

**Ordinances - City of Hankinson, North Dakota**

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**ENACTING ORDINANCE**

**ORDINANCE NO 2002-1**

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

BE IT ORDAINED BY THE CITY COUCIL OF THE CITY OF HANKINSON, NORTH DAKOTA:

Section 1.2002 Revised Ordinances of the City of Hankinson, Richland County, North Dakota. This ordinance and the ordinances hereby adopted shall be known and cited as the 2002 Revised Ordinances of the City of Hankinson.

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

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 All ordinances of the City adopted prior to the date of this enacting ordinance are hereby repealed except the following ordinance which shall continue in full force and effect regardless of the fact that they are herein omitted:

1. All existing ordinances granting franchises, if omitted from these revised ordinances.
2. All existing ordinances creating contract obligations on the part of the City, which obligations shall remain binding until fully performed by the City.
3. All existing ordinances establishing special improvement districts, or street grades.
4. All of the existing ordinances levying taxes for any years under the provisions of any law relating to the issuance of revenue bonds, municipal bonds, warrants, certificates of indebtedness, or other municipal obligations, whether general or special.
5. All salary and appropriation ordinances.
6. The incorporation herein of any of the ordinances of the City granting franchises shall not operate to repeal the same in their original form nor to extend the term of any franchise beyond that fixed in that ordinance granting the same which in reenacted herein.
7. Zoning Classifications of all heretofore zoned areas lying within the city limits of the City of Hankinson as adopted and set forth on the City's Zoning map.
8. Any ordinance(s) relating to the establishment of the Hankinson Park District.
9. Any and all ordinances adopted in said 2002 Revised Ordinances of the City of Hankinson by reference, although the same are not set forth in full therein.
10. All existing ordinances establishing, extending or reducing the city limits of the City, if omitted from these revised ordinances.
11. All ordinances establishing or setting fees or rates for City services including, but not limited to water, sewer and garbage, which are not specifically established herein or otherwise specifically established by resolution if authorized herein, but not yet adopted.

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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 2002 Revised Ordinances of the City of Hankinson 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 2002 Revised Ordinances of the City of Hankinson.

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 2002 Revised Ordinances of the City of Hankinson, 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 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 or 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.

ATTEST:

Joseph O'Meara, Mayor

Sandra Riemann, Auditor

First Reading: July 1, 2002

Second Reading and Final Passage: July 22, 2002

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**CHAPTER ONE**

**GOVERNMENT ORGANIZATION**

**Article 1 – Jurisdiction**

1.101 Over persons and property:

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

1.102 Defining City Limits

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

1.103 Division of City into Wards

- a. Ward Boundaries - The City of Hankinson from and after July 1, 2008 shall consist of and be comprised of one ward to be known as the City of Hankinson Ward.
- b. City Elections - Every resident who is qualified to vote therein may vote at all municipal elections held with all persons voting in the City of Hankinson Ward.
- c. That the Mayor and all City Council Members shall be elected at large at all regular and special city elections and may be appointed at large to fill all vacancies after July 1, 2008.
- d. Except as otherwise provided by City Ordinance, the City elections will be conducted in accordance with the laws of the State of North Dakota governing the same as amended.

1.104 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.

In any case where there shall be a violation of any city ordinance for which no penalty is provided, the person violating the same shall be subject to a fine of not more than Five Hundred Dollars (\$500.00) for each offense; a person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of the city ordinances is committed, continued or permitted.

This section shall not be construed to prohibit the utilization of the sentencing alternatives, other than a fine or imprisonment, provided by NDCC Section 12.1-32-02 for the violation of a City ordinance, nor shall this section limit the use of deferred or suspended sentences pursuant to NDCC Chapter 12.1-32.

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### **Article 2 – Governing Body – City Council**

#### 1.201            Regular Meetings

The City Council shall meet regularly at the City Hall on the first Monday of each month at the hour of 6:00 p.m., unless some other time and place shall be specifically fixed by the council. The council shall meet in addition thereto, as often as required by Section 40-08-19 of the North Dakota Century Code.

#### 1.202            Special Meetings

Special meetings may be called at any time by the mayor or any three (3) members of the governing body to consider matters mentioned in the call of such meetings. Notice of any special meeting shall be given to each member of the governing body at least three hours before the time of the meeting.

#### 1.203            Meeting to be Public – Journal of Proceedings to be Kept

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

#### 1.204            Quorum

The provisions of Section 40-06-03 of the North Dakota Century Code and all subsequent amendment shall be and are hereby incorporated by reference in this ordinance.

A majority of the members of the governing body of a municipality shall constitute a quorum to do business but a smaller number may adjourn from time to time. The governing body may compel the attendance of absentees under such penalties as may be prescribed by ordinance, and may employ the police of the municipality for that purpose.

#### 1.205            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.

#### 1.206            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 or Order. (Source: North Dakota Century Code Section 40-06-05)

### **Article 3 – Elective Officers**

#### 1.301            City Council – Who Constitutes

The governing body of the City shall be the City Council which shall be composed of the mayor and council members. The mayor and six council members shall be elected as provided by law. (Source: North Dakota Century Code Sections 40-08-14)

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### 1.302 Term of Office of Council Members

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

### 1.303 Mayor – Qualifications – Term

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

### 1.304 When President and Vice President of a Council are Elected

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

### 1.305 Vacancies on Council or in Office of Mayor – How Filled

If a vacancy occurs in the office of council member by death, resignation or otherwise, City Council may call a special City Election to fill such vacancy for the unexpired term or may, after fifteen days of the date of such vacancy appoint a person to fill such vacancy until the next City Election, at which election the unexpired terms 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 pm of the fifteenth (15<sup>th</sup>) day of the date of such vacancy or of the vacancy being filled by appointment. If the petition is mailed, it shall be in possession of the council or its representative before 4:00 pm on the fifteenth (15<sup>th</sup>) day after the vacancy occurs or after the vacancy was filled by appointment. (Source: North Dakota Century Code Section 40-08-08)

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

### 1.306 Absence or Disability of Mayor – Who to be Acting Mayor

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

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1.307            Mayor to Preside at Council Meetings – Voting Power of Mayor

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

1.308            Mayor may Remove Appointive Offices – Reasons for Removal to be Given

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

1.309            Mayor to Perform Duties Prescribed by Law – Enforced Laws and Ordinances

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

1.310            Inspection of Books, Records and Papers of the City by Mayor

The mayor, at any time, may examine and inspect the books, records and papers of any agent, employee or officer of the City. (Source: North Dakota Century Code Section 440-08-23.)

1.311            Message to Council

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

1.312            Mayor May Call on Male Inhabitants to Aid in Enforcing Ordinances

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

1.313            Mayor May Administer Oath

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

1.314            Compensation of Alderman

The compensation for service of each council member shall be One Hundred Dollars (\$100.00 ) per month providing he/she has actively attended a session during the month, Forty Dollars (\$40.00) for each day actually attended by him/her as a member of the Board of Equalization, and Forty Dollars (\$40.00) for each special meeting of the Council attended during the month. Payment shall be made semi-annually in June and December and not subject to the limitations of Section 40-08-07 of the North Dakota Century Code. No compensation shall be made for missed meetings. Alderman must be in attendance at meeting for at least one hour to be paid for meeting unless otherwise approved by the Council. This ordinance is adopted pursuant to Home Rule powers of the City of Hankinson.

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### 1.315 Mayor, Compensation of

The Mayor shall receive as compensation the sum of One Hundred Fifty Dollars (\$150.00) per month providing he/she has actually attended a session during the month, Forty Dollars (\$40.00) for each day actually attended by him/her as a member of the Board of Equalization, and Forty Dollars (\$40.00) for each special meeting of the Council attended during the month. Payment shall be made semi-annually in June and December and not subject to the limitations of Section 40-08-07 of the North Dakota Century Code. No compensation shall be made for missed meetings. Mayor must be in attendance at meeting for at least one hour to be paid for meeting unless otherwise approved by the Council. This ordinance is adopted pursuant to Home Rule powers of the City of Hankinson.

## **Article 4 – Elective Officers Other Than Governing Body**

### 1.401 Municipal Judge - Appointed

The City of Hankinson, acting pursuant to its Home Rule Powers, hereby provides that the Municipal Judge for the City of Hankinson shall be appointed by the Mayor of the City and such appointment shall be confirmed by the City Council. Such appointment shall be for a term of two (2) years or such other term as is otherwise specified by the City Council.

An alternate Municipal Judge may be appointed to serve when the Municipal Judge is unable to serve due to temporary absence, interest, disqualification, or disability. The alternate Municipal Judge must be compensated at a rate set by the City Council and shall possess the qualifications of a Municipal Judge.

All of the other sections of Article 4 of Chapter One remain in full force and effect.

### 1.402 Report to the City Council

It shall be the duty of the municipal judge to make a full report under oath, of all proceedings in the actions or matters before him in which the City is a party, or interested therein, to the governing body of the City 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.

### 1.403 Contents of Report

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

### 1.404 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.

### 1.405 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.

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### 1.406            Duties of Municipal Judge

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

## **Article 5 – Appointive Offices**

### 1.501            Appointive Officers in Council Cities

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

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

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

### Committees

At the organizational meeting of the City Council held in June of each even number year, the mayor shall appoint three City Council members to each of the following committees:

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

The mayor shall select one of the three appointed as Chairperson of the committee. Each City Council member shall serve on only two of such committees. The committees have the authority to make decisions to rectify emergency situations that might incur expenses for the City without consulting of the entire council.

The mayor will be the representative to the drain board with Brightwood Township.

The mayor shall appoint a representative from the Council to the District Fire Board.

### 1.502            Terms 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.

### 1.503            Officers Commissioned by Warrant – City Auditor to Receive Certificate of Appointment

All officers elected or appointed, except the city auditor, council members 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. (Source: North Dakota Century Code Section 40-14-06)

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### 1.504            General Duties of the City Auditor

It shall be the duty of the city auditor to issue the calls for all special meetings of the City Council when requested to do so by the mayor or any three (3) members of the City Council. (Source: North Dakota Century Code Section 40-08-10) He shall also keep a full and complete record of all meetings of the City Council and shall keep a book titled as the "Ordinance Book" and shall record therein at length all ordinances of the City. He shall also keep a book titled as the "Special Assessment Book" in which he shall keep all records of special assessments. All such books shall have full and complete indexes of the contents thereof. He shall report to the City Council at the end of every month a list of all warrants, interest coupons, bonds or other evidence of indebtedness which may have been redeemed or paid by him during the month and he shall duly give to the council a copy of his receipt therefore. He shall further handle all correspondence, permits and 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. (Source: North Dakota Century Code Section Chapter 40-16)

### 1.505            Building Inspector

### 1.506            General Duties of City Attorney

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

### 1.507            General Duties of Other Appointive Officers

All other appointive officers shall perform such duties as directed by the Board of 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**

### 1.601            Bonds of Municipal Officers and Employees

The following officers and employees of the City shall be bonded in the sums 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 and Chapter 26.1-21 of the North Dakota Century Code

### 1.602            Oaths of Municipal Officers

Every person appointed to any municipal office, before he enters upon the discharge of duties thereof, shall take and subscribe the oath of office prescribed for civil officers and, except in the case of the auditor, shall file the same with the city auditor within 10 days after notice of his election or appointment has been given. The oath of the auditor shall be filed in the office of the county auditor. Refusal to take the oath of office

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shall also be deemed a refusal to serve and, therefore, a failure to qualify for the office pursuant to NDCC 44-02-01. (Source: North Dakota Century Code Section 40-13-03)

### 1.603                    Salaries of Elected Officers Fixed by Ordinance or Resolution

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

### 1.604                    Meals and Lodging – Amount Allowed

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

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

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

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

### 1.605                    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 adopted by such other members, and entered in the official minutes of the governing body, to be necessary for the reason that the services or property are not otherwise available at equal cost. (Source: North Dakota Century Code Section 40-13-05)

### 1.606                    Retiring Officer to Turn Over Books

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

### 1.607                    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.

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

### 1.608            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**

### 1.701            Competitive Bidding Requirements

All purchase of and contracts for supplies and contractual services with a cost in excess of one hundred thousand dollars shall be based on competitive bids.

### 1.702            Procedure

All supplies and contractual services except as otherwise provided herein, when the estimated cost thereof shall exceed \$100,000.00 shall be purchased from the lowest responsible bidder after due notice inviting proposals. Due notice shall be given by advertising for the sale or purchase of the property or service by giving written notice in the official newspaper of the City for three (3) consecutive weeks and the opening of the bids so received not less than 21 days after the first publication thereof. The lowest responsible bidder shall be the 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.

### 1.703            Open Market Purchases – Emergency

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

### 1.704            Accounts Against City to be in Writing

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

### 1.705            Further Verification May be Required

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

## **Ordinances - City of Hankinson, North Dakota**

### 1.706                    Conveyance, Sale, Lease or Disposal of Property

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

When the property to be disposed of, whether real property or personal property is estimated, by the governing body of the municipality to be of a value of less than \$25,000.00, such property may be sold at private sale upon the proper resolution of the governing body. Real property of any value may be sold at private sale to a development corporation for the purposes of residential development within the City if two-thirds of the members of the City Council determine that such a private sale will benefit the future development and growth of the City. In all other cases, such property may be sold only at public sale or as provided under Section 40-11-04.2 of the North Dakota Century Code (Source: North Dakota Century Code Section 40-11-04). Bids for the purchase or lease of real property belonging to the municipality, whether or not advertisement therefore has been made, shall be made directly to the governing body and submitted to the city auditor, who shall present any and all such bids to the governing body at its next regularly scheduled meeting. When specific statutory provisions contained in the North Dakota Century Code provide for a procedure which is in conflict with this section, governing the conveyance, sale, lease or disposal of real property, this section shall supersede insofar as it is in conflict with such state law. Said statutory procedures include the following:

- a. Lease of airports or landing fields, or portions thereof shall be under authority granted in Section 2-02-15, NDCC. Said lease shall further be in compliance with regulations and directives appropriate federal agencies.
- b. Conveyance of right of way for any state highway shall be as provided in Section 24-01-46, NDCC.
- c. 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.
- d. Conveyance of property to a municipal parking authority shall be as provided in Section 40-61-05, NDCC.
- e. Lease of public buildings or portions thereof shall be as provided in Chapter 48-08, NDCC.
- f. Granting of concessions for cafes, restaurants and confectioneries in public buildings or on public grounds shall be as provided in Section 49-09 NDCC.
- g. 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.

### 1.707                    Real Property Transfer Requirements

Except as explicitly provided for in Section 1.706, the provisions of Sections 40-11-04.01 and 40-11-04.2 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

These amendments are enacted pursuant to the City's Home Rule powers.

## Ordinances - City of Hankinson, North Dakota

### Article 8 – Municipal Elections

#### 1.801 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 no person may vote in any place other than the ward of which he is a resident.

#### 1.802 Elections in Council Cities – Polling Places – Polls Open – Notice

The provisions of Section 40-21-02 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

#### 1.803 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.

#### 1.804 Compensation of Inspectors, Judges and Clerks at Municipal Elections

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

Each inspector, judge or clerk of any regular or special municipal election shall receive compensation as determined for election officials in Section 16.1-0505. The amounts determined to be due election officials at municipal elections shall be paid from the funds of the municipality holding the election. In the event a special municipal election is held on the same date as a statewide, district wide or county wide 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.

#### 1.805 Reference to Party Ballot or Affiliation in Petition of Candidate for Municipal Office – Prohibited

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

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

## **Ordinances - City of Hankinson, North Dakota**

1.806                    Petition for Nomination of Elected Official in Municipalities – Signatures Required – Contents

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

A candidate for any public office in the City may be nominated by filing with the city auditor, at least sixty days and before four pm on the sixtieth day prior to the holding of the election, a petition signed by not less than ten percent of the number of qualified electors who voted for that office in the last City Election. Qualified electors who sign such a petition shall reside within the ward for 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 the officer before 4 pm on the sixtieth day prior to the holding of the election. In no case shall more than three hundred signatures be required, and such signatures may be on separate sheets of paper. Each qualified elector who signs a petition shall add to the petitioner's mailing address. If a City election is not held in conjunction with a state or county election, a candidate may be nominated by filing the required petition with the city auditor at least thirty-three days and before four pm on the thirty-third day before the holding of the election.

1.807                    Ballots in Municipalities – Makeup

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

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

1.808                    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.

1.809                    Counting Ballots – Returns – Canvass of Returns by Governing Body of Municipality – Agreement with the County

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

The ballots 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 pm 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.

## Ordinances - City of Hankinson, North Dakota

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

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

The provisions of Section 40-21-13 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The manner of conducting, voting at, keeping poll lists and canvassing votes at municipal elections, recounts and contests of the results of such elections shall be governed, as nearly as possible and except as otherwise provided in this chapter, by the laws of this state applicable to elections and contests in the case of county officers. Absent voters' ballots must be available in municipal elections in accordance with the provisions of Chapter 16.1-07 as amended.

1.811            City Auditor to Notify of Election or Appointments

The provisions of Section 40-21-14 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The city auditor, within five days after the result of an election is declared or the appointment of an officer is made within the municipality, shall notify each person elected or appointed to municipal office of his election or appointment. Within the same period of time, the city auditor shall also notify the state Supreme Court of the election or appointment of any municipal judge or alternate judge.

1.812            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.

1.813            Special Elections Conducted in Same Manner as General Election

The provision 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 elections of several precincts in the same manner and the returns shall be made in the same form and manner as at regular municipal elections.

1.814            Highest Number of Votes Elects in Municipal Election – Procedure on Tie Vote

The provisions of Section 40-21-17 of the North Dakota Century Code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The person having the highest number of votes for any municipal office shall be declared elected to such office. In case of a tie vote in the election of any municipal officer, a recount must be conducted pursuant

## **Ordinances - City of Hankinson, North Dakota**

to Section 16.1-16-01 of the North Dakota Century Code. If a recount results in a tie vote, the choice shall be determined by a coin flip in the presence of the governing body of the municipality and in such manner as it shall direct.

### **Article 9 – Records Management Policy**

#### 1.901            Adoption of Policy

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

#### 1.902            Amendments, Deletions, Additions to City Records Management Manual

### **Article 10 – Housing Authority Financing**

BE IT ORDAINED, by the City Council of the City of Hankinson, North Dakota, that effective January 3, 2011, that the City of Hankinson will provide enterprise funding to the Housing Authority of the City of Hankinson to help finance renovation, remodeling and/or moving housing into the city limits.

## Ordinances - City of Hankinson, North Dakota

### CHAPTER TWO

#### ORDINANCES

##### Article 1 – Procedure

###### 2.101 Enacting Clause for Ordinances

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

###### 2.102 Procedure in Passing Ordinances

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

###### 2.103 Yea and Nay Vote on Passage – When Required

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

###### 2.104 Reconsideration or Rescinding Vote

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

###### 2.105 Publication of Ordinances

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

###### 2.106 Effective Date of Ordinances

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

## **Ordinances - City of Hankinson, North Dakota**

### 2.107            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.

### 2.108            Enactment and Revision of Ordinances

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

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

### 2.109            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.

### 2.110            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 warranty shall be taken without unnecessary delay before the proper officer to be tried for the alleged offense.

### 2.111            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.

## **Ordinances - City of Hankinson, North Dakota**

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, in 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.

### 2.112 Costs of Prosecution

If permitted by Federal and State law, in every case of conviction of a violation of any ordinance, or any part thereof, the cost of prosecution may be assessed against the person convicted as part of the punishment.

### 2.113 Judgment of Conviction

In all trials for offenses under the ordinances of the City, if the defendant is found guilty, the municipal judge shall render judgment accordingly. It shall be a part of the judgment that the defendant stands committed until such judgment is complied with, and, at the discretion of the municipal court, he may be required to work for the municipality at such labor as the defendant's strength and health will permit under the provisions of Section 40-18-12 of the North Dakota Century Code.

### 2.114 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.

### 2.115 Fines and Forfeitures for Violation of Ordinances Paid into Municipal Treasury

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

### 2.116 Deferring or Suspending Sentence

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

**Ordinances - City of Hankinson, North Dakota**

**CHAPTER THREE**

**PUBLIC PLACES AND PROPERTY**

**Article 1 – Construction and Repair**

3.101 Supervision

All construction maintenance and repair of public streets, alleys, sidewalks and other public ways shall be under the supervision of the city engineer or street chairman. 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.

3.102 Construction and Repair – Permits

It shall be unlawful to construct, reconstruct, alter, grade or repair any public street, sidewalk, driveway, curbs or gutters without having first secured a permit therefore, unless said work is performed by the City contractor. Applications for such permits shall be made to the Auditor and shall state the location of the intended pavement or repair, the extent thereof and the person or firm who is to do the actual construction work. No such permits shall be issued except where the work will conform to the ordinances of the City.

3.103 Bond

Each applicant shall file a bond 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.

3.104 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.

3.105 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 chairman 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 chairman, the city engineer or street chairman shall report the facts to the governing body, which shall then proceed as provided in Chapter 40-29 of the North Dakota Century Code.

3.106 Application for Permit

An applicant for a permit hereunder shall file with the city engineer or city auditor an application showing:

- a. Name and address of the owner, or agent in charge, of the property abutting the proposed work area.
- b. Name and address of the party doing the work.
- c. Location of the work area.
- d. Attached plans or sufficient sketches showing details of the proposed alterations.
- e. Estimated cost of the alterations.

