cause. The City may become a purchaser of any or all property at the sale. The chief of police shall give the purchaser at the sale a certificate of purchase of such property.

12.0406 Removal and Impoundment Proceeds

Within thirty (30) days after a sale, the person making the sale shall make out, in writing, and file with the City a full report of the sale, specifying the property sold, the amount received therefore, the amount of costs and expenses and the disposition of the proceeds of the sale. The proceeds arising from the sale shall be delivered to the city auditor and credited to the general fund.

ARTICLE 5 – Noxious Weeds

12.0501 Definition

Whenever used in this ordinance, the term "noxious weeds" shall mean and include all weeds of the kind known as Canada Thistle, sow thistle, quack grass, leafy spurge (Euphorbia esula or Ruphrobia virgata), field bindweed, Russian knapweed, (Centaurea picris), hoary cress (Lapidium draba, Lepidium reoebs, abd Humenophysa pubescens), dodder, or any similar unwanted vegetation over eight inches in height.

12.0502 Weeds Prohibited

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

12.0503 Notice to Destroy

The City health officer is hereby authorized and empowered to notify in writing the owner of any lot, place, or area within the City or the agent of such owner, to cut, destroy, and /or remove any noxious weeds found growing, lying, or located on such owner's property or upon the one-half of any road or street lying next to the lands or boulevards abutting thereon. The notice shall be by registered or certified mail addressed to said owner or agent of said owner at their last known address and shall give such owner or agent a minimum of five days to cut or destroy the noxious weeds.

12.0504 Action Upon Non-Compliance

Upon the failure, neglect, or refusal of any owner or agent to cut, destroy and/or remove noxious weeds growing, lying or located upon the owner's property or upon the one-half of any road or street lying next to the lands or boulevards abutting thereon, after receipt of the written notice provided for in 12.0503 or within five days after the date of such notice in the event the same is returned to the City because of inability to make delivery thereof, provided the same was properly addressed to the last known address of such owner or agent, the health officer is hereby authorized and empowered to pay for the cutting, destroying, and/or removal of such noxious weeds or to order their removal by the City.

12.0505 Cost Assessed to Property

When the City has effected the removal of such noxious weeds or has paid for their removal, the actual cost thereof, if not paid by the owner prior thereto, shall be charged and assessed against the property upon which the noxious weeds were cut or destroyed. An assessment list showing the lots or tracts to be assessed with the cost against each lot or tract shall be prepared as are other special assessment lists and shall be approved by the governing body. Such assessments shall be subject to the same procedure for certification to the county auditor, payment and collection as are other special assessments under state law.

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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. Except as otherwise provided, a criminal contempt proceeding under this section shall be deemed a prosecution for an offense for the purposes of North Dakota Century Code Chapters 12.1-01 through 12.2-05, North Dakota Century Code Chapter 12.1-32. and Article 5 of this Chapter.

3. 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.

4. This section shall not be construed to deprive a court of its power, by civil contempt proceedings, to compel compliance with its lawful writ, process, order, rule, decree or command or to compensate a complainant for losses sustained by reason of disobedience or resistance thereto, in accordance with the prevailing usage's of law and equity, including the power of detention.

13.0102 Hindering Proceedings by Disorderly Conduct

A person is guilty of an offense if the person recklessly or intentionally hinders an official city proceeding by noise or violent or tumultuous behavior or disturbance.

13.0103 Fleeing or Attempting to Elude a Police Officer

Any driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police vehicle, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a class B misdemeanor. A signal complies with the section if the signal is perceptible to the driver and the police officer giving such signal is in uniform, prominently displaying the officer's badge of office, and the vehicle is appropriately marked showing it to be an official police vehicle. (Source: North Dakota Century Code Section 39-10-71).

13.0104 Interference with Officers

No person in the City shall resist any police or fire officer, any member of the police or fire departments, or any person duly empowered with police or fire authority, while in the discharge or apparent discharge of duty, or in any way interfere with or hinder in the discharge of duty.

13.0105 False Alarms or False Reports

No person in the City shall intentionally make, turn in, or give a false alarm of fire, or of need for police or ambulance assistance, or aid or abet in the commission of such act. No person in the City shall make to, or file with, the police department of the City any false, misleading or unfounded statement or report concerning the commission or alleged commission of any crime occurring in the City.

ARTICLE 2 – Offenses Against Persons

13.0201 Simple Assault

1. A person is guilty of an offense if that person:

   a. Willfully causes bodily injury to another human being; or
   b. Negligently causes 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 12.1-17-01,08)

13.0202 Sexual Assault

1. A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense if:

   a. That person knows or has reasonable cause to believe that the contact is offensive to the other person;
   b. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders that other person incapable of understanding the nature of that other persons conduct;
   c. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct, by administering or employing without the victim's knowledge, intoxicants, a controlled substance as defined in Chapter 19-03.1 of the North Dakota Century Code, or other means for the purpose of preventing resistance;
   d. The other person is in official custody or detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over that other person;
   e. The other person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare; or
   f. The other person is a minor, fifteen years of age or older, and the actor is an adult. (Source: North Dakota Century Code Section 12.1-20-07).

13.0203 Harassment

A person is guilty of an offense if, with intent to frighten or harass another, the person:

a. Makes a telephone call anonymously or in offensively coarse language;
b. Makes repeated telephone calls, whether or not a conversation ensues, with no purpose of legitimate communication; or
c. Communicates a falsehood by telephone and causes mental anguish.
(Source: North Dakota Century Code Section 12.1-17-07(1)(b), (c), (d).)

ARTICLE 3 – Offense Against Property

Division 1. Property Destruction and Criminal Intrusion

13.0301 Criminal Mischief – Penalty

A person is guilty of an offense if that person:

a. Willfully tampers with tangible property of another so as to endanger person or property;
Or
b. Willfully damages tangible property of another.

Conduct is punishable as criminal mischief under this ordinance when pecuniary loss, if Intentionally caused, is not in excess of one hundred dollars ($100.00); if recklessly caused, is not in excess of two thousand dollars ($2,000.00); and if the damages to tangible property of another are not by means of an explosive or a destructive device.

c. The penalty for the offense of criminal mischief may not exceed a fine of 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:

a. Tampering with or damaging the tangible property of another;
b. Incapacitating an operator of such service; or
c. Negligently damaging the tangible property of another by fire, explosive or other dangerous means. (Source: North Dakota Century Code Section 12.1-21-06).

13.0303 Consent as a Defense and Definition of "of another" for Criminal Mischief or Tampering with or Damaging a Public Service

For prosecution of criminal mischief under 13.0301 or tampering with or damaging a public Service under 13.0302.

1. Whenever it is an element of the offense that the property is of another, it is a defense to a prosecution under those sections that the other has consented to the actor's conduct with respect to the property.

2. Property is that "of another" if anyone other than the actor has a possessory or proprietary interest therein. (Source: North Dakota Century Code Section 12.1-21-07 and 08(2)).

13.0304 Criminal Trespass

A person is guilty of an offense if, knowing that the person is not licensed or privileged to do so, that person, enters or remains in any place as to which notice against trespass is given by actual communication to the actor by the person in charge of the premises or other authorized person or by posting in a manner reasonably likely to come to the attention of intruders. (Source: North Dakota Century Code Section 12.1-22-03 (3)).

Division 2. Theft and Related Offenses

13.0305 Consolidated Theft Offenses

1. Conduct denominated theft in 13.0306 to 13.0308 constitutes a single offense designed to include the separate offenses heretofore known as larceny, stealing, purloining, embezzlement, obtaining money or property by false pretenses, extortion, blackmail, fraudulent conversion, receiving stolen property, misappropriation of public funds, swindling and the like.

2. A charge of theft under 12.0306 to 13.0308, which fairly apprises the defendant of the nature of the charges against the defendant, shall not be deemed insufficient because it fails to specify a particular category of theft. The defendant may be found guilty of theft under such charge if the defendant's conduct falls under 13.0306 to 13.0308, so long as the conduct proved is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case that must be met. (Source: North Dakota Century Code Section 12.1-23-01).

13.0306 Theft of Property

A person is guilty of theft if that person:

a. Knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof;
b. Knowingly obtains the property of another by deception or by threat with intent to deprive the owner thereof, or intentionally deprives another of his property by deception or by threat; or
c. Knowingly receives, retains or disposes of property of another which has been stolen, with intent to deprive the owner thereof. (Source: North Dakota Century Code Section 12.1-23-02).

13.0307 Theft of Services

A person is guilty of theft if:

a. The person intentionally obtains services, known by the person to be available only for compensation, by deception, threat, false token or other means to avoid payment for the services; or
b. Having control over the disposition of services of another to which the person is not entitled, the person knowingly diverts those services to his own benefit or to the benefit of another not entitled thereto.

Where compensation for services is ordinarily paid immediately upon their rendition, as in the case of hotels, restaurants, and comparable establishments, absconding without payment or making provision to pay is prima facie evidence that the services were obtained by deception. (Source: North Dakota Century Code Section 12.1-23-03).

13.0308 Theft of Property Lost, Mislaid or Delivered by Mistakes

A person is guilty of theft if the person:

a. Retains of disposes of property of another when that person knows it has been lost or mislaid; or
b. Retains or disposes of property of another when that person knows it has been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property; and with intent to deprive the owner of it, he fails to take readily available and reasonable measures to restore the property of a person entitled to have it. (Source: North Dakota Century Code Section 12.1-23-04).

