CERTIFICATE

STATE OF NORTH DAKOTA)

) ss.

COUNTY OF SARGENT)

The undersigned City Auditor of the City of Forman, hereby certifies that she is the City Auditor of the City of Forman, and as such is the custodian of the Ordinance Book of the City;

She further certifies that the foregoing is a true and accurate copy of the Ordinances of 2011, duly enacted by the governing body of the City of Forman, the first reading which was had on the regular meeting held on November 7, 2011 and the second reading and final passage had at the regular meeting held on December 5, 2011, and passed on a roll call vote as shown in the records kept of said meeting.

Dated this 6th day of December, 2011

_____

City Auditor
City of Forman, North Dakota

BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF Forman, NORTH DAKOTA

1. That the present city ordinances be revised and be called the City of Forman, North Dakota Revised Ordinances of 2011.

2. That the Mayor of the City of Forman does hereby appoint, by and with the advice and consent of the City Council of the City of Forman the City Attorney, Lyle R. Bopp, to prepare and submit to the City Council for its adoption or rejection, an Ordinance for the revision or for the enactment of new and additional ordinances for the City of Forman.

_____

Mayor

ATTEST:

_____

City Auditor

CITY SEAL

First Reading: November 7, 2011

Second Reading and Final Passage: December 5, 2011

ENACTING ORDINANCE
ORDINANCE NO. 1

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

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

Section 1. City of Forman, North Dakota, Revised Ordinances of 2011. This ordinance and the ordinances hereby adopted shall be known and cited as the City of Forman, North Dakota, Revised Ordinances of 2011.

Section 2. ENACTMENT. The City of Forman, North Dakota, Revised Ordinances of 2011, consisting of Chapters One to Fifteen, 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 Forman.

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 All ordinances of the City adopted prior to the date of this enacting ordinance are hereby repealed except the following ordinance which shall continue in full force and effect regardless of the fact that they are herein omitted:

1. All existing ordinances granting franchises, if omitted from these revised ordinances
2. All existing ordinances creating contract obligations on the part of the city, which obligations shall remain binding until fully performed by the city.
3. All existing ordinances establishing special improvement districts, or street grades.
4. All of the existing ordinances levying taxes for any years under the provisions of any law relating to the issuance of revenue bonds, municipal bonds, warrants, certificates of indebtedness, or other municipal obligations, whether general or special.
5. All salary and appropriation ordinances.
6. The incorporation herein of any of the ordinances of the City of Forman 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 is reenacted herein.
7. Any and all other ordinances adopted in said City of Forman, North Dakota, Revised Ordinances of 2011 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. Fair housing ordinances.

Section 4. EXISTING LICENSES AND PERMITS. All licenses and permits issued prior to the date on which this ordinance becomes effective shall continue in force for the remainder of the term for which the same were issued, without additional fees, but all licensees and permittees shall be governed by the provisions of the City of Forman, North Dakota, Ordinances of 2000 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 City of Forman, North Dakota, Revised Ordinances of 2011.

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 City of Forman, North Dakota, Revised Ordinances of 2011, 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: November 7, 2011

Second Reading and Final Passage: December 5, 2011

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CHAPTER ONE - GOVERNMENT ORGANIZATION

ARTICLE 1 - Jurisdiction

1.0101 Over Persons and Property

The jurisdiction of the City of Forman, 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 thereto, and specifically the application of the City's zoning regulations is hereby extended to each quarter quarter section of unincorporated territory, the majority of which is located within one-half mile (.80 kilometer) of its city limits in any direction, pursuant to NDCC Sec. 40-47-01.1.

1.0102 Defining City Limits

There shall be included within the municipal limits of the City of Forman, North Dakota, All area originally platted and annexed to the City by resolution of the City Council and other areas heretofore or that may be in the future annexed to the City. All lots, blocks and all streets, alleys and public ways included within the area and adjacent thereto which are defined as within the confines of the city limits shall also be included within the municipal 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 to which extra territorial jurisdiction is allowed by law 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.

1.0103 intentionally omitted.

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 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 chapter 12-53.

ARTICLE 2 - Governing Body - City Council

1.0201 Regular Meetings

The Forman City Council shall meet monthly at the City Hall as set by resolution of the city council unless some other time and place shall be specifically fixed by the Council. The Council shall meet in addition thereto, as often as required by Section 40-08-10 of the North Dakota Century Code.

1.0202 Special Meetings

Special meetings may be called at any time by the Mayor, or any two (2) members of the governing body to consider matters mentioned in the call of such meetings. Written notice or notice by telephone 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 North Dakota Century Code and amendments thereto.

1.0204 Quorum

The provisions of Section 40-06-03 of the North Dakota Century Code and all subsequent amendments 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.

ARTICLE 3 - Elective Officers

1.0301 City Council - Who Constitutes

The governing body of the City of Forman shall be the City Council which shall be composed of the Mayor of the City of Forman and four Aldermen. The Mayor and Aldermen shall be elected as provided by law, at large.

1.0302 Term of Office of Aldermen - Qualifications

Aldermen shall hold office for four years and until their successors are elected and qualified. Terms of Aldermen shall be arranged so that only one-half of the Aldermen shall be elected in any one election. No member of the city

council shall be eligible to any other office the salary of which is payable out of the city treasury; shall hold any other office under city government; nor shall hold a position of remuneration in the employment of the city.

1.0303 Mayor - Qualifications - Term

The chief executive officer of the city is the Mayor. He shall be a qualified elector within the city and shall hold his office for four years and until his successor is elected and qualified.

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 a 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 Alderman 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 within fifteen (15) days and before 4:00 P.M. of the fifteenth (15th) day of the date of such vacancy. 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.

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 the successor, the President of the City Council shall be acting Mayor. During the interim between the date when a vacancy occurs in the office of mayor and the election and qualification of a successor, the president of the city council shall be the acting mayor.

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.

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.

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.

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.

1.0310 Release of Prisoners by Mayor - Report to Council

The Mayor may release any person in prison for violation of any city ordinance and shall report such release, with the cause thereof, to the City Council at its first session thereafter.

1.0311 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.

1.0312 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.

1.0313 Ordinance or Resolution Signed or Vetoed by Mayor

The Mayor shall sign or veto each ordinance or resolution passed by the Council.

1.0314 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.

1.0315 Mayor Shall Call on Inhabitants to Aid in Enforcing Ordinances

When necessary, the Mayor may call on each inhabitant of the City over the age of eighteen years to aid in the enforcing of the laws and ordinances of the City.

1.0316 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.

1.0317 Mayor May Administer Oath

The Mayor of the City may administer oaths and affirmations.

ARTICLE 4 - Elective Officers Other Than Governing Body

1.0401 Municipal Judge

The city council shall establish by resolution whether they wish to have a municipal judge who is elected. The municipal judge shall perform all the duties prescribed by law and the ordinances of this city. He shall receive an annual salary as full compensation for all services rendered.

1.0402 Report to Forman City Council

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

1.0403 Contents of Report

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

1.0404 Receipt to Accompany Report

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

1.0405 Court Hours

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

1.0406 Duties of Municipal Judge

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

1.0407 Municipal Judge, Contracting with County

The City Council, upon written agreement with the District Court of Sargent County, may contract with the District Court for Municipal Judge services to be performed by the Judge of the District Court or Judge of the District Judge under such terms and conditions as agreed by the City Council and allowed under the laws of the State. While any such agreement is in force, any reference to the Municipal Judge in these ordinances shall also include and pertain to and apply to the Judge of the District Court. {Further, the election and salary of the Municipal Judge shall be suspended while the Judge of the District Court acts as the Municipal Judge.}

ARTICLE 5 - Appointive Offices

1.0501 Appointive Officers in Council Cities

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

1. City Auditor;

2. City Assessor;

3. City Attorney;

4. City Engineer;

5. Such other officers as the City Council deems necessary and expedient.

The City Assessor shall be appointed at the first meeting of the City Council in September of each odd numbered year.

1.0502 Term of Appointive Officers

The term of all appointive officers of the City operating under the Council form of government shall commence the first day of July succeeding their appointment unless otherwise provided by ordinance, and such officers shall hold their respective offices for two years, and until their successors are appointed and qualified.

1.0503 Officers Commissioned by Warrant - City Auditor to Receive Certificate of Appointment

All officers elected or appointed, except the City Auditor, Aldermen and Mayor, shall be commissioned by warrants signed by the Auditor and the Mayor or President of the City Council. The Mayor shall issue a Certificate of Appointment to the Auditor.

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 Mayor or any two (2) members of the City Council. He shall also keep a full and complete record of all meetings of the City Council and shall keep a book to be styled the "Ordinance Book" and shall record therein at length all ordinances of the city. He shall also keep a book to be styled the "Special Assessment Book" in which he shall keep all records of special assessments. All such books shall have full and complete indexes of the contents thereof. He shall report to the City Council at the end of every month a list of all warrants, interest coupons, bonds, or other evidence of indebtedness which may have been redeemed or paid by him during the month and he shall duly give to the Council a copy of his receipt therefor. He shall further handle all correspondence, permits, and licenses and shall do and perform each, every and all duties and things prescribed for him to do by statutes of this state, or by an ordinance, resolution, or proper instruction of the City Council.

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 Forman 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 of Forman shall be bonded in the sums as hereinafter set forth:

Mayor

City Auditor

Municipal Judge

City Assessor

Said officers or employees shall be bonded in accordance with the provisions of Section 40-13-02 of the North Dakota Century Code.

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 treasurer and auditor, shall file the same with the City Auditor within 10 days after notice of his election or appointment has been given. The oath of the municipal treasurer and of the auditor shall be filed in the office of the County Auditor. In addition, each alderman shall take an oath that he is not under any direct or indirect obligation to appoint or elect any persons to the office of policeman, fireman, or any other office, position or appointment under the city government.

1.0603 Salaries of Officers Fixed by Ordinance - Diminution During Term Prohibited

Any officer or employee of a municipality shall receive the salary, fees, or other compensation fixed by ordinance or resolution, and after having been once fixed, the same shall not be diminished to take affect during the term for which the officer was elected or appointed.

1.0604 Salaries of City Officials and Appointive Officers

Salary 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 his 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; provided however, the amount paid for such lodging shall not be required to be listed.

Such persons engaged in travel without 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 sworn statement and receipts shall be required for taxi or cab fares up to and including the sum of five dollars.

Any person filing a false claim with the City of Forman for mileage or expenses as herein permitted is guilty of an offense, and may be punished by a fine of not to exceed $500.00 and imprisonment not to exceed 30 days.

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.

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 offense and may be punished by a fine of not to exceed $500.00 and imprisonment of not to exceed 30 days.

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 his department as the governing board may request.
5. Be responsible for the proper maintenance of all City property and equipment used in his department.
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 subordinates under him.

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, and all sales of property which has become obsolete or unusable shall, except as otherwise provided herein, be based, whenever possible, on competitive bids.

1.0702 Procedure

All supplies and contractual services except as otherwise provided herein, when the estimated cost thereof shall exceed $5,000.00 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 a paper of general circulation within the municipality for two (2) successive weeks and the opening of the bids so received not less than 15 days after the first publication thereof. All sales or disposition of obsolete or unusable property when the estimated value shall exceed $2,500.00 shall be sold to the highest responsible bidder. The lowest responsible bidder, or the highest 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

All purchases and contractual services and all sales of property which has become obsolete or unusable of an estimated value of less than $2,500.00 or all supplies and services of a non-competitive type or kind, or purchases or sales between governmental bodies, or when in the opinion of the Forman City Council an apparent emergency requires immediate purchase of supplies or contractual services, shall be made or obtained in the open market without competitive bidding.

1.0704 Accounts Against City to be in Writing and Verified

Accounts, claims and demands against the City of Forman, North Dakota, for any property or services for which said city shall be liable, shall be reduced to writing.

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, if deemed necessary in his or their discretion, 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 of the City of Forman, North Dakota, 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 in 1.0710. 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, the section shall not apply insofar as it is in conflict with such state law. Said statutory procedures are as follows:

1. Lease or airports or landing fields, or portions thereof shall be under authority granted in Section 2-02-06, NDCC. Said lease shall further be in compliance with regulations and directives of appropriate federal agencies.

2. Conveyance of right of way for any state highway shall be as provided in 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 Section 40-11-04.1 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Upon resolution by the governing body of the city authorizing the sale of real property, a notice containing a description of the property to be sold and designating the place where and the day and the hour when the sale will be held shall be published in the city's official newspaper as provided in section 40-01-09 of the North Dakota Century Code once each week for two consecutive weeks with the last publication being at least ten days in advance of the date set for the sale. The notice shall specify whether the bids are to be received at auction or as sealed bids as determined by the governing body. The property advertised shall be sold to the highest bidder if his bid is deemed sufficient by a majority of the members of the governing body.

1.0708 Real Property Transfers by Nonexclusive Listing Agreements

As an alternative to the procedure established under section 1.0709, the governing body may by resolution describe the real property of the city which is to be sold; provide a maximum rate of fee, compensation, or commission; and provide that the city reserves the right to reject any and all offers determined to be insufficient. After adoption of the resolution, the governing body may engage licensed real estate brokers to attempt to sell the described property by way of nonexclusive listing agreements.

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 - Judges, Clerks and Inspectors

The provisions of Section 40-21-03 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in to this ordinance.

Biennial municipal elections in cities operating under the Council form of government must be held on the second Tuesday in June in each even-numbered year. Ten days' notice of the time and place of holding each election and offices to be filled at the election must be given by the City Auditor by publication in at least two newspapers published in the city if two are published in the city. Publication in one newspaper is sufficient if only one newspaper is published in the city. The city council shall enter into an agreement with the governing body of the county or counties in which the city lies concerning the use of a single canvassing board, the sharing of election personnel, the printing of election materials, and the apportioning of election expenses. For special city elections the city council shall appoint one inspector, two clerks, and two judges of election for each precinct in the city at least ten days before the election is held and the polls must be opened and closed as provided for the opening and closing of polls at statewide elections. For a special city election in a precinct in which seventy-five or fewer votes were cast in the last city election, the city council may appoint one inspector, one clerk, and one judge.

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 Elections

The provisions of Section 40-21-05 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Each inspector, judge or clerk of any regular or special municipal election shall receive compensation as determined for election officials in Section 16.1-05-05. The amounts determined to be due election officials at municipal elections shall be paid from the funds of the municipality holding the election. In the event a special municipal election is held on the same date as a statewide, district wide or countywide election, and if the same election officials perform services for both elections, the city shall not be required to pay the elections officials, except for any extra officials necessary for such special municipal election.

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

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 nor to the party affiliation of a candidate in a petition to be filed by or in behalf of a candidate for nomination to a public office in any incorporated city in this state. Such candidate may state or have stated after his name in any such petition, in not more than twenty words, any particular principle or principles of local administrative policy or policies he stands for and seeks election to promote.

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 an incorporated city may be nominated by filing with the city auditor, at least sixty days and before five 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. If multiple candidates were elected to the office at the preceding city election at which the office was voted upon, the number of signatures must equal at least ten percent of the total votes cast for all candidates divided by the number of candidates that were to be elected to that office at that 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 five 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 such petition shall add to his name his 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 five o'clock 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. Opposite or immediately below the names of each candidate on the ballot shall be placed the statement, in not more than twenty words, of the principle or principles which he seeks to promote. Such statement shall be set forth in the manner in which it appeared in the petition or petitions filed by or on behalf of such candidate, and in such manner as readily to inform the voter of the policy or policies upon which such candidate seeks election. The auditor shall arrange the offices upon the ballot in the order in which they are named in the statutes. The arrangement of the names of the candidates upon the ballot shall be determined by lot by such auditor in the presence of the candidates or their representatives at noon on the day following the last day for the filing of the nomination papers.

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

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 cast 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 o'clock 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.

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 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 shall be used 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 that person's election or appointment. Within that same period of time, the city auditor shall also notify the state supreme court of the election or the 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, 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.

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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 Forman shall be "Be it ordained by the City Council of the City of Forman." Such caption, however, may be omitted where the ordinances are published in book form, or are revised and digested.

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.

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. The member of the governing body who passes his vote or who remains silent when the roll call on the vote is taken, shall be deemed to have voted yea, and a record of yea shall be entered in the journal.

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 was present when such vote was taken.

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.

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.

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 and Section 40-ll-9.l 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 revisor or revisors, 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.

Three years after the adoption or amendment of a resolution or the enactment or amendment of an ordinance by the governing body it shall be conclusively presumed that the resolution or ordinance was adopted, enacted, or amended and published as required by law.

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 of Forman, 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, not exceeding 8 hours in each working day. For that work, the defendant will be allowed for each day exclusive of his board, $10.00 on account of the fines and costs assessed against him.

2.0114 Hard Labor Authorized

If, in the opinion of the Court, a person to be sentenced is capable of performing manual labor, such Court may sentence such person to confinement at hard labor.

2.0115 Refusal to Work

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

2.0116 Fines and Forfeitures for Violation of Ordinances Paid into Municipal Treasury

All fines, penalties and forfeitures collected for offenses against the ordinances of the City of Forman shall be paid into its treasury. Under no circumstances shall the municipal judge be paid until that person shall remit such payment of fines or penalties or payments of costs.

2.0117 Deferring or Suspending Sentence

The municipal judge may, in his discretion, upon the conviction of any person of any offense against any of the ordinances of the City of Forman, then and there impose a sentence of imprisonment as may be regulated by such ordinances, or defer imposition of sentence or suspended the sentence imposed on such person for a period of not to exceed ninety (90) days from the date of such conviction; and 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 said City, or may suspend or defer such sentence upon such terms and conditions as the Judge may prescribed; and may, in his

discretion, 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 and executed in like manner, so far as applicable, as may be provided by law or the ordinance in cases where the commitment and imposition of the sentence of imprisonment is not deferred or suspended and may then and there forthwith commit such defendant and require that such sentence of imprisonment be executed and carried out.

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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 commissioner of streets and public improvements. 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 therefor, unless said work is performed by the city contractor. Applications for such permits shall be made to the Auditor and shall state the location of the intended pavement or repair, the extent thereof, and the person or firm who is to do the actual construction work. No such permits shall be issued except where the work will conform to the ordinances of the city.

3.0103 Bond

Each applicant shall file a bond in an amount to be established by the City Council 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 who shall then proceed, as provided in the laws of the State of North Dakota, Chapter 40-29 of the N.D.C.C.

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 he finds:

1. That the work will be done according to the standard specifications of the City for public work of like character.
2. That the operation will not unreasonably interfere with vehicular and pedestrian traffic, the demand and necessity for parking spaces, and the means of ingress and egress to and from the property affected and adjacent properties.
3. That the health, welfare and safety of the public will not be unreasonably impaired.

3.0108 Sidewalks Built to Grade Specifications

All sidewalks shall be constructed in accordance with the elevations and grade therefore to be furnished by the City Engineer and shall be constructed under 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 (1/4th) inch per foot from the inside edge toward the street.
3. All sidewalks shall be of concrete and of at least four (4) inches in thickness.
4. All sidewalks shall be laid out as follows:
    a. In locations where the right-of-way is sixty (60) feet or less the sidewalks shall be constructed on the property line.
    b. In locations where the right-of-way is greater than sixty (60) feet the sidewalk shall be constructed eighteen (18) inches out from the property line.
    c. In no case in the residential district shall the sidewalk be constructed adjacent to the curb unless right-of-way and topographic features require it.
    d. Notwithstanding any other provision herein all sidewalks shall be set out so that they are in conformity with existing sidewalks to which they may attach.
5. All sidewalks in commercial and/or industrial districts shall be constructed from the property line to the back of the curb and the width of sidewalk shall be governed by the width of street section; provided however, in areas where commercial development is not complete the entire sidewalk need not be constructed, a section six (6) feet in width adjacent to the curb shall be constructed thus leaving an area for structural foundations.

3.0109 Materials and Manner of Construction

The kind and quality of material of 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 of Forman 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 of Forman, 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 an 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 relayed 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 relayed, 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 Commissioner of Streets and Public Improvements.

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 of Forman or held by the City of Forman 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 and No/100 Dollars ($25.00), nor more than Five Hundred and No/100 Dollars ($500.00), or be imprisoned in the city jail for not to exceed thirty (30) days or by both such fine and imprisonment.

3.0203 Encroachments

It shall be unlawful to erect or maintain any building or structure which 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 Commissioner of Streets 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 permission 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 contract.

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 of Forman, North Dakota.

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 matter on lawns, porches, yards, sidewalks, steps, streets, alleys, public or public parking lots in the City of Forman, by any person, firm, co-partnership, association or corporation, is hereby declared to be a nuisance and unlawful. Any such 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 Forman, 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 of Forman 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, provided, however, that 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 sprinkles thereon and the necessary expenses thereof shall be charged against the abutting property by special assessment thereof in the manner prescribed by law.

3.0212 Same: Assessments by Commissioner of Streets When Work is Done by City

Whenever the Commissioner of Streets 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.

3.0213 Same: Assessments, Publication by Auditor, Hearing by City Council

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 Council, notifying all persons objecting thereto to appear and present their objections, such notice shall be published twice, once in each week's issue 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 Council or at such later meeting as the hearing and confirmation of such assessment may be adjourned to, the City Council shall take up and consider said assessment and shall hear any objections thereto or to any part thereof, and after revising and correcting the same; the City Auditor shall thereupon attach to such list his certificate that the same is correct as confirmed by the City Council and shall thereupon file said assessment list in his office as provided by law, and such assessment shall be certified to the County Auditor by the City Auditor at the same time and in the same manner that sidewalk assessments are certified.

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 Same: Notice

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

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 of Forman, 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 Same: Guarding of

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 Same: Application

Applications for such permits shall be made to the Auditor, and shall described 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 Same: Fees

The fee for such permits shall be: as established by resolution of the City Council.

3.0222 Same: Bond

No permit shall be issued unless and until the applicant therefore has filed with the Auditor a bond in the sum of Ten Thousand and No/100 Dollars ($10,000.00), or such amount established by resolution of the City Council, 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 Same: Deposit

No such permit shall be issued unless and until the applicant therefore has deposited with the Auditor a cash deposit or bond in the sum to be fixed 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 Same: Manner of

It shall be unlawful to make any such excavation or tunnel in any way contrary to or at variance with the terms of the permit therefor. Proper bracing shall be maintained to prevent the collapse of adjoining ground, and in excavations the excavation shall not have anywhere below the surface any portion which extends beyond the opening at the surface.