## **Ordinances - City of Hankinson, North Dakota**

- f. Such other information as the city engineer or street chairman shall find reasonably necessary to the determination whether a permit should be issued hereunder.

### 3.107                    Standards for Issuance of Permit

The city engineer or street chairman shall issue a permit hereunder when it is determined:

- a. That the work will be done according to the standard specifications of the City for public work of like character.
- b. 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.
- c. That the health, welfare and safety of the public will not be unreasonably impaired.

### 3.108                    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 chairman. All sidewalks shall meet the following requirements:

- a. All sidewalks shall be constructed of reinforced concrete.
  - b. All sidewalks in residential areas shall be constructed not less than four (4) feet in width and shall have a minimum slope one-fourth (1/4) inch per foot from the inside edge toward the street.
  - c. All sidewalks shall be of concrete and of at least four (4) inches in thickness.
  - d. The outside edge of the sidewalks shall not protrude over 6" above the edge of the curb.
  - e. If a portion of the sidewalk is to be replaced between existing sidewalk that is in good shape the replacement shall conform to the measurements of the existing sidewalk.
1. All sidewalks shall be laid out as follows:
    - a. In location where the right-of-way is sixty (60) feet or less the sidewalks shall be constructed on the property line.
    - b. In locations where the right-of-way is greater than sixty (60) feet the sidewalk shall be constructed eighteen (18) inches out from the property line.
    - c. In no case in the residential district shall the sidewalk be constructed adjacent to the curb unless right-of-way and topographic features require it.
    - d. Notwithstanding any other provision herein all sidewalks shall be set out so that they are in conformity with existing sidewalks to which they may attaché.
  2. 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.

### 3.108(a)                    **RESOLUTION 2009-06**

#### **ORDINANCE 3.108a CREATING A SIDEWALK DISTRICT WITHIN THE CITY LIMITS OF THE CITY OF HANKINSON**

BE IT ORDAINED by the City Council of the City of Hankinson, North Dakota to create a sidewalk district within the city limits of the City of Hankinson, Richland County, North Dakota to ensure specified areas are up to code, safe and well maintained for pedestrian traffic. Sidewalk District shall include all streets and avenues as depicted on attached map.

## **Ordinances - City of Hankinson, North Dakota**

BE IT FURTHER ORDAINED that Sidewalk District may be expanded and amended at any time at the discretion of the City Council if more than 50 percent of property owners outside of Sidewalk District, affected by new proposed sidewalk, wish to be included.

### 3.109                    Materials and Manner of Construction

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

### 3.110                    City Contactor

The auditor shall receive bids for the construction of sidewalks, driveways, curb and gutter and paving repairs as the City may find necessary to have done. Such bids shall be made upon blanks furnished by the city engineer or street chairman and shall conform to specifications filed with the city auditor by the city engineer or street chairman and approved by the governing body.

All sidewalks, driveways, curb and gutter and alley returns lying between the property line and the abutting street hereafter constructed within the City must conform to this chapter, and the specifications filed with the city engineer, and approved by the governing body must specify the details with respect thereto. When any contract for the construction of sidewalks, driveways, curb and gutter, relaying of block walks and paving repairs is about to be entered into by the City in accordance with the provisions of the laws of this state, the contractor to whom any such contract shall be awarded shall be required, before such contract is entered into, to give in addition to the contract bond required by the laws of the state of North Dakota, an additional bond in an amount to be determined by the governing body, running to the City, conditioned that said contractor shall maintain and keep in good repair, for a period of two (2) years from date of final acceptance all sidewalks, driveways, curb and gutter and paving repairs so constructed by such contractor under the terms of such contract, and that in case of default under the part of such contractor to so maintain and keep such improvements in good repair made by him for the said period of two (2) years, or in case they shall within said time begin to crumble or disintegrate or become cracked or broken to such extent that, in the opinion of the city engineer or street chairman, the same is not a satisfactory compliance with the specifications for the construction thereof, then the city engineer or street chairman may direct that such sidewalks, driveways, curb and gutters or paving repairs be immediately repaired or re-laid in whole or in part as he shall deem best, and the contractor shall immediately cause the same to be repaired or failure so to repair or to relay the same, the City at any time within said two (2) year period or thereafter, may cause the same to be repaired or re-laid, and the cost thereof whether done by the City directly or through a contract, may be recovered against said contractor and the surety upon such bond.

## **Article 2 – Use and Care of Streets, Sidewalks and Public Places**

### 3.201                    Obstructions & Signs Prohibited – 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, including right-of-ways except as may be specified by ordinance or by the city engineer or street chairman. Such obstructions include, but are not limited to, signs advertising meals, benefit events, auctions, business events, garage sales and other events.

Any person violating the provisions of this section shall be issued a warning ticket by Law Enforcement. Person violating the provisions of this section for second and succeeding offences shall be fined not less than Fifty Dollars (\$50.00) per offence..

### 3.202                    Destruction of City Property – Prohibited \_ Penalty

## **Ordinances - City of Hankinson, North Dakota**

It shall be unlawful for any firm, person or corporation to willfully and without just cause or excuse, to injure, deface or destroy any property owned by the City or held by the City for public use. Any person violating the provisions of this section shall be guilty of an offense and be fined not less than twenty-five dollars (\$25.00), nor more than one thousand dollars (\$1,000.00) or be imprisoned in the City jail for not to exceed thirty (30) days or by both such fine and imprisonment.

### 3.203            Encroachments

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

### 3.204            Openings

It shall be unlawful to construct or maintain any opening or stairway in any public street or sidewalk or alley without a permit from the governing body. All such lawfully maintained openings shall be guarded by a suitable strong cover or railing to be approved by the street chairman or the city engineer or the official who supervises public improvements.

### 3.205            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 chairman of Streets and Public Improvements, so that no injury shall be done either to the poles or wires or to the shrubs and trees by their contact.

### 3.206            Littering – Prohibited

No person, firm or corporation shall throw or deposit or cause to be thrown or deposited any garbage, grass, grass clippings, tree branches, fallen leaves, weeds, glass bottles, boxes or rubbish of any kind upon any street, curb or alley in the City.

### 3.207            Burning

It shall be unlawful for any person, firm or corporation to burn any leaves, paper, rubbish or other substances within the city limits of Hankinson.

### 3.208            Distributing Hand Bills, Etc.

The scattering, throwing or placing of bills, posters, advertising matter, hand bills and other similar items on private premises, sidewalks, streets or other public places in the City must be done in such a manner so as to prevent the items from being blown about these premises, sidewalks, streets or other public places. Any person or entity violating the provisions of this section shall be guilty of an infraction.

## **Ordinances - City of Hankinson, North Dakota**

### 3.209            Heavy Vehicles

No person, firm or corporation shall move, cause to be moved over the paved streets, sidewalks, crosswalks, culverts, bridges and viaducts within the City any engine, tractor, wagon, truck or other vehicle, object or thing which will tend to injure the paving, sidewalks, crosswalks, culverts, bridges or viaducts over which the same are transported, or which exceeds in weight, 16,000 pounds per axle and exceeds 750 pounds per inch of tire widths, or any vehicle to the wheels of which are attached spurs, bars, angle irons or cleats which will tend to mar or deface the paving, sidewalks, crosswalks, culverts, bridges or viaducts, except under the direction and permission of the governing body and, in addition thereto, shall pay or cause to be paid to the 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.

### 3.210            Removal of Snow and Ice from Sidewalk

It shall be, and hereby is declared to be, the duty of the owner or occupant of each lot in the City to remove from the sidewalk in front of or along the same, any ice or snow which forms, accumulates or obstructs such sidewalk, within twenty-four (24) hours after the ice forms or the snow ceases to fall thereon. Where the ice accumulated is of such character as to make the removal thereof practically impossible, the sprinkling of ashes or sand thereon within the time specified for removal in such manner as to make such sidewalk safe for the travel of pedestrians thereon, shall be deemed a compliance with the provisions of this article.

### 3.211            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 there from 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 chairman of the City, or ashes or sand sprinkled thereon, and the necessary expenses shall be charged against the abutting property by special assessment in the manner prescribed by law.

### 3.212            Assessments by Street Chairman When Work is Done by City

Whenever the street chairman shall, pursuant to Section 3.0211 of this article, remove or cause to be removed any snow or ice from any sidewalk or sidewalks along or in front of any building, grounds or premises, he shall assess the cost of the same against said property, and on or before the first day of May in each year, make and file in the office of the city auditor a list of the property chargeable with such expense, the actual cost and expense of such removal and a description of the lot, lots or parcels of land along or in front of which is the sidewalk or sidewalks from which snow or ice has been removed. (Source: North Dakota Century Code Section 40-29-18)

### 3.214            Street Cleaning – Snow Removal

Whenever it shall be necessary that streets, alleys or public ways in the City shall be cleared of snow or ice or be cleaned by the use of street sweepers or other methods of cleaning such streets, or for marking for traffic purposes, the ordinance 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

## Ordinances - City of Hankinson, North Dakota

the said parking ordinances are suspended. Time frame for such parking shall be from 1:00 am to 7:00 am from October 1 to April 1.

It shall also be unlawful for anyone to push or deposit snow from residential or commercial property on to streets, alleys or public ways. Snow shall be prohibited from being pushed or deposited by anyone other than City personnel on to City street and alley right-of-ways as those areas are used for the sole purpose of the City's storage of snow and ice.

It shall be property owner's responsibility to ensure that such actions as described in this ordinance 3.124 do not occur. However if such infraction does occur, first offence shall be a written warning by law enforcement to abate the nuisance. Penalty for property owner for each succeeding offence shall be a citation from law enforcement of \$100 for each day that such infraction exists.

### 3.215 Notice – Snow Removal or Street Cleaning (*repealed April 2, 2007*)

### 3.216 Impounding Vehicles and Equipment

Whenever any parked automobile, truck, machinery, vehicle or equipment shall be found in any place prohibited by these restrictions, and during the hours as provided herein, the same shall be impounded by the City at a place to be provided and it shall be unlawful for any person, firm or corporation to remove or attempt to remove any truck, automobile, machinery, vehicle or equipment from the place where impounded without first paying the cost of such impounding.

### 3.217 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.

### 3.218 Excavations – Permit

It shall be unlawful for any person, firm or corporation, excluding those licensed by the City, to tunnel under or to make any excavation in any street, alley or other public place in the City without having obtained a permit as is herein required, or without complying with the provisions of this article or in violation of or variance from the terms of any such permit.

### 3.219 Guarding or Excavations and Openings

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

### 3.220 Application for Excavation Permits

Applications for excavation permits shall be made to the Auditor, and shall describe the location of the intended excavation or tunnel, the size thereof, the purpose therefore, and the person, firm or corporation doing the actual excavating work and the name of the person, firm or corporation for whom or which the work is being done, and shall contain an agreement that the applicant will comply with all ordinances and laws relating to the work.

## **Ordinances - City of Hankinson, North Dakota**

### 3.221 Bond – Excavations

No excavation permit shall be issued unless and until the applicant therefore has filed with the Auditor a bond in the sum set forth by resolution, conditioned to indemnify the City for any loss, liability or damage that may result or accrue from or because of the making, existence or manner of guarding or constructing any such tunnel or excavations. Such bond shall have as surety a corporation licensed to do business in the state as a surety company.

### 3.222 Deposit – Excavations

No such permit shall be issued unless and until the applicant therefore has deposited with the Auditor a cash deposit or bond in the sum set forth in resolution if no pavement is involved, and if the excavation is in a paved area the sum set forth in resolution to 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.

### 3.223 Making Excavations – Notice

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

No injury shall be done to any pipes, cables or conduits in the making of such excavations or tunnels, and notice shall be given to the persons maintaining any such pipes, cables or conduits or to the City department or officer charged with the care thereof, which are or may be endangered or affected by the making of any such excavation or tunnel before such pipes, cables or conduits shall be disturbed. Notice shall be given as required by Chapter 49-23 of the North Dakota Century Code.

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

### 3.224 Restoration of Excavations

Any person, firm or corporation making any excavation or tunnel in or under any public street, alley or other public place in the City shall restore the surface to its original condition if there is not pavement there. Refills shall be properly tamped down, and any bracing in such tunnel or excavation shall be left in the ground.

Any opening in a paved or improved portion of a street shall be repaired and the surface re-laid by the applicant, in compliance with the ordinances of the City and under the supervision of the street chairman or city engineer.

### 3.225 Supervision of Excavation Work

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

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### 3.226 City Parks – Hours

All City parks shall have established hours of public access. The hours shall be from 7:00 am to 11:00 pm each day. Notice of the same may be published in the official newspaper or posted at the public parks. Any variance from the above hours or use shall be under special permission granted by the Park Board.

### 3.227 City Buildings, Equipment and Vehicles – Smoking

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

### 3.228 Discharges – Dewatering Wells and/or Sump Pumps

Whenever, the judgment of the governing body or of the Street Chairman of the City, it shall be necessary to discontinue the discharge of water from dewatering wells and/or sump pumps on, across, under or into the City sidewalk and/or City street systems in order to make sidewalks and streets safe for travel for pedestrians and vehicles and to protect the same from damages due to freezing and thawing, it shall be unlawful for any property owner or tenant of any property to operate a dewatering well and/or sump pump, which discharges or causes water to flow from such well or pump on, across, under or into the city sidewalk or city street system including alleyways, from October 1 through April 1 of each year.

Penalty: Any person violating the provisions of this section shall be issued a warning ticket for the first offence. The penalty for each violation thereafter shall be an infraction and conviction thereof shall be fined in an amount not exceeding Five Hundred Dollars (\$500.00) for each violation. Each day in which any such violation shall continue shall be deemed a separate offense.

## **Article 3 – Unclaimed and Abandoned Property**

### 3.301 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.

### 3.302 Seizure of Unclaimed or Abandoned Property

Whenever any unclaimed or abandoned personal property is found upon the streets, alleys or other public ways of the City, the same shall be seized and possession thereof taken by any police officer, street chairman or other officer of the City.

### 3.303 Holding of Personal Property – Notice of Sale

Abandoned personal property shall be held by the City for a period of not less than thirty (30) days after its seizure as provided herein, and after the expiration of said thirty (30) days the city auditor shall cause notice to be published in the official newspaper of said City, said notice specifying and stating the description of the property so seized and held, the location of the place where the same was seized or taken by the City, and a further notice that said property will be sold at public auction, to the highest bidder for cash, not less than ten (10) days from and after the date of the publication of such notice and the hour, date

## **Ordinances - City of Hankinson, North Dakota**

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.

### 3.304 Report of Abandoned Property Sale

At the time specified in said notice the said property shall be sold by the chief of police of the City or by any police officer designated, at public auction, to the highest bidder for cash and within three (3) days after the date of said sale, the officer making the sale shall make a report thereof to the governing body. The report shall contain the description of the property sold, the time and place of the sale, the name or names of the purchaser or purchasers and the amount received therefore. The report shall be made under oath and subscribed by the officer making such sale and shall be filed with the city auditor within three (3) days after the date of such sale. The officer upon filing the report shall pay to the city auditor the proceeds of said sale.

### 3.305 Bill of Sale – Abandoned Property

Upon the receipt of the report as specified in Section 3.0304 hereof, the city auditor shall prepare a bill of sale of the property sold conveying the same to such purchaser and the same shall be executed by the presiding officer of the governing body and attested by the city auditor and delivered to the purchaser.

### 3.306 Proceeds of Sale – Abandoned Property

The city auditor shall retain such money as is received from such sales in a separate account for a period of six (6) months from and after the time of such sale and if proceeds of such sale are not claimed as hereinafter provided by the owner of said property, the said money shall thereupon be transferred to the general fund of the City.

### 3.307 Redemption of Personal Property

Any person owning such personal property seized as aforesaid, may at any time prior to the sale thereof, upon furnishing satisfactory proof of his ownership thereof to the governing body, reclaim such property upon paying the expenses incurred by the City for the seizure, storage or advertising the sale thereof and any person owning such property as aforesaid may at any time within six (6) months after such sale and upon making satisfactory proof to the governing body of his ownership thereof, claim the proceeds of such sale, upon payment to the City of the necessary expenses incurred by the City for the seizure, storage and sale of said property.

### 3.308 Annual Report – Unclaimed and Abandoned Property

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

## **Article 4 – House Numbering**

### 3.401 House Numbering Required

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

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### 3.402 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 ½) inches high, showing the number of the house.

## Article 5 – Trees

### 3.501 Definitions – Street Trees and Park Trees and Nuisance Trees

“Street trees” are herein defined as trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of all streets, avenues or ways within the City.

“Park trees” are herein defined as trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the City, or to which the public has free access as a park.

“Nuisance trees” are herein defined as any tree, shrub or hedge, or part thereof, growing upon public or private property which interferes with the use of any public walk, street, highway, alley, right-of-way, utility easement, park, public place or private property which, in the opinion of the City Forester, endangers the life, health, welfare, safety or property of the public or any person or property or which poses a real or potential health hazard to other trees, shrubs or foliage.

Any trees lying within the city limits rather on private or public property in which 50 percent or more of its limbs have been damaged, stripped, dry rot, or deemed to be dead, such tree will be deemed to be a public nuisance and must be removed.

The following trees are deemed nuisance trees and are banned from planting within the city: Cottonwood, Dutch Elm, Boxelder and Green Ash.

All Boxelder trees currently growing within the city are deemed a nuisance and must be removed.

The following are deemed nuisance *boulevard trees* and are not allowed to be planted on any city boulevard: hedges, shrubs, willows, pines, firs, evergreens, bushes of any variety or any tree with low heavy foliage.

### 3.502 Establishment of a City Forester – Terms – Compensation

There is hereby established a City Forester for the City, who shall be appointed by the mayor with the approval of the City governing body. The terms of Foresters shall be three years.

### 3.503 Operation and Duties of the City Forester

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

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### 3.504            Tree Care – Tree Topping

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

### 3.505            Abatement

It is unlawful for any person to permit any public nuisance as defined in section 3.501 to remain on any premises owned or controlled or occupied by said person. Such nuisance shall be abated in the manner prescribed by this article.

### 3.506            Inspection and Investigation

- a. The City Forester, or employees or agents of the City Forester shall inspect all premises and places as often as practicable to determine whether any condition described in section 3.501 exists therein.
- b. Whenever necessary to determine the existence of a public nuisance or potential vectors of such a nuisance in any tree, shrub or foliage, the person inspecting such tree may remove or cut specimens from the plant or part thereof in question in such manner as to avoid permanent injury thereto and deliver such specimens to the Forester who may forward them to an official diagnostic laboratory for analysis to determine the presence of such nuisances. The City Forester, or agents or employees of the City Forester, shall be authorized to remove or cut specimens to determine the existence of any public nuisance or potential vectors. Action to remove suspect trees or wood or foliage may be taken even though no positive diagnosis of the disease has been made.
- c. The Forester and The Forester's agents or employees shall have authority to enter upon private premises at reasonable times for the purpose of carrying out any of the provisions of this article.

### 3.507            Abatement of Nuisance: Duty of Forester

- a. The Forester shall order, direct, supervise and control the abatement of public nuisances specified in this article by whatever means the Forester determines to be necessary to abate the nuisance.
- b. Whenever the Forester, after inspection or examination, shall determine that a public nuisance as herein defined exists on public property, the Forester shall immediately abate or cause the abatement of such nuisance.
- c. When the Forester shall determine, with reasonable certainty that a public nuisance exists upon private premises or upon the terrace strip between the lot line and the curb, or upon or concerning any street, alley, utility easement, boulevard or other public way adjoining private property, the Forester shall immediately serve or cause to be served written notice to the owner or person in control of or person occupying such property on which or adjoining which the nuisance is found. Such notice shall describe the nuisance and procedures for its

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abatement. If the owner or person controlling the property or the person occupying the property cannot be found, a copy of said notice shall be posted upon the nuisance or upon any structure on the affected property.

The owner or person in control or the person occupying the property shall abate the nuisance in the manner specified in the notice. The duty to abate shall be a duty of the owner of the property, controller of the property and the occupier of the property, jointly and severally. If said nuisance is not abated within 5 days after written notice is given the Forester shall cause the abatement thereof at the expense of the property served or abutting property.

If the Forester, determines that reasonable cause has been shown, the Forester may extend the time allowed the property owner or property controller or property occupier for abatement work but not to exceed ten (10) additional days.

3.508

### Costs

- a. For abatement of a public nuisance as previously defined and with the nuisance on public land, park district lands and Hankinson School District lands, the cost will be paid out of the City general funds or as arranged between the City and the Park Board, School Board or other political subdivision.
- b. For abatement of public nuisance as previously defined with the nuisance occurring on private land or on any street, alley, boulevard, right of way, sidewalk, utility easement, or the terrace strip between the lot line and the curb or improved portion of any public way, or other public way, or public place adjoining the private property, the cost shall be borne by the private owner, property controller, or property occupier, said persons to be jointly and severally liable.

If the owner, property controller, or property occupier cannot or will not pay for the abatement of said nuisance the costs of abatement may be assessed against the property taxes of the property on which or adjoining which the nuisance is found, over a period not to exceed five (5) years or said costs may be recovered by a suit at law.

3.509

### Placement of Trees

Any property owner or person shall have the right to plant trees on the boulevard between the curb line and the property line. Such trees shall be placed three and one-half (3 ½) feet from the curb line, and shall be spaced twenty (20) feet apart. The trees placed upon the intersection of the streets shall be placed twenty (20) feet from the corner of any intersection and shall be so placed as to line up all four ways, with the trees set according to this regulation in the same block and adjoining block; provided, that in cases where streets deflect or there is a jog, special provisions shall be made by the City Forester or street chairman. The City Forester or street chairman may vary the distance between trees in long or short blocks by keeping the trees equally spaced in such block. The owner may choose his own trees, with the exception that in no case shall cottonwood trees be planted upon any boulevard within the City.