13.0309 Thefts Punishable Under City Ordinances

Theft under 13.00306 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 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:

a. The theft was not committed by threat;
b. The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft;
c. The defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of official duties;
d. The property stolen is not a firearm, ammunition, explosive or destructive device, or an automobile, aircraft or other motor-propelled vehicle;
e. The property does not consist of any government file, record, document or other government paper stolen from any government office or from any public servant;
f. The defendant is not in the business of buying or selling stolen property and he does not receive, retain or dispose of the property in the course of that business;
g. The property stolen does not consist of any implement, paper or other thing uniquely associated with the preparation of any money, stamp, bond or other document, instrument or obligation of the State of North Dakota;
h. The property stolen does not consist of livestock taken from the premises of the owner;
i. The property stolen does not consist of a key or other implement uniquely suited to provide access to property the theft of which would be a felony or was not stolen to gain such access.
j. The property stolen is not a card, plate, or other credit device existing for the purpose of obtaining money property, labor, or services on credit, or is a debit card, electronic fund transfer card, code or other means of access to an account for the purpose of initiating electronic fund transfers. (Source: North Dakota Century Code Section 12.1-23-05).

13.0310 Defrauding Secured Creditors – Penalty

A person is guilty of an offense if he destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with intent to prevent collection of the debt represented by the security interest or if he makes false statements at the time of sale as to the existence of security interests.

13.0311 Retail Theft – Shoplifting

1. Presumption. Any person concealing upon that person's person or among that person's belongings, or causing to be concealed upon the person or among the belongings of another, unpurchased merchandise displayed, held, offered or stored for sale in a retail mercantile establishment and removing it to a point beyond the last station for receiving payments in that retail mercantile establishment shall be prima facie presumed to have so concealed such merchandise with the intention of permanently depriving the merchant of possession or of the full retail value of such merchandise.

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.

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.

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 ($100.00), imprisonment of thirty (30) days, or both such fine and imprisonment. (Source: North Dakota Century Code Sections 51-21-01, 51-21-02, 51-21-03 and 40-05-06).

13.0312 <u>Defenses and Proof as to Theft and Related Offenses</u>

1. It is a defense to a prosecution under this article that:

a. The actor honestly believed that he had a claim to the property or services involved which he was entitled to assert in the manner which forms the basis for the charge against him; or
b. The victim is the actor's spouse, but only when the property involved constitutes household or personal effects or other property normally accessible to both spouses and the parties involved are living together. The term 'spouse', as used in this section includes persons living together as husband and wife.

2. It does not constitute a defense to a prosecution for conducts constituting an offense in violation of this article that:

a. Stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed;
b. A facility or an opportunity to engage in such conduct, including offering for sale property not stolen as if it were stolen, was provided; or
c. Mere solicitation that would not induce an ordinary law-abiding person to engage in such conduct was made by a law enforcement officer to gain evidence against a person predisposed to engage in such conduct.

3. 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. 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.
c. Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business, or without the usual induce of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen. (Source: North Dakota Century Code Section 12.1-23-09).

13.0313 Definitions

In this article:

1. "Dealer in property" means a person who buys or sells property as a business.

2. "Deception" means:

   a. Creating or reinforcing a false impression, including false impressions as to fact, law, status, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not substantially perform the promise unless it is part of a continuing scheme to defraud; or
   b. Preventing another from acquiring information which would affect his judgment of a transaction; or
   c. Failing to correct a false impression which the actor previously created or reinforced, or which he knows to be influencing another to whom he stands in fiduciary or confidential relationship; or
   d. Failing to correct an impression which the actor previously created or reinforced and which the actor knows to have become false due to subsequent events; or
   e. Failing to disclose a lien, adverse claim, or other impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained or in order to continue to deprive another of his property, whether such impediment is or is not valid, or is or is not a matter of official record; or
   f. Using a credit card, charge plate or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer (i.) where such instrument has been stolen, forged, revoked or canceled, or where for any other reason its use by the actor is unauthorized, and (ii.) where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument; or
   g. Any other scheme to defraud. The term "deception" does not, however, include falsifications as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares in communications addressed to the public or to a class or group.

3. "Deprive" means:

   a. To withhold property or to cause it to be withheld either permanently or under such circumstances that a major portion of its economic value, or its use and benefit, has, in fact, been appropriated; or
   b. To withhold property or to cause it to be withheld with the intent to restore it only upon the payment of a reward or other compensation; or
   c. To dispose of property or use it or transfer any interest in it under circumstances that make its restoration, in fact, unlikely.

4. "Fiduciary" means a trustee, guardian, executor, administrator, receiver or any other person acting in a

fiduciary capacity, or any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

5. "Financial institution" means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.
6. "Obtain" means:

    a. In relation to property, to bring about a transfer or purported transfer of an interest in the property, whether to the actor or another; or
    b. In relation to services, to secure performance thereof.

7. "Property" means any money, tangible or intangible personal property, property (whether real or personal) the location of which can be changed (including things growing on, affixed to, or found in land and documents although the rights represented thereby have no physical location), contract right, chose-in-action, interest in or claim to wealth, credit or any other article or thing of value of any kind. "Property" also means real property, the location of which cannot be moved if the offense involves transfer or attempted transfer of an interest in the property.

8. "Property of another" means property in which a person other than the actor or in which a government has an interest without consent, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person or government might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another that has a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement. "Owner" means any person or a government with an interest in property such that it is "property of another" as far as the actor is concerned.

9. "Receiving," means acquiring possession, control or title, or lending on the security of the property.

10. "Services" means labor, professional service, transportation, telephone, mail or other public service, gas, electricity and other public utility services, accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or other property.

11. "Stolen" means property which has been the subject of theft or robbery or a vehicle which is received from a person who is then in violation of North Dakota Century Code Section 12.1-23-06.

12. "Threat" means an expressed purpose, however communicated, to:

    a. Cause bodily injury in the future to the person threatened or to any other person; or
    b. Cause damage to property; or
    c. Subject the person threatened or any other person to physical confinement or restraint; or
    d. Engage in other conduct constituting a crime; or
    e. Accuse anyone of a crime; or
    f. Expose a secret or publicize an asserted fact, whether true or false, tending to subject a person living or deceased, to hatred, contempt or ridicule or to impair another's credit or business repute; or
    g. Reveal any information sought to be concealed by the person threatened; or
    h. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
    i. Take or withhold official action as a public servant, or cause a public servant to take or withhold official action; or
    j. Bring about or continue to strike, boycott or other similar collective action to obtain property or deprive another of his property which is not demanded or received for the benefit of the group which the actor

purports to represent; or

k. Cause anyone to be dismissed from his employment, unless the property is demanded or obtained for lawful union purposes; or

l. Do any other act which would not in itself substantially benefit the actor or a group he represents but which is calculated to harm another person in a substantial manner with respect to his health, safety, business, employment, calling, career, financial condition, reputation or personal relationship. Upon a charge of theft, the receipt of property in consideration for taking or withholding official action shall be deemed to be theft by threat regardless of whether the owner voluntarily parted with his property or he initiated the scheme.

13. "Traffic" means:

a. To sell, transfer, distribute, dispense or otherwise dispose of to another person;

or

b. To buy, receive, possess or obtain control of, with intent to sell, transfer, distribute, dispense or otherwise dispose of to another person. (Source: North Dakota Century Code Section 12.1-23-10)

13.0314 Making or Uttering Slugs

1. A person is guilty of an offense if that person makes or utters a slug or slugs which do not exceed fifty dollars ($50.00) in value with intent to deprive a supplier of property or service sold or offered by means of a coin machine or with knowledge that he is facilitating such a deprivation by another person.

2. In this section:

a. "Slug" means a metal, paper or other object which by virtue of its size, shape or any other quality is capable of being inserted, deposited or otherwise used in a coin machine as an improper but effective substitute for a genuine coin, bill or token;

b. "Coin machine" means a coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle designed (i.) to receive a coin or bill of a certain denomination or a token make for the purpose; and (ii.) in return for the insertion or deposit thereof, automatically to offer, provide, assist in providing, or permit the acquisition of property or a public or private service.

c. "Value" of the slugs means the value of the coins, bills or tokens for which they are capable of being substituted.

ARTICLE 4 – Offenses Against Public Order, Health, Safety and Sensibilities

Division 1. Riot

13.0401 Engaging in a Riot

1. A person is guilty of an offense if that person engages in a riot.

2. "Riot" means a public disturbance involving an assemblage of five (5) or more persons, which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government function. (Source: North Dakota Century Code Section 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 13.0401-(2) or which when one is immediately impending, he disobeys a reasonable public safety order to move, disperse or refrain from specified activities in the immediate vicinity of the riot. A public safety order is an order designated to prevent or control disorder, or promote the safety of persons or property, issued by the senior law enforcement official on the scene. (Source: North Dakota Century Code Section 12.1-25-04).