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.

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

3.0225 Same: Restoration

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 relayed by the applicant, in compliance with the ordinances of the city and under the supervision of the Commissioner of Streets or City Engineer.

3.0226 Same: Supervision

The Commissioner of Streets 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 Forman shall have public access during such hours that are established by the Park Commissioner or the governing body of the City.

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 Same: Seizure of

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 Same: Holding - Notice of Sale

Such personal property as aforesaid 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 Same: Report of 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 therefor. The report shall be made under oath and subscribed by the officer

making such sale and shall be filed with the City Auditor within three (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 Same: Bill of Sale

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 Same: Proceeds of Sale

The City Auditor shall retain such money as is received from such sales in a separate account for a period of six (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 Same: Redemption

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

The Chief of Police prior to June 1st of each year shall submit to the City Auditor a written list of all unclaimed and abandoned property held by the City which has not been sold pursuant to the provisions of this article. The City Auditor shall bring such list to the attention of the governing body at the next regular meeting.

ARTICLE 4 - House Numbering

3.0401 House Numbering Required

All houses and buildings in the City shall be numbered, except as might be herein otherwise provided, as follows: all houses and buildings in the City shall be numbered as they are now numbered and all new houses and buildings or houses and buildings not now numbered shall be numbered as designated by the City Auditor. The City Auditor shall have the authority to change any number or to institute a different plan of numbering.

3.0402 Numbers on Houses

It shall be the duty of the owner and occupants of every house in the city to have placed thereon, in a place visible from the street, figures at least two and one-half (2 1/2) inches high, showing the number of the house.

ARTICLE 5 - Street and Avenue Names or Numbers

3.0501 Names or Numbers of Streets and Avenues

The names and numbers of streets and avenues in the city of Forman shall be as shown on the "Zoning Map of the City of Forman" attached as an appendix to Chapter Six (Zoning Ordinance) of these Ordinances. Street and Avenue names or numbers may be changed by resolution of the Forman City Council.

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CHAPTER FOUR - FIRE PROTECTION AND PREVENTION

ARTICLE 1. Fire Regulations in Commercial and Industrial Zones

4.0101 Fire Limits

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

4.0102 Same: Erection of Buildings Within

No buildings or part of any buildings shall be erected within the fire limits unless all outside walls and party walls thereof shall be built or constructed of stone, brick, concrete or other fireproof material, and all outside ends and party walls shall be not less than eight (8) inches in thickness. All joist, beams or other wood or combustible material in any outside end or party wall shall recede from the outer surface of such wall at least four (4) inches, and all gutters and roofs shall be covered on the outside surface with copper, tin, iron or other fireproof material, and all ends and party walls shall extend above the roof at least twelve (12) inches, nor shall the plating or sheeting of any such roof extend across the fire wall of such building. Provided, outhouses and sheds may be erected of any other material, not necessarily of fireproof qualities, by obtaining a permit from the Mayor and City Council upon application therefore which may be granted or refused in their discretion.

4.0103 Alterations and Additions

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 fire proofing material.

This section shall not apply to any building or structure owned by the city within the fire limits provided that a resolution approving any proposed alteration, addition or repair to such building or structure owned by the city, has been approved by the governing body.

4.0104 Inspection of Premises, 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. 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.

4.0105 Quality of Materials

All building materials shall be of good quality, and shall conform to specifications which the Building Official prescribed. The more generally accepted standard specifications for quality of materials are those of the American Society for Testing Materials.

4.0106 Repairs

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 or otherwise over fifty percent (50%) of its value shall be torn down and removed.

ARTICLE 2. Fires in Public Places

4.0201 Smoking

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.

4.0202 Notice

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 of Forman, advising tenants of the provisions of this chapter.

4.0203 Bonfires Prohibited - Exception

No person shall kindle, maintain or assist in maintaining any bonfire or other exposed fire on any pavement or oiled street within the city, or within twenty-five (25) feet of any building, excepting under the written permit of the Chief of the Fire Department, and only when such burning shall be done in metallic receptacles approved by him, and under proper safeguards as he may direct as to time and weather conditions, and no 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.

4.0204 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 no-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.

4.0205 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.

4.0206 Reports

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

ARTICLE 3. Fire Prevention

4.0301 Adoption of Fire Code

There is hereby adopted by the City of Forman for the purposes of prescribing regulations governing conditions hazardous to life and property from fire or explosion, that certain code known as the Uniform Fire Code and the whole thereof, save and except such portions as are hereinafter deleted, modified or amended, of which code not less than one (l) copy has been and is now filed in the office of the Auditor of the City and the same are hereby adopted and incorporated as full as if set out at length herein.

The fee for any permit or license required by the said fire prevention code, where no other license or permit fee is fixed elsewhere in the city ordinances, shall be the sum to be fixed by the City Council by resolution to be paid to the Chief of the Bureau of Fire Prevention and by him to be paid into the City Treasury without delay.

4.0302 Storage of Flammable Liquids

No new bulk plants or tanks for storage of flammable liquids shall be permitted within the limits of the City except in the following established area: In those parts of the city that have been zoned for industrial use, or such other area approved by the City Council.

4.0303 Storage of Liquefied Petroleum

The limits or area for storage of liquefied petroleum shall comply with the limits established in Section 4.0302.

4.0304 Modifications of Fire Code

The chief of the bureau of fire prevention 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 bureau of fire prevention thereon shall be entered upon the records of the department and a signed copy shall be furnished the applicant.

4.0305 Appeals

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 governing body within 30 days from the date of the decision of the appeal.

ARTICLE 4. Firearms, Fireworks and Explosives

4.0401 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.

4.0402 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 Mayor of the City of Forman, which permit shall limit the time of such firing and be subject to the revocation of the Mayor of the City of Forman 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.

4.0403 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 of Forman, North Dakota, any blank cartridges, pistols, blank cartridge revolver or other blank cartridge firearms, blank cartridge caps containing dynamite or fire-crackers exceeding three (3) inches in length and exceeding one-half (1/2) inch in diameter.

4.0404 Fireworks Defined

The term “fireworks” shall mean and include fireworks, as that term is defined in N.D.C.C. § 23-15-01.

4.0405 Fireworks - Discharging of, Sale of

1. Public Display. This ordinance shall not prohibit supervised public displays of fireworks by any person, organization or association within the City for which a permit shall have been first obtained from the City Council. The application for such permit, in such form as may be required by the City Council, shall be filed with the City Auditor and by the City Auditor referred to the Chief of the Fire Department for investigation to determine whether the operator of the display is competent and whether the display is of such character and is to be so located, discharged, or fired that it will not be hazardous to property or endanger any person. The Chief of the Fire Department shall report the results of his investigation to the City Council who shall determine whether such permit shall be issued or the application rejected.

2. Private Use. Any individual who is at least 12 years of age, or under direct adult supervision, may use, explode, or possess any fireworks within the limits of the City of Forman during the periods of June 27 through July 5 and December 27 through January 1 of each year, subject to the following restrictions:

a. June 27 through July 5, excluding July 3 and 4, legal time for use is 9:00 a.m. to 11:00 p.m.

b. July 3 and 4 legal time for use is 9:00 a.m. to 12:00 a.m. (midnight).

c. December 27 through December 30, legal time for use is 9:00 a.m. to 9:00 p.m.

d. December 31 legal time for use is 9:00 a.m. to 1:00 a.m. January 1.

e. The individual use or explosion of fireworks at any other time during the year is prohibited.

3. Sale. A person may offer fireworks for sale to individuals at retail within the city June 27 through July 5 and December 27 through January 1 of each year..

4.0406 Exceptions

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 5. Adoption of Electrical Code

4.0501 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 6. Penalty for Violation of this Chapter

4.0601 Penalty

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 $500.00 or by imprisonment for not to exceed thirty (30) days or by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each ten days that prohibited conditions are maintained shall constitute a separate offense. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

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CHAPTER FIVE - POLICE DEPARTMENT

ARTICLE 1. Organization and Regulations

5.0101 Establishment

The Police Department heretofore created for the City of Forman and by this chapter continued shall consist of the Chief of Police and as many policemen, policewomen, patrolmen and 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 power to appoint such other and additional policemen and policewomen as he may deem necessary for the preservation of the public peace.

5.0103 Duties of Chief

The Chief of Police shall be the keeper of the city jail, and shall have custody of all persons incarcerated therein, and shall provide a jailer at all times when there is somebody incarcerated therein. He shall keep such records and make such reports concerning the activities of his 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 his supervision.

5.0104 Rules and Regulations

The Chief of the Police Department may make or prescribe such rules and regulations as he shall deem advisable; such rules, when approved by the governing body, shall be binding on such members. Such rules and regulations may cover, besides the conduct of the members, uniforms and equipment to be worn or carried, hours of service, vacations 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, violations of the criminal laws of the state and breaches of peace, and to make complaint against the person or persons guilty thereof, and to attend punctually on all trials of offenses in regard to which complaint has been made by any policeman.

Within the city limits and for a distance of one and one-half (1 1/2) miles in all directions outside the city limits, the police officers and watchman of the city shall perform the duties and exercise the powers of peace officers as defined and prescribed by the laws of the State of North Dakota.

5.0106 Duties of Police - Hot Pursuit - Defined

A police officer in "hot pursuit" may continue beyond the one and one-half (1 1/2) mile limit to make an arrest, in obedience to a warrant or without a warrant under the conditions of Section 29-06-15 of the North Dakota Century Code, whenever obtaining the aid of peace officers having jurisdiction beyond that limit would cause a delay permitting escape. As used in this subsection, "hot pursuit" means the immediate pursuit of a person who is endeavoring to avoid arrest.

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 Chief of Police and governing body.

5.0108 Special Police

At the request of any corporation, firm or person, the Chief of Police may appoint one or more special policemen or policewomen to duty for such corporation, firm or person which special policemen or policewomen shall have all the authority now, or which may be hereafter conferred by law upon policemen, and may make arrangements that such special policemen or police-women shall be paid by the corporation, firm or person requesting the same, and covered by their Workmen's Compensation coverage in which case such special police shall receive no compensation from the city and the city shall not be responsible for the negligent or unauthorized acts, this being the responsibility of the firm, person or corporation requesting their appointment.

ARTICLE 2. Powers and Duties

5.0201 Money or Property of Arrested Persons

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

5.0202 Arrested Persons

Any police officer after making any arrest, with or without a warrant, for any violation of city ordinances, shall take the person or persons so arrested, without any unreasonable delay, before the Municipal Judge, or County or District 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 of Forman 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 red 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.

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CHAPTER SIX - ZONING – PLANNING

Chapter Six is intentionally omitted. The City of Forman has previously adopted a Land Development Code which is in full force and effect dated march 1999 and all revisions thereto.

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CHAPTER SEVEN - WATER AND SEWER

ARTICLE 1. Utility Established

7.0101 Water and Sewer Departments Established

There is hereby established and created within the City of Forman, North Dakota, departments to be known as the City Water and Sewer Departments, which 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 obtaining of a water supply and the conservation, treatment and disposal of water for public and private uses, and/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 Departments to be Independent Agencies

All of the business affairs of the said City Water and Sewer Departments shall be conducted, insofar as is possible within the ordinances of the City of Forman as a completely separate and distinct divisions of the City of Forman. Separate and distinct accounts shall be set up on the books of the City Auditor, which said accounts shall at all times reflect the true condition of the Water and Sewer Departments, as distinct from the remaining business of the city, and which shall be so devised as to disclose the annual profit or loss of said departments. The funds of the departments shall be held in the custody of the City Auditor and disbursed upon warrant in the same manner as other funds, but the said Water and Sewer Departments 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 Departments to the General Fund or any other fund of the city shall not be made except upon order of the governing body, nor shall transfer be made from said city funds to the Water and Sewer Departments 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 said Water and Sewer Departments, after setting up a reasonable reserve for depreciation and new construction, to make payment of the bond requirements from the profits of the said Water and Sewer Departments. 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 said Water and Sewer Departments shall be placed upon an entirely independent basis as a separate business enterprise.

7.0103 Scope of Utility

The properties of said utility 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

Said utility 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; and 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 main 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 per cent 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 sewers connected thereto, in amounts proportionate to and not exceeding the benefits determined to be derived by said respective properties from such trunk sewer.

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

5. Where a portion of the benefits of any of the foregoing improvements is deemed to accrue primarily to the city at large, a portion not exceeding 20 percent of the cost thereof as determined by the governing body with the concurrence of the Board of Budget Review, 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 omission 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 said utility, except collections of special assessments and taxes appropriated to improvement district funds and moneys borrowed for capital improvements, and all money, receipts and returns received from any investments of such earnings, shall be paid into the treasury of the city and kept in a special fund which shall be permanently maintained on the books of the city, separate and distinct from other funds, and designated as the Water and Sewer Utility Funds, in the records of which 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 with 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 be 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 months period upon all revenue bonds of the city heretofore or hereafter issued and made payable from said accounts. After said 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 said 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 as hereinbefore defined without preference or priority of one bond over any other; provided that 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 40-22-15 and 40-22-16 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 of 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 said 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 7.0107 hereof, provided that moneys on hand in any such account shall at all times be available for and used to the extent necessary to meet the current requirements of all of the foregoing accounts except the Replacement and Depreciation Account.

7.0107 Provisions for Financing Capital Improvements

In borrowing money for capital improvement, 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; and the portion of such 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 a 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 prepayable 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 therefor.

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 follow:

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 whenever and as often as needed to perform this covenant.

4. 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, and that it will furnish a certified transcript therefrom of any information which any such bond or warrant holder may request, upon payment of a reasonable fee therefor.

5. 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.

6. Upon written demand of the holder of 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.

7. 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, and will 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 to be accounted for as an operating cost of the utility, and the city will use the proceeds of any such insurance and bonds to restore the loss or damage compensated thereby.

8. 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 or the ordinances and resolutions of the city in force on the date upon which any such obligations are issued, and all provisions of the Constitution and laws and of such ordinances and resolutions which provide security for the holders of bonds issued hereunder are acknowledged to be a part of the city's contract with the holders from time to time 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.

9. The holders of 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, in behalf of the holders of all outstanding obligations of the same issue, any suit or proceedings 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 of such obligations are then in default as to principal and interest, and each and all of the rights and remedies specified and mentioned in Sections 40-35-15 and 40-35-19, inclusive, of the North Dakota Century Code are hereby acknowledged to be available to the holders of such obligations.

ARTICLE 2. Water and Sewer 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 Departments

A Water and Sewer Utility Superintendent shall be appointed by the governing board. If he is a part time employee, and if he is also a city employee in some other capacity, only his 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

Such Superintendent shall make monthly reports to the governing body concerning the operation of his department.

7.0204 When Connection for Waterworks System Required

It shall be unlawful for any person, organization, business enterprise, or other legal entity to use or occupy or permit to be used or occupied wherein water is used or will be used for domestic purposes (domestic purposes defined in Section 7.0228), any premises or building within the corporate limits of the City of Forman and which is located within two hundred (200) feet of the city water main, without first making, or causing to be made, proper connection with the City Waterworks System. The term "proper connection" when used in this section shall be construed to mean connections with such water mains which are equipped and furnished with proper valves and fittings so as to enable such water connection to be used at all times be kept in repair and in a manner so as to make them available for use and in condition to be used in all seasons of the year.

7.0205 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 municipality. Such application shall state an exact description of the premises to serve, 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 and for a connection charge, established

from time to time by resolution of the city council for a residential building, commercial building, or multiple dwelling.

7.0206 Water or Sewer 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, such amount 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.

7.0207 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 sections 7.0204 and 7.0205 hereof.

7.0208 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.

7.0209 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 of 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.

7.0210 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 Register of Deeds Office of Sargent County, North Dakota. Exceptions may be granted in special cases upon a resolution adopted by the governing body.

7.0211 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 municipality. Any repairs found to be necessary by such representatives shall be made promptly, or the municipality will discontinue service.

All services shall be constructed by licensed plumbers at the owner's expense, and each service shall be maintained by the owner. Services heretofore acquired by the issuance of special assessment warrants and assessed against the property, or which may be acquired in the future in like manner, shall likewise be maintained by the owner. Services means the service line running from the point of connection with the city main to owner's premises.

7.0212 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 municipality 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 fee refunded.

7.0213 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 municipal water system except when drawn through a meter installed by the municipality. No person except an authorized representative of the Utility Superintendent shall turn on or off or tamper with any curb cock.

7.0214 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; and if such claims so filed, it shall be the duty of the Utility Superintendent to investigate the facts alleged in such claim and determine the amount, if any, which should be refunded to such claimant by reason of such defective service and report such determination to the governing body, and, if 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 municipality for any fire or any injuries to the person or property of any consumer of water or sewer service under the provisions hereof.

7.0215 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.

7.0216 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 Twenty-Five Dollars ($25.00) each for shutting off or turning on services.
5. Entrance and Access to Premises by Waterworks Employees. Authorized employees of the Water and Sewer Departments 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.

7.0217 Connection to be Supervised by Municipal 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 Departments. 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.

7.0218 Service Pipes Specifications

All service pipes connected with the water and sewer utility shall be laid 5 feet and 6 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.

7.0219 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 an 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.

7.0220 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 pound per square inch.

7.0221 Use of Water During Fire - Unlawful

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

7.0222 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 waterworks 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.

7.0223 Rates and Charges (Water and Sewer)

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. Any change in the rates or charges shall be published at least one time within ten (10) days from adoption in the official newspaper of the city.

7.0224 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.

7.0225 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.

7.0226 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.

7.0227 Restriction of Use of Water

The City Council of the City of Forman 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.

7.0228 Use of Private Wells

It shall be unlawful for any person, organization, business enterprise or other legal entity to use water from private wells for domestic uses. Domestic uses for the purpose of this ordinance shall be construed to mean all uses related to human consumption and the health, comfort and convenience of a person or family in the enjoyment of their dwelling as a house or in the use of facilities for the enjoyment referred to above located in any office, business enterprise, church, school, factory or other building used or occupied by persons. Private wells may be used for any purpose not herein defined as domestic use. It shall also be unlawful to discharge overflow from private wells, tubular or artesian, into the city storm or sanitary sewer systems, excepting that private wells in existence on September 1, 1992, may continue in existence if connected to the sanitary sewer system. Provided further, that in the event the overflow from a private well is discharged into the sanitary sewer system, the city may set reasonable rates for treatment of the discharge into the sanitary sewer system.

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, in the City of Forman, North Dakota.

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.
7. "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.
8. "Garbage" shall mean the animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.
9. "Industrial Wastes" shall mean the wastewater from industrial processes, trade or business as distinct from domestic or sanitary wastes.
10. "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.
11. "May" is permissive (see "shall," Sec. 18).
10. "Person" shall mean any individual, firm, company, association, society, corporation or group.
11. "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 a pH value of 7 and a hydrogen-ion concentration of 10-7.
12. "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 1/2 inch (1.27 centimeters) in any dimension.
13. "Public Sewer" shall mean a common sewer controlled by a governmental agency or public utility.
14. "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.
15. "Sewage" is the spent water of a community. The preferred term is "wastewater," Sec. 24.
16. "Sewer" shall mean a pipe or conduit that carries wastewater or drainage water.

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

18. "Slug" shall mean any discharge of water or wastewater which in concentration of any give 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.

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

20. "Superintendent" shall mean the superintendent of wastewater facilities, and/or of wastewater treatment works, and/or of water pollution control of the city or his authorized deputy, agent or representative.

21. "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 non-filterable residue.

22. "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 benefitted by discharge to the sanitary sewers and wastewater treatment facilities provided.

23. “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.

24. "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.

25. "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."

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

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

7.0303 Use of Public Sewers Required

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

2. It shall be unlawful to discharge to any natural outlet within the City of Forman, North Dakota, or in any area under the jurisdiction of said City of Forman, North Dakota, 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 of Forman, North Dakota, 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, the City of Forman, North Dakota, is hereby required as its 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 When Private Sewage Disposal Permitted

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

2. Before commencement of construction of a private wastewater disposal system the owner shall first obtain a written permit signed by the Superintendent. The application for such permit shall be made on a form furnished by the city, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the Superintendent. A permit and inspection fee of Twenty-five Dollars ($25.00) shall be paid to the city at the time the application is filed.

3. A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the Superintendent. The Superintendent shall be allowed to inspect the work at any stage of construction, and in any event, the applicant for the permit shall notify the Superintendent when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 24 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 the North Dakota State Health Department Regulation 23-19-01.

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

7.0305 Building Sewers and Connections

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

2. There shall be two (2) classes of building sewer permits: (a) for residential and commercial service, and (b) for service to establishments producing industrial wastes. In either case, the owner or his 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 Twenty-five Dollars ($25.00) for a residential or commercial building sewer permit and Twenty-five Dollars ($25.00) for an industrial building sewer permit shall be paid to the city at the time the application is filed.

3. All costs and 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, but the city does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection aforementioned.

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 set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 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, or the procedures set forth in appropriate specifications of the A.S.T.M. and the W.P.C.F. Manual of Practice No. 9. All such connections shall be made gastight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the Superintendent before installation.

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

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

7.0306 Use of Public Sewers

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

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

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

    a. Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.

    b. Any waters containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the wastewater treatment plant.

    c. Any waters or wastes having a pH lower than 5.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the wastewater works.

    d. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the wastewater facilities such as, but not limited to ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc. either whole or ground by garbage grinders.

4. The following described substances, materials, waters or waste shall be limited in discharges to municipal 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 degrees Fahrenheit (65 degrees Celsius).

b. Wastewater containing more than 25 milligrams per liter of petroleum oil, non-biodegradable cutting oils or product of mineral oil origin.

c. Wastewater from industrial plants containing floatable oils, fat or grease.

d. Any garbage that has not been properly shredded (see section 7.0302 (13). Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers.

e. Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances to such degree that any such material received in the composite wastewater at the wastewater treatment works exceeds the limits established by the Superintendent for such materials.

f. Any waters or wastes containing odor-producing substances exceeding limits which may be established by the Superintendent.

g. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Superintendent in compliance with applicable state or federal regulations.

h. Quantities of flow, concentrations or both which constitute a "slug" as defined herein.

i. Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only to such a degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

j. Any water or wastes which, by interaction with other water or wastes in the public sewer system, release noxious gases, form suspended solids which interfere with the collection system, or create a condition deleterious to structures and treatment processes.