The branches of any trees shall be kept clear from all sidewalks, boulevards and alleys above by at least seven (7) feet and twelve (12) feet above any street.

The owner may choose his own trees from a list provided by the City Forester.

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3.510

Acceptable Boulevard Trees

	HEIGHT	SPREAD
Amur Chokecherry	25-30	15-20
Crimson King Maple Acer	35-40	30-40
Dakota Pinnacle Birch	30-35	8-10
Flame Amur Maple	15-20	15-18
Greenspire Linden	40-50	30-35
Littleleaf Linden	30-40	30-40
North Acclaim Honeylocust	35-45	25-35
Norway Maple - Columnar	30-50	25-35
Norway Maple - Veriegated	50-60	40-50
Redmond Linden	40-60	25-30
Royal Frost Birch	30-40	15-20
Spring Snow Crab (fruitless)	25-30	15
Thornless Honeylocust	30-50	25-35

3.511

Prohibited Acts and Penalties

Any person who does any of the following acts within the City of Hankinson or in areas under the control or jurisdiction of the City of Hankinson upon conviction thereof shall be punished of a fine not to exceed One Thousand Dollars (\$1,000), or by imprisonment not to exceed Thirty (30) days, or both such fine and imprisonment in the discretion of the Court:

- a. Interferes with or prevents any acts of the Forester or Forester’s agents or employees while they are engaged in the performance of any of the duties imposed by this article;
- b. Refuses to permit the Forester or the Forester’s duly authorized representative to enter upon said person’s premises at reasonable times to exercise any of the duties imposed by this article;
- c. Permits any nuisance to remain on any premises owned or controlled or occupied by said person when ordered by the Forester to abate or to take appropriate measures to render such nuisance innocuous.

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**CHAPTER FOUR**

**FIRE PROTECTION AND PREVENTION**

**Article 1 – Regulation of the Fire Department**

4.101 Police Powers of Fire Department

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

4.102 Unlawful to Hinder Fire Department

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

4.103 Right of Way – Fire Department Vehicles

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

4.104 Driving Over Fire Hoses

No person shall drive any team, wagon, card, street car, railroad car, steam engine, automobile or other vehicle of any kind whatsoever, upon or over any hose belonging to the fire department while the same is laid in the streets and alleys of the City.

4.105 False Alarms of Fire

It shall be unlawful for any person knowingly to give or cause to be given any false alarm of fire, or to give or cause to be given, while a fire is in progress, a second or general alarm for the same fire, or tamper with or set off any fire alarm or signal box with like intent; or tamper, meddle or interfere with any such fire alarm box; or intentionally cut, break, deface or remove any such box, or any of the wires or supports thereof, connected with the fire alarm system or intentionally interfere with or injure any property of any kind belonging to or used by the fire department; or hinder or delay any apparatus or equipment or vehicle belonging to the fire department.

4.106 Taking Fire Equipment

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

4.107 Entering Fire Department

## **Ordinances - City of Hankinson, North Dakota**

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

### **Article 2 – Fire Limits**

#### 4.201 Fire Limits

All that portion which is determined by the Hankinson Fire District

#### 4.202 Fire Limits – Erection of Buildings Within

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

#### 4.203 Alterations and Additions if Fire Limits

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

#### 4.204 Inspection of Premises, Materials, Discovery, Order

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

#### 4.205 Repairs to Damaged Buildings

It shall be unlawful to repair any existing frame 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 3 – Fires in Public Places**

#### 4.301 Smoking – Setting Fires

Any person who, by smoking or attempting to light or to smoke cigarettes, cigars, pipes or tobacco in any manner, in which lighters or matches are employed who shall in any careless, negligent or reckless manner whatsoever, whether willfully or wantonly or not, set fire to any furniture, curtains, drapes, household fittings or furnishings whatsoever in any hotel, public rooming house, tenement house or any public

## **Ordinances - City of Hankinson, North Dakota**

building, so as to endanger life to property in any way or to any extent shall be guilty of violating this article.

### 4.302            Notice – Smoking Ordinance

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

### 4.303            Bonfires Prohibited – Exception

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

### 4.304            Hot Ashes and Other Dangerous Materials – Depositing of

Ashes, smoldering coals or embers, greasy or oily substances and other matter liable to spontaneous ignition shall not be deposited or allowed to remain within ten (10) feet of any combustible materials or construction made up of combustible materials, except in metal or other non-combustible receptacles. Such receptacles shall be placed on non-combustible stands, unless resting on a non-combustible floor or on the ground outside the building, and shall be kept at least two (2) feet away from any combustible wall or partition.

### 4.305            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.

### 4.306            Reports of Hotel or Apartment Fires

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

### 4.307            Fire Pit Regulations

Fire pits/rings may be up to 36 inches by 36 inches maximum, with flame no more than three (3) feet high, and may not be located closer than thirty (30) feet from any structure unless a fire extinguisher is readily available or a garden hose with water is available to suppress any potential fire hazard.

PENALTY: A person violating this ordinance will first be given a warning with subsequent offences a misdemeanor and subject to a fine not to exceed One Hundred Dollars (\$100).

## **Ordinances - City of Hankinson, North Dakota**

### **Article 4 – Fire Prevention**

#### 4.401            Storage of Flammable Liquids

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

#### 4.402            Storage of Liquefied Petroleum

The limits or area for storage of liquefied petroleum shall comply with the limits established in Section 4.401.

#### 4.403            Modifications of Fire Code

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

#### 4.404            Appeals from Decisions of Fire Chief

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

### **Article 5 – Firearms, Fireworks and Explosives**

#### 4.501            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.

#### 4.502            Exploding Firearms

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

#### 4.503            Blank Cartridges, Pistols, Etc. – Manufacture, Use and Sale of

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

## **Ordinances - City of Hankinson, North Dakota**

### 4.504 Fireworks Defined

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

### 4.505 Fireworks – Discharging of, Sale of

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

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

Nothing in this article shall prohibit, however, the public display of fireworks within the City, provided that specific permission therefore is given by the City Council of the City of Hankinson, which permission shall be provided by a motion of the City Council, duly carried.

## **Article 6 – Adoption of Electrical Code**

### 4.601 Electrical Code Adopted

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

## **Article 7 – Penalty for Violation of this Chapter**

### 4.701 Penalty – Violations of Fire Protection and Prevention Chapter

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

### **Ordinances - City of Hankinson, North Dakota**

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.

**Ordinances - City of Hankinson, North Dakota**

**CHAPTER FIVE**

**POLICE DEPARTMENT**

**Article 1 – Organization and Regulations**

5.101 County Contracting

If the City of Hankinson is under contract for police protection with the Richland County Sheriff's Department the rules of that department will be followed instead of the ones listed below.

5.102 Establishment

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

5.103 Additional Officers – Emergency

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

5.104 Duties of Chief

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

5.105 Rules and Regulations

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

5.106 Duties of Police – General

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

Within the City limits and for a distance of one and one-half (1 ½) miles in all directions outside the City limits, police officers shall perform the duties and exercise the powers of peace officers as defined and

## **Ordinances - City of Hankinson, North Dakota**

prescribed by the laws of the State of North Dakota. (Source: North Dakota Century Code Section 40-20-05)

### 5.107 Duties of Police – Hot Pursuit – Defined

A police officer in “hot pursuit” may continue beyond the one and one-half (1 ½) mile limit to make an arrest, in obedience to a warranty or without a warrant under the conditions of Section 29-06-15 of the North Dakota Century Code, whenever obtaining the aid of peace officers having jurisdiction beyond that limit would cause a delay permitting escape. As used in this subsection “hot pursuit” means the immediate pursuit of a person who is endeavoring to avoid arrest. (Source: North Dakota Century Code Section 40-20-05)

### 5.108 Duties of Police – Service of Process, Etc.

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

## **Article 2 – Powers and Duties**

### 5.201 Money or Property of Arrested Persons

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

### 5.202 Arrested Persons

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

### 5.203 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 3.308 of these ordinances.

### 5.204 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 ordinance.

### 5.205 Witness Fees and Mileage of Municipal Police Officers

Police officers of the City shall be entitled to be paid the witness fees and mileage expenses allowed by law for other witnesses while off duty when such officers are subpoenaed to testify in actions involving the

## **Ordinances - City of Hankinson, North Dakota**

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**

#### 5.301            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.

#### 5.302            Right of Way

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

**Ordinances - City of Hankinson, North Dakota**

**CHAPTER SIX**

**ZONING – LAND USE PLANNING**

**Article 1 – Planning and Zoning Commission and Extra Territorial Zoning and Classifications**

6.101 Planning Commission Created

The governing body of the City of Hankinson also acts as the planning commission for the City. The city engineer and the city attorney shall be ex-officio members thereof.

6.102 Terms, Compensation, Meetings, Terms, Compensation, Meetings

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

6.103 Ex-Officio Zoning Commission

The planning commission shall also serve as the zoning commission of the City to hold hearings, make reports and recommendations as to the boundaries of the various original districts and appropriate regulations to be enforced therein, and for changes in or supplements thereto. (Source: North Dakota Century Code Section 4-47-06).

6.104 Jurisdiction to Include Extra Territorial Zoning Lands

The jurisdiction of this ordinance shall include all lands within the corporate limits of the City of Hankinson, North Dakota and the application of the City's zoning regulations is hereby extended to all unincorporated territory located outside the limits of the City of Hankinson for a distance of one (1) mile from the City limits as permitted by North Dakota Century Code Section 40-47-01.1(1)(a). The application of the City's zoning regulations contained herein and elsewhere shall extend to each quarter (1/4) section of unincorporated territory, the majority of which is located within one (1) mile of its limits in any direction.

6.105 City Council to Act as Board of Adjustment

Notwithstanding anything to the contrary, the City Council shall have all powers, duties, responsibilities and authority that would otherwise be possessed by the Board of Adjustment. The City Council shall hereafter exercise said powers, duties, responsibilities and authority in place of an in substitution for the Board of Adjustment. The City Council's exercise of power, duty, responsibility and authority shall be exercised in the same manner and with the same standards and procedures as is set forth in Article X of the City's Revised Zoning Ordinances and state statutes.

6.106 Statute of Extra Territorial Zoning District and Zoning Classifications

The Zoning Classifications for an Extra Territorial zoned area shall continue with the current zoning classification of the respective Township Zoning Ordinances until otherwise amended and as set forth on the map attached hereto.

**Article 2 – Definitions**

6.201 Definitions

## Ordinances - City of Hankinson, North Dakota

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

- a. "Accessory Use or Building" is a subordinate use or building customarily incident to and located on the same lot with the main use building.
- b. "Alteration" as applied to a building or structure, is a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.
- c. "Building" is a structure designed, built or occupied as a shelter or roofed enclosure for persons, animals or property, including tents, lunch wagons, dining cars, camp cars, trailers and other roofed structure on wheels or other supports used for residential, business, mercantile, storage, commercial, industrial, institutional, assembly, educational or recreational purposes. For the purposes of this definition "roof" shall include an awning or other similar covering, whether of not permanent in nature.
- d. "Building Line" is the line between which and the street line or lot line not building or other structure or portion thereof, except as provided in this Code, may be erected above the grade level. The building line is considered a vertical surface intersection the ground on such line.
- e. "Manufactured Homes" means factory built dwelling units, with at least nine hundred(900) square feet of living space, to be placed on a permanent foundation or basement and is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to be placed on a permanent site and bears a label certifying that it was built in compliance with the latest standards adopted by the U.S. Dept. of Housing and Urban Development for a manufactured home and the Uniform Building Code for a modular home.
- f. "Mobile Home" means manufactured unit, transportable in one or more sections and has at least nine hundred (900) square feet of living space and is designed as a year round dwelling unit and built prior to the enactment of the Federal Manufactured Home Construction and Safety Standards Act of 1974 (24 CFR 3280), which became effective June 15, 1976. A recreational travel trailer is not a mobile home.
- g. "Mobile Home Park" is any premise where one or more mobile homes are parked for living or sleeping purposes, or any premises used or set apart for supplying to the public parking space for one or more mobile homes for living or sleeping purposes, and which include any buildings, structure, vehicles or enclosure used or intended for use as a part of the equipment of such mobile home park.
- h. "Permanent Foundation" means an extension of the outer walls of a building or structure made of solid materials such as brick, concrete or treated wood and extended below the ground surface through the frost zone, or other depths as required by the City.
- i. "Dwelling" is a building used exclusively for permanent residential occupancy, or a portion thereof, including one family dwelling, two family dwellings, and multiple family dwellings, but not including a mobile home as defined by these ordinances designed or used primarily for residential occupancy, or hotel, motel, apartments, boarding, lodging or rooming house, tents, cottage camps or other structures designed or used primarily for transient residents.
- j. "Dwelling, Single-Family" is a detached building containing only one dwelling unit designed to be located on a permanent foundation and, if site built, constructed in accordance with the provisions of the applicable city codes governing construction; or, if manufactured off site, constructed in accordance with either the City code governing construction or the HUD Manufactured Home Construction and Safety Standards (24 CFR 3280) and designed for occupancy or use exclusively by one family. All single family dwellings shall be considered and taxed as real property as provided by law. Each single family dwelling shall meet the following requirements
  - (1) the main entrance shall face the street;
  - (2) each unit shall have no less than two entrances;
  - (3) the roof pitch shall not be less than (four/twelve) 4/12 ratio;

## Ordinances - City of Hankinson, North Dakota

- (4) the roof shall have an overhang of not less than twenty-four (24) inches;
  - (5) each unit shall have space for at least a single stall attached garage;
  - (6) modular homes and site built homes meet the requirements of Uniform Building Code;
  - (7) manufactured homes meet HUD Code;
  - (8) each unit shall have at least nine hundred (900) square feet of living space with a minimum width of twenty-four (24) feet, excluding the garage;
  - (9) each unit shall have appearances similar to the surrounding swelling units; and
  - (10) all moving devices, such as wheels and hitches, if any, must be removed.
- k. "Dwelling, Two Family" is a building designed or used exclusively for occupancy by two families.
  - l. "Dwelling Unit" is one or more rooms providing complete living facilities for one family, including equipment for cooking, or provisions for the same, and including room or rooms for living, sleeping and eating.
  - m. "Dwelling, Multi-Family" is a building, or portion thereof, containing three or more dwelling units.
  - n. "Family" is a single individual, doing his own cooking, and living upon the premises as a separate housekeeping unit, or a collective body of persons doing their own cooking and living together upon the premises as a separate housekeeping unit in a domestic relationship based upon birth, marriage or other domestic bond as distinguished from a group occupying a board house, lodging house, club, fraternity or hotel.
  - o. "Garage, Private" is a building or part thereof accessory to a main building and providing for the storage of automobiles and in which not occupation or business for profit is carried on.
  - p. "Lot" is a parcel of land occupied or capable of being occupied by one building, and the accessory buildings or uses customarily incident to it, including such open spaces as are required by this chapter.
  - g. "Non-conforming se" is a building, structure or use of land existing at the time of the enactment of this chapter and which does not conform to the regulations of the district in which it is located.
  - r. "Setback Building Line" is a building line back of the street line.
  - s. "Structure" is anything constructed or erected which requires location on the ground or attached to something having location on the ground, including signs and billboards, but not including fences or walls used as fences.
  - t. "Use" is the purpose for which land or a building is arranged, designed or intended or for which either land or a building is or may be occupied or maintained.
  - u. "Yard" is an open space other than a court, on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in this chapter.
  - v. "Yard, Front" is an open unoccupied space on the same lot with a main building, extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of the lot.
  - w. "Yard, Rear" is an open unoccupied space on the same lot with the building between the rear line of the building and the rear line of the lot and extending the full width of the lot.
  - x. "Yard, Side" is an open unoccupied space on the same lot with the building situated between the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a lot line.
  - y. "Child Day Care Centers" means all group day care homes or facilities and day care centers where care is provided to seven or more children, other than the provider's own children, who have obtained the appropriate occupancy permit from the city building inspector and complied with inspection by the city fire inspector.



## **Ordinances - City of Hankinson, North Dakota**

### **Article 4 – Application of Regulations**

#### 6.401            Application of Regulations

Except as provided in this chapter:

1. Conformity of Buildings and Land. No building, structure or premises shall be used or occupied, and no building or part thereof or other structure shall be erected, raised, moved, placed, reconstructed, extended, enlarged or altered except in conformity with the regulations herein specified for the district, as shown on the official map, in which it is located.
2. Conformity of Buildings. No building, structure or premises shall be erected, altered or used so as to produce smaller yards or less unoccupied area, and no building shall be occupied by more families than prescribed for such building, structure or premises for the district in which it is located.
3. Conformity of Open Spaces. No yard, court or open space, or part thereof, shall be included as a part of the yard, court or open space similarly required for any other building, structure or dwelling under this chapter.

### **Article 5 – Non-Conforming Uses**

#### 6.501            Non-Conforming Uses

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

1. Alterations. A non-conforming building or structure may be altered, improved or reconstructed provided such work is not to an extent exceeding in aggregate cost twenty-five percent (25%) of the assessed value of the building or structure is changed to a conforming use.
2. Extension. A non-conforming use shall not be extended, but the extension of a lawful use to any portion of a non-conforming building or structure which existed prior to the enactment of this ordinance shall not be deemed the extension of such non-conforming use.
3. Changes. No non-conforming building, structure or use shall be changed to another non-conforming use.
4. Abandonment. A non-conforming use of a building or premises which has been abandoned shall not thereafter be returned to such non-conforming use.
5. Unlawful Use Not Authorized. Nothing in this chapter shall be interpreted as authorization for or approval of the continuance of the use of a structure or premises in violation of zoning regulations in effect at the time of the effective date of this chapter.
6. Certificate of Non-Conforming Use. Upon the effective date of this chapter, the zoning committee shall issue a “Certificate of Non-Conforming Use” to all owners of property, the use of which does not conform to the provisions of the use zone in which the property is located.
  - d. In accordance with the provisions of this section no use of land or structures shall be made other than that specified on the “Certificate of Non-Conforming Use,” unless said use shall be in conformity with the provisions of the use zone in which the property is located.
  - e. A copy of each “Certificate of Non-Conforming Use” shall be filed with the office of the zoning committee. No permit or license shall be issued to any property for which a “Certificate of Non-Conforming Use” has been issued until said permit or license has been approved by the zoning committee.
3. District Changes. Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall apply to any non-conforming uses existing therein.

**Ordinances - City of Hankinson, North Dakota**

**Article 6 – Use Districts**

6.601 Use Districts

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

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

6.602 R-1 – Residential Districts – Single Family

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

1. Dwelling houses occupied by not more than one family.
2. Publicly owned and operated buildings.
3. Churches and parish houses.
4. Hospitals.
5. Nursing and rest homes
6. Homes for the aged.
7. Playgrounds and parks
8. Cemeteries.

6.603 RB-2 Residential Business Districts

In a residential business district the following buildings and uses are permitted:

1. Dwelling houses each occupied by not more than two families. Each family shall not be allowed more than two roomers or boarders per family.
2. All other uses permitted in a one-family district.
3. Boarding and rooming houses, light business and commercial uses limited to business or professional office, medical or dental clinic, book store, barber and beauty shop and floral or plant and flower store.

6.604 A-Agricultural District

In an Agricultural district the following uses are permitted.

1. Agriculture and agricultural buildings, cemeteries, churches, one and two family dwellings and mobile homes, existing railroad rights of way, home occupations, parks or other open land recreational uses.

6.605 RB-2 Residential Business Districts

In a residential business district the following buildings and uses are permitted:

1. Dwelling houses each occupied by not more than two families. Each family shall not be allowed more than two roomers or boarders per family.
2. All other uses permitted in a one-family district.
3. Boarding and rooming houses, light business and commercial uses limited to business or professional office, medical or dental clinic, book store, barber and beauty shop and floral or plant and flower store.

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### 6.606            Accessory Uses in Residential Districts

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

1. Professional office for a physician, clergyman, architect, engineer, attorney or similar professional person residing in such main building.
2. Home Occupation. Customary home occupation for gain carried on in the main building or a building accessory thereto requiring only home equipment and employing no non-resident help and no trading in merchandise is carried on.
3. Agricultural uses, gardens.
4. Private garages.
5. Any other accessory use customarily incident to a use authorized in a residential district.

### 6.607            Commercial District

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

1. Retail stores and shops.
2. Service establishments.
3. Business and professional offices.
4. Eating establishments.
5. Funeral homes and mortuaries.
6. Transportation services.
7. Amusements and recreation.
8. Wholesale businesses.
9. Storage buildings and warehouses.
10. Any other building or use similar to the uses herein listed in the type of services or goods sold.
11. Any accessory use customarily incident to a use herein listed.

### 6.608            I – Industrial

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

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

- a. Uses permitted. All uses permitted in a commercial district.
- b. Uses prohibited. No dwelling or dwelling unit.