Division 2. Disorderly Conduct

13.0403 Disorderly Conduct

1. An individual is guilty of violating the ordinances of this City, if with intent to harass, annoy or alarm another person or in reckless disregard of the fact that another is harassed, annoyed or alarmed by the individual's behavior, the individual:

    a. Engages in fighting or in violent, tumultuous or threatening behavior;
    b. Makes unreasonable noise;
    c. In a public place, uses abusive or obscene language, or makes an obscene gesture;
    d. Obstructs vehicular or pedestrian traffic, or the use of a public facility;
    e. Persistently follows a person in or about a public place or places;
    f. While loitering in a public place for the purpose of soliciting sexual contact, the individual solicits such contact;
    g. Creates a hazardous, physically offensive, or seriously alarming condition by any act that serves no legitimate purpose; or
    h. Engages in harassing conduct by means of intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person. (Source: North Dakota Century Code Section 12.1-31-01).

13.0404 Defense when Conduct Consist of Constitutionally Protected Activity

Ordinance 13.0403 does not apply to constitutionally protected activity. If an individual claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim, as a matter of law, and, if found valid, shall exclude evidence of the activity. (Source: North Dakota Century Code Section 12.1-31-01 (2)).

Division 3. Gambling

13.0405 Gambling

1. It shall be an infraction to engage in gambling.

2. "Gambling" means risking any money, credit, deposit or other thing of value for gain, contingent, wholly or partially, upon lot, chance, the operation of gambling apparatus, or the happening or outcome of an event, including an election or sporting event, over which the person taking the risk has no control. Gambling does not include:

    a. Lawful contests for skill, speed strength or endurance in which awards are made only to entrants or to the owners of entries; or
    b. Lawful business transactions or other acts or transactions now or hereafter expressly authorized by law.

3. "Gambling apparatus" means any 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.

Division 4. Sexual Offenses

13.0406 Prostitution

1. A person is guilty of the offense of prostitution if that person:

   a. Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business;
   b. Solicits another person with the intention of being hired to engage in sexual activity.

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 a person under the control, management or supervision of another regularly carries on prostitution.
   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 12.1-29-03,04,05)

13.0407 Unlawful Cohabitation

A person is guilty of an offense if he or she lives openly and notoriously with a person of the opposite sex as a married couple without being married to the other person. (Source: North Dakota Century Code Section 12.1-20-10).

Division 5. Sunday Business or Labor

13.0408 Business or Labor on Sunday

1. Except as otherwise provided in this section, it is a class B misdemeanor for any person between the hours of twelve midnight and twelve noon on Sunday to engage in or conduct business or labor for profit in the usual manner and location, operate a place of business open to the public, or authorize or direct that person's employees or agents to take action prohibited under this section. This subsection shall not apply to any person who in good faith observes a day other than Sunday as the Sabbath, if that person refrains from engaging in or conducting business or labor for profit and closes the place of business to the public between the hours of twelve midnight and twelve noon on the day observed as the Sabbath. (Source: North Dakota Century Code Section 12.1-30-01)

2. Except for items sold at hobby shows, craft show, fairs, exhibits, occasional rummage sales including garage sales or other sales for which a sales tax permit is not required, and tourist attractions that derive at least fifty percent (50%) of their annual gross sales from seasonal or tourist customers, the sale or rental of any of the following items between the hours of twelve midnight and twelve noon on Sunday is prohibited:

   a. Clothing other than work gloves and infant supplies;
   b. Clothing accessories;
   c. Wearing apparel other than that sold to a transient traveler under emergency conditions;
   d. Footwear;
   e. Headwear;
   f. Home, business, office or outdoor furniture;
   g. Kitchenware;
   h. Kitchen utensils;
   i. China;
   j. Home appliances;
   k. Stoves;

l. Refrigerators;
m. Air conditioners;
n. Electric fans;
o. Radios;
p. Television sets;
q. Washing machines
r. Dryers;
s. Cameras;
t. Hardware other than emergency plumbing, heating, cooling or electrical repair or replacement parts and equipment;
u. Tools other than manually driven hand tools;
v. Jewelry;
w. Precious or semiprecious stones;
x. Silverware;
y. Watches;
z. Clocks;
aa. Luggage;
bb. Motor vehicles other than the daily rental of vehicles by business whose sole activity is automobile rental;
cc. Musical instrument
dd. The sale of audio or video recordings, records or tapes. Rental of these items is permitted;
ee. Toys other than those customarily sold as novelties or souvenirs;
ff. Mattresses;
gg. Bed coverings;
hh. Household linens;
ii. Floor coverings;
jj. Lamps;
kk. Draperies;
ll. Blinds
mm. Curtains;
nn. Mirrors;
oo. Cloth piece goods;
pp. Lawnmowers;
qq. Sporting or recreational goods other than those sold or rented on the premises where sports or recreational activities are conducted;
rr. Paint and building and lumber supplies. (Source: North Dakota Century Code Section 12.1-30-02)

3. Subject to the limitations of this subsection and subsection 2, a business specified in this section may operate in the business' usual manner, location, and for its usual purposes. The businesses authorized under this subsection to operate on Sunday include:

a. Restaurants, cafeterias or other prepared food service organizations;
b. Hotels, motels and other lodging facilities;
c. Hospitals and nursing homes, including the sale of giftware on the premises;
d. Dispensaries of drugs and medicines;
e. Ambulance and burial services;
f. Generation and distribution of electric power, water, steam, natural gas, oil or other fuel used as a necessary utility;
g. Distribution of gas, oil and other fuels;
h. Telephone, telegraph and messenger services;
i. Heating, refrigeration and cooling services;
j. Railroad, bus, trolleys, subway, taxi and limousine services;
k. Water, air and land transportation services and attendant facilities;
l. Cold store warehouse;

m. Ice manufacturing and distribution facilities and services;
n. Minimal maintenance of equipment and machinery;
o. Plant and industrial protection services;
p. Industries where continuous processing or manufacturing is required by the very nature of the process involved.
q. Newspaper publication and distribution;
r. Newsstands;
s. Radio and television broadcasting;
t. Motion picture, theatrical and musical performances;
u. Motor vehicle service stations that sell motor fuel and motor oil, and that customarily provide daily repair services or products for any of the following systems or parts of a motor vehicle:
    i. Air conditioning system;
    ii. Batteries;
    iii. Electrical system;
    iv. Engine cooling system
    v. Exhaust system;
    vi. Fuel system;
    vii. Tires and tubes;
    viii. Emergency work necessary for the safe and lawful operation of the motor vehicle.
v. Athletic and sporting events;
w. Parks, beaches and recreational facilities;
x. Scenic, historic and tourist attractions;
y. Amusement centers, fairs, zoos and museums;
z. Libraries;
aa. Educational lectures, forums and exhibits;
bb. Service organizations (USO, YMCA, etc.);
cc. Coin-operated laundry and dry-cleaning facilities;
dd. Food stores operated by an owner or manager in addition to not more than six employees working in the store at one time on a Sunday; (Note: the governing body of a city may, by ordinance increase the number of employees)
ee. Bait shops for the sale of live bait and fishing tackle;
ff. From April 1st through June 15th, floral nurseries for the sale of bedding plants and nursery stock;
gg. From November 20th through December 24th, Christmas tree stands;
hh. Hobby shows, craft shows, fairs, exhibits;
ii. Occasional rummage sales, including garage sales or other sales for which a sales tax permit is not required;
jj. Community festivals licensed or authorized by the governing body of a city or the board of county commissioners;
kk. Premises licensed to dispense beer and alcoholic beverages within the limits prescribed in North Dakota Century Code Sections 5-02-05 and 5-02-05.1.
ll. Credit apparel services, lodging and travel reservation services, and, notwithstanding subsection 2, telemarketing of goods and services. (Source: North Dakota Century Code Section 12.1-30-03)

Division 6. Cruelty to Animals

13.0409 Cruelty to Animals

1. It is an offense for any person to:

a. Overdrive, overload, torture, cruelly beat, neglect or unjustifiably injure, maim, mutilate or kill any animal, or cruelly work any animal when unfit for labor;
b. Deprive any animal over which he has charge or control of necessary food, water or shelter;
c. Keep any animal in any enclosure without exercise and wholesome change of air;

d. Abandon any animal;
e. Allow any maimed, sick, inform or disabled animal of which he is the owner, or of which he has custody, to lie in any street, road or other public place for more than three (3) hours after notice;
f. No person shall willfully instigate, or in any way further, any act of cruelty to any animal or animals, or any act tending to produce such cruelty.
g. Cage any animal for public display except as allowed by North Dakota Century Code Section 336-21.1-02(8);

2. The word "animal" includes every living animal except the human race; the word "torture" or "cruelty" includes every act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering or death is cause or permitted. (Source: North Dakota Century Code Section 36-21.1-01,02).

Division 7. Alcohol Related Offenses

13.0410 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 the 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. Any 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 and gross sales of food are at official duty. Any person under twenty-one years of age may remain in an area of a site where beer, wine, or sparkling wine is sold in accordance with the conditions of an event permit issued pursuant to Section 5-02-01.1 of the North Dakota Century Code. Any person who is nineteen years of age or older but under twenty-one years of age may be employed by the restaurant to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person twenty-one or more years of age, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages. Any establishment where alcoholic beverages are sold may employ persons from eighteen (18) to twenty-one (21) years of age to work in the capacity of musicians under the direct supervision of a person twenty-one (21) or more years of age. (Source: North Dakota Century Code Section 5-01-08 and 5-02-08).

13.0411 Misrepresentation of Age – Obligations of Licenses

Any person who shall misrepresent or misstate his age or the age of any other person, or shall misrepresent his age or the age of any other person, or shall misrepresent his age through presentation of any document purporting to show that person to be of legal age to purchase alcoholic beverages is guilty of an offense. 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).