5. If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in 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).

6. 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.

7. 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.

8. 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.

9. 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 him so as to be safe and accessible at all times.

10. The Superintendent may require a user 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 municipal sewer.

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

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

7.0307 Damage to Sewer Works Prohibited

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

7.0308 Powers and Authority of Inspectors

1. The Superintendent and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing pertinent to discharge to the community system in accordance with the provisions of this ordinance.
2. The Superintendent or other duly authorized employees are authorized to obtain information concerning industrial processes which 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 Hundred and No/100 Dollars ($100.00) 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.

3. The provisions of this Article shall not be mandatory but may be invoked by resolution of the governing body.

7.0402 Determining the Total Annual Cost of Operation and Maintenance

The City of Forman, North Dakota, or its 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 of Forman or its 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 of Forman or its 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 of Forman or its Superintendent or City Engineer, shall determine each user's average daily poundage of suspended solids which 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 of Forman or its 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 of Forman 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/l BOD and 250 mg/l TSS.

7.0405 Surcharge Rate Schedule for Above Normal Volume of Wastes

Surcharge rates shall be as fixed by resolution of the governing body.

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 of Forman or its 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/l BOD_5 and 250 mg/l TSS. The City of Forman 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 three (3) cents per 1,000 gallons for each 25 mg/l or fraction thereof over 200 mg/l of BOD_5 and two (2) cents per 1,000 gallons for each 25 mg/l or fraction thereof over 250 mg/l 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 may add a penalty to be determined by resolution of the city council.. Should any user fail to pay the user wastewater service charge and penalty, 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 plant 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 one (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 of Forman 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 Commissioner of Water and Sewers, 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 Departments 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 directions.

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 for which there is not a penalty otherwise specified, 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 and No/100 Dollars ($500.00) for each violation.

APPENDIX 7-1

WATER RATES AND CHARGES ESTABLISHED BY RESOLUTION OF THE CITY COUNCIL

Water rates and charges for the use of and for the service supplied by the water system for the city based upon the meter readings of the amount of water consumed by any user, residential, business or otherwise are set by resolution by the city council.

Bills for the rates and charges as herein established by the city shall be sent and be due when billed. All bills shall be payable at the office of the City Auditor, Forman, ND.

If any user is absent from the city for a period of time, the user shall continue to be liable for the minimum charge,

APPENDIX 7-2

SEWER SERVICE CHARGES ESTABLISHED BY RESOLUTION OF THE CITY COUNCIL

Sewer rates and charges for the use of and for the service supplied by the sewer system for the city based upon the meter readings of the amount of water consumed by any user, residential, business or otherwise are set by resolution by the city council.

Bills for the rates and charges as herein established by the city shall be sent and be due when billed. All bills shall be payable at the office of the City Auditor, Forman, ND.

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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 file the same with the City Auditor, stating the purpose for which the same is desired, for what length of time, and specifying the place where his business is to be carried on; if required to file a bond before being licensed he shall also name his proposed sureties on his bond in his application.

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 he shall not feel authorized to grant any particular application for license or permit for any purpose not named by ordinance, he 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 board. No person other than the person to whom the license is granted shall be authorized to do business or act under such license or at any other than the place specified therein. The city may grant the continuance of the

business licensed to any other portion of the city, such permission to be certified on the license by the city auditor. No license shall authorize any person to act under it at more than one (1) place at the same time, or at any other place than is therein specified. Whoever shall violate any of the provisions of this section shall be deemed to be acting without a license and shall be subject to the same penalty as prescribed for acting without a license.

8.0106 Licenses - Revocation

All licenses granted shall be subject to ordinances in force at the time of issuing thereof or which may be subsequently passed by the city'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 him, shall not be entitled to any return of any portion of the license fee previously paid to the city.

8.0107 Licenses - Posting of

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

8.0108 Licenses - Short Term

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

8.0109 Licenses - Enforcement

All city officials having duties to perform with reference to licensed premises, including all police officers, shall have authority to enter the licenses 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 Forman or within one half mile of the municipal limits, either in one locality, or in traveling from place to place selling or soliciting orders for the future delivery of, goods, wares and merchandise, personal property, and personal services including spraying, trimming, or pruning of trees and shrubs of all species, painting or repairing buildings or structures, pest or rodent control, and taking pictures for present or future delivery, who does not intend to become and does not become a permanent merchant of the City of Forman.

2. "Merchandise" 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 Twenty-five Dollars ($25.00) per day for each and every day during which any such transient merchants shall transact business in the city.

8.0204 License - Application for

Applicants for license under this article, whether an individual, co-partnership or corporation, shall file a written sworn application signed by the applicant, if an individual, by all partners if a partnership, and by the president if a corporation, with the city auditor, 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 produced 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 $1,000.00 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; said bond to be approved by the City Attorney, conditioned that the said 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 said applicant for any violation of said ordinances or statutes, or any of them, 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 such business with such applicant, whether said misrepresentation 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 said applicant in respect to any matters connected with or arising out of the business transacted under said license and the bond given as required by this article, or for the performance of the conditions of said bond or for any breach thereof, which said instrument shall also contain recitals to the effect that said applicant for said 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 said 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 said 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 the 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. 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.)

8.0301 Solicitation Without Invitation Prohibited

The practice of going in and upon private residence or privately owned property in the city by solicitors, peddlers, hawkers, runners, canvassers, 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 and/or for the purpose of disposing of and/or peddling or hawking the same, and for the purpose of soliciting subscriptions to magazines or periodicals and/or for the purpose of taking photographs in hereby declared to be a nuisance and unlawful.

8.0302 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 4. Alcoholic Beverages

8.0401 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 and which was in existence on November 3, 1936.

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.

8.0402 Exceptions

1. This article shall not apply to wines delivered to priests, rabbis and ministers for sacramental use.
2. This article shall not be construed to apply to the following articles, when they are unfit for beverage purposes:
    a. Denatured alcohol produced and used pursuant to Acts of Congress, and the regulations thereunder.
    b. Patent, proprietary, medical, pharmaceutical, antiseptic and toilet preparations.
    c. Flavoring extracts, syrups and food products.
    d. Scientific, chemical, and industrial products; nor to the manufacturer or sale of said articles containing alcohol.

8.0403 License Required

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

8.0404 <u>Licenses - Class of - Fee</u>

1. On and off-sale liquor licenses at a fee determined by resolution of the city council

2. On and off-sale beer licenses at a fee determined by resolution of the city council

3. The governing body may, by permit, authorize a qualified alcoholic beverage licensee to engage in the sale of alcoholic beverages designated by the permit pursuant to the provisions of Section 5-02-0l.l of the North Dakota Century Code (which section is incorporated herein by reference as though fully set forth herein). The permit may not be valid for a period greater than fourteen days and may include Sundays. The fee therefor shall be set by resolution of the governing body.

4. The governing body may, by permit, authorize a qualified alcoholic beverage licensee to engage in the sale of alcoholic beverages designated by the permit, after noon on Sundays all pursuant to the 1provisions of Section 5-02-05.l of the North Dakota Century Code (which is incorporated herein by reference as though fully set forth herein). The fee therefor shall be set by resolution of the governing body, but shall not exceed an additional fee of more than $5.00 for each Sunday the licensee sells alcoholic beverages.

8.0405 Licenses - Limit of Number

There shall be no limit on the number of on and off-sale liquor and/or beer licenses issued.

8.0406 Licenses - Term of

1. All licenses issued hereunder shall be for a period of not more than one (1) year and shall expire on the 3lst 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 year 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.

8.0407 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 citizen of the United States, State of North Dakota and County of Sargent and be 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 citizens 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 citizens of the United States and residents of North Dakota for a period of more than one year prior to the date of application and be persons 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.

8.0408 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 had 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 cancelling 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, and within the borders of the United States.

14. The occupations which 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.

21. Such other and further information as the governing body may from time to time require.

8.0409 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.

8.0410 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 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.

8.0411 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.

8.0412 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.

8.0413 License - Posting of

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

8.0414 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.

8.0415 License Fees - Disposition of

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

8.0416 Hours and Time of Sale - Penalty

No licensee dispense or permit the consumption of alcoholic beverages on a licensed premises between two a.m. and twelve noon on Sundays, between the hours of two a.m. and eight a.m. on all other days of the week, or on Christmas Day or after six p.m. on Christmas Eve. In addition, a person may not provide off sale after two a.m. on Thanksgiving Day.

8.0417 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.

8.0418 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 license issued by the State of North Dakota.

8.0419 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.

8.0420 Sales Prohibited - Items

No licensee shall sell on the licensed premises any item other than alcoholic beverages, soft drinks, tobacco products, drink mixing supplies, peanuts, pretzels, potato chips, and related sundries; except a licensee may sell alcoholic beverages in a restaurant separated from the room in which alcoholic beverages are opened or mixed if gross sales of food are at least equal to sales of alcoholic beverages in the dining area.

8.0421 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.

8.0422 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 may remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the room in which alcoholic beverages are opened or mixed and gross sales of food are at least equal to the sales of alcoholic beverages that are consumed in the dining area, if the person is employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of a person twenty-one or more years of age and is not engaged in the sale dispensing, or consumption of alcoholic beverages, or if the person is a law enforcement officer entering the premises in the performance of an official duty. 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, but may not be engaged in mixing, dispensing or consuming alcoholic beverages. Any establishment where alcoholic beverages are sold may employ persons from eighteen to twenty-one years of age to work in the capacity of musicians under the direct supervision of a person twenty-one years or more of age.

8.0423 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.

8.0424 Street Sales Prohibited

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

8.0425 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.

8.0426 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.

8.0427 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 V of the North Dakota Century Code; and 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, and 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.

8.0428 Toilets Required

That the premises where 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, is not, at all times strictly observed.

8.0429 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 with the city limits provided however, that this section shall not apply to deliveries made by a licensed wholesaler dealer to a licensed retail dealer.

3. Where any retail alcoholic beverage or beer licensee is a club or lodge, such licensee shall sell to members only.

8.0430 Termination or Revocation of Licenses

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

    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 legal bona fide resident and citizen of the State of North Dakota, or ceases to be a legal bona fide resident of the County of Sargent.

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 cancelled 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 license 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.

Section 2. Any person aggrieved by the provisions of this ordinance shall have the right to appeal shall be in writing and state the reason for appeal. The City Council upon receipt of written notice of appeal, shall fix a reasonable time for hearing thereon, and shall give at least two days' notice thereof to all interested persons, such notice may be given either personally or by mail. Upon the hearing, any interested person may appear in person or by an agent or attorney. The City Council in passing upon an appeal may vary, modify or confirm any of the provisions of this ordinance. Any interested person shall have thirty (30) days from the day of any final decision by the City Council pertaining to this ordinance in which to appeal the order to the District Court of Sargent County, North Dakota.

8.0432 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 and No/100 Dollars ($500.00), or to imprisonment of not to exceed thirty (30) days; or in the discretion of the court to both such fine and imprisonment; and in addition to both such fine and imprisonment all powers, right, and privileges given by any license granted under the terms of this article may be terminated or revoked in accordance with section 8.0629 of this article.

ARTICLE 5. Shows, Carnivals and Circuses

8.0501 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.

8.0502 Fees for

The fees to secure license to conduct the exhibitions mentioned in the foregoing section shall be as follows:

Any carnival, per day.....$l00.00

Any circus, per day.....$l00.00

In addition to the above fees any carnival or circus granted a license shall deposit with the City Auditor cash bond in an amount to be fixed by the City Council 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 addition to such fees, an additional fee in an amount from to be fixed by the City Council 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 6. Validity

8.0601 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 7. Penalty

8.0701 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.

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CHAPTER NINE - TRAFFIC

ARTICLE 1 - Definitions

9.0101 Definitions

Words and phrases used in this chapter shall have the meanings 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 Commissioner of the North Dakota State Highway Department.

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 2211 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 regulate traffic.

9.0304 Certain Non-motorized Traffic to Obey Traffic Regulations

1. Every person propelling any push cart 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 of 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. Class A authorized emergency vehicles.
    a. The driver of a Class A authorized emergency vehicle may:
        i. Park or stand, irrespective of the provisions of this chapter;
        ii. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
        iii. Exceed the speed limit so long as he does not endanger life or property;
        iv. Disregard regulations governing directions of movement or turning in specified directions.
    b. The exceptions herein granted to a Class A authorized emergency vehicle shall apply only:
        i. When the authorized emergency vehicle is in pursuit of or apprehension of a violator or a suspected violator requiring the use of these exemptions;
        ii. When the Class A authorized emergency vehicle is being operated in response to a reported emergency involving a possible personal injury, death or damage to property, and when giving 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);
        iii. In any instance when the head of a 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).
    c. No emergency vehicle shall display or permit to be displayed any red lamp except when operated on official business.
    d. 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.

2. Class B authorized emergency vehicles.
    a. The driver of Class B authorized emergency vehicles may:
        i. Park or stand, irrespective of the provisions of this chapter;

ii. Exceed the speed limit so long as he does not endanger life or property during the time of a local or national disaster;

iii. Disregard regulations governing direction of movement or turning in specified directions.

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

i. When it is necessary for the authorized emergency vehicle to use these exemptions for the immediate protection of life or property;

ii. When an authorized emergency vehicle is stopped on a highway for the purpose of performing a duty as required of him; or

iii. When traveling at a speed slower than the normal flow of traffic.

3. Class C authorized emergency vehicles. All Class B specifications apply to Class C authorized emergency vehicles except that a rotating blue flashing light must be displayed in place of an amber light as provided in section 39-10-03.1 of the North Dakota Century Code. With respect to vehicles used by state and local disaster emergency services personnel, the division of emergency management is responsible for adopting rules for the use of flashing blue lights in accordance with chapter 28-32 of the North Dakota Century Code.

4. Any law enforcement officer as provided in paragraph 2 of subdivision a of subsection 2 of Section 39-01-01 of the North Dakota Century Code having stopped another vehicle along a highway, and while still involved in that incident, where flashing red or combination red and white lights were used in making the stop, may switch to the use of amber lights, visible under normal atmospheric conditions for at least five hundred feet (152.4 meters), for the purpose of maintaining traffic flow.

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 giving an audible signal by bell, siren or exhaust whistle and displaying a visible flashing, revolving, or rotating blue, white, or red light, the driver of every other vehicle shall yield to 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 as 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 an 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 property damage to an apparent extent of at least One Thousand and No/100 Dollars ($1,000.00) shall immediately give notice of such 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. Any person who violates this section must be assessed a fine of Fifty and No/100 Dollars ($50.00). 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. The commissioner may suspend the license or permit to drive and any nonresident operating privileges of any person failing to comply with the duties as provided in Section 39-08-06 through 39-08-09 of the North Dakota Century Code until such duties have been fulfilled, and the commissioner may extend such suspension not to exceed thirty (30) days.

2. When it shall appear to the magistrate that any person has failed to file a written report in compliance with this section he shall notify the Highway Commissioner of such failure so that appropriate action may be taken pursuant to Section 9.0309.

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 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.

2. 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.

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 State Highway Commissioner 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 positions approximately conforming to the requirements of this title, 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 this title and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this title, 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 when authorized by the governing body:

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

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 of 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).

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.

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:

1. Ten (l0) miles per hour in Park Lane Addition to the City.
2. Fifteen (l5) miles an hour when passing a school during school recess or while children are going to or leaving school during opening or closing hours;
3. Twenty (20) miles an hour when approaching within fifty (50) feet of a grade crossing of any steam, electric, or street railway when the driver's view is obstructed. A driver's view shall be deemed to be obstructed when at any time during the last two hundred (200) feet of his approach to such crossing he does not have a clear and uninterrupted view of such railway crossing and of any traffic on such railway for a distance of four hundred (400) feet in each direction from such crossing.
4. Twenty (20) miles an hour when approaching within fifty (50) feet and in traversing an intersection of highways when the driver's view is obstructed. A driver's view shall be deemed to be obstructed when at any time during the last fifty (50) feet of his approach to such intersection, he does not have a clear and uninterrupted view of such intersection and of the traffic upon all of the highways entering such intersection for a distance of two hundred (200) feet from such intersection;
5. Except as herein otherwise provided twenty (20) miles an hour when the driver's view of the highway ahead is obstructed within a distance of one hundred (100) feet;
6. Twenty (20) miles an hour on any street in a business district or in a residence district or in a public park, unless a different speed limit is designated and posted by local authorities; and
7. Twenty (20) miles an hour under other circumstances, unless otherwise permitted, restricted, or required by conditions.
    a. The Highway Commissioner may designate and post special areas of state highways where lower speed limits shall apply.

b. Except as provided by law, it shall be 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.

c. In charging a violation of the provisions of this section, the complaint shall specify the speed at which the defendant is alleged to have driven and the speed which this section prescribes shall be prima facie lawful at the time and place of the alleged offense.

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

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

1. Whenever the local authorities in their respective jurisdictions, on the basis of an engineering and traffic investigation, determine that the maximum speed permitted under this title is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the city may determine and declare a reasonable and safe maximum limit thereon which:

   a. Decreases the limit at intersections;

   b. Increases the limit within an urban district but not to more than fifty-five (55) miles [88.51 kilometers] per hour; or

   c. Decreases the limit outside an urban district.

   2. Local authorities in their respective jurisdictions 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 maximum 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.

5. Not more than six such alterations as hereinabove authorized may be made per mile [1.61 kilometers] 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.

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

The provisions of North Dakota Century Code Section 39-09-06 and all subsequent amendments 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 of a reckless disregard of the safety of others.

9.0505 Minimum Speed Limits

The provisions of North Dakota Century Code Section 39-09-09 and all subsequent amendments 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 may engage in exhibition driving of any vehicle on a highway, street, alley, sidewalk, or any public or private parking lot or area, nor may any person engage in a race, a speed competition, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration. Any person who violates this section by engaging in an act defined by subdivision b of subsection 2 must be assessed a fee of Fifty and No/100 Dollars ($50.00). 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 and No/100 Dollars ($100.00).

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 outdistance the other; or the operation of one or more vehicles over a common selected course from the same point to the same point for the purpose of comparing the relative speed or powers of acceleration of such vehicle or vehicles within a certain distance or time limit.

    b. "Exhibition driving" means driving a vehicle in a manner which disturbs the peace by creating or causing unnecessary engine noise, tire squeal, skid, or slide upon acceleration or braking; or driving and executing or attempting one or a series of unnecessarily abrupt turns.

c. "Race" means the use of one or more vehicles in an attempt to outgain, outdistance, or to arrive at a given distance ahead of another vehicle or vehicles; or the use of one or more vehicles to willfully prevent another vehicle from passing the racing 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 as prima facie evidence of the speed of such motor vehicle in any court or legal proceedings where the speed of the motor vehicle is at issue. The driver of any such motor vehicle may be arrested without a warrant under this section, provided the arresting officer is in uniform or displays his badge of authority; provided that such officer has observed the record of the speed of such motor vehicle by the radio microwaves or other electrical 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 reasonably necessary for safe operation under the circumstances. No person may drive any vehicle upon a highway in a manner to endanger the life, limb, or property of any person.

ARTICLE 6 - Turning Movements

9.0601 Required Position and Method of Turning at Intersection

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 at an intersection shall do so as follows:

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

2. Left turns on two-way roadways. At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection;

3. Left turns on other than two-way roadways. At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand land lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered; and

4. The city may cause markers, buttons, or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when markers, buttons, or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons, or signs.

9.0602 Vehicle Turning Left at Intersection

The provisions 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 safety 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 provisions 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 shall turn a vehicle at an intersection less the vehicle is in proper position upon the roadway as required in 9.0601 or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with

reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement;

2. A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred (100) feet traveled by the vehicle before turning;

3. No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal; and

4. The signals required on vehicles by subsection 2 of 9.0605 shall 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 shall 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 shall be equipped with, and required signals shall 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 shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

1. Left turn: hand and arm extended horizontally;

2. Right turn: hand and arm extended upward;

3. Stop or decrease speed: Hand and arm extended downward.

ARTICLE 7 - Special Stops

9.0701 Authority to Designate Through Streets

The provision of North Dakota Century Code Section 39-07-03 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The Commissioner 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

Through streets may be declared as such by resolution of the city council.

9.0703 Signs

All traffic control devices shall conform to the state manual and 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 an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways. Provided, however, that if the driver is involved in a collision with a vehicle in the intersection or junction of roadways after driving past a yield sign without stopping, such collision shall be deemed prima facie evidence of his failure to yield the right-of-way.

4. Preferential right-of-way at an intersection may be indicated by stop signs or yield signs as authorized in Section 39-07-03.

5. 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 no crosswalk, then as near as practicable to the nearest line of the intersecting roadway.

6. 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.

7. The driver of a vehicle approaching a yield sign if required for safety to stop shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, at a clearly marked stop line, but if none, then at a point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.

9.0705 Emerging from Alley or Driveway

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

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;

b. 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

c. 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 Control of Vehicle

The driver or person in charge of a motor vehicle shall at all times have his car under control and all vehicles shall be driven in a careful manner and with due regard to the safety and convenience of persons and property.

9.0802 Operators - Who Prohibited

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

No parent or guardian shall permit a minor who is not legally licensed to do so under the laws of the State of North Dakota, to drive or operate such vehicle within the limits of this city.

No owner or other person having charge of, or having within his control or supervision a motor vehicle shall knowingly suffer or permit such motor vehicle to be driven or operated within the limits of this city by any person who has not been legally licensed to operate such vehicle under the laws of the State of North Dakota.

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 he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.

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 re conspicuously designated as required in this ordinance. This provision shall not apply at intersections where traffic is controlled by traffic-control signals or police officers.

9.0903 Drivers in a Procession

Each driver in a funeral or other procession shall drive as near to the right hand edge of the roadway as practicable and shall follow the vehicle ahead as close as is practicable and safe.