### 6.609            Rezoning (Part of NW ¼ SE ¼ of Section 13, Township 130 North, Range 50) City of Hankinson

That those tracts lying within the City of Hankinson, as more fully described below, be rezoned from 1-2 to RB-2)

That part of the northwest quarter of the southeast quarter of section 13, township 130 north, range 50 west of the 5<sup>th</sup> principal meridian, City of Hankinson, Richland County, North Dakota described as follows:

Beginning at the iron monument marking the center quarter corner of said section 13 (North Dakota Land Survey Monument Record No 2885); thence on an assumed bearing of North 89 degrees 08 minutes 16 seconds East, on an along the north line of the said Southeast Quarter of Section 13, the said Quarter Line being defined by Monument Record No.'s 2884, 2885, and 2886, (also being the south right of way line of 1<sup>st</sup> St NE as defined by the plat of Wipperman & Heins Addition, being 80 feet south of the south line of Blocks 1,2,and 3 of said Wipperman and Heins Addition, as said Blocks are defined by existing iron monuments), a distance of 389.01 feet (record=380.00 feet), to an iron monument marking the northeast

**Ordinances - City of Hankinson, North Dakota**

corner of that certain tract described and recorded in Book 120 of Deeds on page 189, said Book on file in the Office of the County Register of Deeds in and for said County and State; thence continuing North 89 degrees 08 minutes 16 seconds East a distance of 604.75 feet (record = 604 feet) to an existing iron monument; thence South 00 degrees 51 minutes 44 seconds East, at a right angle form the last described line, a distance of 6.00 feet; thence North 89 degrees 08 minutes 16 seconds East, parallel with said quarter line, a distance of 86.00 feet to an existing iron monument; thence South 00 degrees 08 minutes 04 seconds West, on and along said northerly right of way line of the Burlington Northern Railroad, a distance of 1090.21 feet to the southwest corner of said tract described in Book 120 of Deeds on page 189, said point also being on the west line of the Southwest Quarter of Section 13 as defined by North Dakota Land Survey Monument Record No.'s 96 and 2885; thence North 00 degrees 02 minutes 39 seconds West, on and along the west line of said tract described in Book 120 of Deeds on page 189, and along the west line of the said Southeast Quarter of Section 13, a distance of 252.32 feet to the point of beginning, containing 6.69 acres, more or less.

6.610            Special Exceptions

Special Exception uses shall be applied to all Use Districts and shall be as follows:

- (1) Child day care center homes as required and defined by Article 2 (25).

**ORDINANCE 2010-12**

**ZONING CHANGES FROM RESIDENTIAL TO COMMERCIAL  
PART OF SOUTHSIDE ADDITION**

BE IT ORDAINED by the City Council of the City of Hankinson, North Dakota as follows:

That those lots or tracts lying within the City of Hankinson, as more fully described below, be re-zoned from Residential to Commercial:

- 1. Lot 16, Block 2, Southside Addition.
- 2. (M & B 46) BEG 37 feet south of NWCR Lot 1, Block 3, S13 feet, E27 feet, N13 feet, W27 feet/BEG, Southside Addition.
- 3. (M & B 48) Lot 3 & BEG NWCR Lot 2, Block 3, S50 feet, E146 feet, N25 feet, W27 feet/BEG, Southside Addition.
- 4. Lot 4, Block 3, Southside Addition.

**ORDINANCE 2008-08**

**AN ORDINANCE REZONING (PART OF JONES' ADDITION)**

BE IT ORDAINED by the City Council of the City of Hankinson, North Dakota as follows:

That those lots or tracts lying within the City of Hankinson, as more fully described below, be re-zoned from Residential to Commercial:

All of Block numbered Five (5) of Jones' Addition to the City of Hankinson, Richland County, North Dakota, according tot he official Plat thereon on file and of record in the office of the Register of Deeds in and for said County and State.

Dated this 2<sup>nd</sup> day of September, 2008.

**Ordinances - City of Hankinson, North Dakota**

**RESOLUTION 09-09**

**RESOLUTION APPROVING REPLAT OF BLADOW'S ADDITION  
AND REQUESTING THAT IT BE RECORDED WITHOUT AUDITOR'S CERTIFICATE**

BE IT RESOLVED, by the City Council of the City of Hankinson, North Dakota, as follows:

1. That the replat of Bladow's Addition to the City of Hankinson is hereby approved.
2. That the Mayor and City Auditor and President and Secretary of the Planning Commission are authorized to execute said Plat.
3. Pursuant to North Dakota Century Code 11-18-03(5), the City Council of the City of Hankinson, North Dakota, by this resolution, hereby requests that the replat of Bladow's Addition be recorded by the Richland County, North Dakota, Recorder without the Auditor's Certificate as referred to or otherwise required by NDCC 11-18-02.

Dated this 2<sup>nd</sup> day of November, 2009.

**ORDINANCE 2016-04**

**AN ORDINANCE CHANGING ZONING OF  
LOT 1 AND W383' OF E627' LOT 2 HANK CO AUDITOR'S PLAT  
FROM RESIDENTIAL TO COMMERCIAL**

BE IT ORDAINED, that the following tract, upon petition of the owner and notice as required by law, be re-zoned from Residential to Commercial:

Lot 1 and W383' of E627' Lot 2 County Auditor's Plat, City of Hankinson, Richland County, North Dakota.

First Reading: January 20, 2016  
Second Reading: March 22, 2016  
Adopted: March 22, 2016  
Enacted: April 12, 2016

**ORDINANCE 2016-08**

**AN ORDINANCE CHANGING ZONING OF  
29.77 ACRES: E548' OF SW1/4 12 130 50 EXC 3.23A (SECTION TWELVE (12)  
BRIGHTWOOD TOWNSHIP (130) RANGE FIFTY (50))  
RICHLAND COUNTY, NORTH DAKOTA  
FROM AGRICULTURAL TO COMMERCIAL  
VIA EXTRATERRITORIAL ZONING BY CITY OF HANKINSON**

BE IT ORDAINED, that the following tract, upon petition of the owner and notice as required by law, be re-zoned from Agricultural to Commercial via Extraterritorial Zoning authority by the City of Hankinson, Richland County, North Dakota:

29.77 Acres: E548' of SW1/4 12 130 50 EXC 3.23A (Section Twelve (12) Brightwood Township (130) Range Fifty (50)) Richland County, North Dakota

**Ordinances - City of Hankinson, North Dakota**

First Reading: May 2, 2016  
Second Reading: June 6, 2016  
Adopted: June 6, 2016  
Enacted: June 21, 2016

**ORDINANCE 2016-10**

**AN ORDINANCE CHANGING ZONING OF  
LOT 1 AND LOT 2 BLOCK 1 BLADOW'S SECOND ADDITION  
FROM AGRICULTURAL TO COMMERCIAL**

BE IT ORDAINED, that the following tract, upon petition of the owner and notice as required by law, be re-zoned from Agricultural to Commercial:

Lot 1 and Lot 2 Block 1 Bladow's Second Addition, City of Hankinson, Richland County, North Dakota.

First Reading: August 30, 2016  
Second Reading: September 20, 2016  
Adopted: September 20, 2016  
Enacted: September 27, 2016

**ORDINANCE 2017-06**

**AN ORDINANCE CHANGING ZONING OF  
RESERVE A, BLADOW'S ADDITION  
FROM AGRICULTURAL TO COMMERCIAL**

BE IT ORDAINED, that the following tract, upon petition of the owner and notice as required by law, be re-zoned from Agricultural to Commercial:

Reserve A, Bladow's Addition, City of Hankinson, Richland County, North Dakota.

Dated this 1st day of May 2017.

First Reading: April 3, 2017  
Second Reading: May 1, 2017  
Adopted: May 1, 2017  
Enacted: May 9, 2017

**ORDINANCE 2017-07**

**AN ORDINANCE CHANGING ZONING OF  
NORTH 1/2 OF LOT 11 AND ALL LOT 12, BLOCK 4, WIPPERMAN'S 1ST ADDITION  
FROM RESIDENTIAL R-2 TO COMMERCIAL C-1**

BE IT ORDAINED, that the following tract, upon petition of the owner and notice as required by law, be re-zoned from Residential R-2 to Commercial C-1:

North 1/2 Lot 11 and All Lot 12, Block 4, Wipperman's 1st Addition, City of Hankinson, Richland County, North Dakota. Parcel 48-2310-04633.000, Roger D. & Donna K. Boutain.

## **Ordinances - City of Hankinson, North Dakota**

Dated this 5th day of June 2017.

First Reading: May 1, 2017  
Second Reading: June 5, 2017  
Adopted: June 5, 2017  
Enacted: June 20, 2017

### **Article 8 – Yard Regulations**

#### 6.801 Yard Regulations

In one-family districts there shall be:

1. A front yard of not less than 30 feet.
2. A side yard on each side of not less than 8 feet.
3. A rear yard of not less than 10 feet.

In two-family districts there shall be:

1. A front yard of not less than 30 feet.
2. A side yard on each side of not less than 8 feet.
3. A rear yard of not less than 10 feet.

### **Article 9 – Enforcement**

#### 6.901 Administrative Official

1. Administrative Official. Except as otherwise provided herein the City Assessor shall administer and enforce the provisions of this chapter, including the receiving of applications, the inspection of premises and the issuing of building permits. No building permit or certificate of occupancy shall be issued except where the provisions of this chapter have been complied with.
2. Building Permit Required. No building or structure shall be erected, added to or structurally altered until a permit therefore has been issued by the City Assessor. All applications for such permits shall be in accordance with the requirements herein and, unless upon written order of the Board of Equalization, no such building permit or certificate of occupancy, shall be issued for any building where said construction, addition or alteration or use thereof would be in violation of any of the provisions of this chapter.
  - a. Matter Accompanying Application. There shall be submitted with all applications for building permits a copy of the layout or plot drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected and such other information as may be necessary to determine and provide for the enforcement of this ordinance.
  - b. Payment of Fee. The permit will be issued upon approval of the assessor upon the payment of a fee of \$10.00. If a variance is needed the variance will need to be approved by the Council.

**Ordinances - City of Hankinson, North Dakota**

**ORDINANCE 2016-07**

**AN ORDINANCE ADOPTING REQUIREMENTS FOR  
SPECIAL EXCEPTION USE PERMITS**

BE IT ORDAINED by the City Council of the City of Hankinson, North Dakota, that Chapter 6, Article 9 e amended as follows:

6.901                    Administrative Official

3. Special Exception Building Permits and Zoning Use. No building or structure shall be erected, added to or structurally altered until a permit therefore has been issued by the City Auditor. All applications for such permits shall be in accordance with the requirements herein and, unless upon written order of the Board of Equalization, no such building permit or certificate of occupancy shall be issued for any building where said construction, addition or alteration or use thereof would be in violation of any provisions of this chapter unless such building is a special exception to zoning use. Applications for special exception zoning permits shall be made to the City Auditor in writing upon forms approved by the City Council prior to starting construction or establishing use, and such forms shall be filled in by the owner or authorized agent, and shall be accompanied by a plan in duplicate, drawn to scale, showing the actual lot dimensions, use and intended use, height, size and location of building or buildings, and shall be accompanied by such data as may be required. Such plans and data shall be final and conclusive and any deviation therefrom shall require a new zoning and use registration permit. Upon receipt of application, the City Council shall hold a hearing as to the granting of the Special Exception Permit. All persons living within 150 yards of the property applying for the Special Exception permit must be given notice of the hearing five days prior to the hearing. Upon determining the application satisfies the Special Exception requirements and does not violate any other pre-existing rules, laws, or ordinances, the Special Exception Permit may be granted with any conditions the Council deems appropriate.

First Reading: March 7, 2016  
Second Reading: April 4, 2016  
Adopted: April 4, 2016

3. Certificates of Occupancy
- a. No land shall be occupied or used and no building hereafter erected, altered or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the zoning administrator, stating that the building or proposed use thereof complies with the provisions of this chapter.
  - b. No non-conforming use shall be maintained, renewed, changed or extended without a certificate of occupancy having first been issued by the assessor therefore.
  - c. All certificates of occupancy shall be applied for coincident with the application for a building permit. Said certificate shall be issued within 30 days after the erection or alteration shall have been approved.
  - d. The assessor shall maintain a record of all certificates and copies shall be furnished, upon request, to any person having a proprietary or tenancy interest in the building affected.
  - e. No permit for excavation for, or the erection or alteration of or repairs to any building shall be issued until an application has been made for the certificate of occupancy.
  - f. Under such rules and regulations as may be established by the Board of Adjustment and filed with the Assessor, a temporary certificate of occupancy for not more than thirty (30) days for a part of a building may be issued by him.

## **Ordinances - City of Hankinson, North Dakota**

### **Article 10 – Board of Adjustment**

#### 6.1001            Creation of Board

1. Establishment: For the purposes of these regulations the City Council is hereby designated the Board of Adjustment.
2. Powers and Duties. The Board of Adjustment shall have all the powers and duties prescribed by law and by this chapter, which are more particularly specified as follows:
  - a. Interpretation. Upon appeal from a decision by an administrative official, to decide any question involving the interpretation of any provision of this chapter, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.
  - b. Variances. To vary or adapt the strict application of any of the requirements of this chapter in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, but in no other case. In granting any variance, the Board of Adjustment shall prescribe any conditions that it deems to be necessary or desirable. However, no variance in the strict application of any provision of this chapter shall be granted by the Board of Adjustment unless it finds:
    - 1) That there are special circumstances or conditions, fully described in the findings, applying to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the neighborhood, and that said circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or building.
    - 2) That, for reasons fully set forth in the findings, the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the board is the minimum variance that will accomplish this purpose.
    - 3) That the granting of this variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. In addition to considering the character and use of adjoining buildings and those in the vicinity, the board, in determining its finding, shall take into account the number of persons residing or working in such buildings or upon such land and traffic conditions in the vicinity.
3. Procedure. The Board of Adjustment shall act in strict accordance with the procedure specified by law and by this chapter. All appeals and applications made to the Board shall be in writing, on forms prescribed by the Board. Every appeal or application shall refer to the specific provisions of the ordinance involved, and shall exactly set forth the interpretation that is claimed, the use for which is special permit is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. Every decision of the Board of Adjustment shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case. Each such resolution shall be filed in the office of the city auditor.
4. Notice and Hearing. No action of the Board shall be taken on any case until after due notice has been given to the parties and public hearing has been held.

#### 6.1002            Amendments

The governing board may, from time to time, amend this article by supplementing, changing, modifying or repealing any of the regulations, restrictions or other provisions thereof or of the district map or the districts

## Ordinances - City of Hankinson, North Dakota

on said map or of the boundaries of such district. A proposed amendment may be initiated by the said Board upon its own motion, or upon receipt of a request therefore from the City zoning commission or upon receipt of a petition therefore from any interested person or persons or their agents.

1. Report by City Zoning Commission – Public Hearing. The governing body shall require a report from the City Zoning commission on a proposed amendment before taking final action thereon. The City zoning commission shall thereupon make a tentative report and hold a public hearing thereon with notice the same required for a public hearing by the governing body, before submitting its final report. Such final report shall be submitted within ninety (90) days after the time of referral of the proposed amendments to the City zoning commission unless the governing body is agreeable to an extension of time.
2. Action by Governing Body – Public Hearing. After the receipt of the required final report on any amendment from the City zoning commission or in the event of the failure of the City zoning commission to so report within ninety (90) days following the time of referral of the proposed amendment to the City zoning commission, the governing body shall hold a public hearing, after which the proposed amendment may be passed. Not less than fifteen (15) days notice of the time and place of holding such public hearing shall first be published in the official newspaper. A hearing shall be granted to any person interested, and the time and place specified.
3. Vote after Protest. If a protest against a change, supplement, modification, amendment or repeal is filed and signed by owners of twenty percent (20%) or more:
  - a. Of the area of the lots included in such proposed change; or
  - b. Of those immediately adjacent in the rear thereof extending 150 feet therefrom; or
  - c. Of those directly opposite thereto extending 150 feet from the street frontage of such opposite lots.

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

### 6.1003 Enforcement

The erection, construction, reconstruction, alteration, repair, conversion or maintenance of any building or structure or the use of any building, structure or land in violation of this article or of any regulation, order, requirement, decision or determination made under authority conferred by this article, shall constitute the maintenance of a public nuisance and any appropriate action or proceeding may be instituted by the City, through any administrative officials, department, board or bureau charged with the enforcement of this article:

1. To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use;
2. To restrain, correct or abate such violation;
3. To present the occupancy of the building, structure or land; or
4. To prevent any illegal act, conduct, business or use in or about such premises.

A violation of any provision of this article or a violation of or refusal or failure to comply with any regulation, order, requirement, decision of determination made under authority conferred by this article shall be punishable as provided in the chapter entitled “Ordinances.” (See Ordinance 1.104.)

**Ordinances - City of Hankinson, North Dakota**

**CHAPTER SEVEN**

**WATER AND SEWER**

**Article 1 – Utility Established**

7.101 Water and Sewer Department Established

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

7.102 City Water and Sewer Department to be Independent Agency

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

7.103 Scope of Utility

The properties of the City Water and Sewer Department and all future improvements, extensions and enlargements thereof, together with all cash and other assets held in the City's Water and Sewer Utility Fund and all moneys to be derived thereafter from the services, facilities, products and by-products of said utility, shall be and are hereby appropriated and dedicated to the purpose of insuring the public health, safety and welfare by furnishing and making available water and sewage 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.

7.104 Service Charges – Use of

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

### **7.105                    Policy on Improvements – Extensions**

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

1. Where water mains not exceeding six inches or sanitary sewer mains not exceeding eight inches in diameter are installed adjacent to residential properties, and where water mains not exceeding eight inches or sewer mains not exceeding ten inches in diameter are installed adjacent to commercial properties, the total cost thereof shall be assessed against the properties abutting on such improvements, in sums proportionate to and not exceeding the total benefits determined to be derived therefrom by the respective properties. Water and sewer mains of the dimensions above described are referred to herein as “lateral” mains and other mains are referred to as “trunk” mains.
2. Where a trunk main is installed, the governing body upon advice of the city engineer shall estimate the probable cost of construction of a lateral main at the same time and place and such estimated cost shall be assessed against the properties abutting on such main and in the manner above provided.
3. Twenty percent (20%) of the cost of any sanitary sewer in excess of the estimated cost of a lateral sewer at the same time, and place shall be assessed against all properties determined by the governing body to require the immediate construction of such main as a trunk sewer, including properties abutting thereon and properties served or capable of being served by lateral sewers connected thereto, in amounts proportionate to and not exceeding the benefits determined to be derived by said respective properties from such trunk sewer.
4. The total cost of storm sewers, shall be assessed against properties within the area determined to be benefited thereby, in amounts proportionate to and not exceeding the benefits determined to be derived therefrom by the respective properties.
5. Where a portion of the benefits of any of the foregoing improvements is deemed to accrue primarily to the City at large, a portion not exceeding twenty percent (20%) of the cost thereof, as determined by the governing body, may be paid by the levies of assessments for such improvements, or any portion or all of such cost may be paid out of current funds duly

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provided in the budget, or from the proceeds of general obligation bonds duly authorized by the electors.

6. Such portion of the cost of any improvement, extension or addition to the utility as is not paid by special assessments and taxes levied and actually collected in respect thereof shall be paid from the net revenues of the utility.
7. Where due to any error or omissions or to any special circumstances a special assessment is not levied against any property benefited by an improvement at the time of the construction thereof in accordance with the program described in this section, the City reserves the right to levy a supplemental special assessment upon such property or to impose and collect a special charge for the connection of such property with the utility system in such amount as shall be required to pay its just share of the assessable cost of such improvement.
8. No person, partnership, corporation or other entity shall hook-up or otherwise connect a new service in the City's sanitary sewer system without first making an application therefore to the City Auditor and paying all hook-up fees provided for the same.

That any person applying for the initial hookup of a new service into the City's sanitary sewer system shall pay a non-refundable connection fee in the amount set forth on the schedule below, which shall be due and payable when the application is filed with the City Auditor for the hook-up, except that the applicant may enter into an agreement with the City to pay the fee in annual installments as set forth on the schedule. This schedule covers Forced Main and Lift Station District #99-1.

<u>Single Hook-up</u>		<u>Multiple Hookup</u>		
Year	Amount	Annual Payment	Amount	Annual Payment
	\$161.92	\$5.40	\$323.85	\$10.80
2000	\$161.92	\$5.40	\$323.85	\$10.80
2001	\$156.52	\$5.40	\$313.05	\$10.80
2002	\$151.12	\$5.40	\$302.25	\$10.80
2003	\$145.72	\$5.40	\$291.45	\$10.80
2004	\$140.32	\$5.40	\$280.65	\$10.80
2005	\$134.93	\$5.40	\$269.85	\$10.80
2006	\$129.52	\$5.40	\$259.05	\$10.80
2007	\$124.12	\$5.40	\$248.25	\$10.80
2008	\$118.72	\$5.40	\$237.45	\$10.80
2009	\$113.32	\$5.40	\$226.65	\$10.80
2010	\$107.92	\$5.40	\$215.85	\$10.80
2011	\$102.52	\$5.40	\$205.05	\$10.80
2012	\$ 97.12	\$5.40	\$194.25	\$10.80
2013	\$ 91.72	\$5.40	\$183.45	\$10.80
2014	\$ 86.32	\$5.40	\$172.65	\$10.80
2015	\$ 80.92	\$5.40	\$161.85	\$10.80
2016	\$ 75.52	\$5.40	\$151.05	\$10.80
2017	\$ 70.12	\$5.40	\$140.25	\$10.80
2018	\$ 64.72	\$5.40	\$129.45	\$10.80
2019	\$ 59.32	\$5.40	\$118.65	\$10.80
2020	\$ 53.92	\$5.40	\$107.85	\$10.80
2021	\$ 48.52	\$5.40	\$ 97.05	\$10.80
2022	\$ 43.12	\$5.40	\$ 86.25	\$10.80
2023	\$ 37.72	\$5.40	\$ 75.45	\$10.80
2024	\$ 32.32	\$5.40	\$ 64.65	\$10.80
2025	\$ 26.92	\$5.40	\$ 53.85	\$10.80
2026	\$ 21.52	\$5.40	\$ 43.05	\$10.80

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2027	\$ 16.12	\$5.40	\$ 32.25	\$10.80
2028	\$ 10.72	\$5.40	\$ 21.45	\$10.80
2029		\$5.32		\$10.65

There may become other such hook up fees that are applicable.