13.0412 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).

13.0413 Public Intoxication – Assistance – Medical care

A peace officer has authority to take any apparently intoxicated person to the person's home, to a local hospital, to a detoxification center, or, whenever that person constitutes a danger to himself or others, to a jail for purposes of detoxification. A duly licensed physician of a local hospital has authority to hold that person for treatment up to seventy-two (72) hours. That intoxicated person may not be held in jail because of intoxication more than twenty-four (24) hours. An intoxicated person may not be placed in a jail unless a jailer is constantly present within hearing distance and medical services are provided when the need is indicated. Upon placing that person in a hospital, detoxification center, or jail, the peace officer shall notify the intoxicated person's family as soon as possible. Any additional costs incurred by the city on account of an intoxicated person shall be recoverable from that person. (Source: North Dakota Century Code Section 5-01-05.1).

13.0414 No Prosecution for Intoxication

No person may be prosecuted solely for public intoxication. Law enforcement officers may utilize standard identification procedures on all persons given assistance because of apparent intoxication. (Source: North Dakota Century Code Section 5-01-05.2).

Division 8. Protection of Minors

13.0415 Objectionable Materials or Performance – Display to Minors-Definitions – Penalty

1. A person is guilty of an offense if he willfully displays at newsstands or any other business establishment frequented by minors, or where minors are or may be invited as a part of the general public, any photograph, book, paperback book, pamphlet, or magazine, the exposed cover or available content of which exploits, is devoted to, or is principally made up of depiction's of nude or partially denuded human figures posed or presented in a manner to exploit sex, lust or perversion for commercial gain.

2. As used in this section:

   a. "Nude or partially denuded human figures" means less than completely and opaquely covered human genitals, pubic regions, female breasts or a female breast, if the breast or breasts are exposed below a point immediately above the top of the areola, or human buttocks; and includes human male genitals in a discernible turgid state even if completely and opaquely covered.
   b. "Where minors are or may be invited as a part of the general public" includes any public roadway or public walkway.
   c. The above shall not be construed to include a bona fide school, college, university, museum, public library or art gallery. (Source: North Dakota Century Code Section 12.1-27.1-03.1)

Division 9. Regulation of Minors

13.0416 Curfew, General Regulations – Penalty

1. a. It shall be unlawful for any minor under the age of seventeen years to loiter, idle, wander, stroll, play, or drive or ride in cars idly or aimlessly in or upon the public streets, avenues, highways, roads, alleys, parks, playgrounds and other public grounds, public places and public buildings, places of amusement or entertainment, and vacant lots or other unsupervised places in the city between the hours of 10:00p.m. and 5:00a.m. of the following day, for the days of Sunday through Thursday; and 11p.m. and 5:00a.m. of the

following day, for the days of Friday and Saturday.

b. It shall be unlawful for any minor under the age of seventeen years to loiter, idle, wander, stroll, play, or drive or ride in cars idly or aimlessly in or upon the public streets, avenues, highways, roads, alleys, parks, playgrounds and other public grounds, public places and public buildings, places of amusement or entertainment, and vacant lots or other unsupervised places in the city between the hours of 11:00p.m. and 5:00a.m. of the following day, for the days of Sunday through Thursday; and 12:00a.m. and 5:00a.m. of the following day, for the days of Friday and Saturday.

2. This section does not apply to minor while attending or while in route to or from employment or activities supervised by a school, church, civic or fraternal organization or governmental agency, nor shall such provisions apply to a minor accompanied by his or her parents, guardian or other adult person having care and custody of such minor, nor in the case of an emergency.

3. It shall be unlawful for the parent, guardian or other adult person having the lawful care, custody or control of any minor person to willfully and recklessly allow or permit such minor person to violate the provisions of this section, or to aid or abet such violation.

4. It shall be unlawful for any person operating or in charge of any place of amusement, entertainment, refreshment or other place of business, to knowingly permit any minor to loiter, loaf, or idle in such place during the hours prohibited by this section.

5. Whenever the owner or person in charge of any place of amusement, entertainment, refreshment, or other place of business shall find a minor, during the hours prohibited, loitering, loafing, or idling in such place of business, he shall immediately order the minor to leave, and if the minor refuses to leave the premises the owner or person in charge shall immediately notify law enforcement and inform law enforcement of such refusal.

6. This section shall not be construed so as to permit the presence of any minor in any place where his presence is now prohibited by law.

7. Any law enforcement officer is hereby authorized to detain such minor until picked up by parents, guardian or other adult person having the lawful care, custody or control of the minor.

8. Any person violating any of the terms or provisions of this section shall, upon conviction, be punished by a fine of One Hundred Dollars ($100.00) or by imprisonment not to exceed Thirty (30) days.

ARTICLE 5 – Sentencing

13.0501 Classification of Offenses

Offenses against the ordinances of this city are divided into two (2) classes, as follows:

1. Offense, for which a maximum penalty of thirty (30) days imprisonment, a fine of one thousand dollars ($1,000.00), 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 year prior to commission of the infraction of which he 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 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 shall not exceed in duration the maximum sentences of imprisonment provided in 13.0501 or as provided specifically in an ordinance defining an offense.

This subsection shall not be construed as permitting 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 13.0507, 13.0508, or 13.0509.

2. Credit against any sentence to a term of imprisonment must be given by the court to a defendant for all time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal.

3. A court may suspend the execution of all or a part of the sentence imposed. The court shall place the defendant on probation during the term of suspension.

4. A court, upon application or its own motion, may defer imposition of sentence. the court must place the defendant on probation during the period of deferment. An order deferring imposition of sentence is reviewable upon appeal from a verdict or judgment. In any subsequent prosecution, for any other offense, the prior conviction for which imposition of sentence is deferred may be pleaded and proved, and has the same effect as if probation had not been granted or the information or indictment dismissed under Section 12.1-32-07.1 of the North Dakota Century Code.

5. A court may, prior to imposition of sentence, order the convicted offender committed to an appropriate licensed public or private institution for diagnostic testing for such period of time as may be necessary, but not to exceed thirty days. The court may, by subsequent order, extend the period of commitment for not to exceed thirty additional days. The court may also order such diagnostic testing without ordering

commitment to an institution. Validity of a sentence must not be challenged on the ground that diagnostic testing was not performed pursuant to this subsection.

6. All sentences imposed must be accompanied by a written statement by the court setting forth the reasons for imposing the particular sentence. The statement must become part of the record of the case.

7. If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing, unless, upon motion of the defendant, the court orders the term to commence at some other time. (Source: North Dakota Century Code Section 12.1-32-02).

13.0503 Procedure for Trial of Infraction – Incidence

1. Except as provided in this subsection, all procedural provisions relating to the trial of criminal cases as provided in the statutes or rules relating to criminal procedure shall apply to the trial of a person charged with an infraction. A person charged with an infraction is not entitled to be furnished counsel at public expense nor to have a trial by jury pursuant to North Dakota Century Code Section 40-18-19 unless he 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, 13.0501 or 13.0502, or as the context may otherwise indicate differentiation between the infraction classification and the offense classification, the term "offense" refers to all violations of the ordinances of this city including infractions. (Source: North Dakota Century Code Section 12-32-03.1)

13.0504 Special Sanction for Organizations

When an organization is convicted of an offense, the court may, in addition to any other sentence which may be imposed, require the organization to give notice of its conviction to the persons or class of persons ostensibly harmed by the offense, by mail or by advertising in designated areas or by designated media or otherwise. (Source: North Dakota Century Code Section 12.1-32-03).

13.0505 Factors to be Considered in Sentencing

The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations regarding the desirability of sentencing an offender to imprisonment.

1. The defendant's criminal conduct neither caused nor threatened serious harm to another person or his property.

2. The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property.

3. The defendant acted under strong provocation.

4. There were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant's conduct.

5. The victim of the defendant's conduct induced or facilitated its commission.

6. The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury, which was sustained.

7. The defendant has no history of prior delinquency or criminal activity, or has led a law-abiding life for a substantial period of time before the commission of the present offense.

8. The defendant's conduct was the result of circumstances unlikely to recur.

9. The character, history and attitudes of the defendant indicate that he is unlikely to commit another crime.

10. The defendant is particularly likely to respond affirmatively to probationary treatment.

11. The imprisonment of the defendant would entail undue hardship to himself or his dependents.

12. The defendant is elderly or in poor health.

13. The defendant did not abuse a public position of responsibility or trust.

14. The defendant cooperated with law enforcement authorities by bringing other offenders to justice, otherwise cooperated.

Nothing herein shall be deemed to require explicit reference to these factors in a presentence report or by the court at sentencing. (Source: North Dakota Century Code Section 12.1-32-04).

13.0506 Imposition of Fine – Response to Non-Payment

1. The court, in making a determination of the propriety of imposing a sentence to pay a fine, shall consider the following factors:

   a. The ability of the defendant to pay without undue hardship;
   b. Whether the defendant, other than a defendant organization, gained money or property as a result of commission;
   c. Whether the sentence to pay a fine will interfere with the defendant's capacity to make restitution;
   d. Whether a sentence to pay a fine will serve a valid rehabilitative purpose.

2. The court may allow the defendant to pay any fine or costs imposed in installments. When a defendant is sentenced to pay a fine or costs, the court shall not impose at the same time an alternative sentence to be served in the event that the fine or costs are not paid.