9.0904 Funeral Processions to be Identified

A funeral composed of a procession of vehicles shall be identified as such by headlights burning in daylight hours on all vehicles in the procession, or by such other methods as may be determined and designated by the Chief of Police.

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 shall 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 shall 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 State Highway Commissioner 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 be 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 9.0606 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall not apply to funeral processions.

9.0915 Driving on Divided Highways

The provisions of North Dakota Century Code Section 29-10-19 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 dividing section so construed as to impede vehicular traffic, every vehicle shall 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 shall 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 shall 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 Commissioner 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 State Highway Commissioner 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 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.

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 of 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, the stop sign on the control arm, or the safety strobe lights specified in Section 39-21-18, and the driver may not proceed until such school bus resumes motion or he is signaled by the school bus driver to proceed or the flashing red lights, the stop sign on the control arm, and the safety strobe lights are no longer actuated.

2. Every school bus must 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 shall be equipped with safety lights and must be equipped with a stop sign on a control arm and red visual signals meeting the requirements of Section 39-21-18, which may be actuated by the driver of the school bus whenever the vehicle is stopped on the highway to receive or discharge school children. A school bus driver may not actuate the stop sign or the special visual signals:

    a. On city streets on which the receiving or discharging of school children is prohibited by ordinance;

    b. At intersections or other places where traffic is controlled by traffic-control signals or police officers; or

    c. In designated school bus loading areas where the bus is entirely off the roadway.

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 shall 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 shall not back the same unless such movement can be made with safety and without interfering with other traffic.

2. The driver of a vehicle shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans or any other substance likely to injure any person, animal or vehicle, or throw or deposit rubbish of any kind upon the highway.

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 shall 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 shall 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 shall be under his direction.

9.0931 Alteration of Odometers or other Mileage Recorders, Hour Meters on Tachometers or other Hour Recorders - Penalty

The provisions of North Dakota Century Code Section 39-21-51 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Any person altering a motor vehicle odometer or other mileage recorded, hour meter on tachometer or other hour recorded for the purposes of deceiving another, shall be guilty of an infraction.

9.0932 Open Bottle 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, NDCC, in or on any motor vehicle when such vehicle is upon a public highway or in an area used principally for public parking. No person shall have in his possession on his 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 such 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 such alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle shall be 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. The provisions of this section shall not prohibit the consumption or possession

of alcoholic beverages in a house car, as defined in Section 39-01-01, 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 shall be assessed a fee of Fifty and No/100 Dollars ($50.00); however, the licensing authority shall not record the violation against the driving record of such person unless he wa the driver of the automobile 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.

9.0933 Permitting Unauthorized Minor to Drive

No person shall cause or knowingly permit his child or ward under the age of eighteen (18) years to drive a motor vehicle upon any highway when such minor is not authorized under the laws of this state.

9.0934 Permitting Unauthorized Person to Drive

No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized under the laws of this state.

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 shall be subject to traffic and pedestrian-control signals as provided for in 9.0403 and 9.0405.

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 shall 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 shall not apply under the conditions stated in subsection 2 of Section 9.1103.

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 real 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 shall not cross at any place except in a marked crosswalk.

4. No pedestrian shall 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 the foregoing provisions of this chapter every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

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 shall 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 himself a hazard shall 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 shall 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 shall stand in a roadway for the purpose of soliciting a ride.

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

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

ARTICLE 11 - Regulations for Motorcycles

9.1101 Traffic Laws Apply to Persons Operating Motorcycles or Motorized Bicycles

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

Every person operating a motorcycle or motorized bicycle shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under this title, 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 shall not carry any other person nor shall 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 shall operate a motorcycle while carrying any package, bundle or other article which prevents him from keeping both hands on the handlebars.

4. No operator shall carry any person, nor shall 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 shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This subsection shall not apply to the operation of motorcycle two abreast in a single lane as authorized in subsection 4.

2. The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

3. No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicle.

4. Motorcycles shall not be operated more than two abreast in a single lane.

5. Subsection 2 and 3 shall 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 shall attach himself 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, shall 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 years shall operate or ride upon a motorcycle unless protective headgear, which complies with standards established by the motor vehicle department, 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 shall not apply to persons riding within an enclosed cab or on a golf cart.

3. No person shall 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.

ARTICLE 12 - Regulations for Bicycles

9.1201 Effect of Regulations

1. It is unlawful for any person to do any act forbidden or fail to perform any act required in this article. Any person who violates any of the provisions of this article may be assessed a fee not to exceed Five and No/100 Dollars ($5.00)

2. The parent of any child and the guardian of any ward shall 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 shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.

9.1202 Traffic Ordinances Apply to Persons Riding Bicycles

Every person riding a bicycle 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 as to special regulations in this article and except as to those provisions of this ordinance which by their nature can have no application.

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 shall 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. No person shall ride a bicycle upon a sidewalk within a business district.

2. 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 shall disobey the same.

3. 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 roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

2. Persons riding bicycles upon a roadway shall 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 bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway.

9.1206 Clinging to Vehicles

The provisions of North Dakota Century Code Section 39-10.1-04 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 shall attach the same or himself 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.

The person operating a bicycle shall not 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.

Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit 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 motor vehicle department. 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.

9.1209 Riding on Bicycles - Motorized Bicycles

1. A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

2. No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

9.1210 Parking

No person shall 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 lease 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 limits of the City of Forman, except when officially sanctioned to do so and supervised by the Chief of Police of the city.

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

9.1213 License Required

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

9.1214 License Application

Application for a bicycle license and license plate shall be made upon a form provided by the city and shall be made to the Chief of Police. An annual fee of fifty cents ($.50) shall be paid to the city before each license, or renewal thereof, is granted for a bicycle with one seat; and One dollar and No/100 ($1.00) if equipped with more than one seat. All licenses are due January 1st of each year and delinquent March 1st of each year. The owner of a bicycle purchased after March 1st of any year shall apply for a license within fifteen (15) days from the date of

purchase. Failure to pay license fee within the time prescribed in this section subjects the owner to a penalty of twenty-five cents ($.25) 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 January, 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, the name and the number on the frame of the bicycle for which issued; and a record of all bicycle license fees collected by him.

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 of the City of Forman, 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; and such notice to be served in the manner provided for the service of a Summons in the Justice Court of the State of North Dakota; and such 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 Transfers

It shall be the duty of any person who sells or transfers any bicycle licensed hereunder, to report the sale or transfer to the Chief of Police within five (5) days after such sale or transfer, giving the name and address of the person to whom said bicycle was sold or transferred, together with the frame number, the name of the maker of said bicycle, and the date of the transfer or sale; and the purchaser or transferee shall, within five (5) days after such transfer, procure a license to operate such bicycle.

9.1219 Manner of Parking - Impoundment - Redemption

All bicycles operated in the business area of the City of Forman shall be parked in the bicycle parking racks provided therefore and not upon any sidewalk. Bicycles operated in the residential area shall not be parked on any sidewalk. All bicycles found parked upon any sidewalk in the city shall be subject to impoundment by the Police Department and redemption of said bicycle may not be had until the owner thereof has paid a redemption for which shall be determined by the Chief of Police.

9.1220 Bicycle may be Impounded by Police

Any bicycle left abandoned upon the streets of the City of Forman and picked up by the city police shall be held by the Police Department and a Five and No/100 Dollar ($5.00) pick up fee shall be charged. If not licensed, the owner shall purchase a current year's license in addition to the Five and No/100 Dollar ($5.00) 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 shall park or stand a vehicle other than at the angle to the curb or edge of the roadway indicated by such signs or markings.

9.1302 Angle Parking - Where

Angle parking shall also be permitted on the following streets:

Main Street between 4th Ave. and 6th Ave. of the City and on Fifth Avenue between 3rd St. and 5th St. of the City

9.1303 Close to Curb

No person shall 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 shall be punishable by a fine of not to exceed Twenty-five and No/100 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 of Forman.

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 three 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 Stopping, Standing or Parking Prohibited in Specified Places

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 shall 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 State Highway Department 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 shall 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 shall 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 shall not be permitted on any federal-aid or state highway without first obtaining the written authorization of the State Highway Commissioner.

4. The State Highway Department 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 shall stop, stand or park any vehicle in violation of the restrictions indicated by such devices.

9.1406 Stopping - Parking - Certain Purposes Prohibited

No person shall 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 shall stop, stand or park a vehicle in any such designated place.

9.1408 Stopping - Parking - In Alleys

No person shall park a vehicle within an alley, nor shall he 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 he 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 shall 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, nor shall this section be construed to permit parking for a longer time than is provided in such areas.

9.1411 Parking Privileges for Mobility Impaired - Certificate – Revocation - Continuing Appropriation - Penalty

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, the distinguishing certificate or insignia specified in subsection 4 is entitled to courtesy in the parking of the automobile. Provided, however, that any municipality may, by ordinance, prohibit parking on any street or highway for the purpose of creating a fire lane, or to provide for the accommodation of heavy traffic during morning and afternoon rush hours, and the privileges extended to such impaired persons do not apply on streets or highways where and during such times as parking is prohibited.

2. Mobility impaired as used in this section includes any person who has lost the use of one or both legs; requires personal assistance or the use of crutches, a wheelchair, or a walker to walk two hundred (200) feet [60.96 meters] without rest; is restricted by cardiac, pulmonary, or vascular disease from walking two hundred (200) feet [60.96 meters] without rest; has a forced expiratory volume of less than one (1) liter for one (1) second or an arterial oxygen tension of less than sixty (60) millimeters of mercury on room air while at rest and is classified III or IV by standards for cardiac disease set by the American Heart Association; or has an orthopedic, neurologic, or other medical condition that makes it impossible for the person to walk two hundred (200) feet [60.96 meters] without assistance or rest.

3. The director shall appoint a three (3) member committee. The committee must include two (2) mobility impaired persons and one (1) qualified physician. The terms of membership on the committee are three (3) years, staggered so that one (1) member is appointed each year. The initial membership of the committee must be appoint to terms of up to three (3) years to provide for the initial staggering of terms under this subsection. The committee shall review guidelines for qualification for and issuance of a special identifying certificate or insignia for use in this state.

4. The director may issue, for a fee of Three and No/100 Dollars ($3.00) per year or part of a year, a special identifying certificate to any mobility impaired applicant upon submission by the applicant of a completed application and a written statement issued by a qualified physician to the director that the applicant is a mobility impaired person within the criteria of subsection. 2. The application must include the information required by the director. The physician's statement must described how the impairment limits the applicant's mobility and daily life functions of the applicant. The certificate is valid for a period, not to exceed three (3) years, as determined by the director. A physician who provides a false statement that a person is mobility impaired for the purpose of that person obtaining a certificate under this subsection is guilty of an infraction for which a minimum fine of One Hundred and No/10 Dollars

($100.00) must be imposed. A certificate issued under this subsection must be a least five and one-half (5 1/2) inches [13.97 centimeters] in height and eight and one-half (8 1/2) inches [21.59 centimeters] in width and must bear, in blue on white, the internationally accepted symbol of access for the mobility impaired. The certificate must bear the expiration date and registration number assigned by the director. The director shall adopt rules governing the issuance of the certificate. A temporary certificate, valid for an initial period not to exceed three (3) months, may be issued by the director for a fee of Three and No/100 Dollars ($3.00) upon application supported by a physician's statement. The temporary certificate may be extended an additional period, not to exceed three (3) months, upon application supported by a physician's statement that the extension is warranted. The director shall determine the form and size of the temporary certificate.

5. Two and No/100 Dollars ($2.00) of each fee for issuance of a certificate under this section must be deposited in the state highway department fund for purposes of defraying the cost of issuing the certificate. The rest of the fee must be deposited in the state treasury and credited to the employment of people with disabilities fund. The fees deposited in the fund are hereby appropriated on a continuing basis to the committee on employment of people with disabilities of the governor's council on human resources for development of job opportunities for disabled individuals in this state. If a certificate is lost, mutilated, or destroyed, the person to whom the certificate is lost, mutilated, or destroyed, and shall pay a replacement fee of Three and No/100 Dollars ($3.00).

6. A certificate issued under this section must be prominently displayed on the left-hand dashboard of the motor vehicle whenever the vehicle is occupying a space reserved for the mobility impaired and is being used by a mobility impaired person or another person for the purposes of transporting the mobility impaired person. No part of the certificate may be obscured. A fee of Five and No/100 Dollars ($5.000 may be imposed for a violation of this subsection.

7. An applicant may appeal a decision denying issuance of the certificate to the director. Written notice of the appeal must be received within ten (10) business days following receipt by the applicant of notice of denial. The applicant has sixty (60) days to provide additional supportive material to the director for purposes of deciding the appeal. The director shall affirm or reverse the decision to deny issuance of the certificate within thirty (30) days after receipt of the supportive material. Written notice of the decision must be given to the applicant.

8. If a law enforcement officer finds that the certificate is being improperly used, the officer may report to the director any such violation and the director may, in the director's discretion, remove the privilege. Any person who is not mobility impaired and who exercised the privileges granted a mobility impaired person under subsection 1 is guilty of an infraction for which a fine of One Hundred and No/100 Dollars ($100.00) must be imposed.

9. Whenever any public or private agency or authority designates parking spaces for use by motor vehicles operated by mobility impaired persons, those reserved spaces shall 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 spaces reserved must also be indicated by signs approved by the director bearing the internationally accepted symbol of access for the mobility impaired which indicate, through the use of arrows, the total width of the reserved area. The sign must indicate that unauthorized use of the space is an infraction for which a fine of One Hundred and No/100 Dollars ($100.00) must be imposed. For particular events, a public or a private agency may reserve additional parking spaces for use by motor vehicles operated by mobility impaired persons. In that case, the temporarily reserved spaces must be indicated by signs or other suitable means. A sign indicating that a space is reserved for the mobility impaired and blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space, unless the

space is a temporary mobility impaired parking space, is sufficient basis for the enforcement of this section. A law enforcement officer may enforce this section in any parking lot or parking facility, whether publicly or privately owned.

10. A person may not stop, stand, or park any vehicle in any designated parking space that is reserved for the mobility impaired unless the vehicle displays a mobility impaired identification certificate issued by the director to a mobility impaired person. A mobility impaired person may not permit the use of a certificate issued under this section by a person who is not mobility impaired when that use is not in connection with the transport of the mobility impaired person. A vehicle may temporarily use a space reserved for mobility impaired persons without a mobility impaired certificate for the purpose of loading and unloading mobility impaired persons. A violation of this subsection is an infraction for which a fine of One Hundred and No/100 Dollars ($100.00) must be imposed.

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

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 shall establish from time to time areas for loading and unloading, bus parking, guest parking, taxi parking, emergency parking, no parking, police and fire use on such public streets in such places and in such number as he shall determine or as the governing body may specifically designate to be of greatest benefit and convenience to the public and to promote the best use of the streets for traffic to pedestrians and designate the same 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 five (5) consecutive minutes on street areas so posted, or for more than ten (10) consecutive minutes on street areas so posted, or more than thirty (30) consecutive minutes on street areas so posted, or more than sixty (60) consecutive minutes on street areas so posted, or for more than one hundred twenty (120) consecutive minutes on street areas so posted, when said areas have been made available for parking.

The City Engineer or authorized person shall establish from time to time in such places and in such manner time parking zones as he shall 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 shall 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 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 No. 205.

9.1702 Child Restraint Devices - Penalty - Evidence

1. If a child, under three 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. While the motor vehicle is moving, each child of three to five years of age who is in the motor vehicle must be in an approved child restraint system or buckled in a seat belt.

Use of child restraint systems and seat belts is not required in motor vehicles that were not equipped with seat belts when manufactured. If all of the seat belts are used by other family members in the vehicle, this section does not apply.

2. Violation of this ordinance is punishable by a fine not to exceed Twenty and No/100 Dollars ($20.00).

3. Violation of this ordinance is not, in itself, evidence of negligence. The fact of a violation of this ordinance is not admissible in any proceeding other than one charging the violation.

9.1703 Vehicle Transporting Explosives or Hazardous Materials - Administrative Procedure and Judicial Review

Any person operating any vehicle transporting any explosive or hazardous material as a cargo or part of a cargo upon a highway shall comply with this section.

1. The vehicle shall be equipped with at least one (1) fire extinguisher, filled and ready for immediate use, and placed at a convenient point on the vehicle.

2. The Superintendent of the State Highway Patrol shall, pursuant to Chapter 28-32 of the North Dakota Century Code, adopt such rules as may be necessary for the safe transportation of hazardous materials. Rules shall duplicate or be consistent with current hazardous materials. Rules shall duplicate or be consistent with current hazardous materials regulations of the United States Department of Transportation. The Superintendent of the State Highway Patrol is authorized to adopt the hazardous materials regulations by reference and any adoption shall be construed to incorporate amendments as may be made from time to time. Any proceeding under this section for issuing or modifying rules and regulations and determining compliance with rules and regulations of the Superintendent of the State Highway Patrol shall be conducted in accordance with Chapter 28-32 of the North Dakota Century Code, and appeals may be taken as provided in Chapter 28-32 of the North Dakota Century Code.

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.

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.

3. 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.

4. 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.

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

    a. Any modifying equipment must meet Specialty Equipment Marketing Association standards.

    b. If tires placed on a motor vehicle have a diameter greater than that of the tires on the motor vehicle as manufactured, those tires must comply with Department of Transportation requirements.

    c. The maximum outside diameter permitted for tires is forty-four (44) inches (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).

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

7. Vehicles owned by law enforcement agencies, the military, fire fighting agencies, and ambulances, may be modified without regard to this ordinance.

8. The registrar may adopt rules to implement this ordinance.

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 ordinance, or which the actor knows is equipped in any manner in violation of this ordinance, or for any person to do any act forbidden or fail to perform any act required under this ordinance. Any person who violates any of the provisions of Sections 39-21-08, 39-31-09, 39-21-10 or 39-21-14 of the North Dakota Century Code shall be assessed a fee of Ten and No/100 Dollars ($10.00). 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 shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this ordinance.

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 and regulations of the department do not apply to vehicles moved solely by human power, except as specifically made applicable.

9.1707 Alteration of Odometers or Other Mileage Recorders, Hour Meters on Tachometers or Other Hour Recorders

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.

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.

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.

9.1803 Frame-Chassis Requirements

1. The motorcycle frame-chassis, including the suspension components and engine mountings, shall 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 wheel base shall not be less than forty (40) inches (101.6 centimeters).

9.1804 Brakes

1. Every motorcycle shall have either a split service brake system or two (2) independently actuated service brake systems in accordance with regulations promulgated by the registrar of motor vehicles pursuant to Chapter 38-32. Brakes must act on the front and rear wheels.

2. Every motorcycle shall meet the requirements for brake system effectiveness, fade, and partial systems as specified in rules and regulations promulgated by the registrar of motor vehicles pursuant to Chapter 28-32.

3. All linkage, cables, pivots and bearings shall 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 shall 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 shall be in accordance with regulations promulgated by the registrar of motor vehicles pursuant to Chapter 28-32. 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 shall be equipped with a parking brake of a friction type with a solely mechanical means to retain engagement.

9.1805 Brakes on Motor-Driven Cycles

The department may require an inspection of the brake on any motor-driven cycle and may disapprove any brake which is not so designed or constructed as to ensure reasonable and reliable performance in actual use.

9.1806 Tires, Wheels and Rims

1 Motorcycle tires shall 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 shall 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.

9.1807 Steering and Suspension Systems

1 Motorcycle steering and suspension systems shall 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 shall 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 shall 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 shall be equipped with an adjustment feature that will provide proper wheel tracking.

3. The steering head shall 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, shall 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 shall include the specific rake and trail for each motorcycle or class of motorcycles and the terms "rake" and "trail" shall be defined by the registrar of motor vehicles by regulations promulgated pursuant to Chapter 28-32.

5. Handlebars shall 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 shall 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 shall provide a minimum of eighteen (18) inches (45.72 centimeters) between grip after final assembly.

6. Handlebars shall be equipped with handgrips consisting of a material and surface patter to ensure firm, nonslip gripping for the driver.

7. Every motorcycle shall be equipped with a suspension system and such suspension system shall be applicable to at least the front wheel. The suspension system shall be effective in reducing road shock and designed for the purpose of maximizing vehicle stability.

9.1808 Fuel Systems

1. All fuel system components, including the tank, pump, tubing, hoses, clamps, etc., shall 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 shall 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 shall be adequately vented and provided with a fuel shutoff valve located between the fuel supply and the engine.

9.1809 Exhaust Systems - Prevention of Noise

Motorcycles shall 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 shall be leak proof and all components shall be securely attached to the vehicle and located so as not to interfere with the operation of the motorcycle. Shielding shall 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 shall meet the noise decibel limitations as established by the Environmental Protection Agency. No person shall sell, offer for sale, or install any noise suppressing system or device which will produce noise in excess of the maximum allowable decibel limitations of this section.

9.1810 Mirrors

Every motorcycle shall 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 shall consist of a minimum reflective surface of ten (10) square inches (64.52 square centimeters). All mirrors shall not contain sharp edges or projections capable of producing injury.

9.1811 Fenders

Each wheel of a motorcycle shall be equipped with fenders or otherwise covered by the body configuration. Fenders shall 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 shall be effective in reducing side spray.

9.1812 Seat or Saddle

A seat or saddle securely attached to the vehicle shall be provided for the use of the operator. The seat or saddle shall 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 shall prevent relative movement of the seat from its selected and secured position under all normal vehicle operating conditions.

9.1813 Chain Guard

Any drive chain on a motorcycle shall be equipped with a chain guard or covering device to prevent chain or chain sprocket contact with any rider.

9.1814 Vehicle Stand

All motorcycles designed with two wheels shall 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 so equipped.

9.1815 Glazing

When equipped, all motorcycle windscreens and windshields shall meet the following standards.

1. The glazing material shall comply with the standards promulgated by regulation of the registrar of motor vehicles.

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

3. Covering material, other than glazing, shall be beaded at the edges to prevent fraying.

9.1816 Horn

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

9.1817 Speedometer and Odometer

Every motorcycle shall be equipped with a properly operating speedometer and odometer calibrated in miles (kilometers) per hour and miles (kilometers) respectively and shall be fully illuminated when the head lamp is activated.