**ORDINANCE 2010-13**

**AN ORDINANCE ENACTING AND CREATING A  
STORM WATER SEWER IMPROVEMENT FUND SURCHARGE**

BE IT ORDAINED, by the City Council of the City of Hankinson, North Dakota, that effective December 1, 2010, any person, partnership, corporation or other entity within the city limits for each lot, parcel, or tract owned by it that is hooked up or otherwise connected to the city's storm sewer system, the owner shall pay a hookup fee surcharge in the same principle amount and according to the same amortization schedule as required of and assessed to all city lots for Storm Drain Improvement District 2009-1 (Entire City of Hankinson) for having an actual hookup.

Such surcharge will be paid in full, at the time of hookup, unless such user enters into an agreement with the city to pay the fee in annual installments amortized as set forth on the schedule attached hereto.

**SINGLE HOOKUP**

Year	Amount	Annual Payment
2010	\$406.30	
2011	\$390.40	\$26.06
2012	\$374.10	\$26.06
2013	\$357.39	\$26.06
2014	\$340.10	\$26.06
2015	\$322.71	\$26.06
2016	\$304.72	\$26.06
2017	\$286.28	\$26.06
2018	\$267.38	\$26.06
2019	\$248.00	\$26.06
2020	\$228.14	\$26.06
2021	\$207.78	\$26.06
2022	\$186.91	\$26.06
2023	\$165.52	\$26.06
2024	\$143.60	\$26.06
2025	\$121.13	\$26.06
2026	\$ 98.10	\$26.06
2027	\$ 74.49	\$26.06
2028	\$ 50.29	\$26.06
2029	\$ 25.49	\$26.06

7.106            Utility Fund – Separate Accounts

All moneys received by the City in respect of the services, facilities, products and by-products furnished and made available by the City Water and Sewer Department, except collections of special assessments and taxes appropriated to improvement district funds and moneys borrowed for capital improvements, and all

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money, receipt and returns received from any investments of such earnings, shall be paid into the treasury of the City and kept in a special fund which shall be permanently maintained on the books of the City, separate and distinct from other funds, and designated as the Water and Sewer Utility fund. In the record of this fund, all receipts and disbursements of money on account of or in connection with the utility shall be entered and reflected; but the moneys from time to time on hand therein shall always constitute public municipal funds and shall be deposited and their safekeeping secured like other City funds. Separate accounts within the Water and Sewer Utility Fund shall be permanently maintained for the purpose of segregating the revenues required to meet the several expenses and obligations of the utility, as provided below, and such revenues shall be administered and accounted for as follows:

1. Operation and Maintenance Account. There shall be credited at least once in each calendar month to the Operation and Maintenance Account of said fund, as a first lien and charge on the gross revenues of the utility such sum as shall be needed, over and above any credit balance then held therein, to pay all claims due which by accepted accounting practices constitute normal, reasonable and current expenses of operation and maintenance of the utility, and to pay such expenses estimated to accrue for a period of approximately one month, and to maintain reasonable reserve for contingencies. Moneys in said account shall be used only to pay expenses of the foregoing type, and not for repairs or replacements or for capital improvements properly chargeable to replacement and depreciation reserves or surplus funds.
2. Principal and Interest Account. The Principal and Interest Account of the Fund, created by resolution, shall continue to be maintained as provided in that resolution until the payment in full of the improvement warrants issued against said fund.
3. Revenue Bond Account. The net revenues of the utility are herein defined as the aggregate of all sums on hand in the Water and Sewer Utility Fund from time to time in excess of the current requirements defined in (1) and (2) above. The entirety of the said net revenues shall be credited each month to the Revenue Bond Account of the Water and Sewer Fund until there shall have been credited within said account, and thereafter so much of the net revenues as shall be necessary to maintain at all times, a reserve in an amount at least equal to the sum of the principal and interest payments due within each next succeeding twelve-month period upon all revenue bonds of the City heretofore or hereafter issued and made payable from said accounts. After this reserve has been created, there shall continue to be credited out of the net revenues to the Revenue Bond Account each month, over and above sums required to maintain such reserve, an amount not less than one-twelfth (1/12) of the sum of the principal and interest to become due on all such revenue bonds within the then next succeeding twelve months. Moneys in said account shall be used only for the payment of principal and interest as it becomes due on said revenue bonds, and the reserve shall be used for such purpose only when other moneys in the account are insufficient. All revenue bonds heretofore and hereafter issued and made payable from said account, subject to the limitations upon such issuance contained in Section (6) hereof, shall constitute a first lien and charge on the net revenues of said utility without preference or priority of one bond over any other. However, if at any time the moneys in the Revenue Bond Account should be insufficient to make all payments of principal and interest due on such revenue bonds, and cannot be made sufficient by transfer of moneys from the other accounts described below, the moneys available shall be first used to pay interest then accrued on all bonds payable from said account, and any excess moneys available shall be used to pay matured principal of such bonds in order of their maturity dates, provided that moneys available for payment of bonds maturing on the same date shall be prorated equally among such bonds.
4. Improvement Warrant Account. There shall also be maintained in said fund an Improvement Warrant Account, for the purpose of segregating net revenues required for the payment of any portion of the cost of improvements hereafter instituted, for which such revenues have been pledged in accordance with the provisions of Chapter 40-22 of the North Dakota Century Code. There shall be transferred from said account as required, to the fund of each improvement district for which such pledge has been made, sums sufficient, together with tax and assessment collections held in such funds, to pay when due the principal and interest on all improvement warrants drawn upon such funds for the financing of such improvements. Moneys sufficient for the requirements of said improvement district funds shall

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- be credited and paid into the Improvement Warrant Account out of the net revenues remaining from time to time after provision for the current requirements of the Revenue Bond Account, and the lien and charge on said net revenues in favor improvement warrants for the payment of which such pledges have been made shall be subordinate only to the lien and charge on said net revenues in favor of revenue bonds payable from the Revenue Bond Account. In the event that moneys in the Improvement Warrant Account shall be insufficient for the making of all transfers required to be made to the several improvement district funds from the remaining accounts described below, the available moneys shall be apportioned first to the several improvement district funds in sums sufficient to pay interest then accrued on all warrants drawn on such district funds, and any remainder shall be applied in payment of matured principal of such warrants in order of the maturity dates thereof. As among warrants maturing on the same date, such available moneys shall be applied to the warrants of the several issues in proportion to the matured principal amount thereof for the payment of which taxes and assessments in the respective improvement funds are insufficient.
5. Replacement and Depreciation Account. There shall be maintained a Replacement and Depreciation Account, into which there shall be credited and paid as received, except as otherwise stated below, all net revenues in excess of the current requirements of the other accounts above described. In said account there shall be maintained such balances as the governing body shall from time to time determine to constitute an adequate reserve for depreciation and replacement of the utility, which reserve may be used to redeem prior to maturity obligations payable from the net revenues as and when the same become pre-payable according to their terms, or to replace worn out or obsolete properties of the utility, or to make extensions, enlargements or improvements thereto. Any moneys in said account determined to be surplus to the immediate requirements therefore may be invested or may be transferred to other City funds in the discretion of the Board, in the manner and subject to the limitations set forth in Section 40-33-12 of the North Dakota Century Code; and any acts amendatory thereof or supplemental thereto.
  6. Moneys on Hand. The moneys on hand in any of the accounts of the Water and Sewer Utility Fund shall at all times be available and shall be used to the extent necessary to restore any deficiency in the funds on hand in any of the preceding accounts, in the order listed above, for the fulfillment of the requirements of such preceding accounts as herein defined.
  7. Additional Accounts. The City also reserves the right to create additional accounts within the Water and Sewer Utility Fund for the purpose of segregating any surplus net revenues which may be pledged and appropriated to the payment of obligations hereafter issued to finance improvements, enlargements or extensions of said utility, other than the obligations made payable from the Revenue Bond Account and the Improvement Warrant Account, pursuant to the authority for such issuance reserved in Section 7.107 hereof. Moneys on hand in any such account shall at all times be available for and used to the extent necessary to meet the current requirements of all of the foregoing accounts except the Replacement and Depreciation Account.

### 7.107            Provisions for Financing Capital Improvements

In borrowing money for capital improvements, extensions or additions to said utility the following provisions shall at all times be observed:

1. For the purpose of this section, whenever the net revenues of the utility hereinabove appropriated to the Improvement Warrant Account are pledged to pay a portion of the cost of any improvement to be financed by improvement warrants, such warrants and the interest accruing thereon shall be deemed to be payable from said net revenues in the same proportion as that part of the cost payable from said net revenues bears to the principal amount of such warrants. The portion of costs payable from net revenues shall be deemed equal to the principal amount of the warrants less the principal amount of the taxes and assessments to be levied for the payment thereof.
2. Except as provided in 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 7.106 (3) hereof, received during the then next preceding fiscal

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- year, shall have been in an aggregate amount at least equal to 125% of the average annual principal and interest payments due on all bonds payable from the Revenue Bond Account which are then outstanding or then to be issued, plus such percentage of the average of the annual principal and interest payments due on each issue of improvement warrants then outstanding or then to be issued as shall be payable from said net revenues, which averages shall be computed on the basis of the principal and interest payments due in the fiscal years of the then remaining term of all such revenue bonds and improvement warrants then outstanding. For the purpose of such computation, whenever rates for water and sewer service have been changed in the course of any fiscal year, the net revenues for such year shall be deemed to be those which would have been received if such amended rates had been in effect during the entirety of such year, based on actual quantities of service furnished to each class of customers and the actual expenses of the utility during such year; provided that in no case shall the net revenues so computed be deemed to exceed 125% of the net revenues actually received during such year.
3. Refunding revenue bonds may be issued for the purpose of prepaying and refunding bonds payable from the Revenue Bond Account when and as they become pre-payable according to their terms, in the manner and to the extent permitted by law, provided that such refunding revenue bonds shall be subject to the requirements set forth in part (2) hereof, as applied to the past net revenues and future principal and interest requirements as of the date of the issuance of such refunding revenue bonds. However, the City, shall and does hereby also reserve the right and privilege of issuing refunding revenue bonds, when permitted by law, for the maturities of any bonds payable from the Revenue Bond Account which have matured and for the payment of which the moneys in the Revenue Bond Account are insufficient, and cannot be made sufficient by transfer of moneys from other accounts, and such refunding revenue bonds shall be payable from the Revenue Bond Account on a parity as to interest with all then outstanding bonds payable therefrom, but the maturities of such refunding revenue bonds shall be subsequent to the maturities of all such outstanding bonds. Nothing herein shall be deemed to require the holder of any revenue bond to accept a refunding revenue bond in exchange therefore.
  4. The City also reserves the right and privilege of issuing refunding improvement warrants in the manner and to the extent provided in Chapter 40-27 of the North Dakota Century Code and acts amendatory thereof and supplemental thereto. The lien and charge of such refunding warrants on the net revenues appropriated to the Improvement Warrant Account shall be the same as that in favor of the improvement warrants refunded thereby; provided that for the purpose of the computations directed to be made in this section, the maturities and the rate or rates of interest payable on such refunding warrants shall be substituted for the maturities and interest rates of the improvement warrants refunded thereby.
  5. Nothing herein shall be deemed to affect the obligation of the City, under the laws of the State of North Dakota, to levy ad valorem taxes upon all taxable property within its corporate limits for the purpose of paying a deficiency, if any, in the fund of any improvement district, at the time of the maturity of the last warrant drawn thereon, or at such earlier time as may be hereafter directed by such laws; provided that it shall be the policy of the City that the amounts of any deficiency tax levies so made shall be restored to the general funds of the City out of any surplus net revenues thereafter received, over and above the requirements of the several accounts of the Water and Sewer Utility Fund as stated in Section 7.106 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.

7.108                    Agreements with Bond and Warrant Purchasers

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

1. It will complete all improvements financed by the issuance of such obligations with due diligence and with the greatest economy consistent with good workmanship and efficient results, and will do so without creating or permitting the creation of any liens or encumbrances on said utility or on the revenues thereof other than the liens and charges of said revenues expressly authorized in this article.
2. As long as any obligations payable from said accounts are outstanding, it will continue to own and operate said utility as a municipal utility, free from all competitions as to the services thereby provided and in good and efficient operating condition.
3. It will at all times maintain a schedule of rates, charges and rentals for all services, facilities, commodities and benefits furnished by said utility and will impose and collect the same in amounts at least sufficient to make the minimum payments into the respective accounts of the Water and Sewer Utility Fund as specified in Section 7.106 hereof, and will revise such schedules in such manner and as often as needed to perform this covenant.
4. Under each such schedule, the City shall be obligated to pay and will pay from its other funds to the Water and Sewer Utility Fund a fair and equitable amount for any and all services, facilities, commodities and benefits furnished to the City or any of its departments by the utility.
5. It will at all times maintain books of account adequate to show all receipts and disbursements of the City respecting the utility, and application of such receipts to the purposes of the several accounts described in Section 7.106 hereof, which books of account shall be open to inspection by the holder of any obligation payable from the Revenue Bond Account or the Improvement Warrant Account at any reasonable time. The City will furnish a certified transcript therefrom of any information which any such bond or warrant holder may request, upon payment of a reasonable fee therefore.
6. It will cause the annual financial statement of the City required by the provisions of Section 40-16-05 of the North Dakota Century Code to include a statement as the financial condition and the receipts and disbursements of the Water and Sewer Utility Fund and of its several accounts during each fiscal year, and will furnish a copy of such statement to the original purchaser of each issue of bonds or warrants upon request.
7. Upon written demand of the holder of twenty percent (20%) or more of the bonds or warrants of any issue payable from the Revenue Bond Account or Improvement Warrant Account and then outstanding, it will cause an audit of the books of account of the utility to be made by a certified public accountant satisfactory to the holders of such obligations, the cost thereof to be paid as an operating expense of the utility and will furnish a copy of the report of any such audit to such party as shall be designated in such demand.
8. It will at all times keep the properties of said utility insured in reasonable amounts against loss or damage by fire, tornado and other risks for which similar properties are customarily insured by prudent owners, and will carry adequate public liability insurance, insuring against any claim of personal injury of property damage which is or may become a charge against the revenues of the utility. The City will also cause all persons handling funds of the utility to be bonded in suitable amounts for the protection of the City and the holders of obligations of the utility, and the expense of all such insurance and bonds shall be accounted for as an operating cost of the utility. The City will use the proceeds of any such insurance and bonds to restore the loss or damage compensated thereby.
9. The City and its governing body and each and all of its officers will punctually perform all duties with reference to said utility and the revenues thereof and the obligations issued hereunder which are imposed by the ordinances and resolutions of the City in force on the date upon which any such obligations are issued. All provisions of the Constitution and laws and of such ordinances and resolutions which provide security for the holders of bonds issued hereunder are acknowledged to be a part of the City's contract with the holders of such obligations; provided that nothing herein shall be deemed to preclude the City from modifying the policies set forth in Section 7.105 hereof with reference to any improvements constructed and financed after the effective date of such modification.

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

### 7.109                    Ordinance to Contract for Purchase of Water From Southeast Water Users District

**Section 1.** It is hereby declared that the City owns a system for the distribution of water for fire protection and other public purposes and for selling water to its inhabitants and that the water for this system is unsuitable and inadequate.

**Section 2.** It is hereby declared that Southeast Water Users District is a North Dakota Water District and a political subdivision under the laws of the State of North Dakota able and willing to furnish water to the City for its water system in accordance with a WATER PURCHASE CONTRACT complying with the provisions of 40-33-15 of the North Dakota Century Code, said corporation undertaking to furnish potable water meeting applicable purity standards of North Dakota State Department of Health in quantities as required by the City at an agreed rate or rates for all water taken by the City under said contract.

**Section 3.** The City hereby agrees that upon the completion and acceptance of the improvements and equipment necessary to take delivery of water under the contract, it will initially, and thereafter periodically, amend its water rates, to establish and maintain rates and charges for supplying water to its inhabitants and industries sufficient to produce net stated amounts during the life of said WATER PURCHASE CONTRACT over and above the amount sufficient to pay all costs of operating and maintaining said water system, including operating reserves and revenues to be paid into the water general fund. The net stated amounts so collected shall be and are hereby appropriated to the utility operation and maintenance account to be used for the monthly payments to become due under the WATER PURCHASE CONTRACT.

**Section 4.** The WATER PURCHASE CONTRACT does not provide that the City shall be obligated to pay for water solely out of net revenues, but it is hereby declared as the policy of the City that provision shall be made in each annual budget for any deficiency in the net stated amounts of charges for supplying water which is then deemed likely to occur within the next year.

**Section 5.** The City agrees to pay at the rate or rates agreed upon in or pursuant to said WATER PURCHASE CONTRACT for all water taken by the City under the contract and resold by it.

**Section 6.** Upon approval by a majority of the voters voting on the proposition, the adoption by the City Council, the Mayor and City Auditor are hereby directed to make and execute on behalf of the City, a contract with the above named Southeast Water Users District, in accordance with the terms of the Ordinance, the WATER PURCHASE AGREEMENT filed with the City Auditor, and 40-33-16 of the North Dakota Century Code.

**Section 7.** The City, upon the approval of this Ordinance by a majority of the voters voting on the proposition, shall do and perform any other acts, which in the discretion of the city governing body are deemed reasonable and appropriate for the procurement of water under said WATER PURCHASE CONTRACT in the most efficient and economical basis.

**Section 8.** This Ordinance shall be in full force and effect from and after approval by a majority of the voters of the City voting on the proposition and after its final passage.

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### Article 2 – Water Service

#### 7.201 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.

#### 7.202 Supervisor of City Water and Sewer Department

A water and sewer Supervisor shall be hired by the governing board. It shall be the duty of the Supervisor to exercise control and management of the operation of the utility system. City employees as may be necessary to the operation of the utility system shall be subject to his orders and directions, and he shall be responsible for their acts. The Supervisor shall report directly to the Chairman of the Water and Sewer Committee and the city council on all matters considered out of the ordinary. The Chairman of the Water and Sewer Committee, or in his/her absence, the Mayor, shall have the authority to authorize expenditures as needed to mitigate any situation which he considers to be an emergency involving the water and sewer system with such expenditure presented to and approved by the city council at its next regular or special meeting. The Supervisor shall have the power and authority to purchase such materials, supplies and repairs for the water and sewer system between regular council meetings, which shall be reasonably necessary for the operation of such system. The Supervisor shall keep such books and records of matters pertaining to the operation of the system, as are necessary to show the operation and condition thereof. The Supervisor shall perform such other duties and have such other powers and authority as are hereinafter provided for in Chapter 7 of City Ordinance Book.

#### 7.203 Same: Reports

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

#### 7.204 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 7205 set forth below, shall apply for a connection on a form provided by the City. Such application shall state an exact description of the premises to be served, and the uses, both general and special, to which the water is to be put, the nature of sewage to be discharged, and the estimated amount of water to be used for a quarter-annual period. Such application shall be filed with the city auditor, and the applicant shall thereupon pay to the city auditor, as a connection charge. Amount of charge is set by resolution.

#### 7.205 Water Service – To Property Not Previously Assessed

No permit shall be issued for the making of any connection between any water or sewer line on any property which has not previously been benefited by existing water and /or sewer lines or whenever the owners of such property have not been assessed for such water and sewer lines, unless and until such person shall have paid or made a written statement with the City to pay in monthly installments within a maximum of 25 years an amount of money as may be therefore determined by the governing body. The amount of the payment shall be based on the area served and benefit resulting to the property involved.

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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.

### 7.206            Subsequent Connection to Premises

Any party, other than the original applicant, desiring service for premise where a connection has been made pursuant to Sections 7.204 and 7.205 hereof shall make written applications therefore as in cases described in Section 7.204 hereof, and if the connection charge for such premises has not been fully paid at such time, the applicant shall pay or agree to pay the remainder thereof in like manner and time as described in Section 7.204 and 7.205 thereof.

### 7.207            Separate Connections for each Premise – Exception

Unless a special permission is granted by the water and sewer utility supervisor, 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 unity on the branch shall pay the fees as set in 7.222.

### 7.208            Service Outside City Limits – Prohibited – Exception

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

### 7.209            Service in Un-platted Areas

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

### 7.210            Water Service – Construction of – Maintenance of by City & Property Owner

The cost of original installation of all plumbing between the water main and any City shut off devices maintained by the City, and all extensions made to service devices, as well as all repairs, shall be borne entirely by the City. Service devices and services LINES, as well as the meters, shall at all reasonable times be subject to inspection by duly authorized representatives of the City. Any repairs found to be necessary to service devices and service lines by such representatives shall be made promptly, and will be the responsibility of the property owner.

The cost of the original water meter and plumbing of such meter from curb stop to said residence is borne entirely by the consumer.

All services shall be constructed by licensed plumbers at the owner's expense, and each service maintained by the owner. Services heretofore acquired by the issuance of special assessment warrants and assessed against the property, or which may be acquired in the future in like manner, shall likewise be maintained by

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the owner. Services mean the service line running from the point of connection with the City main to owner's premises.