3. If the defendant does not pay any fine or costs imposed, or make any required partial payment, the courts, upon motion of the prosecuting attorney or on its own motion, may issue an order to show cause why the defendant shows that his default is excusable, the court may, after hearing, commit him to imprisonment until the fine, or costs or both, are fully paid or discharged by labor as provided in North Dakota Century Code Section 40-18-12.

The court may not commit a person under this section when the sole reason for his nonpayment is his indigence. An order of commitment under this subsection shall not be for a period in excess of thirty (30) days. As used in this subsection, "fine" does not include a fee established pursuant to section 9.2208 of these ordinances. (Source: North Dakota Century Code Section 12.1-32-05 and Section 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 commits 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 13.0509;
    f. Pay a fine imposed after consideration of the provisions of 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 3 of section 12.1-32-08.
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 he is being released.

4. The court, upon notice to the probationer 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 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 exercise all powers permissible under this chapter over the defendant. (Source: North Dakota Century Code Section 12.1-32-07).

13.0509 <u>Restitution or Reparation – Procedures</u>

1. Prior to 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 must be 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 such order must be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, unless the court directs otherwise, be filled, transcribed, and enforced by the person entitled to the restitution or reparation in the same manner as civil judgments rendered by the courts of this state may be enforced.

2. The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim. (Source: North Dakota Century Code Section 12.1-32-08).

13.0510 <u>Merger of Sentences – Sentencing for Multiple Offenses</u>

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

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 dollars ($1,000.00) or by imprisonment not to exceed thirty (30) days, or both. (Source: North Dakota Century Code Section 40-05-06)

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CHAPTER FOURTEEN

GAMES OF CHANCE

ARTICLE 1 - Games of Chance

14.0101 Origin

This Chapter is based on Chapter 53-06.1 NDCC and subsequent amendments, and is intended to enact certain provisions therefrom that pertain to cities. Insofar as this Chapter is inconsistent with Chapter 53-06.1, state law shall prevail.

14.0102 Definitions

The definitions used in this Chapter shall conform with Section 53-06.1-01 NDCC and any amendments thereto.

ARTICLE 2 - Organizations Eligible to Conduct Games of Chance

14.0201 Qualifications and Use of Net Proceeds

Non-profit veterans, charitable, educational, religious and fraternal organizations, civic and service clubs, and public-spirited organizations, as those terms are defined by this Chapter, are eligible to conduct games of chance under the conditions of this Chapter. The entire net proceeds of such games of chance are to be devoted to educational, charitable, patriotic, fraternal, religious, or other-public spirited uses as defined by this Chapter. Notwithstanding any other provision of this Chapter, any eligible organization, which is not required to be licensed by the Attorney General, may use the net proceeds of such games of chance to directly benefit the eligible organizations.

14.0202 Waiver of Two-Year Existence Requirement

An organization that has not been in existence within this State for two years becomes an eligible organization for purposes of this Section upon approval by the Mott City Council, if the organization will conduct games of chance only within the City.

14.0203 City Authorization of Certain Games of Chance

1. Any eligible organization not required to be licensed by the Attorney General of the State of North Dakota, if its principal activities are conducted within the City of Mott, shall apply to the City Council to obtain authorization for the conduct of games of chance. Applications for the conduct of games of chance subject to authorization by the City must be made on forms provided by the Attorney General. Fees for such permission or authorization shall be in the amount of $10.00 for each authorization.

2. The following organizations may obtain local authorization from the City Council for the following described games of chance:

    a. Any non-profit organization recognized as public-spirited by the governing body of the City of Mott may obtain local authorization to conduct raffles or bingo in which the primary prize does not exceed $1,000, and the aggregate does not exceed $6,000 annually, or to conduct sports pools in which the total wagers do not exceed $500 for each pool.
    b. A nonprofit organization that conducts a City festival or celebration, or a centennial committee organized by the City for the purpose of celebrating a North Dakota centennial, may obtain local authorization to conduct raffles in which the primary prize does not exceed $1,000 and the aggregate does not exceed $2,000. For purposes of this subdivision, a "city festival or celebration" means an event:

i. A celebration of local heritage, anniversary of a local establishment of the City, or other significant local event recognized as public-spirited by the governing body of the City; and
ii. Supported by significant community participation.

c. For purposes of this subsection, the determination of what is a public-spirited "organization" is within the sole discretion of the governing body of the City.

3. Any educational organization from within the City of Mott shall apply in writing to the City Council for permission to conduct raffles, sports pools or bingo at least thirty (30) days prior to each occasion. The application shall state the time, place and educational, charitable, patriotic, fraternal, religious or other public-spirited uses to which the proceeds will be devoted. The governing body may at its own discretion and upon application, grant permission for raffles, sports pools and bingo to be held at specifically designated times and places for specific uses covering a one year period. The governing body shall charge a $10.00 fee for each authorization. The governing body, may at its own discretion choose to authorize raffles, sports pools and bingo pursuant to this Chapter by resolution.

ARTICLE 3 - Site Licensure and Number of Sites

14.0301 Site Licensure

Applicants applying to the Attorney General for games of chance licenses must first secure approval of the proposed site or sites in which it intends to conduct games of chance from the City Council, if within the City limits. This approval or permit may be granted at the discretion of the City Council. The City Council may charge a $100.00 or lesser amount as a fee for this permit.

14.0302 Inspection

Premises wherein the game of chance is being held, operated, or conducted, or where it is intended that such game will be held, shall be open to inspection by representatives of the City Council which has authorized the games of chance, and by peace officers of any political subdivision of this State.

14.0303 Number of Gaming Sites

The number of tables for twenty-one per site shall be one (1) and the maximum number of sites upon which an eligible organization may conduct games of chance within the City shall be one (1).

ARTICLE 4 - Work Permits

14.0401 Work Permit - Fee

For sites within the City limits, the City may require a person associated with the conduct of games of chance to obtain a work permit. The City may, by ordinance or resolution, set a fee for the issuance of the work permit, and conduct reasonable inquiries into the background of each individual. The fee charged for issuance of a work permit shall be the lesser of set fee or the actual expense to the City for licensing the individual.

ARTICLE 5 - Examination of Books and Records

14.0501 Books and Records Examined

The governing body of the City, with respect to eligible organizations authorized by the City, shall have the power to examine or cause to be examined the books and records of any eligible organization licensed or authorized to conduct games of chance under this Chapter to the extent that such books and records relate to any transactions connected with the holding, operating, or conducting of any game of chance.

ARTICLE 6 - Enforcement

14.0601 Violations - Fees

Each person or organization operating games of chance pursuant to authorization or permit granted by the City shall comply with all the conditions and requirements of this Chapter and Chapter 53-06.1 of the North Dakota Century Code.

Any person who knowingly makes a false statement in any application form for an authorizing resolution or in any statement annexed thereto, or fails to keep sufficient books and records to substantiate the receipts or expenses, or uses resulting from the games of chance conducted under this Ordinance, or who falsifies any books or records so far as they relate to any transaction connected with the holding, operating and conducting of any games of chance, or who violates any of the provisions of this Ordinance, or of any
term of an authorization shall be subject to a fine in the maximum amount of Five Hundred and No/100 Dollars ($500.00), imprisonment for a period not to exceed thirty (30) days, or both. Any organization so doing shall be subject to a fine not to exceed Five Hundred and No/100 Dollars ($500.00). If convicted, such organization or person shall forfeit any authorizing resolution issued to it pursuant to this Ordinance and shall be ineligible to reapply for a license or authorization for two years thereafter.

ARTICLE 7 - Effective Date

14.0701 Effective Date

This Ordinance shall be in full force and effect after its passage and approval as provided by law.

CHAPTER FIFTEEN

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CHAPTER FIFTEEN

FLOOD PLAIN MANAGEMENT

ARTICLE 1 - Statutory Authorization, Finds of Facts and Purposes

15.0101 Statutory Authorization

The Legislature of the State of North Dakota has in North Dakota Century Code, Chapters 40-47, 11-33 and 58-13, delegated responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City Council of Mott, North Dakota does ordain the following:

15.0102 Findings of Fact

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

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

15.0103 Statement of Purpose

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

1. To protect human life and health;

2. To minimize expenditure of public money for costly flood control projects;

3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

4. To minimize prolonged business interruptions;

5. To minimize damage to public facilities and utilities such as water and has mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard so as to minimize future flood blight areas;

6. To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;

7. To ensure that potential buyers are notified that property is in an area of special flood hazard; and

8. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

15.0104 Methods of Reducing Flood Losses

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

1. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

2. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

3. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

4. Controlling filling, grading, dredging, and other development which may increase flood damage; and

5. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

ARTICLE 2 - Definitions

15.0201 Definitions

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

1. "Appeal" means a request for a review of the Building Inspector's interpretation of any provision of this ordinance or a request for a variance.

2. "Area of shallow flooding" means a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and undetermined; and velocity flow may be evident.

3. "Area of special flood hazard" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.

4. "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

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

6. "Existing mobile home park or mobile home subdivision" means a parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale for which the construction of facilities for servicing the lot on which the mobile home is to be affixed (including, at a minimum, the installation of utilities either final site grading or the pouring of concrete pads, and the construction of streets) is completed before the effective date of this ordinance.

7. "Expansion to an existing mobile home park or mobile home subdivision" means the preparation of additional sites by the construction of facilities for serving the lots on which the mobile homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete pads or the construction of streets).