9.1818 Lighting Equipment

1 Every motorcycle shall 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, shall be located within the operator's field of vision.

3. A headlamp beam indicator light shall be located within the operator's field of vision and illuminated automatically when the high beam of the head lamp is actuated.

9.1819 Lighting Equipment on Motor-Driven Cycles

The head lamp or head lamps upon every motor-driven cycle may be of the single-beam or multiple-beam type but no either event shall comply with the requirements and limitations as follows:

1. Every head lamp or head lamps on a motor-driven cycle shall 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 head lamp or head lamps the upper beam shall meet the minimum requirements set forth in Subsection 1 of 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 shall 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.

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 shall be located on the longitudinal centerline of the motorcycle.

9.1821 Handhold

A handhold device, which may consist of a bar or strap, to provide adequate support for a person having a body weight up to two hundred fifty (250) pounds (113.40 kilograms) must be provided for the passenger rider if the motorcycle is designed to carry more than one person.

9.1822 Footrests

Footrests shall be provided for each designated seating position. Each footrest for a passenger shall be so designed 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 shall be so located to provide reasonable accessibility for the passenger's feet. Footrests shall fold rearward or upward when not in use if the footrest protrudes beyond the width of the handlebars.

9.1823 Highway Bars

If a motorcycle is so equipped, highway bars shall 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 shall not interfere with the operation of the foot controls.

9.1824 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, shall be approved by the department before they will be available for use within the state.

ARTICLE 19 - Lighted Lamps Required

9.1901 When Lighted Lamps are Required - Penalty

Every vehicle upon a highway within this state 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, and at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of one thousand (1,000) feet (304.8 meters) ahead must display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles. Stop lights, turn signals, and other signaling devices must be lighted as prescribed for the use of such devices.

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

9.2001 Load Restrictions upon Vehicles Using Certain Roadways

When signs are erected giving notice thereof, no person 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 so designated.

9.2002 Commercial Vehicles Prohibited from Using Certain Streets

When signs are erected giving notice thereof, no person shall operate any commercial vehicle exceeding the maximum indicated gross weight at any time upon any street or part of a street so designated except that such vehicles may be operated thereon for the purpose of delivering or picking up materials or merchandise and then only by entering such street at the intersection nearest the designation of the vehicle and proceeding thereon no farther than the nearest intersection thereafter.

9.2003 Size Restrictions upon Vehicles Using Certain Highways

When signs are erected giving notice thereof, no person shall operate any vehicle exceeding the dimensions specified by such sign or signs at any time upon any street or part of a street so designated.

9.2004 Restrictions Upon Use of Streets by Certain Vehicles

1. The City Traffic Engineer or authorized person may determine and designate those 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 shall disobey the restrictions stated on such signs.

ARTICLE 21 - Criminal Traffic Violations

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

The provision 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 a blood alcohol concentration of at least ten one-hundredths of one percent (.10%) by weight at the time of the performance of a chemical test within two (2) hours after the driving.

b. That person is under the influence of intoxicating liquor.

c. That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.

d. That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.

The fact that any person charged with violating this ordinance is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this ordinance, 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 ordinance is guilty of a class B misdemeanor for the first or second conviction in a five-year period, and of a class A misdemeanor for a later conviction in a five-year period. Notwithstanding the other provisions of this subsection, a person violating this ordinance is guilty of a class A misdemeanor for the fourth or subsequent conviction in a seven-year period. The minimum penalty for violating this ordinance is as provided in subsection 4. The Court shall take judicial notice of the fact that a conviction would be a subsequent conviction if indicated by the records of the Commissioner or may make such 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 by the chief law enforcement officer of the City for the duration of the period of suspension of the offender's driver's license or driving privilege by the licensing authority. The impounded motor vehicle number plates may be released, upon the order of the court, to a bona fide purchaser of the offender's motor vehicle, if that purchaser produces a new certificate of title issued by the registrar of motor vehicles.

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 and No/100 Dollars ($250.00) and order for addiction evaluation by an appropriate licensed addiction treatment program.

b. For a second offense within five (5) years, the sentence must include at least four (4) days' imprisonment, of which forty-eight (48) hours must be served consecutively, or ten (10) days' community service; a fine of at least Five Hundred and No/100 Dollars ($500.00); and an order for addiction evaluation by an appropriate licensed addiction treatment program.

c. For a third offense within five (5) years, the sentence must include at least sixty (60) days' imprisonment, of which forty-eight (48) hours must be served consecutively; a fine of One Thousand and No/100 Dollars ($1,000.00); and an order for addiction evaluation by an appropriate licensed addiction treatment program.

d. For a fourth offense within seven (7) years, the sentence must include one hundred eighty (180) days' imprisonment, of which forty-eight (48) hours must be served consecutively; and a fine of One Thousand and No/100 Dollars ($1,000.00).

e. The execution or imposition of sentence under this ordinance may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02, NDCC, except that a fine or a sentence of imprisonment may be suspended in any of the following instances:

i. Upon conviction of being in actual physical control of a motor vehicle in violation of this ordinance.

ii. If the defendant is under the age of eighteen (18) when convicted except that if the defendant has, within the preceding five (5) years, previously been convicted of violation Section 39-08-01, North Dakota Century Code, or equivalent ordinance, the sentence must include at least forty-eight (48) consecutive hours imprisonment or in a minimum security facility or at least ten (10) days of community service, which sentence or imposition of deferred under subsection 3 or 4 of section 12.1-32-02, NDCC.

f. For purposes of this ordinance, conviction of an offense under a law or ordinance of another state which is the equivalent to this ordinance 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 ordinance includes imprisonment 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 inpatient treatment at an appropriate licensed addiction treatment program and the time spent by the defendant in the inpatient treatment must be credited as a portion of a sentence of imprisonment under this ordinance.

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.

9.2103 Reckless Driving - Aggravated 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 shall be guilty of reckless driving if he 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 ordinance shall be guilty of a class B misdemeanor. Any person who, by reason of reckless driving as herein defined, causes and inflicts injury upon the person of another, is guilty of aggravated reckless driving, and is guilty of a class A misdemeanor.

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 he has fulfilled the requirements of Section 9.2105. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances shall be guilty of an offense.

9.2105 Duty Upon Striking Unattended Vehicle

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 his name and address and of the registration number of the vehicle he 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, 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.

2. If the suspension or revocation was imposed for violation of Section 39-08-01 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 sentence and the imposition of sentence may not be suspended under Chapter 12-53. 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, 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 registrar of motor vehicles.

4. A city may, by ordinance, authorize its municipal judge to 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 section, the following definitions are hereby adopted:

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

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

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

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

e. "Person" includes an individual, partnership, corporation, association, the state and its departments, agencies and political subdivisions, and any body of persons, whether incorporated or not.

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

g. "Registrar" means the registrar of motor vehicles as provided in Chapter 39-02 of the North Dakota Century Code.

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

i. "Snowmobile" means a self-propelled vehicle designed for travel on snow, ice or a natural terrain and steered by skis or runners.

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 state except as provided pursuant to this ordinance. No snowmobile shall be operated at any time within the right of way of any interstate highway within this state 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) head lamp, one tail lamp, and brakes, all in working order, which conform to standards prescribed by rule of the commissioner pursuant to the authority vested in him by this code and this ordinance.

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

5. It shall be 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 controlled substance.

d. Without a lighted head lamp 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 and address of the person posting the land and the date of posting must appear on each sign in legible characters. The posted signs shall be readable from the outside of the land and must 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 such signs at or on all gates through such fence or enclosure, must be construed to be a posting of all such enclosed lands.

6. It shall be unlawful for any person to operate a snowmobile pursuant to chapter 39-24 of the North Dakota Century Code without having in possession a valid driver's license or permit, except as provided by section 39-24-09.1 of the North Dakota Century Code.

7. When snowmobiles are operated within the right of way of any road, street or highway of this state pursuant to this ordinance, 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 shall be 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 1st and November 1st of any year.

9. No snowmobile shall 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 (18) 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.

9.2111 Operators must be Licensed - Additional Licensing - Penalty

1. A person, unless expressly exempted in this section, may not drive any 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 unless the person has a valid license as an operator under the provision of this section or a temporary operator's permit issued under chapter 39-20, NDCC. A person may not receive an operator's license unless and until that person surrenders to the commissioner all operator's licenses issued to the person by any jurisdiction. When a license issued by another jurisdiction is surrendered, the commissioner shall notify the issuing jurisdiction of its surrender. A person may not have more than one (1) valid operator's license at any time.

2 Any person licensed as an operator hereunder may exercise the privilege thereby granted upon all streets and highways in this state and may not be required to obtain any other license to exercise such privilege by any county, municipal or local board, or body having authority to adopt local police regulations, except that municipalities may license draymen, parcel deliverymen, bus drivers, taxi drivers, porters, expressmen, watermen, and others pursuing like occupations, and the operation of taxicabs, as provided by subsection 27 of section 40-05-01.

9.2112 Driving without Liability Insurance Prohibited - Penalty

A person may not drive a motor vehicle in this state without a valid policy of liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance, or use of that motor vehicle in the

amount required by Chapter 39-16.1, North Dakota Century Code. Violation of this section is a class B misdemeanor.

9.2113 Violations of Registration Provisions

It is unlawful for any person to commit any of the following acts:

1. To operate, or for the owner thereof knowingly to permit anyone to operate, upon a highway any motor vehicle the registration of which has been canceled or revoked, or which is not registered, or which does not have attached thereto and displayed thereon a number plate, plates, or validation tabs assigned thereto by the registrar for the current registration period, subject to the exemptions allowed in this chapter.

2. To display or cause or permit to be displayed, or to have in possession, any registration card, registration number plate, or validation tabs knowing the same to be fictitious or to have been canceled, revoked, suspended, or altered.

3. To lend any registration number plate, registration card, or validation tabs to any person not entitled thereto, or knowingly permit the use of any registration number plate or registration card by any person not entitled thereto.

4. To fail or refuse to surrender to the department, upon demand, any registration card, registration number plate, or validation tab which has been suspended, canceled, or revoked as is provided in this chapter.

5. To use a false or fictitious name or address in any application for the registration of any vehicle, or for any renewal or duplicate thereof, or knowingly to make a false statement or knowingly to conceal a material fact or otherwise to commit a fraud in any application.

6. To operate a passenger motor vehicle without payment of the registration fees as required in subsection 2 of Section 39-04-19 of the North Dakota Century Code.

9.2114 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 his operator's license or permit in his immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of any district court, municipal court, a county court, a patrolman, peace officer, or a field deputy or inspector of the Highway Department. However, no person charged with violating this section shall be convicted or assessed any court cost if he 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 him and valid and not under suspension, revocation or cancellation at the time of his arrest.

9.2115 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 the police officer or any agent of this state having police powers relating to motor vehicles, shall be 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 amendments 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 39-20-03.2 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 noncriminal 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 ten (10) days after the issuance of such summons or notice unless the person halted shall demand an earlier hearing, and 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 of the city in which the offense was committed. 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 him from custody. Any person refusing to give such written promise to appear shall 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 a class B misdemeanor, regardless of the disposition of the charge upon which the person originally was halted. The time limitations for a hearing as provided by this ordinance 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 ordinance.

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 shall not apply to a person if:

1. The halting officer shall have good reason to believe such person guilty of any felony or when such person is halted and charged with any of the offenses listed in Section 39-06.1-05, NDCC, but not listed in subsection 2; or

2. The halting officer, acting within the officer's discretion, determines that it is inadvisable to release such person upon a promise to appear and if the person has been halted and charged with any of the following offenses:

    a. Reckless driving.

    b. Driving in excess of speed limitations established by the state or by local authorities in their respective jurisdictions.

    c. Driving while license or driving privilege is suspended or revoked for violation of section 39-06-42, NDCC, or an equivalent ordinance.

    d. Operating a modified vehicle.

    e. Failing to display a placard or flag, in violation of any rule implementing section 39-21-44, NDCC, while transporting explosive or hazardous materials.

    f. Operating an unsafe vehicle in violation of subsection 1 of section 39-21-46, NDCC.

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

9.2204 Traffic Violations Noncriminal - Exceptions - Procedures

Any person cited, in accordance with the provisions of Sections 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, shall be deemed to be charged with a noncriminal offense and may appear before the designated official and pay the statutory fee for the violation charged at or prior to the time scheduled for a hearing, or, if he has posted bond in person, as provided by Section 39-07-07 of the North Dakota Century Code, or by mail, he may forfeit bond by not appearing at the designated time. If the person appears at the time scheduled in the citation, he may make a statement in explanation of his action, and the official may at that time, in his discretion, waive, reduce, or suspend the statutory fee or bond, or both. If the person cited follows the foregoing procedures, he shall be 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 shall 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.

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. If a person cited for a traffic violation, other than an offense listed in Section 39-06.1-05, does not choose to follow one of the procedures set forth in Section 39-06.1-02, he may request a hearing on the issue of his commission of the violation charged, the hearing to be held at the time scheduled in the citation or at some future time, not to exceed ninety (90) days later, set at the 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, who has requested a hearing on the issue of the commission of the violation charged, 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 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, he 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, shall not be referred to in any way, nor be admissible as evidence in any court, civil, equity or criminal, except in an action or proceeding involving that person's driving license or privilege.

5. If a person is aggrieved by a finding that he committed the violation, he may, without payment of a filing fee, appeal that finding to the district court or county court for trial anew.

    a. 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 shall 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 shall be served upon the prosecuting attorney. An appeal taken under this

subsection shall 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 shall 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 and No/100 Dollars ($2.00). Any order granting a stay or a temporary certificate shall 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 shall 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 shall be guilty of a traffic violation and shall be assessed a fee of Twenty and No/100 Dollars ($20.00).

c. If the person charged is found not to have committed the violation by the appellate court, the Clerk of Court shall report that fact to the licensing authority immediately. If an appeal under this subsection is from a violation of a city ordinance, the City Attorney shall prosecute the appeal. In all other cases, the appropriate State's Attorney shall prosecute the appeal.

6. The state or the city, as the case may be, must prove the commission of a charged violation at the hearing or appeal under this section by a fair preponderance of the evidence. Upon an appeal under subsection 5, the court and parties shall follow, to the extent applicable, the North Dakota Rules of Civil Procedure. If on the appeal from the finding of the official the finding is affirmed, costs may be assessed at the discretion of the trial judge.

7. As used in Sections 39-06.1-02, 39-06.1-03 and 39-06.1-04 of the North Dakota Century Code, the word "official" means a district judge, a judge of a county court, a municipal judge, or, when provided by statute, a person appointed by a district judge to serve as such official for all or a specified part of a 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, he shall 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

shall be a class B misdemeanor. Failure to appear without just cause at the hearing shall 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 39-08-01, NDCC, or an equivalent ordinance.

2. Reckless driving or aggravated reckless driving in violation of Section 39-08-03, NDCC, or an equivalent ordinance.

3. A violation of chapter 12.1-16-03, NDCC, resulting from the operation of a motor vehicle.

4. Leaving the scene of an accident in violation of Sections 39-08-04, 39-08-05, 39-08-07 or 39-08-08, NDCC, or equivalent ordinances.

5. Driving while license or driving privilege is suspended or revoked in violation of Section 39-06-42, NDCC, or an equivalent ordinance.

6. Violating subdivisions b or c of subsection 5 of Section 39-24-09, NDCC.

7. Operating a modified motor vehicle in violation of Section 39-21-45.1, NDCC.

8. Driving without liability insurance in violation of Section 39-08-20, NDCC.

9. Failing to display a placard or flag, in violation of any rule implementing Section 39-21-44, NDCC, while transporting explosive or hazardous materials.

l0. Operating an unsafe vehicle in violation of subsection 1 of section 39-21-46, NDCC.

9.2208 <u>Amount of Statutory Fees</u>

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 non-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 Ten and No/100 Dollars ($10.00).

2. For a moving violation as defined in Section 9.2210, a fee of Twenty and No/100 Dollars ($20.00).

3. Except as provided in subsection 8 of section 39-06.1-06, for a violation of section 39-09-02, or an equivalent ordinance, 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 and No/100 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 and No/100 Dollars ($10.00), nor more than Thirty and No/100 Dollars ($30.00).

6. Repealed by S.L. 1985, chapter 430, section 4.

7. For a violation of any traffic parking regulations, except a violation of subsection 9 of section 39-01-15, on any state charitable or penal institution property or on the state capitol grounds, a fee in the amount of Five and No/100 Dollars ($5.00).

8. On a highway on which the speed limit is a speed higher than fifty-five (55) miles [88.51 kilometers] an hour as posted and designated by the commissioner pursuant to subdivision g of subsection 1 of section 39-09-02, for a violation of section 39-09-02, or an equivalent ordinance, a fee established as follows:

Miles per hour over lawful speed limit	Fee
1 - 5	$ 10.00 plus $1/each mph over limit
6 - 10	$ 15.00 plus $2/each mph over 5 mph over limit
11 - 15	$ 25.00 plus $3/each mph over 10 mph over limit
16 - 25	$ 40.00 plus $3/each mph over 15 mph over limit
26 - 35	$ 70.00 plus $3/each mph over 25 mph over limit
36 + ...	$100.00 plus $5/each mph over 35 mph over limit

9. For a violation of section 39-21-41.3, a fee not to exceed Twenty and No/100 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" shall mean Sections 9.0924, 9.0933, 9.0934, or the provisions of ARTICLE 14.

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 section 39-04-22; subsection 1 of section 39-04-37; section 39-04-55; 39-06-01; 39-06-14; 39-06-16; 39-09-04.1; 39-09-09; 39-12-04; 39-12-05; 39-12-06; 39-12-09; 39-24-02; or 39-24-09, except subdivisions b and c of subsection 5, or equivalent ordinances; or a violation of the provisions of chapter 39-10, 39-10.2, or 39-21, or equivalent ordinances, except sections 39-21-44, 39-21-45.1, 39-21-46, and those sections within those chapters which are specifically listed in subsection 1 of section 39-06.1-08.

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 shall be guilty of an infraction. 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 sanction which may be imposed.

9.2212 Notification of Parents or Guardians of Juvenile Traffic Offenders

The municipal judge or his 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 20, 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 thereto as may be made therein from time to time, and such copy of the adopted portions of Title 39 filed as required in ARTICLE 22 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 Five Hundred and No/100 Dollars ($500.00) or by imprisonment not to exceed thirty (30) days, or both and, upon conviction of any person of a violation of ARTICLE 19, 9.2101 Persons Under the Influence of Intoxicating Liquor or Narcotic Drugs Not to Operate Vehicle - Penalty, or Section 9.2107 Penalty for Driving While License Suspended or Revoked, the court may order the number plate of the motor vehicle owned and operated by the offender at the time of the offense to be impounded by the Sheriff or chief law enforcement officer of the city, as is appropriate, for the duration of the period of suspension of the offender's drivers license or driving privilege by the licensing authority.

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CHAPTER TEN – HEALTH *(updated 9/8/2014)*

ARTICLE 1 - Health Officer

10.0101 Designation

By NDCC statute, the Health Officer is the county or regional Public Health Officer who shall have and exercise all powers under the law.

ARTICLE 2 - Garbage, Refuse, Rubbish

10.0201 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.

10.0202 Accumulation of Refuse Prohibited

A person may not permit or suffer 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 him, or for which he may be agent, within the city limits, any and all refuse, nor suffer such yard, lot, place or premises to be or remain in such condition.

10.0203 Containers

All garbage and rubbish shall, by the person upon whose premises the same shall have been produced or accumulated, be placed in adequate containers or plastic sacks of not more than thirty-one (31) gallons net capacity, which container shall be kept clean and continuously closed by a tight-fitting cover and shall be protected against the access of flies and rodents. Containers for wet garbage shall have plastic disposable liners.

Containers shall be placed in the alley of those lots having access to any alley and along the curb if no alley is accessible. The city may specify where containers shall be placed along the alley or street for convenience of collection.

10.0204 Burning

Garbage, refuse, and rubbish may not be burned within the city or in disposal grounds maintained by the city.

10.0205 Nuisance

Failure to comply with the provisions of Sections 10.0202, 10.0203 and 10.0204, herein contained constitutes a public nuisance and is punishable as such under the terms of Chapter Twelve 12.0208 of these ordinances.

10.0206 City Collection

The city or franchised contractor shall collect all garbage and rubbish as frequently as is necessary to maintain and preserve community cleanliness and sanitation. Collection of garbage and rubbish is not required where streets and alleys are in a temporary condition which makes it impossible to collect. In such cases, the occupant of the premises is still responsible for the payment of the garbage and rubbish collection fees hereinafter provided for.

10.0207 Fees and Charges

The governing body shall fix garbage collection fees and charges by resolution. The city reserves the right to change the rates as it deems best. The city shall keep the resolution fixing garbage collection fees and charges open for public inspection in the office of the City Auditor. The city shall publish any rate change at least once within ten (10) days from adoption in the official newspaper of the city.

10.0208 Fees - Payment - Collection

1. In all places where water service is provided, the monthly rates charged by the city 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.

2. In all places where water service is not provided, the charges above set forth shall be paid to the city upon monthly or quarterly bills from the city.

3. 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.

4. The proceeds from the collection of the fees and charges shall be placed in the garbage 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 garbage fund.

10.0209 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 10.0208.

10.0210 Disposal of Refuse not Collected by the City

1. 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; or, such person may arrange with some person not in their employ to collect or haul such wastes to such points as are designated by the city. Hauling done by or for an individual may only be done in a covered container or covered truck box.

2. Any disposal within the city jurisdiction in areas not designated by the city such as dumping over the fenced area or outside the fenced area of the city dump grounds shall be an offense punishable by a fine of Fifty and No/100 Dollars ($50.00) plus the cost of cleanup.

10.0211 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 city superintendent, who shall, unless there is a franchised contractor, carry out the purposes of this article, subject to the approval of the governing body.

10.0212 Rules and Regulations

The city shall prescribe such reasonable rules and regulations in connection with the preparation, handling and disposition of garbage and rubbish as may be necessary to regulate, enforce and carry out the provisions of this chapter. The city 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 city may give instructions to a franchised contractor.