City will be responsible for maintenance and repairs to water mains and up to and including all curb stops, including a second older curb stop, that are located within city street or alley right of way.

If a second curb stop is located on private property, repairs to that curb stop are the responsibility of the property owner.

If curb stop for a property is not located within the street or alley right of way, the city will be responsible for repairs and maintenance of service line from water main to and including curb stop and its connector to property service line. The city retains the right to install a new curb stop in right of way at its discretion.

### 7.211 Unlawful to Use Water Not Metered – Unlawful to Tamper with Curb cock

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

### 7.212 Defective Service – Consumers Duty to Report

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

### 7.213 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.

### 7.214 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 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

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- 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 \$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 department shall have free access to any premises supplied with water, at proper times, to inspect and ascertain the condition of the meters and fixtures, or for reading meters, and no owner or occupant shall refuse such employees such access. The water department shall have the right to enter any premises and remove the meter for the purpose of examination and test after first notifying the owner or occupant, and to shut off the water to premises where free access is prevented.
  6. Fire Hydrants – Who May Open. No person except City employees or volunteer fire department members in the performance of their official duties shall open or cause to be opened any fire hydrant without written permission of the water supervisor.

### 7.215                    Connection to be Supervised by City Employees

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

### 7.216                    Service Pipes Specifications

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

### 7.217                    Curb Cock Specifications

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

### 7.218                    Check Valves Required When Necessary

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

### 7.219                    Use of Water During Fire – Unlawful

It is hereby declared to be unlawful for any person in this City or any person owning or occupying premises connected to the utility to use or allow to be used during a fire any water from said utility except for the purpose of extinguishing said fire; and upon the sounding of a fire alarm, it shall be the duty of every such

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person to see that all water services are tightly closed and that no water is used, except for necessary household purposes during said fire.

### 7.220                    Waterworks Customers May Lay Larger Pipes with Hydrants – When

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

### 7.221                    Rates and Charges

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

### 7.222                    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 premise where water or sewer service is supplied shall notify the water or sewer department of the city auditor in case any tenant moves from said premises, prior to such moving. On request of the owner 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.

### 7.223                    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.

### 7.224                    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 3.220 through 3.227 of Chapter 3 of these ordinances.

### 7.225                    Restriction of User of Water

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

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### Article 3 – Regulation of Sewer Use

#### 7.301 Purpose

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

#### 7.302 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 or disposal, also called house connection.
4. “Combined Sewer” shall mean a sewer intended to receive both wastewater and storm or surface water.
5. “Easement” shall mean an acquired legal right for the specific use of land owned by others.
6. “Floatable Oil” is oil, fat or grease in a physical state such that it will separate by gravity from wastewater bay treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection system.
7. “Garbage” shall mean the animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.
8. “Industrial Wastes” shall mean the wastewater from industrial processes, trade or business as distinct from domestic or sanitary wastes.
9. “Natural Outlet” shall mean any outlet, including storm sewers and combined sewer overflows, into a watercourse pond, ditch, lake or other body of surface or groundwater.
10. “May” is permissive (see “shall,” Sec. 18)
11. “Person” shall mean any individual, firm, company, association, society, corporation or group.
12. “pH” shall mean the logarithm of the reciprocal of the hydrogen-ion concentration. The concentration is the weight of hydrogen ions, in grams, per liter of solution. Neutral water, for example, has pH value of 7 and a hydrogen-ion concentration of 10<sup>-7</sup>.
13. “Properly Shredded Garbage” shall mean the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than ½ inch (1.27 centimeters) in any dimension.
14. “Public Sewer” shall mean a common sewer controlled by a governmental agency or public utility.
15. “Sanitary Sewer” shall mean a sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters that are not admitted intentionally.
16. “Sewage” is the spent water of a community. The preferred term is “wastewater,” Sec. 24.
17. “Sewer” shall mean a pipe or conduit that carries wastewater or drainage water.
18. “Shall” is mandatory (see “may,” Sec. 10).

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19. "Slug" shall mean any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration or flows during normal operation and shall adversely affect the collection system and/or performance of the wastewater treatment works.
20. "Storm Drain" (sometimes termed "storm sewer") shall mean a drain or sewer for conveying water, groundwater, subsurface water or unpolluted water from any source.
21. "Supervisor" shall mean the supervisor of wastewater facilities, and/or of wastewater treatment works, and/or of water pollution control of the City or an authorized deputy, agent or representative.
22. "Suspended Solids" shall mean total suspended matter that either floats on the surface of, or is in suspension in water, wastewater or other liquids, and that is removable by laboratory filtering as prescribed in "Standard Methods for the Examination of Water and Wastewater" and referred to as non-filterable residue.
23. "Unpolluted Water" is water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.
24. "Wastewater" shall mean the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and storm water that may be present.
25. "Wastewater Facilities" shall mean the structures, equipment and processes required to collect, carry away and treat domestic and industrial wastes and dispose of the effluent.
26. "Wastewater Treatment Works" shall mean an arrangement of devices and structures for treating wastewater, industrial wastes and sludge. Sometimes used as synonymous with "wastewater treatment plant" or "water pollution control plant."
27. "Watercourse" shall mean a natural or artificial channel for the passage of water either continuously or intermittently.
28. "Hearing Board" shall mean that board appointed according to the provisions of Section 7.209.

### 7.303            Use of Public Sewers Required

1. It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the City or in any area under the jurisdiction of the City any human or animal excrement, garbage or other objectionable waste.
2. It shall be unlawful to discharge to any natural outlet within the City or in any area under the jurisdiction of the City any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this ordinance.
3. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage.
4. The owner of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the City, and abutting on any street, alley or right-of-way in which there is now located or may in the future be located or may in the future be located a public sanitary sewer, is hereby required at the owner's expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this ordinance, within 30 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.

### 7.304            When Private Sewage Disposal Permitted

1. Where a public sanitary or combined sewer is not available under the provisions of Section 7.303 (4), the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this article.

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2. Before commencement of construction of a private wastewater disposal system, the owner shall obtain a written permit signed by the supervisor. The application for such permit shall be made on a form furnished by the City, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the supervisor.
3. A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the supervisor. The supervisor shall be allowed to inspect the work at any stage of construction, and in any event, the applicant for the permit shall notify the superintendent when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 72 hours of the receipt of notice by the supervisor.
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 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 7.303 (4), a direct connection shall be made to the public sewer within 30 days in compliance with this ordinance, and any septic tanks, cesspools and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.
6. The owner shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the City. All sludge or solids, to be disposed of from a septic tank, cesspool or other individual method of disposal shall be disposed of by a licensed septic tank pumper in accordance with Section 23-19-01 of the North Dakota Century Code.
7. No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the local health officer.

### 7.305 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 supervisor.
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 supervisor.
3. All costs and expense incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.
4. A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer. The City does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection.
5. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the supervisor, to meet all requirements of this ordinance.
6. The size, slope alignment, materials of construction of all sanitary sewers including building sewers, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City. In the absence of suitable code provisions, specifications of the state building and plumbing codes shall apply.
7. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the

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- 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 supervisor and the North Dakota State Department of Health.
  9. The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City. All such connections shall be made gastight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the supervisor before installation.
  10. The applicant for the building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.
  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.

### 7.305.1 Sewer Service – Construction of – Maintenance of by Owner

The installation cost of manholes, sewer mains and service connections shall be borne entirely by the City which may utilize special assessment proceedings. Service connections shall at all reasonable times be subject to inspection by duly authorized representatives of the City. Any repairs found to be necessary by such representatives shall be made promptly, and will be the responsibility of the City.

All services shall be constructed by licensed plumbers at the owner's expense, and each service maintained by the owner. The cost of the plumbing from the main to said residence is borne entirely by the consumer. Service means the service line running from the point of connection with the City main to owner's premises.

The City shall be responsible for any plumbing attachments to the main where residential or commercial services tie in with the main. Any fracture or blockage that affects the sewer main and service connections will be the City's responsibility to locate the problem. If necessary, the City shall open the street surface to gain access to the main and service lines for repairs. The City shall determine the quality and quantity of plumbing located beneath the street surface and who will be responsible for payment of repairs. The City shall notify the property owner within a reasonable time prior to making repairs of service line problem regarding percentage of cost which will be their responsibility. Full payment by property owner may be made at time of completion of repairs, or payment may, at the request of the property owner, be added as a special assessment to property taxes over a period of up to five years at 1.5 percent over current Bank of North Dakota Prime Rate.

### 7.306 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 supervisor and the North Dakota State Department of Health
2. Storm water other than that exempted under Section 7.306 (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 sewer:
  - a. Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.

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- b. Any waters containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the wastewater treatment plant.
  - c. Any waters or wastes having a pH lower than 5.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the wastewater works.
  - d. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers or other interference with the proper operation of the wastewater facilities such as, but not limited to ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc. either whole or ground by garbage grinders.
4. The following described substances, materials, waters or waste shall be limited in discharges to city systems to concentrations or quantities which will not harm either the sewers, wastewater treatment process or equipment, will not have an adverse effect on the receiving stream, or will not otherwise endanger lives, limb, public property or constitute a nuisance. The supervisor may set limitations lower than the limitations established in the regulations below if in his opinion such more sever limitations are necessary to meet the above objectives. In forming his opinion as to the acceptability, the supervisor will give consideration to such factors as the quantity of subject waste in relation to flows and velocities in the sewers, materials of construction of the sewers, the wastewater treatment process employed, capacity of the wastewater treatment plant, degree of treatability of the waste in the wastewater treatment plant and other pertinent factors. The limitations or restrictions on materials or characteristics of waste or wastewaters discharged to the sanitary sewer which shall not be violated without approval of the supervisor are as follows:
  - 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, nonbiodegradable cutting oils or product of mineral oil origin.
  - c. Wastewater from industrial plants containing floatable oils, fat or grease.
  - d. Any garbage that has not been properly shredded (see Section 7.302 (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 supervisor for such material.
  - f. Any waters or wastes containing odor producing substances exceeding limits which may be established by the supervisor.
  - g. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the supervisor in compliance with applicable state or federal regulations.
  - h. Quantities of flow, concentrations or both which constitute a "slug" as defined herein.
  - i. Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only to such a degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
  - j. Any water or wastes which, by interaction with other water or wastes in the public sewer system, release obnoxious gases, form suspended solids which interfere with the collection system or create a condition deleterious to structures and treatment processes.
5. If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in 7.306 (4), and which in the judgment of the supervisor, may have a deleterious effect upon the wastewater facilities, processes,

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equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the supervisor 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 7.306 (11)

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

6. Grease, oil and sand interceptors shall be provided when, in the opinion of the supervisor, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts as specified in 7.306 (4), 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 supervisor. Any removal and having of the collected materials not performed by owner personnel must be performed by currently licensed waste disposal firms.
7. Where pretreatment or flow equalizing facilities are provided or required by any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.
8. When required by the supervisor, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such structures, when required, shall be accessibly and safely located and shall be constructed in accordance with plans approved by the supervisor. The structure shall be installed by the owner at his expense and shall be maintained by the owner so as to be safe and accessible at all times.
9. The supervisor may require a use of sewer services to provide information needed to determine compliance with this ordinance. These requirements may include:
  - a. Wastewaters discharge peak rate and volume over a specified time period.
  - b. Chemical analyses of wastewaters.
  - c. Information on raw materials, processes and products affecting wastewater volume and quality.
  - d. Quantity and disposition of specific liquid, sludge, oil, solvent or other materials important to sewer use control.
  - e. A plot plan of sewers of the user's property showing sewer and pretreatment facility location.
  - f. Details of wastewater pretreatment facilities.
  - g. Details of systems to prevent and control the losses of materials through spills to the City sewer.
10. All measurements, test and analyses of the characteristics of waters and wastes to which reference is made in this ordinance shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association. Sampling methods, location, times, durations and frequencies are to be determined on an individual basis by the supervisor.
11. No statement contained in this section shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment.

7.307                    Damage to Sewer Works Prohibited

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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.

### 7.308                    Powers and Authority of Inspectors

1. The supervisor and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing pertinent to discharge to the community system in accordance with the provisions of this ordinance.
2. The supervisor or other duly authorized employees are authorized to obtain information concerning industrial processes that have a direct bearing on the kind and source of discharge to the wastewater collection system. The industry may withhold information considered confidential. The industry must establish that the revelation to the public of the information in question might result in an advantage to competitors.
3. While performing the necessary work on private properties referred to in Section 7.308 (1), above, the supervisor or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company, and the company shall be held harmless for injury or death to the City employees, and the City shall indemnify the company against loss or damage to its property by City employees and against liability claims and demands for personal injury or property damage asserted against the company growing out of the gauging and sampling operation, except such as may be caused by negligence or failure of the company to maintain safe conditions as required in Section 7.306 (8).
4. The supervisor and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the wastewater facilities lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

### 7.309                    Hearing Board

1. A hearing board, consisting of three (3) members, shall be selected as needed for arbitration of differences between the supervisor and sewer users on matters concerning interpretation and execution of the provisions of this ordinance by the supervisor.
2. One member of the board shall be selected to represent the City, one member shall be selected to represent the sewer user involved in the arbitration and the third member shall be acceptable to both parties and shall serve as chairman in the arbitration.

### 7.310                    Penalties

1. Any person found to be violating any provision of this ordinance except Section 7.307 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 7.310 (1), shall be guilty of a misdemeanor, and on conviction thereof shall be fined in the amount not exceeding one thousand dollars (\$1,000.00) for each violation. Each day in which any such violation shall continue shall be deemed a separate offense.
3. Any person violating any of the provisions of this ordinance shall become liable to the City for any expense, loss or damage occasioned the City by reason of such violation.

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### 7.311            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**

#### 7.401            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 7.302 of this chapter shall also apply to this article.

#### 7.402            Determining the Total Annual Cost of Operation and Maintenance

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

#### 7.403            Determining Each User's Wastewater Contribution Percentage

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

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

#### 7.404            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

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process or to constitute a hazard in the receiving waters of the wastewater treatment plan is hereby prohibited.

### **Article 5 – Adoption of State Plumbing Code**

#### 7.501            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 shall comply with said code.

#### 7.502            Plumbing Code – Enforcement of Provisions

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

#### 7.503            Plumbing Code – Changes in Existing Installations

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

#### 7.504            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**

#### 7.601            Penalty for Violation of Chapter

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

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**CHAPTER EIGHT**

**BUSINESS REGULATIONS AND LICENSES**

**Article 1 – General Provisions**

8.101 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.

8.102 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 the application blanks furnished by the city auditor and shall file the same with the city auditor. The application shall state the purpose for which the license or permit is desired, for what length of time, the place where the business is to be carried on and the proposed sureties on any required bonds.

8.103 Licenses – Granting

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

8.104 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 July in each year and expire on the last day of June 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 July 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.

8.105 Licenses – Not Transferable

No license or permit shall be assignable or transferable except by permission of the governing body. No person other than the person to whom the license is granted shall be authorized to do business or act under such license or at any other than the place specified therein. The City may grant the continuance of the business licensed to any other portion of the City, such permission to be certified on the license by the city

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auditor. No license shall authorized 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.

### 8.106 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 ceased to be a legal and bona fide citizen of the State of North Dakota.

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

### 8.107 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.

### 8.108 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 the first day of July of each year.

### 8.109 Licenses – Enforcement

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

## **Article 2 – Transient Merchants**

### 8.201 Definitions

For the purpose of this article:

1. “Transient merchant” includes any person, individual, co-partnership or corporation, either as principal or agent, who engages in, does or transacts any temporary or transient business in the City limits, either

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

### 8.202 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.

### 8.203 License Fee

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

### 8.204 License – Application for

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

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

### 8.205 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

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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 of time after the expiration of the license issued pursuant thereto nor until due notice that the terms of the bond are to be cancelled has been given by the city auditor. The bond is to be approved by the city attorney, conditioned that the applicant shall comply fully with all of the provisions of the ordinances of the City and the statutes of the State of North Dakota, regulating and concerning the sale of goods, wares and merchandise and will pay all judgments rendered against the applicant for any violation of said ordinances or statutes, together with all judgments and costs that may be recovered against him by any person or persons for damage growing out of any misrepresentation or deception practiced on any person transacting business with the applicant, whether misrepresentations or deceptions were made or practiced by the owners or by their servants, agents or employees, of any character whatsoever, printed or circulated with reference to the goods, wares and merchandise sold or any part thereof. Action on the bond may be brought in the name of the City to the use of the aggrieved person.

### 8.206            Service of Process

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

### 8.207            Exhibiting License

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

### 8.208            Transfer

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

### 8.209            Enforcement by Police

It shall be the duty of the police officers of the City to examine all places of business and persons in their respective territories subject to the provisions of this article, to determine if this article has been complied with and to enforce the provisions of this article against any person found to be violating the same. The city auditor shall deposit with the police a record of each license number, together with the location within the City of the business licensed thereunder to assist and promote such enforcement.

### 8.210            Revocation

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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 know address at least five (5) days prior to the dates set for the hearing.

### 8.211            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 4 – Runners, Solicitors and Canvassers**

### 8.401            Definitions

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

### 8.402            Exceptions

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

### 8.403            License Required

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

### 8.404            License – Application for

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

1. Name, age and sex of the applicant;
2. Address (legal and local);
3. A brief description of the nature of the business and the goods to be sold;

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4. If employed, the name and address of the employer, together with credentials establishing the exact relationship;
5. The length of time for which the right to do business is desired;
6. If a vehicle is to be used, a description of the same, together with license number; and
7. A statement as to whether or not the applicant has been convicted of any crimes, misdemeanors or violations of any municipal ordinance, the nature of the offense and punishment or penalty assessed therefore.

### 8.405            Fees

The license fee to be required of all runners, solicitors and canvassers for the transaction of business within the City shall be in the sum of twenty five dollars (\$25.00) per day for each day or portion of the day which such runner, solicitor or canvasser shall transact business in the City.

### 8.406            Exhibition of License

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

### 8.407            Transfer

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

### 8.408            Use of Streets

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

### 8.409            Enforcement

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

### 8.410            Revocation

1. Licenses issued under the provision of this article may be revoked by the governing body of the City after notice and hearing, for any of the following causes:
  - a. Fraud, misrepresentation or false statement contained in the application for license;
  - b. Fraud, misrepresentation or false statement made in the course of carrying on his business;
  - c. Any violation of this article;
  - d. Conviction of any crime or misdemeanor involving moral turpitude;
  - e. Conducting the business of soliciting and canvassing in an unlawful manner or in such a manner as to constitute a breach of peace or constitute a menace to the health, safety or general welfare of the public.
2. Notice of a hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five days prior to the date set for the hearing.

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### **Article 5 – Solicitation Without Invitation**

#### 8.501            Solicitation Without Invitation Prohibited

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

#### 8.502            Enforcement

All police officers in the City are hereby required and directed to suppress the same and to abate any such nuisance as described in 8.501.

### **Article 6 – Alcoholic Beverages**

#### 8.601            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 purpose or the promotion of sports, which has at least 200 members at the time of application for license.
9. “Retail sale” shall mean the sale of alcoholic beverages for use or consumption and not for resale.
10. “Off-sale” shall mean the sale of alcoholic beverages in original packages for consumption off or away from the premises where sold, and an off-sale license shall authorize the person named therein to conduct such off-sales only at the place designated in such license and not elsewhere, and shall not permit the opening of the package sold on the premises where sold. Such sale must in each case be completed by delivery of the liquor sold to the actual purchaser thereof on the licensed premises.
11. “On-sale” shall mean the sale of alcoholic beverages for consumption only on the premises where sold, and an on-sale license shall authorize the licensee to conduct such on-sales only at the place designated in such license and not elsewhere.
12. “Wine” shall mean the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than 24 percent alcohol by volume. This includes wines made effervescent with carbon dioxide (sparkling wines).

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### 8.602            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; not to the manufacturer or sale of said articles containing alcohol.

### 8.603            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.

### 8.604            Licenses – Classes of – Fees

The fees for the following class of licenses shall be established by resolution adopted by the City Council:

License to sell beer Monday through Saturday;  
Sunday license for the sale of beer;  
License to sell beer and wine on Friday and Saturday only;  
Sunday license for the sale of beer and wine;  
Club license fee;  
License for on/off sale of intoxicating liquor Monday through Saturday;  
License for off sale of intoxicating liquor Monday through Saturday;  
Sunday license for the on/off sale of intoxicating liquor; and  
Sunday license for the off sale of intoxicating liquor.  
Retail off sale alcoholic beverage license.

All fees due and payable for one of the preceding licenses shall be paid at the time the application for the license is made.

### 8.605            Licenses – Terms of

1. All licenses issued hereunder shall be for a period of not more than one (1) year and shall expire on the 30<sup>th</sup> day of June in each year. Where a license is granted for a period less than one (1) year, any subsequent renewal thereof must be made for the full annual term.
2. If an application is made for license hereunder during the license year for the unexpired portion of such year, the fees for said license shall be proportional to represent the number of whole months in which said license will be in effect.

### 8.606            License – Qualification for

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

1. Applicant, if an individual, must be a legal resident of the United States, a resident of the State of North Dakota and a person of good moral character.