8. "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

a. The overflow of inland or tidal waters and/or;
b. The unusual and rapid accumulation or runoff of surface waters from any source.

9. “Flood Insurance Rate Map” (FIRM) means the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

10. "Flood Insurance Study" means the official report (last updated March 16, 2011) provided by the Federal Emergency Management Agency, as it may be amended from time to time, that includes flood profiles, the Flood Insurance Rate Map, the water surface elevation of the base flood, and identifies the floodway.

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

12. "Habitable floor" means any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a "habitual floor".

13. "Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable flood proofing design requirements of this ordinance.

14. "Manufactured home" means a structure that is transportable in one or more sections, built on a permanent foundation when connected to the required utilities. It includes recreational vehicles or travel trailers placed on a site for more than 180 consecutive days.

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

16. "Mobile home" means a structure that is transportable in one or more sections, built on a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers.

17. "New construction" means structures for which the "start of construction" commenced on or after the effective date of this ordinance.

18. "New mobile home park or mobile home subdivision" means a parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale for which construction of facilities for servicing the lot (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of street) is completed on or after the effective date of this ordinance.

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

garages or sheds not occupied as dwelling units or not part of the main structure.

20. "Structure" means a walled and roofed building, manufactured home or liquid storage tank that is principally above ground.

21. "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

    a. Before the improvement or repair is started, or
    b. If the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences whether or not that alteration affects the external dimensions of the structure.

    The term does not however, include either:

    a. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or
    b. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

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

ARTICLE 3 - General Provisions

15.0301 Jurisdiction

This ordinance shall apply to all areas of special flood hazards within the jurisdiction of the City of Mott.

15.0302 Basis for Establishing the Areas of Special Flood Hazard

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for the City of Mott, dated March 4, 1986," with an accompanying Flood Insurance Rate Map and all subsequent revisions thereto (the latest being the Flood Insurance Study, March 16, 2011) are hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file at the City Hall, Mott, N.D. 58646.

15.0303 Compliance

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations.

15.0304 Greater Restrictions

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

15.0305 Interpretation

In the interpretation and application of this ordinance, all provisions shall be:

1. Considered as minimum requirements;

2. Liberally construed in favor of the governing body; and

3. Deemed neither to limit nor repeal any other powers granted under state statutes.

15.0306 Warning and Disclaimer or Liability

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

15.0307 Severability

If any section, clause, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

ARTICLE 4 - Administration

15.0401 Establishment of Development Permit

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 15.0302. Application for a development permit shall be made on forms furnished by the Building Inspector and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill storage materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

1. Elevation in relation to mean sea level, or the lowest floor of all structures;
2. Elevation in relation to mean sea level to which any structure has been flood-proofed;

3. Certification by a registered professional engineer or architect that the flood-proofing methods for any non-residential structure that meets the flood-proofing criteria in Section 15.0602; and

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

15.0402 Designation of the Building Inspector

The Building Inspector is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

15.0403 Duties and Responsibilities of the Building Inspector

Duties of the Building Inspector shall include, but not be limited to:

1. Permit Review

    a. Review all development permits to determine that the permit requirements of this ordinance have been satisfied.

b. Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.
c. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 15.0603(1) are met.

2. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 15.0302, the Building Inspector shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source, as criteria for requiring that new construction, substantial improvements or other development in the flood plain are administered in accordance with ARTICLE 6.

3. Information to be Obtained and Maintained

   a. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
   b. For all new or substantially improved flood-proofed structures:
      i. Obtain and record the actual elevation (in relation to mean sea level) to which the structure has been flood-proofed;
      ii. Maintain the flood-proofing certifications required in ARTICLE 4.
   c. Maintain for public inspection all records pertaining to the provisions of this ordinance.

4. Alteration of Watercourses

   a. Notify adjacent communities and the North Dakota State Engineer prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
   b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

5. Interpretation of Flood Insurance Rate Map (FIRM) Boundaries. Make interpretation where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 15.0404.

15.0404 <u>Variance Procedure - Appeal Board</u>

1. The City Council as established by the City of Mott shall hear and decide appeals and requests for variances from the requirements of this ordinance.

2. The City Council shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Building Inspector in the enforcement or administration of this ordinance.

3. Those aggrieved by the decision of the City Council or any taxpayer, may appeal such decision to the District Court, as provided in NDCC 27-05-06.

4. In passing upon such applications, the City Council shall consider all technical evaluation, all relevant factors, standards specified in other sections of this ordinance and:

   a. The danger that materials may be swept onto other lands to the injury of others;

b. The danger to life and property due to flooding or erosion damage;
c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
d. The importance of the services provided by the proposed facility to the community;
e. The necessity to the facility of a waterfront location, where applicable;
f. The availability of alternative locations, for the proposed use which are not subject to flooding or erosion damage;
g. The compatibility of the proposed use with existing and anticipated development;
h. The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
j. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

5. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre to less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (a-k) in Section 15.0405(4) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

6. Upon consideration of the factors of Section 15.0404(4) and the purposes of this ordinance, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

7. The Building Inspector shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

15.0405 Variance Procedure - Conditions for Variance

1. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places, without regard to the procedures set forth in the remainder of this section;

2. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result;

3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;

4. Variances shall only be issued upon:

   a. A showing of good and sufficient cause;
   b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
   c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, cause fraud on or victimization of the public as identified in Section 15.0404(4), or conflict with existing local laws or ordinances.

5. Any applicant to whom a variance is granted shall be given written notice that the structure will be

permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

ARTICLE 5 - Provisions for Flood Hazard Reduction - General Standards

15.0501 Anchoring

1. All new construction and substantial improvements (including additions) shall be anchored to prevent flotations, collapse or lateral movement of the structure.

2. All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

15.0502 Construction Materials and Methods

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

3. All new construction and substantial improvements shall be constructed with electrical, heating ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

15.0503 Utilities

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration or flood waters into the systems;

2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and

3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

15.0504 Subdivision Proposals

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

2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and

4. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or 5 acres (whichever is less).

ARTICLE 6 - Provisions for Flood Hazard Reduction - Specific Standards

In all areas of special flood hazards where base flood elevation data have been provided as set forth in Section 15.0302 or Section 15.0403(2), the following provisions are required.

15.0601 Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated above the base flood elevation.

15.0602 Nonresidential Construction

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation; or together with attendant utility and sanitary facilities shall:

1. Be flood-proofed so that below and base flood level the structure is watertight with walls substantially impermeable to the passage of water;

2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either by certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

   a. A minimum of two openings having a total net area of not less than one square foot of enclosed area subject to flooding shall be provided;
   b. The bottom of all openings shall be no higher than one foot above grade;
   c. Openings may be equipped with screens, louver, or other coverings or devices provided that they permit the automatic entry and exit of flood waters; and

3. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the official as set forth in Section 15.0403(2).

15.0603 Manufactured Homes

1. Manufactured homes shall be anchored in accordance with Section 15.0501(2).

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

ARTICLE 7 - Floodways

15.0701 Floodways

Located within areas of special flood hazard established in Section 15.0302 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

1. Prohibit encroachment, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

2. If Section 15.0701(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of ARTICLE 5 and ARTICLE 6.

ARTICLE 8 - Penalties for Violation

15.0801 Penalties for Violation

1. Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violations on conditions and safeguards established in connection with grants or variances or conditional uses, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be punished by a fine not exceeding $500 or by imprisonment not to exceed 30 days or by both such fine and imprisonment for each such offense, and in addition shall pay costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

2. Nothing herein contained shall prevent the City Council from taking such other lawful action as is necessary to prevent or remedy any violation.

ARTICLE 9 - Amendments

15.0901 Amendments

The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed or repealed as is deemed necessary.

CHAPTER SIXTEEN

CITY TREE BOARD AND COMMUNITY FORESTRY PROGRAM

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CHAPTER SIXTEEN

CITY TREE BOARD AND COMMUNITY FORESTRY PROGRAM

ARTICLE 1 - Creation of Mott City Tree Board

16.0101 Creation of Mott City Tree Board

1. There shall be created a Mott City Tree Board, which shall be composed of four (4) members appointed by the Mayor.

2. The members of the Tree Board shall serve two (2) year terms which shall be staggered. Two of the original members shall serve a term of one (1) year, with the other two serving a full two (2) years. Thereafter the term of any member shall be a full two (2) years.

3. The Tree Board shall develop a comprehensive community forestry program which shall include specific work plans to be updated annually. The forestry program shall respond to overall needs as outlined in the Community Forestry Plan.

4. The Tree Board shall serve as a coordinator of annual projects other than those provided by the City Budget. The City Tree Board shall be commissioned to develop, coordinate and implement projects for tree planning activities sponsored by service clubs, garden clubs, other organizations and private individuals.

5. The Tree Board shall maintain a reference library of materials relevant to city trees and serve as an advisory body to the City Council and Mayor in matters involving trees.

6. The Tree Board shall prepare an annual City Forestry Budget to be submitted to the City Council in time for such to be included in the overall City Budget. The annual work plan shall serve as a basis for the City Forestry Budget.

ARTICLE 2 - Line Budget Item for a City Forestry Program

16.0201 Line Budget Item for a City Forestry Program

The City Council shall designate a line budget item for a City Forestry Program.

16.0202 City Employee Directed to Budget City Forestry Program

The City Council shall designate a city employee to be directly responsible for the budgeted portion of the City Forestry Program.