ARTICLE 3 - Dangerous Buildings

10.0301 Dangerous Building Defined

All buildings or structures which have any or all of the following defects shall be deemed "dangerous buildings":

1. Those whose interior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.

2. Those which, exclusive of the foundation, show thirty-three percent (33%) or more, damage, or deterioration of the supporting member or members, or fifty percent (50%) of damage or deterioration of the non-supporting enclosing or outside walls or covering.

3. Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have Insufficient strength to be reasonably safe for the purpose used.

4. Those which have been damaged by fire, wind or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the city.

5. Those which have become or are so dilapidated, decayed, unsafe, unsanitary or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation or are likely to cause sickness or disease so as to work injury to the health, morals, safety or general welfare of those living therein.

6. Those having inadequate facilities for egress in case of fire or panic or those having insufficient stairway, elevators, fire escapes or other means of communication.

7. Those which have parts thereof which are so attached that they may fall and injure members of the public or property.

8. Those which because of their condition are unsafe, unsanitary or dangerous to the health, morals, safety or general welfare of the people of this city.

9. Those buildings existing in violation of any provision of the building code, fire prevention code, electrical or plumbing codes or of other ordinances of this city.

10. Those which are 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.

10.0302 Standards for Repair, Vacation or Demolition

The following standards shall be followed in substance by the building inspector and/or the governing body in ordering repair, vacation, or demolition of the “dangerous building” by the owner:

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, morals, safety, or general welfare of its occupant, it shall be ordered to be vacated.

3. If any case where a "dangerous building" is fifty percent (50%) damaged or decayed or deteriorated from its original value or structure, it shall be ordered demolished.

4. If a “dangerous building” cannot be repaired so that it will no longer exist in violation to the terms of this article, it shall be ordered demolished.

5. If 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 ordered demolished.

10.0303 Dangerous Buildings - Nuisances

All "dangerous buildings" within the terms of Section 10.0301 of this article are hereby declared to be public nuisances and shall be repaired, vacated, or demolished as hereinbefore and hereinafter provided.

10.0304 Duties of Building Inspector or Knowledgeable Third Party

The City council shall appoint a Building Inspector or knowledgeable third party who shall:

1. Inspect any building, wall, or structure when a complaint of potential violation of this article is received.

2. Notify in writing, either directly or through the city council or city attorney, the owner/occupant, as shown by the records in the office of the Register of Deeds of the County of Sargent, of any building found to be a "dangerous building" within the standards set forth in Section 10.0301 of this article that the owner or occupant must vacate, repair, or demolish said building in accordance with the terms of the notice and this article;

3. Set forth in the notice provided for in subsection 2 hereof:
   (a) a description of the building, or structure deemed unsafe,

   (b) a statement of the particulars which make the building or structure a "dangerous building," and

   (c) 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.

4. Report to the City Council any noncompliance with the "notice" provided for in subsection 2 and 3 hereof.

5. Appear at all hearings conducted by the Forman City Council and testify as to the conditions of "dangerous buildings".

6. 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 as shown by the records of the Register of Deeds of the County of Sargent. It is unlawful to remove this notice until such notice is complied with."

10.0305 Duties of the Forman City Council

The Forman City Council shall:

1. Upon receipt of a report of the Building Inspector or knowledgeable third party as provided for in Section 10.0304, subsection 5 hereof, give written notice to the owner/occupant, as shown by the records of the Register of Deeds of the County of Sargent, 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 or knowledgeable third party notice provided for herein in Section 10.0304, subsection 4.

2. Hold a hearing and hear such testimony as the Building Inspector or knowledgeable third party, or the owner/occupant, as shown by the records of the Register of Deeds of the County of Sargent, or any other persons wishing testify shall offer relative to the "dangerous building".

3. Make 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 10.0301 hereof.

4. Issue an order based upon findings of fact made pursuant to subsection 3 commanding the owner, occupant, mortgagee, lessee, and all other persons having an interest in said building as shown by the records of the Register of Deeds of the County of Sargent, to repair, vacate, or demolish any building found to be a "dangerous building" within the terms of this article and provided that any person so notified, except the owners, shall have the privilege of either vacating or repairing said "dangerous building".

5. Report to the city attorney the names of all persons not complying with the order provided in subsection 4 of this section.

10.0306 Failure to Comply with Decision of the Council

1. If the owner, occupant, mortgagee, or lessee fails to comply with the order of the Council or fails to appeal to the District Court within thirty (30) days, the city through its officers and employees shall cause such building or structure to be repaired, vacated, or demolished as ordered by the Council.

2. The Council shall bill the owner for the total costs incurred.

3. If the owner fails to pay the total costs of repair, vacation, or demolition, the Council may recover the costs through civil action or taxation by special assessment.

10.0307 Violations - Penalty for Disregarding Notices or Orders

1. The owner of any "dangerous building" who has failed to comply with any notice or order to repair, vacate, or demolish shall be guilty of an infraction and upon conviction thereof shall be fined not exceeding Five Hundred and No/100 Dollars ($500.00) for each offense. Each 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.

2. 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 and No/100 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.

3. Any person removing the notice provided for in Section 10.0304(6), shall be guilty of an infraction and upon conviction shall be fined not exceeding Five Hundred and No/100 Dollars ($500.00) for each offense.

10.0308 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 10.0304, subsections 3 and 4 and the order provided for in Section 10.0305, subsection 4.

2. Appear at all hearings before the Forman City Council in regard to "dangerous buildings".

3. Take such other legal action as is necessary to carry out the terms and provisions of this article.

10.0309 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 or served upon by the sheriff, to the owner/occupant, as shown by the land records of the Register of Deeds of the County of Sargent, 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, whether or not accepted by the recipient, and posting shall be deemed adequate service.

10.03010 Administrative Liability

An officer, agent, or employee of the City of Forman may not be rendered personally liable for any damage that may accrue to a person or property as a result of any act required or permitted in the discharge of the duties of this article.

10.0311 Appeal

The city council shall serve upon the owner, occupant, mortgagee, lessee, and all other persons having an interest in any such building so ordered repaired, vacated, or demolished, a copy of its order of such notice to be served upon such owner, occupant, mortgagee, or lessee within ten (10) days after the issuance of such an order. Such owner, occupant, mortgagee, or lessee shall have thirty (30) days from the date the city council issued an order to repair, vacate, or demolish a building in which to appeal from such order to the District Court of Sargent County, North Dakota, pursuant to North Dakota Century Code § 28-34-01.

APPENDIX 10-1

IN THE MATTER OF "DANGEROUS BUILDINGS" LOCATED

AT FORMAN, NORTH DAKOTA

UNDER ARTICLE 4, CHAPTER TEN

NOTICE OF HEARING

You are hereby notified that the Building Inspector of Forman, North Dakota, has filed with the Forman City Council a report that you have not complied with a Notice and Order issued by him that buildings located at _____ were dangerous buildings and were to be demolished by you prior to _____,_____.

You are further notified to appear before the Forman City Council at _____ on the __ day of _____,_____ , at the hour of ___ o'clock _.M., to show cause, if any you have, why said building reported to be a "dangerous building" should not be demolished in accordance with the statement of particulars set forth in the Building Inspector's Notice.

Dated _____,_____

THE CITY OF Forman, NORTH DAKOTA

By_____

Mayor

ATTEST:

_____

City Auditor

APPENDIX 10-2

IN THE MATTER OF A "DANGEROUS BUILDING" LOCATED AT

_____

TO THE CITY OF Forman, NORTH DAKOTA, WITH AN ADDRESS OF

_____

NOTICE AND ORDER

_____

_____

_____

You are hereby notified that the undersigned, Building Inspector of the City of Forman, North Dakota, acting pursuant to Article 4, Chapter 10 of the Ordinances of the City of Forman, 2011, 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 of the City of Forman, 2011, in the following particulars:_____

_____

YOU ARE THEREFORE ORDERED TO_____

the said building on or before this ___ day of _____,_____.

_____

Building Inspector

Dated this ___ day of _____,_____.

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 Forman, 2011, 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

Forman, North Dakota

APPENDIX 10-4

GARBAGE COLLECTION FEES AND CHARGES ESTABLISHED

BY RESOLUTION OF THE CITY COUNCIL

The monthly fees and charges for the collection of garbage and rubbish by the city or franchised contractor and the disposal thereof are set by resolution of the city council.

An extra charge may be made for removal of ashes, garbage, refuse and rubbish not in containers on a basis of nature, amount and clean-up required for removal.

Fees shall be charged for private use of the dump grounds on a basis of nature and bulk.

All fees are to be billed to the owner of the property assessed.

Garbage collection fees shall be suspended for any residence or commercial establishment for any period of time that the owner or lessee is absent front he city or for any period that a business is not in operation, provided that proper notification is given to the City Auditor.

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CHAPTER ELEVEN - ANIMALS AND FOWL *(updated 9/8/2014)*

ARTICLE 1 - General Regulations

11.0101 Cruelty

A person may not cruelly treat any animal in the city in any way. Cruelty shall be defined and punishable pursuant to North Dakota Century Code 36-21.2 and any subsequent revisions thereof.

11.0102 Dangerous Animals

A person may not keep, shelter, or harbor a dangerous animal or vicious animal or permit such animal to run at large within the city. Exhibitions or parades of animals which are ferae naturae in the eyes of the law may be conducted only upon securing a permit from the city. A person may not keep or harbor within the City of Forman any dangerous animal without first having obtained a permit to keep or harbor such animal from the city.

11.0103 Defined. "Dangerous animal" means:

1. Any animal or reptile which is not naturally tame or gentle, and which is of a wild nature or disposition, and which is capable of killing, inflicting serious injury upon, or causing disease among human beings or domestic animals, and having known tendencies as a species to do so.
2. Any animal declared to be dangerous by the Forman City Council.
3. The following animals shall be deemed to be dangerous animals:
    a. Lions, tigers, jaguars, leopards, cougars, lynxes, cheetahs, and bobcats;
    b. Wolves, coyotes, and foxes;
    c. Badgers, wolverines, weasels, and skunks;
    d. Raccoons;
    e. Bears;
    f. Monkeys, chimpanzees, and other primates;
    g. Alligators, crocodiles, or any related species;
    h. Venomous snakes;
    i. Constrictor snakes;
    j. Gila monsters;
    k. Piranhas and sharks;
    l. Any crossbreed of such animals or reptiles that have similar characteristics to the animals or reptiles specified above.
    m. Pit bull dogs. "Pit bull dogs" is defined to mean:
        i. Staffordshire Bull Terrier breed of dog;
        ii. American Pit Bull Terrier breed of dog;
        iii. American Staffordshire Terrier breed of dog;
        iv. Any mixed breed of dog, which contains as an element of its breeding, the breed of Staffordshire Bull Terrier, American Staffordshire Terrier, or American Pit Bull Terrier as to be identifiable as partially of the breed of Staffordshire Bull Terrier, American Staffordshire Terrier, or American Pit Bull Terrier.
        v. Any dog that has the appearance and characteristics of being predominantly of the breeds of Staffordshire Bull Terrier, American Pit Bull Terrier, American Staffordshire

Terrier; and other breeds commonly known as Pit Bulls, Pit Bull dogs, or Pit Bull Terriers, or a combination of any of these breeds.

11.0104 Permit - When Issued

1. The city shall have discretion as to whether or not to issue a permit pursuant to Section 11.0102 and 11.0103.

2. Prior to obtaining a permit, the owner must:

    a. provide proof of liability insurance for the animal,

    b. provide a description of the animal,

    c. provide the name of the owner or person to be held liable,

    d. provide the purpose for which the animal is kept,

    e. such other pertinent information as the city shall determine, and

    f. pay the permit fee as set by the city council.

3. Any dangerous animal kept without the owner or keeper having first obtained a permit in compliance with this section or allowed to run at large is hereby declared a nuisance and the owner or keeper shall be guilty of a violation of this article.

4. A person in possession of a dangerous animal, as defined in section 11.0103, without a permit, is guilty of an infraction and shall be so ordered to remove the animal from the city limits within 24 hours. Any owner failing to comply with said order will be fined One-Hundred and No/100 Dollars ($100.00) and the Sargent County Sheriff's Department will remove said animal with all costs incurred by the owner.

11.0105 Killing Dangerous Animals

Any person in the city, including the Sargent County Sheriff's Department, is authorized to kill a dangerous animal when it is necessary for the protection of any person or property.

11.0106 Diseased Animals

1. A person may not allow a domestic animal afflicted with a contagious or infectious disease to run at large or ~~to~~ be exposed in any public place whereby the health of a person or beast may be affected;-

2. A person may not ship or remove a diseased animal from the premises of the owner thereof, except under the supervision of the Sargent County Sheriff or the County Health Officer.

11.0107 Housing

1. A person shall keep any kennel or place where any animal is or may be kept clean and wholesome.

2. A person may not permanently house more than three (3) adult animals of the same species and no more than five (5) domestic animals in total.

11.0108 Keeping of Certain Animals Prohibited - Exceptions

1. It shall be unlawful to keep any live horses, sheep, swine or pigs, cattle, chickens or other poultry, or goats within the city limits of the city of Forman, except that horses and cattle may be kept in the outer perimeter, (a one-block radius) of the city away from the residential and business sections. A minimum of one acre shall be provided for each animal unit. Over-pasturing of animals on less than one acre per animal unit shall be a violation of this ordinance. Barns, feeding areas and any area where animals tend to congregate shall be located not less than 200 feet from any residence or business building, other than that of the owner of the animal. Fencing for such animals shall be of a permanent nature and adequate to contain the animals. All areas where animals are housed shall be kept clean and sanitary, with manure being removed on a regular basis and not allowed to accumulate. Owners shall be responsible for spraying and controlling flies in affected areas.

2. Exception for hens: Residents may apply to the City Council for permission to raise up to four hens. The City Council may approve the request if the resident applicant has written permission from all property owners within 300 feet in any direction from the hen enclosure and the reason given for raising the hens is found sufficient by the City Council. The City Council may revoke the approval upon petition of one or more property owners located within the 300 foot limit. It shall be unlawful to keep hens which cause annoyance, disturbance, or offense to persons residing in the neighborhood, either by reason of loud sounds or noises. The owner must maintain all structures, pens or coops wherein any fowl is kept in a clean and sanitary condition devoid of rodents and vermin and free from all objectionable odors. Hens shall be kept in an enclosure that is at least one hundred (100) feet from any residence and is constructed as to prevent such hens from wandering or flying from the enclosure.

3. Any person keeping an unlawful animal, as defined herein is guilty of an infraction and shall be so ordered to remove the animal from the city limits within 24 hours. Any owner failing to comply with said order will be subject to the penalties defined in section 11.0112 and the Sargent County Sheriff's Department will remove said animal with all costs incurred by the owner.

11.0109 Strays

1. A person may not 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.

2. A person may not picket or tie any such animal in any of the streets of the city for the purpose of grazing or feeding.

11.0110 Noises

A person may not harbor or keep any animals that disturb the peace by loud noises at any time of the day or night.

11.0111 Riding Horses in City

A person may not ride a horse on the streets and alleys of the city, or on private property other than that of the owner of the animal, except that permission is granted for transit on a street or alley from pasturing area by shortest route to the exterior of the city. Such passage shall only be during daylight hours, meaning from one-half hour before sunrise until one-half hour after sunset. Horse riders are responsible for cleaning up horse droppings on the streets, and this shall be done immediately after the event. Special permission shall be given for parades and celebrations.

11.0112 Penalty

A person who violates any provision of this article for which a specific penalty is not otherwise provided shall be guilty of an infraction for which the penalty is a fine of Fifty and No/100 Dollars ($50.00) for the first and second offense and One Hundred and No/100 Dollars ($100.00) for a third offense. 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 to license such dog or cat. No license or renewal license shall be issued unless the dog or cat has been 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 address of owner and name of dog or cat. Licenses shall be issued by the City Auditor or County Sheriff on an annual basis as hereinafter more fully provided. The person paying the license fee shall receive a receipt therefore and a metal tag 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 City Council shall determine the license fee by Resolution.

11.0204 License Fee: When Due and Payable

The license fees or renewal fees previously provided for shall become due and payable on or before the 1st day of May, or within one (1) month of the animal’s arrival in the city, in each year and shall become delinquent on the 25th day of May in each year. If the fee is not paid before the 25th day of May, a penalty shall be charged as determined by Resolution of the City Council.

11.0205 Dog or Cat Running at Large Prohibited

1. The owner or keeper of any dog or cat may not permit the animal to run at large in the city.

2. A dog or cat shall be considered running at large if unattended and not under restraint within the confines of the owner's or keeper's premises.

3. A dog or cat is under “restraint” within the meaning of this title if it is:

    a. controlled by a leash or chain, not longer than six feet in length, and held by a competent person;

    b. controlled with an electronic collar within ten feet and in sight of the handler;

    c. enclosed within a vehicle being driven or parked on the streets; or

    d. within the property limits of its owner or keeper.

11.0206 Disposition of Unlawful Dogs or Cats

Any dog or cat running at large may be taken up by any city personnel, Sargent County Sheriff or Deputy and impounded at the city dog pound, or such other place as may be designated by the governing body. The dog or cat shall not be released to anyone until all pound charges are paid directly to the facility where the dog or cat is housed, in addition to the penalties set forth in this section.

11.0207 Disposition of Unclaimed Dogs or Cats

The owner or keeper shall be notified of the taking of the dog or cat. If the owner or keeper fails to pay the charges (including license if necessary) and claim the animal within five (5) days of notification the animal may be destroyed.

11.0208 Return to Owner if Known

Notwithstanding the provisions of Section 11.0206, if a currently licensed 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 officer may proceed against the owner or keeper for violation of this article.

11.0209 Noisy Dog or Cat Prohibited

A person may not keep or harbor within the city any dog or cat that disturbs the peace by howling, barking, whining, meowing, or making any other disagreeable noise. A person wishing to file a complaint shall give his name, address, and sign a complaint.

11.0210-Animal Waste

1. An owner, keeper, caretaker, or attendant of an animal may not allow an animal to defecate on public or private property other than that person’s own. If such animal does defecate upon public or private

property, the owner, keeper, caretaker, or attendant must clean the fecal matter immediately and thoroughly from such property.

2. Anyone walking an animal on public or private property other than the individual's own must carry visible means of cleaning up any fecal matter left by the animal. Animals used in parades, involved in law enforcement, or service animals are exempt from this subsection.

3. An owner may not allow the accumulation of animal feces in any open area, run, cage, or yard wherein animals are kept and shall remove or dispose of feces at least once every twenty-four (24) hours. Collection and removal of animal feces must be placed in a tightly secured bag or similar airtight container and placed in a cover trash receptacle. The container must be kept closed after each collection and, at least once a week, all collected feces must be disposed of in a manner that does not to permit fly breeding or other unhealthy conditions.

11.0211 Nuisance - When

Any dog or cat running at large, any dog or cat disturbing the peace, or any dog or cat molesting passersby, chasing vehicles, or trespassing upon private property, or defecating on public or private property other than its own, which is not immediately cleaned, is hereby declared to be a nuisance.

11.0212 Penalty

A person who violates any provision of this article for which a specific penalty is not otherwise provided shall be guilty of an infraction for which the penalty is a fine of Fifty and No/100 Dollars ($50.00) for the first and second offense, One Hundred and No/100 Dollars ($100.00) for a third offense, and Five Hundred and No/100 Dollars ($500.00) for a fourth offense. 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.

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CHAPTER TWELVE – NUISANCES *(updated 9/8/2014)*

ARTICLE 1 – Definitions

12.0101 Definitions

1. Nuisance - consists in unlawfully doing an act or omitting to perform a duty, which act or omission:

    a. Annoys, injures, or endangers the comfort, repose, health or safety of others;
    b. Offends decency; or
    c. In any way renders other persons insecure in life or in the use of property.

2. Private Nuisance – a nuisance which affects a single individual or a determinate number of persons in the enjoyment of some private right not common to the public.

3. Public Nuisance – a nuisance which at the same time affects an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal.

4. Sanitary Nuisance - the commission of any act, by an individual, municipality, organization or corporation, or the keeping, maintaining, propagation, existence or permission of anything, by an individual, municipality, organization or corporation, by which the health or life of an individual, or the health or life of individuals, may be threatened or impaired or by which or through which, directly or indirectly, disease may be caused.

5. Outhouse - an outbuilding with one or more seats and a pit serving as a toilet.

6. Cesspool – a pit, container or place underground where sewage gathers

7. Abandoned Property – any personal property located on any lot or property within the city limits without the consent of the owner or occupant of the property for a period of five (5) days or more, after the consent of the owner or occupant has been revoked, or any personal property located on a street, highway, alley, or other public roadway for a period of five (5) days or more.

8. Abandoned Vehicle – shall include, without limitation, any vehicle which has remained on any lot or property within the city limits without consent of the owner or occupant of the property for a period of five (5) continuous days or more, after the consent of the owner or occupant has been revoked, or any vehicle which has remained on a street, highway, alley, or other public roadway for a period of five (5) continuous days or more.

9. Unsightly Trash or Junk – any junked motor vehicle, auto or truck bodies or equipment of any type, except in an authorized junk yard, or any accumulations of other unsightly trash which would constitute a health hazard, a rodent harborage, a breeding area for insects or rodents, a dangerous place for children to play in and around or which tends to be unsightly and which does or tends to lower the value of adjacent real property because of its unsightliness. Includes property which is deteriorated, wrecked, or derelict property in unusable condition, having no value other than nominal scrap or junk value, if any, and which has been left unprotected outside of a permanent structure from the elements, and shall include without

being restricted, deteriorated, wrecked, inoperative or partially dismantled motor vehicles, machinery and equipment, trailers, boats, motors, snowmobiles, lawn mowers, motorcycles, campers, refrigerators and other household appliances, furniture, household goods and furnishings, scrap metals or lumber or other similar articles in such condition or any other castoff material of any kind whether or not the same could be put to any reasonable use.

10. Junked Motor Vehicle – any motor vehicle which does not have lawfully affixed thereto a valid state license plate or plates in excess of thirty (30) days, or the condition of which is wrecked, dismantled, partially dismantled, inoperable or discarded.