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2. If applicant is a corporation, the manager of the licensed premises and the officers, directors and stockholders must be legal residents of the United States and persons of good moral character. Corporate applicants must first be properly registered with the Secretary of State.
3. If applicant is a co-partnership, all the members must be legal residents of the United States and of good moral character.
4. Applicant or manager must not have been convicted of a felony.
5. Building in which business is to be conducted must meet local and state requirements regarding the sanitation and safety.
6. Taxes on property for which application for license is made must not be delinquent.
7. If applicant's place of business is to be conducted by a manager or agent, said manager or agent must possess the same qualifications required of the licensee.

### 8.607                    Application for Liquor License

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

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

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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, wither at wholesale or retail, within the borders of the United States.
14. The occupations that the applicant has followed during the past five years.
15. The names and addresses of at least three business references.
16. Whether the applicant is rated by any commercial agency, and if so, the name and address of said agency.
17. Whether the applicant is engaged in any other business or intends to be engaged in any other business than the sale of alcoholic beverages under the license for which application is made, and if so, the type of business, and if an employee, the name and address of the employer.
18. The classification of license applied for.
19. If the applicant is a lodge or club, the date of organization, the number of members, the purpose for which organized and the purpose for which profits to be derived from the sale of alcoholic beverages are to be applied; and whenever required by the governing body a list of the members belonging to such lodge or club.
20. A statement by the applicant that he consents to entry and inspection of the premises for which license is sought or any part thereof at any time by any police officer, sheriff or any peace officer of this City or of the State of North Dakota.

### 8.608            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.

### 8.609            License – Location of

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

1. The convenience of police regulations.
2. Public health and sanitation.
3. Proximity of other licensed businesses.
4. Proximity of schools, churches, funeral homes, public buildings or buildings used by or for minors.
5. Any protest of neighboring property owners or occupants.
6. Zoning regulations.
7. Proposed on or off sale or both licensee.
8. Interference with or proximity to residential property.
9. Interference with neighboring property.
10. Suitability of premises for sale of beer, liquor or alcoholic beverages.
11. Public convenience and necessity.

### 8.610            License – Granting

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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.

### 8.611            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.

### 8.612            License – Posting of

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

### 8.613            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.

### 8.614            License Fees – Disposition of

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

### 8.615            Hours and Time of Sale – Penalty

Anyone who dispenses or permits the consumption of alcoholic beverages on a licensed premises after one o'clock a.m. on Sundays, before eight o'clock a.m. on Mondays or between the hours of one o'clock a.m. and eight o'clock a.m. on all other days of the week or who so dispenses or permits such consumption after one o'clock a.m. on Christmas Day, or after six o'clock p.m. on Christmas Eve is guilty of an offense. In addition, a person may not provide off sale after one o'clock a.m. on Thanksgiving Day. Anyone licensed by the City governing body to sell alcoholic beverages may apply to the City governing body for a permit to sell alcoholic beverages under that license during the hours from eleven o'clock a.m. on Sundays to one o'clock a.m. on Mondays. The authority for issuing the permit rests solely with the City governing body. The fee for this permit shall be set by resolution of the City governing body. (Source: North Dakota Century Code Section 5-02-05.5-02-05.1). Any licensee wishing to dispense or permit the consumption of alcoholic beverages between the hours of eleven o'clock a.m. on Sunday and one o'clock a.m. on Monday may apply for a Sunday alcoholic beverage permit from the City governing body. The fee for the permit is five dollars for each Sunday the licensee is allowed to sell alcoholic beverages (Source: North Dakota Century Code Section 5-02-03,05.1).

### 8.616            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.

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### **8.616.1 Sunday Alcoholic Beverage Permit – Penalty**

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

### **8.616.2 Special Permit**

In accordance NDCC5-02-01.1 and all amendments thereto, the Hankinson City Council may issue special permits to qualified alcoholic beverage licensees authorizing the sale of alcoholic beverages at special events designated by the permit. A qualified alcoholic beverage licensee shall mean an alcoholic beverage license holder of a license granted by the City of Hankinson, who is continuously paying the City of Hankinson Sales and Use Tax.

The permit may not be valid for a period of greater than two (2) days and may include Sundays. The permit holder may only sell such beverages as allowed by the class of license held by the licensee. The permit may be issued for a location other than the primary place of business of the license holder. An application for a special permit shall include the name of the applicant, the time or period for which the permit is desired, the place where such specific event is to be conducted or held, whether the permit is requested for the sale of all alcoholic beverages, beer, wine or any combination thereof, and the hours during which sales will take place. Applications shall be submitted thirty (30) days in advance of the first date for which the special permit is requested, however, the City Council may, in its discretion, waive the thirty (30) day period. The City Council may, in its discretion, establish such conditions as it deems appropriate for the issuance of a special permit.

The fee for a special permit shall be Twenty-five Dollars (\$25.00).

### **8.616.3 Sale of Alcoholic Beverages in Gas Stations, Grocery Stores and Convenience Stores**

Before a City retail off-sale alcoholic beverage license may be issued to a person whose business to be licensed is located in a building that is primarily a gas station, grocery store, or convenience store, the licensed premises must fully comply with NDCC Section 5-02.1 and any amendments thereto.

### **8.617 Gambling Prohibited – Exceptions**

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

### **8.617.1 Prohibited Forms of Entertainment**

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

1. The performance of acts, demonstrations, dance or exhibition or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or or any sexual acts which are prohibited by law, whether by an entertainer or by any patron.

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2. The depiction or display of human genitals or pubic region, buttocks, or the nipple or any portion of the female breast at or below the nipple or areola.
3. No person shall disrobe, undress, dress or change his or her clothes in public view.
4. The depiction or display of any device, costume or covering which gives the appearance of or simulates genitals, pubic hair, buttocks, anal region or the female breast at or below the areola thereof.

### 8.618            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 term authorized or permits any person presenting such bank check, voucher, order or document to receive payment of money.

### 8.619            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.

### 8.620            Minors in Licensed Premises

1. Except as permitted in NDCC 50-02-06, a licensee who dispenses alcoholic beverages to an individual under twenty-one years of age, or who permits an individual under twenty-one years of age to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2.
2. An individual under twenty-one years of age may enter and remain on a licensed premises while alcohol is being sold or displayed, at the discretion of the owner of the licensed premises, if:
  - a. The individual is accompanied by a parent or guardian who is twenty-one years of age or older. For purposes of this section, "guardian" means an individual who has the legal responsibility for the health and well-being of the individual under twenty-one years of age;
  - b. The individual is on the premises to consume a meal or in an emergency situation;
  - c. The premises serves at a tabletop, food that is prepared in a kitchen with at least an indoor grill;
  - d. The individual is not on the licensed premises after ten p.m.; and
  - e. The owner of the licensed premises receives permission of the local licensing authority for individuals to be on the premises as allowed under this section and the licensed premises is located in a city with a population of one thousand five hundred or fewer people, or the licensed premises is not located in a city.
3. An individual under twenty-one years of age may not remain in a restaurant where alcoholic beverages are being sold except 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 gross sales of alcoholic beverages which are consumed in the dining area, or if the individual is employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of an individual twenty-one or more years of age and is not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages.
4. An individual under twenty-one years of age may enter and remain on the licensed premises if the individual is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages; if the individual is a law enforcement officer or other public official who enters the premises in the performance of official duty; or if the individual enters the licensed premises for training, education, or research purposes under the

## **Ordinances - City of Hankinson, North Dakota**

supervision of an individual twenty-one or more years of age with prior notification of the local licensing authority.

5. An individual under twenty-one years of age may remain in an area of a site where beer, wine, or sparkling wine is sold in accordance with the conditions of an event permit issued pursuant to section 5-02-01.1.

6. An individual who is eighteen years of age or older but under twenty-one years of age may be employed by a restaurant as provided in subsection 2 to serve and collect money for alcoholic beverages, if the individual is under the direct supervision of an individual twenty-one or more years of age, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages. Any establishment where alcoholic beverages are sold may employ individuals from eighteen to twenty-one years of age to work in the capacity of musicians under the direct supervision of an individual twenty-one or more years of age.

7. For purposes of this section, an individual is not twenty-one years of age until eight a.m. on that individual's twenty-first birthday.

8. If an individual is convicted of this section, the court shall consider the following in mitigation:  
a. After consuming the alcohol, the underage individual was in need of medical assistance as a result of consuming alcohol; and  
b. Within twelve hours after the underage individual consumed the alcohol, the defendant contacted law enforcement or emergency medical personnel to report that the underage individual was in need of medical assistance as a result of consuming alcohol.

### 8.621 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 ages. 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.

### 8.622 Street Sales and Consumption Prohibited

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

An ordinance amending Article 6 – Alcoholic Beverages of Sections 8.615 Hours and Time of sale – Penalty and 8.622 Street Sales Prohibited. See Ordinance 8.629.

### 8.623 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.

### 8.624 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 premise 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.

## **Ordinances - City of Hankinson, North Dakota**

### 8.625            Purchase from Licensed Wholesaler

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

### 8.626            Toilets Required

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

### 8.627            Deliveries – off Licensed Premises

1. It shall be unlawful for any person, firm or corporation engaged in the retail sale of liquor, beer or alcoholic beverages to make, or cause to be made any deliveries outside of the licensed place of business of beer, liquor or other alcoholic beverages to any purchaser or prospective purchaser.
2. It shall be unlawful for any person, firm or corporation to deliver by foot, carrier or motor carrier, any beer, liquor or alcoholic beverage to any person within the city limits provided however, that this section shall not apply to deliveries made by a licensed wholesaler dealer to a licensed retail dealer.

### 8.628            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 a legal bona fide resident and citizen of the State of North Dakota.
2. License issued pursuant to this ordinance may, in the discretion of the governing body, be either revoked or suspended for such period of time as deemed appropriate, upon the following grounds:
  - a. When the licensee has been convicted of violating any of the provisions of this article.
  - b. When the business of the licensee at the location licensed shall be conducted in violation of health or sanitary regulations or other ordinances of the City.

**Ordinances - City of Hankinson, North Dakota**

- 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 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 licensee voluntarily ceases his business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through him.

8.629 Penalties

**ORDINANCE AMENDING ARTICLE 6 – ALCHOLIC BEVERAGES OF SECTIONS 8.615 HOURS AND TIME OF SALE – PENALTY AND 8.622 STREET SALES PROHIBITED (Penalty Section)**

This Ordinance provides in part:

8.629 “A violation of Sections 8.615 and 8.622 of the Hankinson Revised Ordinances shall be subject to a fine of not to exceed five hundred 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.”

**ORDINANCE 2009-02**

**ORDINANCE REQUIRING SIGNS FOR BAR EXITS AND ENTRANCES REGARDING NO CARRYING OUT OF ALCOHOLIC BEVERAGES**

BE IT ORDAINED by the City Council of the City of Hankinson, North Dakota to require bars within the city limits of the City of Hankinson, Richland County, North Dakota that they shall post a conspicuous sign on entrances and exits stating that no person shall leave premises with open container of alcoholic beverages.

WHEREAS such sign must include the words “open alcoholic beverage containers are not permitted to be removed from premises by order of City Ordinance 8.622” in letters at minimum one-half (1/2) inch tall, printed on white metal sign 12 inches by 18 inches or larger, and the word “warning” printed in bold black letters at minimum one and one-half (1 ½) inches tall on red background or bold red letters on white background, and be posted conspicuously on entrance and exit doors of each establishment with liquor license no less than four (4) feet from bottom of door and no higher than seven (7) feet from bottom of door, and

WHEREAS City Council wishes to insure signs are made to ordinance specifications and are uniform to each affected establishment, the City will provide the signs which are the responsibility of liquor license holders to attach to entrance and exit doors upon receipt of signs.

THEREFORE BE IT RESOLVED that the City Council of the City of Hankinson, North Dakota has approved this ordinance at its May 4, 2009 meeting.

**Article 7 – Shows, Carnivals and Circuses**

## **Ordinances - City of Hankinson, North Dakota**

### 8.701 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.

### 8.702 Fees for

The fees to secure license to conduct the exhibition mentioned in the foregoing section shall be set by resolution by the City's governing board.

In addition to the fees, any carnival or circus granted a license shall deposit with the city auditor cash bond in the amount of \$500.00 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, and additional fee may be charged at the time of obtaining a license to provide for fire and police protection and additional policing in connection with the showing of such carnival or circus.

## **Article 8 – Fireworks**

### 8.801 Fireworks Defined

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

### 8.802 Time of Sale of and Type of Fireworks Permitted

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

1. Star lights, with wood spike cemented in one end, total pyrotechnic composition not to exceed twenty (20) grams each in weight (10 ball);
2. Helicopter type flyers, total pyrotechnic composition not to exceed twenty (20) grams each in weight;
3. Cylindrical foundations, total pyrotechnic composition not to exceed seventy-five (75) grams each in weight. The inside tube diameter shall not exceed three-fourths (3/4) inch;
4. Cone fountains, total pyrotechnic composition not to exceed fifty (50) grams each in weight;
5. Wheels, total pyrotechnic composition not to exceed sixty (60) grams in weight, for each driver unit, but there may be any number of drivers on any one wheel. The inside bore of driver tubes shall not be over one-half (1/2) inch;

## **Ordinances - City of Hankinson, North Dakota**

6. Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed one hundred (100) grams each in weight;
7. Sparklers and dipped sticks, total pyrotechnic composition not to exceed one hundred (100) grams each in weight. Pyrotechnic composition containing any chlorate shall not exceed five (5) grams;
8. Comets and shells, of which the mortar is an integral part, except those designed to produce an audible effect, total pyrotechnic composition not to exceed forty (40) grams each in weight;
9. Soft shell firecrackers not to exceed one and one-half (1 ½) inches in length one one-fourth (1/4) inch in diameter; total pyrotechnic composition not to exceed fifty (50) milligrams each in weight;
10. Whistles without report, total pyrotechnic composition not to exceed forty (40) grams each in weight.

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

Exempted from requirement to having operated a retail business wherein the merchandise was assessed by the local taxing authority on April 1 immediately preceding thereto are any person who held a State Sales Tax Permit and sold fireworks in 2002; all other licensing requirements applied to and shall be complied with by such persons.

### 8.803            Hours of Sale

Except as otherwise provided in this article, no person, firm, partnership, association, corporation or other entity, shall sell, dispense, gifts or otherwise furnish to others fireworks after 12:00 a.m. or before 9:00 a.m. on all days of the week.

### 8.804            Sale of Fireworks Prohibited

Except as otherwise provided in this article, no person, firm, partnership, association, corporation or other entity shall offer for sale, expose for sale, sell at retail, bring into this city or cause to be brought into this city or use or explode any fireworks in this city. It is unlawful for any person not licensed as a wholesaler or retailer to bring any fireworks into this city, and it is unlawful for any retailer in this city to sell any fireworks which have not been purchased from a wholesaler licensed pursuant to this article and under Chapter 23-15, North Dakota Century Code. Any person licensed under NDCC Chapter 23-15 and under this article must keep available for inspection by the state fire marshal or any sheriff, police officer or local fire marshal a copy of each invoice for fireworks purchased as long as any fireworks included on the invoice are held in the licensee's possession, which invoice must show the license number of the wholesaler from whom the purchase was made.

**Ordinances - City of Hankinson, North Dakota**

**ORDINANCE 2016-01**

**REPEAL AND RE-ENACT ORDINANCE**

**WAIVE HANKINSON COMMERCIAL CLUB FIREWORKS DISPLAY LICENSE FEE**

8.805            Public Display of Fireworks Permitted by Municipality of Fair Association Within Its Limits—supervised Display Allowed—permit Required—duty of the City Council to Establish Regulation.

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

8.806            Exceptions

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

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

8.807            Police to Seize All Fireworks or Combustibles

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

8.808            Application for License to Sell Fireworks

No person, firm, partnership, association, or corporation or other entity shall offer for sale, or sell at retail, fireworks within the City of Hankinson unless he has received a license from the City of Hankinson. Applications for such license must be submitted by April 1 of each year hereafter and be accompanied by a license fee of One Hundred Dollars (\$100.00) Each applicant must show in said application the following:

1. That the applicant is a bona fide retail merchant in said city on the date of the application.
2. That the applicant has no unpaid personal property taxes due in Richland County.
3. The business address of the applicant's retail establishment or the place where the fireworks are to be sold.

## **Ordinances - City of Hankinson, North Dakota**

4. Each individual applicant shall be at least eighteen (18) years of age and, for any partnership, association, corporation, form or other entity making application, shall be managed, controlled, and operated solely by person or persons at least eighteen (18) years of age or older.

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

### 8.809 Sale of Fireworks at Wholesale

No person, firm, partnership, association, or corporation or other entity shall offer for sale or sell fireworks at wholesale within the City of Hankinson unless he has received a license from the City of Hankinson. Applications for such license must be submitted by April 1 of each year hereafter, and be accompanied by a license fee of Two Hundred Fifty Dollars (\$250.00). Each applicant must show on said application the following:

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

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

### 8.810 Use of Fireworks Limited (Days, Hours and Sites)

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

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

Nothing in this article shall prohibit, however, the public display of fireworks within the City, provided that specific permission therefore is given by the City Council of the City of Hankinson, which permission shall be provided for by motion of the City Council, duly carried.

### 8.811 Penalty

Any person, firm, partnership, association, or corporation or other entity violating any of the provisions of this article shall be guilty of a class B misdemeanor and be subject to a fine of not to exceed One Thousand Dollars (\$1,000.00) or imprisonment not to exceed 30 days, or both such fine and imprisonment.

## **Article 9 – Validity**

### 8.901 Validity

## **Ordinances - City of Hankinson, North Dakota**

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 10 – Penalty**

#### 8.1001            Penalty

Any person, firm, corporation or association violating any of the terms, articles or provisions of this chapter, for which a specific penalty is not prescribed, shall upon conviction thereof, be punished by a fine not to exceed One Thousand Dollars (\$1,000.00), 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, right 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.

### **ORDINANCE AMENDING HANKINSON COMMUNITY ANTENNA TELEVISION ORDINANCE TO CHANGE THE EXPIRATION DATE FROM DECEMBER 31, 2000 TO DECEMBER 31, 2011.**

#### **ORDINANCE NO. 96-01**

Be it ordained by the City Commission of the City of Hankinson, North Dakota.

1. SECTION III be amended to change the ten (10) year term specified therein to twenty-one (21) years.

2. That SECTION XVII of said Ordinance be amended to read as follows:

“Section XVII-DURATION AND RENEWAL OF ORDINANCE. The rights Granted to Grantee herein shall, except as provided in this Section, terminate Twenty-one (21) years from the effective date of this Ordinance, which Ordinance shall be subject to renewal pursuant to the provisions of the Cable Communications Policy Act of 1984 applicable to new ordinances that are in The nature of a franchise. Pending final completion of renewal proceedings, the Ordinance shall remain in effect even if the original ten (10) year term has Expired. If this Ordinance is not renewed or if it is revoked for cause by the City, the transfer of Grantee’s system shall be governed by Section 627 of The Cable Communication Policy Act of 1984.)

**Ordinances - City of Hankinson, North Dakota**

**CHAPTER NINE**

**TRAFFIC**

**Article 1 – Definitions**

9.101            Definitions

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

**Article 2 – Traffic Administration**

9.201            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.

9.202            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.

9.203            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 9.309 either at the time and at the scene of the accident or thereafter by interviewing the participants, or witnesses, shall make and forward promptly a written report of such accident to the director of the North Dakota Department of Transportation.

**Article 3 – Enforcement and Obedience to Traffic Regulations**

9.301            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.

## **Ordinances - City of Hankinson, North Dakota**

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.

### 9.302            Obedience to Traffic Ordinances

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

### 9.303            Obedience to Police Officers of 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.

### 9.304            Certain Non-motorized Traffic to Obey Traffic Regulations

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

### 9.305            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.

### 9.306            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.

### 9.307            Emergency Vehicles

The provisions of NDCC Sections 39-10-03, 39-1—03.1, and 39-10-03.2 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Authorized emergency vehicles. **Class A** authorized emergency vehicle shall mean:
  - a. Vehicles of a governmental owned fire department;
  - b. Vehicles when operated by or under the control of a police officer having authority to enforce the provisions of this title pertaining to all motor vehicles or by a salaried employee of any municipal police department within the municipality or by any sheriff or deputy sheriff not to

## Ordinances - City of Hankinson, North Dakota

- include special deputy sheriffs, or by the director of the department of correction and rehabilitation and the director's authorized agents who have successfully completed training in the operation of Class A authorized emergency vehicles;
- c. Vehicles clearly identifiable as property of the department of corrections and rehabilitation when operated or under the control of the director of the department of corrections and rehabilitation;
  - d. Ambulances;
  - e. Vehicles operated by or under the control of the director, district deputy director, and district deputy game warden of the North Dakota Game and Fish Department;
  - f. Vehicles owned or leased by the United States Government and used for law enforcement purposes;
  - g. Vehicles designated for the use of the adjutant general or assistant adjutant general in cases of emergency;
  - h. Vehicles operated by or under the control of the director of the Parks and Recreation Department;
  - i. Vehicles operated or under the control of a licensed railroad police officer and used for law enforcement purposes; (Source: North Dakota Century Code Section 39-01-01)
2. The driver of a Class A authorized emergency vehicle may:
    - a. Park or stand, irrespective of the provisions of this chapter;
    - b. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
    - c. Exceed the speed limit so long as he does not endanger life or property;
    - d. Disregard regulations governing directions of movement or turning in specified directions.
  3. The exceptions herein granted to a Class A authorized emergency vehicle shall apply only:
    - a. When the authorized emergency vehicle is in pursuit of or apprehension of a violator or a suspected violator requiring the use of these exemptions;
    - b. When the Class A authorized emergency vehicle 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);
    - c. In any instance when the head of the law enforcement agency deems advisable within the area of his jurisdiction for the protection of person and property and when giving audible signal by siren or when giving adequate warning by use of a flashing red or combination red and white lights which are visible under normal atmospheric conditions for at least five hundred feet (152.4 meters).
  4. No emergency vehicle shall display or permit to be displayed any red lamp except when operated on official business.
  5. Any law enforcement officer as provided in paragraph 2 of subdivision a of subsection 1 of Section 39-01-01 of the North Dakota Century Code having stopped another vehicle along a highway, and while still involved in that incident, or any other such activity, may use amber lights, visible under normal atmospheric conditions for at least five hundred feet (152.4 meters), for the purpose of maintaining traffic flow.
  6. **Class B** authorized emergency vehicles shall mean wreckers and such other emergency vehicles as are authorized by local authorities.
  7. The driver of Class B authorized emergency vehicles may:
    - a. Park or stand, irrespective of the provisions of this chapter;
    - b. Exceed the speed limit so long as he does not endanger life or property during the time of a local or national disaster;
    - c. Disregard regulations governing direction of movement or turning in specified directions.