CHAPTER SEVENTEEN

FRANCHISE

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CHAPTER SEVENTEEN

FRANCHISE

ARTICLE 1 – Grant of Franchises

17.0101 Power to Grant

The governing body may grant to any person, firm, partnership, association, corporation, company or organization of any kind 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))

17.0102 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 be resolution or ordinance provide.

17.0103 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, costs, including attorney's fees, expenses of investigation and litigation of claims and sits thereon which may result from the activities of the grantee of the franchise in the City.

17.0104 Insurance

Any grantee of a franchise by the City shall carry and keep in force a public liability policy of insurance, insuring the grantee of the franchise and the City against any and all liability, of not less than two hundred fifty thousand dollars ($250,000.00) for any one person, property damage, personal injury, or death, and five hundred thousand dollars ($500,000.00) for any one accident resulting in property damage, personal injury, or death. The City may demand proof of such insurance coverage in an insurance company licensed to do business in the State of North Dakota. (Source: North Dakota Century Code Section 32-12.1-03)

ARTICLE 2 – Cable Television Franchise

17.0201 The cable television franchise and associated rights previously granted to Midcontinent Communications are hereby repealed in their entirety pursuant to the Resolution to Cancel Cable Television Franchise, Repeal of Cable Television Ordinance No. ___, and Release, dated December 9, 2013.

ARTICLE 3 - Montana-Dakota Utilities Co. Franchise

17.0301 Existing Franchise Ordinances

All existing ordinances relating to the Montana-Dakota Utilities Company franchise shall continue in full force and effect.

ARTICLE 4 - CTC Communications, Inc. Franchise

17.0401 Existing Franchise Ordinances

All existing ordinances relating to the CTC Communications, Inc. and Consolidated Telcom, including Ordinance Nos. 176 and 178, shall continue in full force and effect.

CHAPTER EIGHTEEN

BUILDING CODE

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CHAPTER EIGHTEEN

BUILDING CODE

ARTICLE 1 - General Building Code

18.0101 Adoption of Code

The erection, construction, enlargement, alteration, repair, moving, removal, conversion, occupancy, equipment, uses, height, area and maintenance of buildings or structures in the City of Mott shall meet with the provisions of the rules and regulations according to Chapters 40-47 of the North Dakota Century Code and are hereby made part of this chapter by reference with the exception of the sections hereinafter set for the 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 code as so modified. The City Building Inspector shall review all building permits to insure their compliance with the building code.

18.0102 Amendment, 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:

18.0103 Clarification of Code

For the purpose of clarifying the Building Code adopted above.

1. "Municipality" or "City" shall mean the City of Mott.

2. Whenever the building code shall conflict with the zoning ordinances, the zoning ordinances shall govern.

3. Any reference to fire limits within the City shall mean the fire limits set out in Chapter IV.

18.0104 Fees

Fees under the Building Code shall be as follows:

For work valued at less than $1,000.00, the fee shall be _____, and for work valued at $1,000.00 and over, there shall be an additional fee of _____ for each additional $1,000.00 of valuation or fraction thereof in excess of $1,000.00.

18.0105 Moving and Demolition of Buildings and Structures

A permit is required for the demolition or moving of any building within, to, or from the City of Mott. Any person wishing to demolish or move a building must apply to the Mott City Council for a permit. The Mott City Council must determine that all requirements of this chapter have been or will be met before approving an application and issuing a permit.

1. Demolition Permits. Demolition permits may be issued only when the following conditions are met:

a. Sewer and water connections must be disconnected from the city water and sewer systems and marked for later location, such marking to be made at or above ground level. This condition is subject to approval by the Mott City Council;

b. Adjacent streets, sidewalks, and alleys must be protected by fences and scaffolds, and all pedestrian traffic must be rerouted with approval of the Mott City Council; and

c. All debris, rubbish, foundation material, and combustible material must be removed from the premises upon completion of the demolition project. The site must then be filled with earth, leveled, and compacted to conform with the grade of the adjacent properties. Restoration of the demolition site must be approved by the Mott City Council.

2. Moving Permits. An application for a moving permit must include all of the following:

a. The route by which the owner of the house or building proposes to move said structure;

b. A Certificate of Inspection from a licensed inspector listing the requirements for construction, alteration, and repairs that must be met in order for the moved structure to comply with the building code and any other relevant City ordinance; and

c. The property owner's agreement, in writing, to remove all debris, rubbish, foundation materials, and combustible materials from the site and to fill with earth, level, and compact the excavation site to conform with the grade of the original site. The owner shall also agree to plug the sewer line and to shut off the water service to the satisfaction of the Mott City Council. The property owner shall mark the sewer and water lines at or above ground level to facilitate future location.

3. Additional requirements for a moving permit:

a. The property owner must ensure that the moving of the structure will not obstruct the orderly flow of traffic;

b. The axle loading of the vehicle and equipment used to move the structure comply with the legal limit for the streets over which they will pass;

c. Moving the structure will not cause any damage to trees within a public right-of-way and the property owner pays for any necessary tree maintenance or trimming;

d. The property owner must post a performance bond with the Mott City Auditor, in an amount to be determined by the Mott City Council, conditioned upon compliance with all of the requirements of this Ordinance as well as all relevant building codes and other ordinances;

e. The property owner filed with the Mott City Auditor a bond or security deposit, in cash or be certified check or cashier's check, of an amount to be determined by the Mott City Council, such amount not to exceed $10,000.00, conditioned on the following:

i. The property owner will pay the cost of any and all damages to the city or any person living in the city or lawfully upon the public streets or alleys of the city, whether such damage be to person or property and

whether caused by the owner of the property, his agents, or his employees;

ii. The structure shall be moved within thirty (30) days after the permit is issued;

iii. The property owner shall hold the City of Mott harmless against all liability, judgments, costs, and expenses which may accrue against the City of Mott as a result of the acts of the property owner, his agents, or employees while moving the structure; and

iv. Compliance with the permit, the laws of North Dakota, and the ordinances of the City of Mott.

18.0106 Penalties

The violation of any of the provision of this chapter shall be punishable as provided in Chapter II of this code.

CHAPTER NINETEEN

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CHAPTER NINETEEN

ELECTRICAL CODE

ARTICLE 1 – Adoption of Electrical Code

19.0101 Electrical Code Adopted

There is hereby adopted the laws and regulations and wiring standards of North Dakota as presently adopted by the State Electrical Board

ARTICLE 2 – Permits

19.0201 Permit Required

No person shall commence any electrical work for which a permit is required until that person has made application for a permit to the city building inspector and if none to the City Auditor and the same shall have been granted, nor having received a permit shall perform any electrical work except in strict compliance with the laws of the State of North Dakota, and the provisions of this article, together with such rules and regulations as the City shall make from time to time for the execution of the same.

19.0202 Permit - Application For

When any person, qualified as heretofore set forth, shall be desirous of executing any electrical work within the corporate limits he shall make application for a permit to carry on such work. Application shall be in form, and shall contain such information regarding the proposed work, as the City shall prescribe.

19.0203 Permit - Grant of

When, after due consideration and examination, it appears that the provisions of this article are complied with, the permit asked for shall be issued.

19.0204 Work by Licensed Electrician

All electrical work hereafter to be installed in any building within the corporate limits, shall be undertaken and executed only by persons holding a master electrician's license or a Class B electrician's license where applicable as provided in the laws of the State of North Dakota, and have given a surety bond in the sum of one thousand ($1,000.00) Dollars approved by the governing body, for the execution of all work in conformity with the laws of the State of North Dakota, and the provisions of this article.

19.0205 Work by Licensed Electrician, When Not Required

No permit or application for a permit shall be required for the installation of electrical wiring for electrical installations made upon their own property by public service corporations, which hold franchises from the City for the manufacture and distribution of electric power.

19.0206 Uses of License by Another

No person holding a master electrician's license or a Class B electrician's license shall allow the use of his name, or any permit granted to him, by any other person.

19.0207 Return of Permit – Work Completed

Within five (5) days after the completion of any electrical work, the permit under which the work was executed shall be returned by the holder thereof to the city inspector or city auditor with a notation thereon of such completion.

19.0208 Inspection of Work

Upon completion of the work, which has been authorized by the issuance of an electrical permit, it shall be the duty of the master electrician to request an inspection of his work by the city inspector. Such inspection shall be requested and conducted before the electrical work is covered by other building components.

In a case where such work includes a new or altered electrical service, the utility company shall not make any connection unless the service entrance bears a notice signed by the city inspector that said wiring has been inspected and approved by the city inspector.

19.0209 Fees For Permits

Applicants for permits for electrical installations at the time such permits are issued, must pay to the City a fee in accordance with the following schedule, which fee shall cover the examination of plans, granting of permits and the inspection of the work:

1. Residences and Apartments:

   a. Service and Metering ……..$_____
   b. Wiring
      1. Per living unit……..$_____
      2. Electrical alterations ……...……$_____
         (No metering involved)
   c. Furnaces, electric hot water heaters……$_____
      (No other permit involved)

2. Commercial:

   a. Service and Metering……$_____
      (Rating based on rating of the feeders that are metered)
      1. Up through 100 amps per meter……$_____
      2. 101 through 200 amps per meter……$_____
      3. 201 through 300 amps per meter……...$_____
      4. 301 through 400 amps per meter……$_____
      5. 401 through 500 amps per meter……$_____
      6. 501 amps and up per meter……$_____
   b. Wiring
      1. Wiring – per floor……$_____
      2. Additions to existing wiring……$_____
         (If no service charge is required)
      3. Signs……$_____
         (If no service or wiring charge is required)
      4. Minimum Charge:……...$_____

ARTICLE 3 – Supervision of Work

19.0301 Supervision of Work

All electrical installations now existing or hereafter to be made, altered or repaired in or upon any building in the City shall be under the supervision of the city inspector who shall require such work to comply with this article and City

ordinances. (NOTE: NDCC 43-09-13.2 requires a person employed by a political subdivision to inspect electrical installations to be licensed as a journeyman or master electrician.)