11. Inoperable Vehicle – any motor vehicle, which has not physically moved twenty-five feet in a seven month period or which is not in operating condition due to damage or removal or inoperability of one or more tires and wheels, damage or removal or inoperability of the engine or other essential parts required for the operation of the vehicle, or which does not have lawfully affixed thereto a valid state license plate or which constitutes an immediate health, safety, fire or traffic hazard.

12. Weeds - whenever used in this Chapter, the term shall mean all weeds or plants declared to be primary noxious weeds or secondary noxious weeds by the North Dakota Department of Agriculture and all other weeds or grass growing upon any lot or parcel of land in the city to a greater height than six (6) inches. This section does not prohibit the cultivation of crops.

13. Vegetation - whenever used in this Chapter, the term shall include:

    a. all weeds as defined in this article,
    b. fallen tree limbs, dead trees, and dead tree limbs, which in the opinion of the Mayor or City Superintendent constitutes a health or safety hazard, and
    c. stacked firewood which has become so decayed as to be unusable or unsuitable for burning or which would constitute a health hazard, a rodent harborage, a breeding area for insects or rodents, or a dangerous place for children to play in and around.

ARTICLE 2- Sanitary Nuisances

12.0201 Residence - When Sewer and Water Required

1. A person may not 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 sewer and water facilities and mains.

2. The term "proper connections" when used in this section shall be construed to mean connections with such 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.

3. 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.

12.0202 Outhouses - Cesspools - A Nuisance

The use, construction, maintenance, building or erection of any outhouse, privy, vault or cesspool within this city is hereby declared a nuisance and a menace to public health.

12.0203 Septic Systems and Wells

1. Private sewage systems and private water systems in use prior to January 1, 2014 may continue in use provided such system conforms to the State Health Department Standards.
2. Each private sewage system or private water supply hereafter altered shall conform to the State Health Department Standards.

12.0204 - Offensive Odors

The owner or occupant of any lot or piece of ground may not suffer or 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 menace to public health of the city.

12.0205 Cleaning of Septic Systems

1. 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 Sargent County Public Health District.

2. 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.

12.0206 Dead Animals

A 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 Department of Health. 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; and any person permitting any dead animal in the street, alley or public place of the city or allowing any animal which he owned or which was in his possession or under his control 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.

12.0207 Water Pools - Putrid Substances

1. An owner or occupant of a parcel of ground may not 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.

2. Any pool of water and any putrid substance permitted to become offensive or injurious to the public health is hereby declared to be a nuisance.

12.0208 Penalty

A person who violates any provision of this article for which a specific penalty is not otherwise provided shall be guilty of an infraction for which the penalty is a fine of Fifty and No/100 Dollars ($50) for each infraction and a separate infraction shall be deemed committed on each day during or on which such nuisance is permitted to exist. Failure to abate the issue within seven (7) days will result in city remediation at the owner's expense.

ARTICLE 3 - Smoke - Gases

12.0301 Smoke, Dust, Ashes, Gases, Cinders - 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 nuisance.

12.0302 Smoke, Dust, Ashes, Cinders, Gases - Prohibited

1. A person, association, or corporation may not 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 the public, or to endanger the comfort, health or safety of the public, or in such manner as to cause or have a natural tendency to cause injury or damage to business or property.

2. A person who violates any provision of section 12.0301 or 12.0302 shall be guilty of an infraction for which the penalty is a fine of Fifty and No/100 Dollars ($50) for each infraction and a separate infraction shall be deemed committed on each day during or on which such nuisance is permitted to exist.

12.0303 Smoking

This Ordinance is enacted to protect the health, safety, and general welfare of the people of the City of Forman pursuant to North Dakota's smoke-free laws. The provisions of Sections 23-12-09 through 23-12-11 of the North Dakota Century Code, including penalties defined therein as now enacted, and all subsequent recodifications and/or amendments, and other applicable legislation, as may be adopted from time to time are hereby adopted and shall govern the regulation of smoking in public places and places of employment as if set out in this Article.

12.0304 Sale, Possession, and Use of Tobacco Products

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

    a. Bar means a retail alcoholic beverage establishment licensed pursuant to Chapter 8. The term includes all indoor and outdoor areas of the licensed premise including but not limited to outdoor patios, terraces, decks, courtyards, sidewalks, and porches.

    b. Business means a sole proprietorship, partnership, association, joint venture, corporation, and other business entity, either for profit or not for profit, including retail establishments where

goods or services are sold and professional corporations and other entities where professional services are delivered.

c. Electronic smoking device means any electronic product, such as one composed of a heating element and battery or electronic circuit which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-hookah, e-cigar, e-pipe or under any other product, name or descriptor and also includes any cartridge or other component of the device. An electronic smoking device is considered a tobacco product for the purposes of this Chapter.

d. Employee means an individual who is employed by an employer in consideration for direct or indirect monetary wages or profit, or an individual who volunteers services for an employer.

e. Employer means an individual, business, or private club, including a municipal corporation or trust, or the state and its agencies and political subdivisions that employees the services of one (1) or more individuals.

f. Enclosed area means all space between a floor and a ceiling that has thirty-three (33) percent or more of the surface area of its parameter [perimeter] bounded by open or closed walls, windows, or doorways. A wall includes any physical barrier regardless of whether it is open or closed, temporary or permanent, or contains openings of any kind, and includes retractable dividers and garage doors.

g. Health care facility means any office or institution providing health care services or treatment of diseases, whether physical, mental, or emotional, or other medical or physiological or psychological conditions, including, but not limited to, hospitals; clinics; ambulatory surgery centers; outpatient care facilities; weight control clinics; nursing homes; homes for the aged or chronically ill, nursing, basic, long-term, or assisted living facilities; laboratories and offices of any medical professional licensed under N.D.C.C. Title 43, including all specialties and subspecialties in those fields. This definition shall include all waiting rooms, hallways, private rooms, semi-private rooms, wards within health care facilities, and any mobile or temporary health care facilities.

h. Health Care Services means services provided by any health care facility including but not limited to: medical, surgical, dental, vision, chiropractic, psychological, and pharmaceutical services.

i. Minor means a person under the age of 18 years.

j. Place of employment means an area under the control of a public or private employer, including but not limited to: work areas, auditoriums, classrooms, conference rooms, elevators, employee cafeterias, employee lounges, hallways, meeting rooms, private rooms, restaurants, temporary offices, vehicles, and stairs. A private residence is not a place of employment unless it is used as a licensed child care, adult day care, or health care facility.

k. Public place means any area which the public enters, including but not limited to: publicly owned buildings, vehicles, or offices; bars, bingo facilities, gambling and gaming facilities as defined by in N.D.C.C. 12.1-28-01; child care and adult day care facilities subject to licensure by the North Dakota Department of Human Services, including those operated in private homes; educational facilities, both public and private; facilities primarily used for exhibiting a motion picture, stage,

drama, lecture, musical, recital, or other similar performance; financial institutions; health care facilities; hotels and motels, including all rooms that are rented to guests; Laundromats, any common areas in apartment buildings, condominiums, mobile home parks, retirement facilities, nursing homes and other multi-unit residential facilities; private and semi-private nursing home rooms; museums, libraries, galleries, and aquariums; polling places; professional offices; public transportation facilities, including buses, trains, airplanes and similar aircraft, taxicabs and similar vehicles such as town cars and limousines when used for public transportation, and ticket, boarding and waiting areas of public transit facilities, including bus and train stations and airports; reception areas; restaurants; retail stores including tobacco and hookah establishments; rooms, chambers, places of meeting or public assembly, including school buildings; shopping malls; sports arenas; theaters; and waiting rooms.

l. Publicly owned building, vehicle or office means a place or vehicle owned, leased, or rented by any state or political subdivision, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of taxes.

m. Restaurant includes every building or other structure, or any part thereof, and all buildings in connection therewith that are kept, used, maintained, advertised, or held out to the public as a place where food is served, whether or not the establishment serves alcohol or nonalcoholic beverages, including but not limited to coffee shops, cafeterias, sandwich shops, private and public school cafeterias, kitchens, and catering facilities in which food is prepared on the premises for serving elsewhere, and a bar area within a restaurant. The term also includes outdoor areas of a restaurant where food and/or beverages are served or consumed including but not limited to outdoor patios, terraces, decks, courtyards, sidewalks, and porches.

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

o. Shopping mall means an indoor public walkway or hall area that serves to connect retail or professional businesses.

p. Smoking means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. Smoking also includes the use of an electronic smoking devise which creates a vapor, in any manner or form, or the use of any oral smoking device for the purposes of circumventing the prohibition on smoking in this article.

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

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

2. Purchase or use of Tobacco Products by Minors

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

b. It is a misdemeanor for a minor to smoke or use tobacco products in any form in which it may be smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means in the city. However, an individual under 18 years of age may purchase and possess tobacco as a part of a compliance survey program when acting with the permission of the individual's parent or guardian, and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority.

c. It shall be unlawful for any minor to sell, possess, purchase, attempt to purchase, smoke or use tobacco in any form in which such products may be smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means. However, an individual under 18 years of age may purchase and possess tobacco products as part of a compliance survey program while acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority. A minor may sell tobacco products as a bona fide employee of a licensed tobacco retailer.

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

e. A violation of this section is civil violation and there shall be a fine of $25.00 for a minor 14 years of age or older who has violated this section.

3. Point of Sale of Tobacco Products. A business wherein tobacco products are sold or offered for sale may not sell, permit to be sold, offer for sale or display for sale any tobacco products in any manner, unless such products are stored for sale:

a. Behind a counter in an area accessible only to the personnel of such business, or
b. In a locked container; provided, however, such restrictions shall not apply to:

i. Retail stores which derive at least 90 percent of their revenue from tobacco and tobacco-related products and where that retailer ensures that no person younger than 18 years of age is present, or permitted to enter at any time; and

ii. Any places to which admission is restricted to persons eighteen years of age or older.

ARTICLE 4 - Radio Interference and Noise Control

12.0401 Radio Interference Prohibited

A person may not knowingly maintain, use, operate or cause to be operated any machine, device, appliance, equipment, or apparatus which causes reasonably preventable electrical interference with radio reception within said municipal limits. The maintenance, use or operation 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 common nuisance.

12.0402 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 or their sounding for an unnecessary and unreasonable period of time.

2. Radios, phonographs, etc. The using, operating or permitting to be played, used or operated, any radio receiving set, musical instrument, 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 operation 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 use, operating or permitting to be played, used or operation of 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 P.M. and 7:00 A.M., or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office, or in any dwelling, hotel or other type of residence, or of any persons in the vicinity.

5. 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 in such streets indicating that the same is a school, hospital or court street.

6. Exceptions shall be city celebrations, street dances, or other city approved events or the discharge of fireworks as permitted by statute.

12.0403 Compression Brakes - Prohibited

1. A person may not use motor vehicle brakes that are in any way activated or operated by the compression of the engine of that motor vehicle or any unit or part thereof. It shall be an affirmative defense to prosecution under this section that the compression brakes were applied in an emergency and were necessary for the protection of persons and /or property.

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

3. As used in this section, the term “compression brakes” means the use of motor vehicle brakes to retard the forward motion of a motor vehicle by compression of the engine. “Compression brakes” are also referred to as “exhaust brakes” and/or “jake brakes.”

12.0404 Penalty

Any person who violates any provision of this article shall be guilty of an infraction for which the penalty is a fine of Fifty and No/100 Dollars ($50) for each infraction.

ARTICLE 5 - Automobiles - Personal Property

12.0501 Automobiles, Personal Property - When a Nuisance

Unsheltered storage of old, used, stripped, junked, unlicensed 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 with which it was manufactured, unsightly trash or any other property as defined in section 12.0101, for a period of thirty (30) days or more (except in an authorized 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 and morals or which may be abandoned or unclaimed within the city, is hereby declared to be a nuisance and dangerous to public safety and shall be abated in the manner prescribed in this article.

12.0502 Abatement Required by Owners

1. 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 said property involved in such storage (all of whom are hereinafter referred to collectively as "owners"), shall jointly and severally abate said nuisance by the prompt removal of said 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.

2. Summary of Process for Abatement of Nuisances:
    a. City receives nuisance complaint
    b. City investigates and orders action for any ordinance violation, which will be given by certified mail or personal service.
    c. Property owner voluntarily fixes or removes the nuisance at owner's expense.
    d. If property owner fails to abate the nuisance, the city will abate the nuisance out of its existing budget. The property owner then must pay the costs to the city or the city uses special assessment procedures and / or civil procedures to recover costs. The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

3. Nothing which is done or maintained under the express authority of a statute shall be deemed a nuisance.

4. Every successive owner of property who neglects to abate a continuing nuisance upon or in the use of such property created by a former owner is liable therefor in the same manner as the one who first created it. A lapse of time may not legalize a public nuisance amounting to an actual obstruction of public right.

12.0503 Abatement Required - Penalty for Failure

If the owners allow the nuisance to exist or fail to abate said nuisance they, and each of them upon conviction thereof shall be fined not less than Fifty and No/100 Dollars ($50.00), nor more than Five Hundred and No/100 Dollars ($500.00) for each infraction and a separate infraction shall be deemed committed on each day during or on which such nuisance is permitted to exist.

12.0504 Removal and Impoundment by City

The City may remove or cause to be removed to any place within the city, selected for the purpose of any personal property described in 12.0501 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, or other claims of the city against the owner, or any other person lawfully entitled to the possession thereof.

12.0505 Removal and Impoundment - When Sold

1. 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 12.0501 may be sold and disposed of by the City in the manner hereinafter provided. If the personal property has only salvage value, it shall be sold to a salvage or junkyard and the proceeds thereof shall be applied to the costs entitled to the city.

2. Any vehicle impounded and held in impound by a duly executed contract with a designated contractor, that is 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, if not sold at public sale by the city, shall become the property of the impound contractor and deemed disposed thereof.

3. If the impounded personal property is deemed to have value beyond that of scrap, notice that such property will be sold shall be published once, at least six (6) days prior to the sale, in a newspaper

published in the official newspaper of the city. Such notice shall specify a description of the property to be sold, the time and place of sale, and shall be signed by the County Sheriff. Such sale shall be held between the hours of 9:00 o'clock A.M. and 5:00 o'clock P.M. of the day specified in the notice. Such sale shall be held at the front door of the County Courthouse, or at the location of the property to be sold. Any sale may be postponed or discontinued by public announcement at the time of the sale where there are no 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 such sale. The County Sheriff shall give the purchaser at such sale a certificate of purchase of such property.

12.0506 Removal and Impoundment Proceeds

Within thirty (30) days after such sale, the person making the sale shall make out, in writing, and file with the city a full report of such sale specifying the property sold, the amount received therefore, the amount of costs and expenses, the disposition made by him of the proceeds of the sale. The proceeds arising from such sale shall be delivered over to the City Auditor and credited to the general fund.

12.0507 Abandoned Vehicles and Abandoned Property

1. A person may not abandon any vehicle or personal property upon a street, highway, alley, or other public roadway.

2. A person may not abandon any vehicle or personal property upon any public or private property without the express or implied consent of the owner or person in lawful possession or control of the property.

3. In addition to the definitions set forth in section 12.0101, for purposes of this section, a vehicle and personal property shall be presumed to be abandoned if it is left unattended on a highway, alley, or other public roadway, for a period in excess of 5 days; or on any public or private property without the express or implied consent of the owner or person in lawful possession or control of the property, for a period in excess of 5 days.

4. A law enforcement officer who has reasonable grounds to believe that a vehicle has been abandoned may remove the vehicle, or cause it to be removed, at the expense of the owner, to the nearest garage or other place of safety.

5. In the event a vehicle is not reclaimed by the registered owner or any lien-holder within 90 days, the laws of this state governing the disposition of abandoned property shall apply and the property shall be disposed of in accordance therewith.

6. Penalty - Any person who violates this section shall be guilty of an infraction for which the penalty is a fine of Twenty-Five and No/100 Dollars ($25) for each infraction.

ARTICLE 6 - Noxious Weeds and Vegetation

12.0601 Weeds and Vegetation Prohibited

An owner of a lot, place, or area within the City or the agent of such owner, may not 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 weeds or vegetation as defined in section 12.0101, or other deleterious, unhealthful growths.

12.0602 Notice to Destroy

The city shall notify in writing the owner of any such lot, place, or area within the City or the agent of such owner, to cut, destroy, and/or remove any such weeds or vegetation as defined in section 12.0101, 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. Such notice shall be addressed to said owner or agent of said owner at his last known address and shall give such owner or his agent a minimum of five days to cut, destroy, or otherwise remove said weeds or vegetation.

12.0603 Action Upon Non-Compliance

Upon the failure, neglect, or refusal of any owner or agent so notified to cut, destroy, and/or remove weeds or vegetation after receipt of the written notice provided for in 12.0602 or within five days after the date of such notice in the event the same is returned to the City Post Office Department because of inability to make delivery thereof, provided the same was properly addressed to the last known address of such owner or agent, the city shall cut, destroy, and/or remove such weeds or vegetation.

12.0604 Cost Assessed to Property

When the City has affected the removal of such weeds or vegetation, or has paid for their removal, the actual cost thereof, if not paid by said owner prior thereto, shall be charged and assessed against the property upon which the weeds or vegetation were cut, destroyed, or removed. 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.

ARTICLE 7 - Trees and Shrubs

12.0701 Nuisance Declared

The following conditions are public nuisances whenever they are found with the City of Forman.

1. Any living or standing elm tree or part thereof infected to any degree with the Dutch Elm Disease fungus, Ceratocystis ulmi, and which harbors any of the elm bark beetles, Scolytus multristriatus or Hylurgopinus rufipes.

2. Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed or chipped and buried in a land fill.

3. Any other variety of living or standing tree or part thereof infected to any degree with any disease considered a threat by the North Dakota Department of Agriculture.

4. Any tree, shrub or hedge, or part thereof, growing upon public property or upon private property but overhanging or interfering with the use of any public walk, street or highway, park or public place within the City of Forman, which in the opinion of the majority of the Shade Tree Committee, endangers the life, health, safety or property of the public, shall be declared a public nuisance.

12.0702 Shade Tree Committee Created

1. A Shade Tree Committee shall be appointed by the City Council.

2. The duties of the Shade Tree Committee shall be to advise and aid in the coordination of the tree care and tree planting programs in the City of Forman.

3. The members of the committee shall serve without compensation.

12.0703 Inspection and Investigation

1. All premises and places within the City shall be inspected annually to determine whether any condition described in 12.0701 exists therein.

2. The City, Shade Tree Committee or its agent may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned to them under this ordinance.

3. The owner shall be notified in writing of the existence of any nuisance and given a reasonable time for its removal.

12.0704 Abatement of Nuisance on Public Property

In abating the nuisance on public property, public streets, alleys, boulevards or public ways the city or Shade Tree Committee shall cause the infected tree or wood to be removed or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of pests and disease. Such abatement procedures shall be carried out in accordance with the latest technical and expert methods and plans as may be designated by the Commissioner of Agriculture of the State of North Dakota.

12.0705 Abatement of Nuisances on Private Property

1. A person may not willfully permit any public nuisance as defined in 12.0701 to remain on any premises that person owns or controls. Whenever the City or Shade Tree Committee finds with reasonable certainty that any nuisance as defined in section 12.0701 exists in any tree or wood located on private property, outside of any public way in the city, the owner or person in control of such property on which the nuisance is found shall be notified by certified mail or upon personal service, that nuisance be abated approved within thirty (30) days after receipt of such notice. In the case of an infected tree, if such owner cannot be found, a copy of said notice shall be posted upon said infected tree.

2. The cost of tree planting for replacement of diseased trees on private property will be borne by the private owner.

12.0706 Action Upon Non-Compliance

Upon the failure, neglect, or refusal of any owner or agent so notified of a diseased tree or nuisance tree, shrub or hedge identified in section 12.0701, after receipt of the written notice provided for in 12.0705 above or within five days after the date of such notice in the event the same is returned to the City Post Office Department because of inability to make delivery thereof, provided the same was properly addressed to the last known address of such owner or agent, the City shall cut, destroy, and/or remove the identified nuisance.

12.0707 Cost Assessed to Property

When the City has affected the removal of such tree, shrub or hedge, or has paid for their removal, the actual cost thereof, if not paid by said owner prior thereto, shall be charged and assessed against the property upon which the tree, shrub or hedge was cut, destroyed or removed. 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.

12.0708. Trees allowed on Public Parkways and Berms

1. The following trees may be used for planting in public parkways and berms: Black Walnut, American Basswood Linden, Bur Oak, Hackberry, and Silver Maple. A tree not herein mentioned may not be planted without special permission from the city or Shade Tree Committee.

2. The following trees may **NOT** be planted on the parkways, berms, or boulevards of the City of Forman: Cottonwood and Poplar, Non-resistant Elm, Green Ash, Willow, Box Elder.

3. In order to achieve certain landscape effects, the City may at times, use trees not generally recommended.

4. Tree sizes and spaces of trees shall be in accordance with the regulations of the city.

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CHAPTER THIRTEEN - OFFENSES

ARTICLE 1 - In General

13.0101 Criminal Attempt

1. A person is guilty of criminal attempt if, acting with the kind of culpability otherwise required for commission of a crime, he intentionally engages in conduct which, in fact, constitutes a substantial step toward commission of the crime. A "substantial step" is any conduct which is strongly corroborative of the firmness of the actor's intent to complete the commission of the crime. Factual or legal impossibility of committing the crime is not a defense, if the crime could have been committed had the attendant circumstances been as the actor believed them to be.

2. A person who engages in conduct intending to aid another to commit a crime is guilty of criminal attempt if the conduct would establish his complicity under Section 12.1-03-01, North Dakota Century Code, were the crime committed by the other person, even if the other is not guilty of committing or attempting the crime, for example, because he has a defense of justification or entrapment.

3. Criminal attempt is an offense of the same class as the offense attempted, except that (a) an attempt to commit a class AA felony is a class A felony and an attempt to commit a class A felony is a class B felony; and (b) whenever it is established by a preponderance of the evidence at sentencing that the conduct constituting the attempt did not come dangerously close to commission of the crime, an attempt to commit a class B felony shall be a class C felony and an attempt to commit a class C felony shall be a class A misdemeanor.

13.0102 Criminal Conspiracy

1. A person commits conspiracy if he agrees with one or more persons to engage in or cause conduct which, in fact, constitutes an offense or offenses, and any one or more of such persons does an overt act to effect an objective of the conspiracy. The agreement need not be explicit, but may be implicit in the fact of collaboration or existence of other circumstances.

2. If a person knows or could expect that one with whom he agrees has agreed or will agree with another to effect the same objective, he shall be deemed to have agreed with the other, whether or not he knows the other's identity.

3. A conspiracy shall be deemed to continue until its objectives are accomplished, frustrated, or abandoned. "Objectives" includes escape from the scene of the crime, distribution of booty, and measures, other than silence, for concealing the crime or obstructing justice in relation to it. A conspiracy shall be deemed abandoned if no overt act to effect its objectives has been committed by any conspirator during the applicable period of limitations.

4. It is no defense to a prosecution under this section that the person with whom such person is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.

5. Accomplice liability for offenses committed in furtherance of the conspiracy is to be determined as provided in Section 12.1-03-01, North Dakota Century Code.

6. Conspiracy is an offense of the same class as the crime which was the objective of the conspiracy.

13.0103 Aiding Consummation of a Crime

A person is guilty of the offense of aiding consummation of an offense against the ordinances of this city if he intentionally aids another to secrete, disguise, or convert the proceeds of the offense against the ordinances or otherwise profits from the offense.

13.0104 Public Servants Permitting Escape

A public servant concerned in official detention, as defined by Section 12.1-08-06(3), North Dakota Century Code, pursuant to process issued by a court, judge or magistrate is guilty of an offense against the ordinances of this city if he negligently permits an escape.

13.0105 Criminal Contempt

1. The municipal court has power to punish for contempt of its authority only 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 Chapters 12.1-01 through 12.1-05, and Chapters 12.1-32, North Dakota Century Code, 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. In a subsequent prosecution, the defendant shall receive credit for all time spent in custody and any fine paid by him pursuant to the criminal contempt proceeding.

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 usages of law and equity, including the power of detention.

13.0106 Impersonating Officials

1. A person is guilty of an offense if he falsely pretends to be:

a. A public servant, other than a law enforcement officer, and acts as if to exercise the authority of such public servant.

b. A public servant or a former public servant and thereby obtains a thing of value.

c. A law enforcement officer.

2. It is no defense to prosecution under this section that the pretended capacity did not exist or the pretended authority could not legally or otherwise have been exercised or conferred.

3. An offense under subdivision b or c of subsection 1 is a class A misdemeanor. An offense under subdivision a of subsection 1 is a class B misdemeanor.

13.0107 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 his duty, or in any way interfere with or hinder in the discharge of his duty.

13.0108 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.

13.0109 Discrimination in Public Places

A person is guilty of an offense if, whether or not acting under color of law, he, by force, or threat of force or by economic coercion, intentionally:

1. Injures, intimidates, or interferes with another because of his sex, race, color, religion, or national origin and because he is or has been exercising or attempting to exercise his right to full and equal enjoyment of any facility open to the public.

2. Injures, intimidates, or interferes with another because of his sex, race, color, religion, or national origin in order to intimidate him or any other person from exercising or attempting to exercise his right to full and equal enjoyment of any facility open to the public.

13.0110 Preventing Exercise of Civil Rights - Hindering or Preventing Another Aiding Third Person to Exercise Civil Rights

A person is guilty of an offense if, whether or not acting under color of law, he, by force or threat of force or by economic coercion, intentionally:

1. Injures, intimidates, or interferes with another because he is or is about to exercise his civil rights, or because he has exercised his civil rights.

2. Intimidates or prevents another from aiding a third person to exercise his civil rights.

ARTICLE 2 - Offenses Against Persons

13.0201 Simple Assault

1. A person is guilty of an offense if he:

    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 an offense 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 reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or

    c. The conduct and the injury are reasonably 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 or harmfulness of the conduct charged to constitute the offense; or

    c. It is induced by force, duress or deception.

13.0202 Sexual Assault

A person who knowingly has sexual contact with another, or who causes such other person to have sexual contact with him, is guilty of an offense if:

1. He knows or has reasonable cause to believe that the contact is offense to the other person;

2. He knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct;

3. He or someone with his knowledge has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge intoxicants or other means for the purpose of preventing resistance;

4. 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 him or her.

13.0203 Harassment

1. A person is guilty of an offense if, with intent to frighten or harass another, he:

    a. Makes a telephone call anonymously or in offensively coarse language;

    b. Makes repeated telephone calls, whether or not conversation ensues, with no purpose of legitimate communication; or

    c. Communicates a falsehood by telephone and causes mental anguish.

2. Any offense defined herein and committed by use of a telephone may be deemed to have been committed at either the place at which the telephone call or calls were made, or at the place where the telephone call or calls were made, or at the place where the telephone call or calls were received, and is a class B misdemeanor.

ARTICLE 3 - Offenses Against Property

13.0301 Criminal Mischief

1. A person is guilty of an offense if he:

    a. Willfully tampers with tangible property of another so as to endanger person or property; or

    b. Willfully damages tangible property of another.

2. The offense is a class B misdemeanor if the actor recklessly causes pecuniary loss less than Two Thousand and No/100 Dollars ($2,000.00), or if the actor intentionally causes pecuniary loss of less than One Hundred and No/100 Dollars ($100.00).

13.0302 Tampering with or Damaging a Public Service

A person is guilty of an offense if he negligently causes a substantial interruption or impairment of a public communication, transportation, supply of water, gas, power or other public service by:

1. Tampering with or damaging the tangible property of another;

2. Incapacitating an operator of such service; or

3. Negligently damaging the tangible property of another by fire, explosive or other dangerous means.

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.

13.0304 Criminal Trespass

A person is guilty of an offense if, knowing that he is not licensed or privileged to do so, he 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.

13.0305 Consolidated Theft Offenses

1. Conduct denominated theft in 13.0306 to 13.0308 constitutes a single offense designed to include the separate offense 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 13.0306 to 13.0308 which fairly apprises the defendant of the nature of the charges against him 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 his 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 he must meet.

13.0306 Theft of Property

A person is guilty of theft if he:

1. Knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof;

2. Knowingly obtains the property of another by deception or by threat with intent to deprive the owner thereof, or intentionally deprives another of his property by deception or by threat; or

3. Knowingly receives, retains or disposes of property of another which has been stolen, with intent to deprive the owner thereof.

13.0307 Theft of Services

A person is guilty of theft if:

1. He intentionally obtains services, known by him to be available only for compensation, by deception, threat, false token or other means to avoid payment for the services; or

2. Having control over the disposition of services of another to which he is not entitled, he 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.

13.0308 Theft of Property Lost, Mislaid or Delivered by Mistake

A person is guilty of theft if he:

1. Retains or disposes of property of another when he knows it has been lost or mislaid; or

2. Retains or disposes of property of another when he 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 to a person entitled to have it.

13.0309 Thefts Punishable Under City Ordinances

Theft under 13.0306 to 13.0308 may be punished as an offense against the city ordinances if the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that he was stealing, or which the actor could reasonably have anticipated to have been the property or services involved, does not exceed Two Hundred Fifty and No/100 Dollars ($250.00) and if:

1. The theft was not committed by threat;

2. The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft;

3. The defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of his official duties;

4. The property stolen is not a firearm, ammunition, explosive or destructive device, or an automobile, aircraft or other motor-propelled vehicle;

5. The property does not consist of any government file, record, document or other government paper stolen from any government office or from any public servant;

6. The defendant is not in the business of buying or selling stolen property and he does not receive, retain or dispose of the property in the course of that business;

7. The property stolen does not consist of any implement, paper or other thing uniquely associated with the preparation of any money, stamp, bond or other document, instrument or obligation of the State of North Dakota;

8. The property stolen does not consist of 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.

13.0310 Retail Theft - Shoplifting

1. Definitions. As used in this chapter, unless the context requires otherwise:

   a. An item is "concealed" within the meaning of this chapter if, even though there is some notice of its presence, the item itself is not visible through ordinary observation.

   b. "Full retail value" means the merchant's stated or advertised price of the merchandise.

   c. "Merchandise" means any item of tangible personal property, and specifically includes shopping carts.

   d. "Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, franchisee, or independent contractor or such owner or operator.

   e. "Person" means any natural person or individual.

   f. "Premises of a retail mercantile establishment" includes, but is not limited to, the retail mercantile establishment, any common-use areas in shopping centers, and all parking areas set aside by a merchant, or on behalf of a merchant, for the ehicles 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.

2. Presumption. Any person concealing upon his person or among his 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.

3. Detention of suspect - Procedure. Any peach 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 his 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.

4. Civil and criminal immunity for acts of detention. Any peace officer or merchant who detains any person as permitted under Section 13.0310(3) shall not be held civilly or criminally liable for any cause of action allegedly arising from such detention.

5. Civil remedy against adult shoplifters or the parent of a minor shoplifter. An adult who commits the offense of theft from a merchant shall be civilly liable to the merchant for the retail value of the merchandise, plus exemplary damages of not more than Two Hundred Fifty and No/100 Dollars ($250.00), costs of suit, and reasonable attorney's fees. The parent or legal guardian of an un-emancipated minor who while living with the parent or legal guardian commits the offense of theft from a merchant shall be civilly liable to the merchant for the retail value of the merchandise, plus exemplary damages of not more than Two Hundred Fifty and No/100 Dollars ($250.00), costs of suit, and reasonable attorney's fees. A conviction or plea of guilty for the theft is not a prerequisite to the bringing of a suit hereunder. A parent or legal guardian of an un-emancipated minor shall not be civilly liable under this section if it is determined by the court that one of the principal rationales for the shoplifting was a desire on the part of the minor to cause his parent or legal guardian to be liable under this section.

13.0311 Defenses and Proof as to Theft and Related Offenses

1. It is a defense to a prosecution under 13.0305 and 13.0312 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 conduct constituting an offense in violation of 13.0305 and 13.0312 that:

   a. Stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed;

   b. A facility or an opportunity to engage in such conduct including offering for sale property not stolen as if it were stolen, was provided; or

   c. Mere solicitation that would not induce an ordinary law-abiding person to engage in such conduct was made by a law enforcement officer to gain evidence against a person predisposed to engage in such conduct.

3.

   a. It shall be a prima facie case of theft under 13.0305 to 13.0312 if it is shown that a public servant or an officer, director, agent, employee of, or a person connected in any capacity with a financial institution has failed to pay or account upon lawful demand for money or property entrusted to him as part of his official duties or if an audit reveals a shortage or falsification of his accounts.

   b. It is a prima facie case of theft under this chapter if it is shown that a person, having successfully bid on and obtained an item at an auction, removed the item from the auction premises without paying or making provisions to pay for the item.

   c. Proof of the purchase or sale of stolen property at a price substantially below its fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.

   d. Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business, or without the usual indicia 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.

13.0312 Definitions

For 13.0305 through 13.0311

1. "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 designated person or bearer (i.) where such instrument has been stolen, forged, revoked or cancelled, 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.

2. "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.

3. "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.

4. "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.

5. "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.

6. "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.

7. "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 who 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.

8. "Receiving" means acquiring possession, control or title, or lending on the security of the property.

9. "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.

10. "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.

11. "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 himself initiated the scheme.

12 "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.

13. "Dealer in property" means a person who buys or sells property as a business.

13.0313 Making or Uttering Slugs

1. A person is guilty of an offense if he makes or utters a slug or slugs which do not exceed Fifty and No/100 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 made 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

13.0401 Engaging in a Riot

1. A person is guilty of an offense if he 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.

3. A person shall be convicted under 13.0101 or 13.0102 of attempt or conspiracy to commit an offense under this section only if he engages in the prohibited conduct under circumstances in which there is a substantial likelihood that his conduct will imminently produce a violation of this section. Mere presence at a riot is not an offense under this section.

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 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.

13.0403 Disorderly Conduct

1. A person is guilty of a class B misdemeanor if, with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another person is harassed, annoyed, or alarmed by his behavior, he:

    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, he solicits such contact; or

    g. Creates a hazardous, physically offensive, or seriously alarming condition by any act which serves no legitimate purpose.

13.0404 Prostitution

1. A person is guilty of the offense of prostitution if he or she:

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. "Sexual activity" means sexual act or sexual contact as those terms are defined in North Dakota Century Code Section 12.1-20-02.

b. A "house of prostitution" is any place where prostitution is regularly carried on by a person under the control, management or supervision of another.

c. An "inmate" is a prostitute who acts as such in or through the agency of a house of prostitution.

13.0405 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, infirm or disabled animal of which he is the owner, or of which he has custody, to lie in any street, road or other public place for more than three (3) hours after notice;

f. No person shall willfully instigate, or in any way further, any act of cruelty to any animal or animals, or any act tending to produce such cruelty.

g. Cage any animal for public display except as allowed by North Dakota Century Code Section 36-21.1-02(7);

h. Administer or expose any known poisonous substance or noxious drug, whether mixed with meat or other food or not, which may be eaten or is eaten by any domestic animal.

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 shall be caused or permitted.

13.0406 Persons Less than Twenty-One (21) Years Prohibited from Entering Licensed Premises - Penalty - Exceptions - Referrals to Addiction Facilities

Except as permitted in this section, any person under twenty-one (21) years of age purchasing, attempting to purchase, or being in possession of alcoholic beverages, consuming, or furnishing money to any person for such purchase, or entering any licensed premises where alcoholic beverages are being sold or displayed, except a restaurant when accompanied by a parent or legal guardian, or in accordance with Section 5-02-06, North Dakota Century Code, or if the person is a law enforcement officer entering the premises in the performance of official duty, is guilty of a class B misdemeanor. The court may, under this section, refer the person to an outpatient addiction facility licensed by the State Department of Health and consolidated laboratories for evaluation and appropriate counseling or treatment.

13.0407 Misrepresentation of Age - Penalty - Licensee may keep Book

Any person who misrepresents or misstates that person's age or the age of any other person or who misrepresents his age through presentation of any document purporting to show that person to be of legal age to purchase alcoholic beverages is guilty of a class B misdemeanor. 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 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.

13.0408 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, is guilty of an offense.

13.0409 Public Intoxication - Assistance - Medical Care

A peace officer shall have authority to take any apparently intoxicated person to his home, to a local hospital, or, whenever such person constitutes a danger to himself or others, to a jail for the purposes of detoxification. A duly licensed physician of such local hospital shall have authority to hold such person for treatment up to seventy-two (72) hours. Such intoxicated person shall not be held in jail because of intoxication more than twenty-four (24) hours. An intoxicated person shall 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 such person in a hospital or jail, said 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 such person.

13.0410 No Prosecution for Intoxication

No person shall be prosecuted solely for public intoxication. Law enforcement officers may utilize standard identification procedures on all persons given assistance because of apparent intoxication.

13.0411 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 depictions 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.

ARTICLE 5 - Sentencing

13.0501 Classification of Offenses

Offenses against the ordinances of this city are divided into two (2) classes, as follows:

1. Class B misdemeanors, also referred to as offenses, for which a maximum penalty of thirty (30) days imprisonment, a fine of Five Hundred and No/100 Dollars ($500.00), or both, may be imposed.

2. Infractions, for which a maximum fine of Five Hundred and No/100 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 of state statutes or the ordinances of this or any other North Dakota Municipality 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. Section 40-05-06 of the North Dakota Century Code 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, North Dakota Century Code, for the violation of a city ordinance, nor shall this section limit the use of deferred or suspended sentences pursuant to Chapter 12-53, North Dakota Century Code.

13.0502 Sentencing Alternatives - Credit for Time in Custody - Diagnostic Testing

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 his prosecution;

    b. Probation;

    c. A term of imprisonment, including intermittent imprisonment:

        i. In a county Jail or in a regional corrections center, if convicted of a class B misdemeanor.

        ii. In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.

    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 any other facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.

    Sentences imposed under this subsection shall not exceed in duration the maximum sentences provided in 13.0501 or as provided specifically in an ordinances defining an offense.

    This subsection shall not be construed as not permitting the unconditional discharge of an offender following conviction. Sentences under subdivisions e and f shall be imposed in the manner provided in 13.0308. 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.

2. Credit against any sentence to a term of imprisonment shall be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence is imposed, or as a result of the conduct on which such charge was based. "time spent in custody" shall include 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. Superseded by N.D.R. Crim. P., Rule 35.

4. A court may refer a person convicted of driving while under the influence of an intoxicating liquor or a narcotic drug, prior to sentencing, to an approved treatment facility for diagnosis. Upon receipt of the

results of this diagnosis the court may impose a sentence as prescribed in 9.1901 of chapter 1 or it may sentence the person to treatment in a facility approved by the State Department of Human Services.

5. 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.

6. 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 (30) 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.

7. All sentences imposed shall be accompanied by a written statement by the court setting forth the reasons for imposing the particular sentence. The statement shall become a part of the record of the case.

8. If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of the sentencing, unless, upon motion of the defendant, the court orders the term to commence at some other time.

13.0503 Procedure for Trial of Infraction - Incidents

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 a differentiation between the infraction classification and the offense classification, the term "offense" refers to all violations of the ordinances of this city including infractions.

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.

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 provocations.

4. There were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant's conduct.

5. The victim of the defendant's conduct induced or facilitated its commission.

6. The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury which was sustained.

7. The defendant has no history of prior delinquency or criminal activity, or has led a law-abiding life for a substantial period of time before the commission of the present offense.

8. The defendant's conduct was the result of circumstances unlikely to recur.

9. The character, history and attitudes of the defendant indicate that he is unlikely to commit another crime.

10. The defendant is particularly likely to respond affirmatively to probationary treatment.

11. The imprisonment of the defendant would entail undue hardship to himself or his dependents.

12. The defendant is elderly or in poor health.

13. The defendant did not abuse a public position of responsibility or trust.

14. The defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise cooperated.

Nothing herein shall be deemed to require explicit reference to these factors in a presentence report or by the court at sentencing.

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 should not be imprisoned for nonpayment. Unless 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 9.0208 of the ordinances of the City of Forman.

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 shall constitute a final judgment for all other purposes.

13.0508 Conditions of Probation - Revocation

1. The conditions of probation shall 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 him to do so. The court shall provide as an explicit condition of every sentence to probation that the defendant not commit another offense during the period for which the sentence remains subject to revocation.

2. When imposing a sentence to probation, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:

   a. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip him for suitable employment;

   b. Undergo available medical or psychiatric treatment and remain in a specified institution as required for that purpose;

   c. Attend or reside in a facility established for the instruction, recreation or residence of persons on probation;

   d. Support his dependents and meet other family responsibilities;

   e. Make restitution or reparation to the victim of his conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation or assigned work is a condition of the sentence, 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 possessing a firearm, destructive device or other dangerous weapon unless granted written permission by the court;

   h. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription;

   i. Promptly notify the court of any change of address or employment;

   j. Remain within the jurisdiction of the court, unless granted permission to leave by the court;

   k. Refrain from associating with known users or traffickers in narcotics, marijuana or other controlled substances.

3. When a defendant is sentenced to probation, he shall be given a certificate explicitly setting forth the conditions on which he is being released.

4. The court may, upon notice of the probationer, modify or enlarge the conditions of a sentence to 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 prior to the expiration or termination of the period, the court may, pursuant to the procedure specified in N.D.R. Crim. P. 32(f), continue him on the existing sentence, without modifying or enlarging the conditions, or, if such continuation, modification, or enlargement is not appropriate, may impose any other sentence that was available under 13.0502 at the time of the initial sentencing.

5. Jurisdiction over a probationer may be transferred from the court which imposed the sentence to another court of this state, with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection shall be authorized to exercise all powers permissible under this chapter over the defendant.

13.0509 Restitution or Reparation - Procedures

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 shall be limited to fruits of 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 shall 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 shall be deducted from damage 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, if the court so directs, be filed, 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.

13.0510 Merger of Sentences - Sentencing for Multiple Offenses

1. Unless the court otherwise orders, when a person serving a term of commitment is committed for another offense or offenses, the shorter term or the shorter remaining term shall be merged in the other term. When a person on probation or parole for an offense committed in this city is sentenced for another offense or offenses, the period still to be served on probation or parole shall be merged in any new sentence of commitment or probation. When the court merges sentences under this subsection it shall forthwith furnish the penal facility in which the defendant is confined under sentence with authenticated copies of its sentence, which shall cite the sentences being merged. If the court has imposed a sentence which is merged pursuant to this subsection, it shall modify such sentence in accordance with the effect of the merger.

2. A defendant may not be consecutively sentenced to more than one year.

ARTICLE 6 - Penalties

13.0601 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 Five Hundred and No/100 Dollars ($500.00) or by imprisonment not to exceed thirty (30) days, or both.

CHAPTER FOURTEEN - FRANCHISE 225

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CHAPTER FOURTEEN - FRANCHISE

ARTICLE 1 - Grant of Franchises

14.0101 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.

14.0102 Compliance with Applicable Laws and Ordinances

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

14.0103 Indemnification

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

14.0104 Insurance

Any grantee of a franchise by the city shall carry and keep in force a public liability policy of insurance, insuring the grantee of the franchise and the city against any and all liability in an amount determined by resolution of the city council. The city may demand proof of such insurance coverage in an insurance company licensed to do business in the State of North Dakota.

CHAPTER FIFTEEN - BUILDING CODE 227

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CHAPTER FIFTEEN - BUILDING CODE

ARTICLE 1 - General Building Code

15.0101 Adoption of Code

The erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, uses, height, area and maintenance of buildings or structures in the City of Forman shall meet with the provisions of the rules and regulations of the North Dakota State Building Code, and amendments thereto, a copy of which code is on file with the city auditor and is hereby made a part of this chapter by reference with the exception of the sections affecting local conditions in the City, which may be amended, deleted, or added to, for use and application in the City, and the City hereby adopts said code.

15.0102 Clarification of Code

For the purpose of clarifying the building code adopted above.

l. "Municipality" or "City" shall mean the City of Forman.

2. Whenever the building code shall conflict with the zoning ordinance, the zoning ordinance shall govern.

3. Any reference to fire limits within the City shall mean fire limits set out in Chapter Four.

15.0103 Penalties

The violation of any of the provisions of this chapter shall be punishable as provided in Chapter Two of these ordinances.