19.0302 Powers

The city inspector shall have the right during reasonable hours to enter any building in the discharge of duties, or for the purpose of making any inspection or test of the electrical installation or electrical equipment contained therein, and is hereby empowered to disconnect or order the discontinuance of electrical service to any electric wiring or equipment found to be defectively installed or otherwise not in conformity with the provisions of this article until such wiring, or equipment shall have been made safe as directed by him.

19.0303 Existing Installations

All existing electrical installations and devices on any premises or upon any building or structure in the City shall be subject to inspection by the city inspector and if in the opinion of the city inspector a hazard exists the owner shall be notified with an order requiring that the hazard be corrected. In the case where the owner fails to comply with the city inspector's order, the service to the premises, structure or building shall be disconnected.

19.0304 Defective Work

The inspector is hereby given authority to order the removal and replacement, or the alteration of any installation or portion thereof for which a permit has been obtained, should be upon inspection of the same find it to have been executed in violation of any of the provisions of this article. It shall thereafter be unlawful for any person in any way to use such installation, or to supply the power thereto, until the same shall have been made to conform to the provisions of this article. No permit for any other work shall be issued to any applicant therefore who has executed any work in violation of the provisions of this article until such work shall have been made to conform thereto.

CHAPTER TWENTY

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CHAPTER TWENTY

PARKS AND PARK DISTRICT

ARTICLE 1 - Name, Powers and Jurisdiction

20.0101 Name and Creation

The park district shall be known as "Park District of the City of Mott", the same being created by Ordinance No.17, dated Nov. 4, 1946, Ordinances of the City of Mott, Revised Feb. 1964.

20.0102 Powers

The park district shall have a seal and perpetual succession and may:

1. Sue and be sued.

2. Contract and be contracted with.

3. Acquire by purchase, gift, devise, or otherwise, and hold, own, posses, and maintain real and personal property in trust in use of parks, boulevards, and ways.

4. Exercise all the powers designated in Chapter 40-49 NDCC, as amended.

20.0103 Jurisdiction

Any public grounds used or acquired as use for airfields, parade grounds, public recreational areas, playgrounds and athletic fields, memorial or cemetery grounds, and sites for areas for use and accommodation for the public as distinguished from use for purposes of municipal administration.

ARTICLE 2 - Park Board

20.0201 Powers and Members

The powers of the park district shall be exercised by a board of park commissioners consisting of five (5) members who shall have such duties and powers as defined by Chapter 40-49 NDCC.

20.0202 Board Elections and Governance

Members of the Park Board shall be elected according to the terms of Section 40-49-05 NDCC, and amendments thereto. The Park Board shall exercise its powers by ordinance as provided in Section 40-49-13 NDCC and amendments thereto, and as otherwise provided in Chapter 40-49.

20.0203 Park Regulations

All property under the jurisdiction of the Park Board shall be managed and regulated by such rules and regulations as the Park Board may enact.

CHAPTER TWENTY-ONE

PERSONNEL POLICIES

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CHAPTER TWENTY-ONE

PERSONNEL POLICIES

ARTICLE 1 – Personnel Policies and Procedures

21.0101 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.

21.0102 Amendments to Policies

Sec. _____shall be amended to read as follows:

Sec. _____shall be deleted.

Sec. _____shall be added to said policies to read as follows:

CHAPTER TWENTY-TWO

MISCELLANEOUS

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CHAPTER TWENTY-TWO

MISCELLANEOUS

ARTICLE 1 - City Sales Tax

22.0101 Definitions

All terms defined in Chapters 57-39.2 and 57-04.2 NDCC, including any future amendments, are adopted by reference. All references to the North Dakota Century Code include amendments adopted by the legislature of the State of North Dakota.

22.0102 Sales Tax Imposed

Except as otherwise provided in this chapter, a tax of two (2.0%) is imposed upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within the corporate limit of the City of Mott, North Dakota. 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 Mott sales and use tax, including exemptions for tax exempt entities (schools, counties, state agencies, etc.). Such sales tax shall be applied to the following:

1. Tangible personal property, consisting of goods, wares, or merchandise.

2. The furnishing of service of communications services.

3. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment or athletic activity.

4. The leasing or renting of a hotel or motel room or tourist court of accommodations.

5. Magazines and other periodicals.

6. The leasing or renting of tangible personal property, the transfer of title to which has not been subject to tax under this chapter.

7. Sale of alcoholic beverages and tobacco products as defined in NDCC Section 57-39.2 - 03.2.

22.0103 Use Tax Imposed

Except as otherwise provided in this chapter, an excise tax of two percent (2.0%) is imposed on the storage, use or consumption in the City of Mott 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, at the time it brought into the city, of tangible personal property not originally purchased for storage, use or consumption in the city, at the time which it is brought into the City of Mott,

3. Alcoholic beverages and tobacco products as defined NDCC Section 57-39.2-03.2.

4. Tangible personal property used by a contractor or subcontractor to fulfill a contract as defined in NDCC Section 57-40.2-03.3. The tax applies only to bids submitted on or after April 1, 1997.

22.0104 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 the article.

22.0105 Maximum Tax Imposed

No single transaction involving one or more items is subject to a tax in excess of twenty-five($25.00) dollars.

22.0106 Collection and Administration

The tax commissioner and the city auditor shall have the powers enumerated in the provisions of NDCC chapters 57-39.2 and 57-40.2 relating to the collections 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.

22.0107 City Auditor Empowered to Contract with State Tax Commissioner

The city auditor is authorized to contract with the tax commissioner for the administration and collection of taxes imposed by the chapter. The city auditor has all the powers granted the commissioner and in the absence of a valid contract with the commissioner or failure of the commissioner to perform the delegated duties, shall perform those duties in the place of the commissioner.

22.0108 Corporate Officer Liability/LLC Governor, Manage or Member Liability

1. If a corporation required to remit taxes imposed by this Chapter fails for any reason to file the required returns or to pay the tax due, the president, vice-president, secretary, or treasurer of the corporation, jointly or severally, having control, or supervision of, or charged with the responsibility for making the returns and payments are personally liable for the failure. If a limited liability company required to remit taxes imposed by this Chapter fails for any reason to file the required returns or to pay the taxes due under this Chapter, the governors, managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payments are personally liable for the failure.

2. The dissolution of a corporation or a limited liability company does not 0discharge these parties (that is, the responsible officer, governor, manager or member) from liability for a prior failure of the corporation or limited liability company 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.

3. If the corporate officers, or the governors, managers or members in the case of a limited liability company, elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation or limited liability entity must make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in the amount provided for in 57-39.2-15.2, as amended.

22.0109 Dedication of Tax Proceeds by City Council.

All revenues received and collected under this ordinance shall be dedicated and utilized as follows:

1. Revenues collected shall be used at the discretion of the City Council with first priority given to the improvement, repair and maintenance of the City Streets, second priority given to the improvement, repair and maintenance of the Mott Swimming Pool, and third priority given to economic development activities within the city.

22.0110 Compensation

City sales and use tax permit holders shall not be compensated for collecting and paying the sales tax.

22.0111 Effective Date

This ordinance shall be in full force and effect commencing _____ following its final passage, approval and publication.

22.0113 Saving Clause

Should any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall not be affected thereby.

22.0114 Separate Fund

All revenue collected under this Article shall be maintained in separate fund and apart from all other funds, except as provided herein.

ARTICLE 2 – Municipal Court Cases Transferred to District Court

1. The City agrees to transfer, and the State agrees to accept, all of the City's municipal ordinance cases.
2. The City shall provide the prosecuting attorney and appointed council for indigent defendants and pay the required transcript costs for all cases transferred under this Section of the Contract.
3. The County or State, as appropriate, through the Clerk of District Court, shall provide for recording and management of all files and papers for cases transferred under this Section.
4. The City shall pay all witness expenses for all cases transferred under this Section.
5. The City shall pay all necessary transportation and detention expenses for defendants in cases transferred under this Section.
6. The state shall provide and pay for courtroom supplies and salaries and office-related expenses of the district judge and staff in the adjudication and disposition of cases transferred under this Section. The State will also pay all jury expenses.
7. All fees, fines, costs, forfeitures, and other monetary consideration collected from cases transferred under this Section, and any delinquent fines and costs will be collected by the Clerk of the District Court and distributed in the following manner:
    a. The City will receive 20% of all amounts collected.
    b. The County will receive 20% of all amounts collected.
    c. The State will receive 60% of all amounts collected.

8. All amounts due the City and the County must be transmitted by the Clerk of the District Court on a quarterly basis. The Clerk of the District Court shall account to the City and the County for all monies collected and distributed. Excluded from this provision are fee assessments for funding crime victims and witness programs.