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8. The exceptions herein granted to a Class B authorize emergency vehicle shall apply only when the authorized emergency vehicle is displaying an amber light visible under normal atmospheric conditions for a distance of five hundred feet (152.4 meters) in any direction, and
  - a. When it is necessary for the authorized emergency vehicle to use these exemptions for the immediate protection of life or property;
  - b. When an authorized emergency vehicle is stopped on a highway for the purpose of performing a duty as required of the driver; or
  - c. When traveling at a speed slower than the normal flow of traffic. (Source: North Dakota Century Code Section 39-10-03.2)
9. **Class C** authorized emergency vehicles means:
  - a. Vehicles authorized by state and local division of emergency management organizations;
  - b. Vehicles used by volunteer firefighters while performing their assigned disaster and emergency responsibilities.
  - c. Vehicles other than ambulance, used by emergency medical personnel.
10. **Class C** authorized emergency vehicles. All Class B specifications apply to Class C authorized emergency vehicles except that a rotating blue flashing light shall be displayed in place of an amber light as provided in section 39-10-03.1 of the North Dakota Century Code. The division of disaster emergency services shall be responsible for promulgating the rules for the use of flashing blue lights in accordance with chapter 28-32 of the North Dakota Century Code. (Source: North Dakota Century Code Section 39-10-03.2)

### 9.308 Operation of Vehicles on Approach of Authorized Emergency Vehicles

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

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

### 9.309 Written Report of Accident

1. Immediate notice of accident. The driver of a vehicle involved in an accident resulting in injury to or death of any person or at least one thousand dollars, shall immediately give notice of the accident to the local police department if the accident occurs within a municipality, otherwise to the office of the county sheriff or the state highway patrol. The name of the motor vehicle insurance policy carrier and the policy number of the driver, or if the driver is not the owner of the vehicle, then the motor vehicle insurance policy carrier and the policy number of the owner of the vehicle, must be furnished to the law enforcement officer investigating the accident. If the driver does not have the required information concerning insurance to furnish to the investigating law enforcement officer, then within five (5) days of the accident the driver shall supply that information to the Driver's License Division in the form the division requires. (Source: North Dakota Century Code Section 39-08-09)
2. Officer to report. Every law enforcement officer, who in the regular course of duty investigates a motor vehicle accident required to be reported as provided in subsection 1 either at the time and at the scene of the accident or thereafter by interviewing the participants, or witnesses, shall make and

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promptly forward to the director of the Department of Transportation a report of the accident in a format prescribed by the director. (Source: North Dakota Century Code Section 39-08-10)

3. An accident notice is not required from any person who is physically incapable of making the report during the period of such incapacity.

Whenever the driver of a vehicle is physically incapable of giving an immediate notice of an accident and there was another occupant in the vehicle at the time of the accident capable of doing so, such occupant shall make or cause to be given the notice not given by the driver.

Whenever the driver is physically incapable of giving notice of an accident and such driver is not the owner of the vehicle, then the owner of the vehicle involved shall within five (5) days after learning of the accident give such notice and insurance information not given by the driver. (Source: North Dakota Century Code Section 39-08-11)

4. Garages to report. The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in a reportable accident as provided in Section 9.0309 (1) or of being struck by any bullet, shall report or cause a report to be made to a police officer within twenty-four (24) hours after such motor vehicle is received, and before any repairs are made to such vehicle, giving the registration number and the name and address of the owner, operator, or person in control of such vehicle with a description of the location and type of damage to the vehicle, or any missing parts, if the vehicle does not have a sticker on a window thereof issued by a police officer, sheriff or highway patrolman bearing information to show that the accident in which the vehicle was involved had been investigated. The police officer investigating any reportable accident shall attach a sticker to the window of any damaged vehicle showing that the accident in which such vehicle was involved has been investigated. If the vehicle does bear such a sticker the garage or repair shop need not make the report this section requires and may begin repairs immediately. After repairs have been made and before the vehicle is released, the sticker provided herein shall be removed. (Source: North Dakota Century Code Section 39-07-12)
5. Wrecker and towing services to report. The person in charge of the operator of any commercial towing or wrecker service which causes any motor vehicle to be transported to a private residence or business other than a garage or repair shop which show evidence of having been involved in a reportable accident as provided in section 39-08-09 or of being struck by any bullet shall report or cause a report to be made to a police officer within twenty four hours after such motor vehicle is transported. The report must give the registration number, and the name and address of the owner, operator, or person in control of such vehicle with a description of the location and type of damage to the vehicle, or any missing parts, along with the location such vehicle was transported to, if the vehicle does not have a sticker on a window thereof issued by a police officer, sheriff, or highway patrolman, bearing information to show that the accident in which the vehicle was involved has been investigated. If the vehicle does bear such a sticker the towing or wrecker service need not make the report this section requires. (Source: North Dakota Century Code Section 39-07-13)

### **Article 4 Traffic Control Devices**

#### 9.401            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.

#### 9.402            Specifications for

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All traffic control signs, signals, and devices shall conform to the specifications approved by the director of the North Dakota Department of Transportation pursuant to NDCC Section 39-13-06. All signs and signals required hereunder for a particular purpose shall so far as practicable be uniform as to type and location throughout the City. All traffic control devices so erected and not inconsistent with the provisions of state law or this article shall be official traffic control devices.

### 9.403            Obedience to Traffic Control Devices

The provisions of North Dakota Century Code Section 39-10-04 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

### 9.404            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 nay 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 or 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.

### 9.405            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.

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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.

### 9.406                    Designation of Walks, Lanes, etc.

The city engineer or any person authorized by the governing body shall:

1. Designate and maintain, by appropriate devices, marks or lines upon the surface of the roadway, crosswalks at intersections where there is particular danger to pedestrians crossing the roadway, and at such other places as directed by the governing body.
2. Establish safety zones of such kind and character and at such places as may be deemed necessary for the protection of pedestrians as determined by the governing body.
3. Mark traffic lanes upon the roadway of any street or highway where a regular alignment of traffic is necessary. Where such traffic lanes have been marked, it shall be unlawful for the operator of any vehicle to fail or refuse to keep such vehicle within the boundaries of any such lane except when lawfully passing another vehicle or preparatory to making a lawful turning movement or performing other lawful traffic movements.

## **Article 5 – Speed Regulations and Care Required**

### 9.501                    Basic Rules – Penalty for Violation

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

No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions. Any person who shall drive a vehicle upon a highway or private or public property open to the public for the operation 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 Dollars (\$30.00).

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

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

### 9.502                    Speed Limitations

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

1. Subject to the provisions of 9.501 and except in those instances where a lower speed is specified in this chapter, it presumably shall be unlawful for the driver of a vehicle to drive the same at a speed not exceeding:
  - a. Twenty (20) miles an hour when approaching within fifty (50) feet of a grade crossing of any stream, electric, or street railway when the driver’s view is obstructed. A driver’s view is

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- deemed to be obstructed when at any time during the last two hundred (200) feet of the driver's approach to such crossing, the driver does not have a clear and uninterrupted view of such railway crossing and of any traffic on such railway for a distance of four hundred (400) feet in each direction from such crossing;
- b. Twenty (20) miles an hour when passing a school during school recess or while children are going to or leaving school during opening or closing hours;
  - c. Twenty (20) miles an hour when approaching within fifty (50) feet and in traversing an intersection of highways when the driver's view is obstructed. A driver's view is deemed to be obstructed when at any time during the last fifty (50) feet of the driver's approach to such intersection, the driver does not have a clear and uninterrupted view of such intersection and of the traffic upon all of the highways entering such intersection for a distance of two hundred (200) feet from such intersection;
  - d. Twenty (20) miles an hour when the driver's view of the highway ahead is obstructed within a distance of one hundred (100) feet;
  - e. Twenty five (25) miles an hour on any highway in a business district or in a residence district or in a public park, unless a different speed limit is designated and posted by local authorities; and
  - f. Fifty five (55) miles an hour under other circumstances, unless otherwise permitted, restricted, or required by conditions.
2. The director of the North Dakota Department of Transportation may designate and post special areas of state highways where lower speed limits shall apply.
  3. Except as provided by law, it is unlawful for a person to drive a vehicle upon a highway at a speed that is unsafe or at a speed exceeding the speed limit prescribed by law or established pursuant to law.
  4. In charging a violation of the provisions of this section, the complaint must specify the speed at which the defendant is alleged to have driven and the speed which this section prescribed shall be prima facie lawful at the time and place of the alleged offense.

### 9.503 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 City, on the basis of an engineering and traffic investigation, determines that the maximum speed permitted under this title is greater or less than what is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the City may determine and declare a reasonable and safe maximum limit thereon which:
  - a. Decreases the limit at intersections;
  - b. Increases the limit within an urban district but not to more than fifty-five (55) miles per hour; or
  - c. Decreases the limit outside an urban district.
2. The City shall determine by an engineering and traffic investigation the proper maximum speed for arterial streets and shall declare a reasonable and safe maximum limit thereon which may be greater or less than the minimum speed permitted under this chapter for an urban district.
3. Any altered limit established as hereinabove authorized shall be effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice thereof are erected upon such street or highway.
4. Any alteration of maximum limits on state highways or extensions thereof in the municipality shall not be effective until such alteration has been approved by the director of the North Dakota Department of Transportation.
5. Not more than six such alterations as hereinabove authorized shall be made per mile along a street or highway except in the case of reduced limits at intersections, and the difference between adjacent limits shall not be more than ten (10) miles (16.09 kilometers) per hour.

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9.504            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 or a reckless disregard of the safety of others.

9.505            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.

9.506            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.

9.507            Exhibition Driving and Drag Racing – Definitions – Penalty

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

1. No person shall engage in exhibition driving of any vehicle on a highway, street, alley, sidewalk, or any public or private parking lot or area, nor shall any person engage in a race, a speed competition, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration. Any person who violates this section by engaging in an act defined by subdivision b of subsection 2 must be assessed a fee of fifty dollars. Any person who violates this section by engaging in an act defined by subdivision a or c of subsection 2 must be assessed a fee of one hundred dollars.
2. As used in this section:
  - a. “Drag race” means the operation of two or more vehicles from a point side by side by accelerating rapidly in a competitive attempt to cause one vehicle to 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 out gain, outdistance, or to arrive at a distance ahead of another vehicle or vehicles; or the use of one or more vehicles to willfully prevent another vehicle from passing the facing vehicle or vehicles, or to test the

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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.

### **9.508            Radar Evidence in Speed Violations**

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

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

### **9.509            Care Required in Operating Vehicle**

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

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

## **Article 6 – Turning Movements**

### **9.601            Required Position and Method of Turning**

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

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

1. Right turns. Both the approach for a right turn and a right turn must be made as close as practicable to the right hand curb or edge of the roadway;
2. Left turns. The driver of a vehicle intending to turn left shall approach the turn in the extreme left hand lane lawfully available to traffic moving in the direction of travel of such vehicle. Whenever practicable, the left turn must be made to the left of the center of the intersection and so as to leave the intersection in the extreme left hand lane lawfully available to traffic moving in the same direction as such vehicle on the roadway being entered;
3. The City may cause official traffic control devices to be placed and thereby require and direct that at different course from that specified in this section be traveled by turning vehicles, and when such devices are so placed, no driver of a vehicle may turn other than as directed and required by such devices.

### **9.602            Vehicle Turning Left**

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

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

### **9.603            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 movements can be made in safely and without interfering with other traffic.
2. No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred (500) feet.

### **9.604            Turning Movements and Required Signals**

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

1. No person may turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety without giving an appropriate signal in the manner hereinafter provided;
2. A signal of intention to turn right or left when required must be given continuously during not less than the last one hundred (100) feet traveled by the vehicle before turning;
3. No person may stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal; and
4. The signals required on vehicles by subsection 2 or 9.605 may not be flashed on one side only on the 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.

### **9.605            Signals by Hand and Arm or Signal Lamps**

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

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

### **9.606            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.

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

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

### **Article 7 – Special Stops**

#### 9.701            Authority to Designate Through Streets

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

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

#### 9.702            Signs

All traffic control devices shall conform to state specifications.

#### 9.703            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 in this ordinance.

1. Preferential right of way may be indicated by stop signs or yield signs as authorized in Section 9.701.
2. Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, or if none, then at the point nearest the intersection roadway where the driver has a view of approaching traffic on the intersection roadway before entering it. After having stopped, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.
3. The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop sign, or, if none, before entering the crosswalk on the near side of the intersection or, if none, then at the point nearest the intersection roadway where the driver has a view of approaching traffic on the intersection roadway before entering it. After slowing or stopping, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways. Provided, however, that if the driver is involved in a collision with a vehicle in the intersection or junction of roadways after driving past a yield sign without stopping, such collision shall be deemed prima facie evidence of his failure to yield the right of way.
4. Every stop sign and every yield sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is not crosswalk, then as near as practicable to the nearest line of the intersecting roadway.
5. Except when directed to proceed by a police officer or traffic control sign, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersection roadway where the driver has a view of approaching traffic on the intersecting roadway.

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

### 9.704            Emerging from Alley or Driveway

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

### 9.705            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.

### 9.706            Obedience to Signal Indicating Approach of Train

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

1. Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within fifty (50) feet (15.24 meters) but not less than fifteen (15) feet (4.57 meters) from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply when:
  - a. A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;
  - b. A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;
  - c. A railroad train approaching within approximately one thousand three hundred twenty (1,320) feet (402.34 meters) of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard; or
  - d. An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.
2. No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed. No person shall drive any vehicle past any human flagman at a railroad crossing until the flagman signals that the way is clear to proceed.

## **Article 8 – Operators**

### 9.801            Operators – Who Prohibited

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

### **Article 9 – Miscellaneous Driving Rules**

#### 9.901            When Traffic Obstructed

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

#### 9.902            Driving Through Funeral or Other Procession

No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when such vehicles are conspicuously designated as required in this ordinance, except when authorized to do so by a law enforcement officer or when such vehicle is an emergency vehicle giving an audible or visible signal. (Source: North Dakota Century Code Section 39-10-72 (4)).

#### 9.903            Drivers in a Procession

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

#### 9.904            Funeral Processions to be Identified

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

#### 9.905            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 the 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.

#### 9.906            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;

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- 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 to 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.

### 9.907 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.

### 9.908 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 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.

### 9.909 When Overtaking on the Right is Permitted

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

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

### 9.910 Limitations on Overtaking on the Left

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

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

### 9.911 Further Limitation 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 9.906 not to the driver of a vehicle turning left into or from an alley, private road or driveway.

### 9.912 No-Passing Zones

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

1. The director of the North Dakota Department of Transportation and local authorities are hereby authorized to determine those portions of any highway under their respective jurisdiction where overtaking and passing or driving on the left side of the roadway would especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones and when such signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions thereof.
2. Where signs or markings are in place to define a no-passing zone as set forth in subsection 1, no driver shall at any time drive on the left side of the roadway with such no passing zone or on the left side of any pavement striping designed to mark such no passing zone throughout its length.
3. This section does not apply under the conditions described in Section 9.906 nor to the driver of a vehicle turning left into or from an alley, private road or driveway.

### 9.913 Driving on Roadways Laned for Traffic

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

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

1. A vehicle must be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

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2. Upon a roadway which is divided into three lanes and provides for two way traffic, a vehicle may not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center line is clear of traffic within a safe distance, or in preparation for making a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic control devices.
3. Official traffic control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such device.
4. Official traffic control devices may be installed prohibiting the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of every such device.

### 9.914            Following Too Closely

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

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

### 9.915            Driving on Divided Highways

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

Whenever any highway has been divided into two or more roadways by leaving an intervening space or by a physical barrier or clearly indicated divided section so construed as to impede vehicular traffic, every vehicle must be driven only upon the right hand roadway, unless directed or permitted to use another roadway by official traffic control devices or police officers. No vehicle may be driven over, across or within any such dividing space, barrier or section, except through an opening in such physical barrier or dividing section or space at a crossover or intersection as established by public authority, unless such crossing is specifically prohibited and such prohibition is indicated by appropriate traffic control devices.

### 9.916            Restricted Access

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

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

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### 9.917 Restrictions on Use of Controlled Access Roadway

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

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

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

### 9.918 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.

### 9.919 Vehicle Approaching or Entering Intersection

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

1. When two vehicles approach or enter an intersection not controlled by an official traffic control device from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right. If the intersection is T-shaped and not controlled by an official traffic control device, the driver of the vehicle on the terminating street shall yield to the vehicle on the continuing street or highway.
2. The right of way rule declared in this section is, modified at through highways and otherwise as stated in this chapter.

### 9.920 Overtaking and Passing School Bus

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

1. The driver of a vehicle meeting or overtaking from either direction any school bus stopped on the highway shall stop the vehicle before reaching the school bus when there is in operation on the school bus the flashing red lights or the stop sign on the control arm specified in North Dakota Century Code 39-21-18, and the driver may not proceed until the school bus resumes motion, the driver is signaled by the school bus driver to proceed, or the flashing red lights and the stop sign on the control arm are no longer actuated.
2. Every school bus shall bear upon the front and rear thereof plainly visible signs containing the word "SCHOOL BUS" in letters not less than eight (8) inches (20.32 centimeters) in height. When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or for a school sanctioned activity, all markings thereon indicating "SCHOOL BUS" shall be covered or concealed.

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3. The operator of a school bus equipped with amber caution lights may activate those lights at a distance of not less than three hundred (300) feet (91.44 meters) nor more than five hundred (500) feet (152.4 meters) from the point where school children are to be received or discharged from the bus.
4. Every school bus must be equipped with a stop sign on a control arm and red visual signals meeting the requirements of North Dakota Century Code Section 39-21-18, which may only be actuated by the driver of the school bus whenever the vehicle is stopped on the highway to receive or discharge school children.
5. The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon 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".

### 9.921 Unattended Motor Vehicle

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

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

### 9.922 Limitations on Backing

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

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

### 9.923 Obstruction to Driver's View or Driving Mechanism

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

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

### 9.924 Opening and Closing Vehicle Doors

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

No person may open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so and can be done without interfering with the movement of other traffic, nor may

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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.

### 9.925            Coasting Prohibited

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

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

### 9.926            Following Fire Apparatus Prohibited

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

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

### 9.927            Crossing Fire Hose

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

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

### 9.928            Garbage, Glass, Etc. on Highways Prohibited

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

1. No person may throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, rubbish, or any other substance likely to injure any person, animal or vehicle.
2. Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.
3. Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

### 9.929            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.

### 9.930            Moving Heavy Equipment at Railroad Grade Crossings

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

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

### 9.931 Open Container Law – Penalty

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

1. A person may not drink or consume alcoholic beverages, as defined in Section 5-01-01 of the North Dakota Century Code, in or on any motor vehicle when the vehicle is upon a public highway or in an area used principally for public parking. A person may not have in that person's possession on that person's person while in or on a private motor vehicle upon a public highway or in an area used principally for public parking, any bottle or receptacle containing alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed. It shall be unlawful for the owner of any private motor vehicle or the driver, if the owner be not then present in or on the motor vehicle, to keep or allow to be kept in a motor vehicle when such vehicle is upon the public highway or in an area used principally for public parking any bottle or receptacle containing alcoholic beverages which have been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle is kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers. This section does not prohibit the consumption or possession of alcoholic beverages in a house car, as defined in Section 9.1001, if the consumption or possession occurs in the area of the house car used as sleeping or living quarters and that area is separated from the driving compartment by a solid partition, door, curtain or some similar means of separation; however, consumption is not authorized while the house car is in motion. Any person violating the provisions of this section must be assessed a fee of Fifty Dollars (\$50.00); however the licensing authority shall not record the violation against person's driving record unless the person was the driver of the motor vehicle at the time that the violation occurred.
2. Subsection 1 does not apply to a public conveyance that has been commercially chartered for group use, any passenger for compensation in a for hire motor vehicle, or a privately owned motor vehicle operated by a person in the course of that person's usual employment transporting passengers at the employer's direction. This subsection does not authorize possession or consumption of an alcoholic beverage by the operator of any motor vehicle described in this subsection while upon a public highway or in an area used principally for public parking.

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### 9.932            Permitting Unauthorized Minor to Drive

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

### 9.933            Permitting Unauthorized Person to Drive

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

## **Article 10 – Pedestrians' Rights and Duties**

### 9.1001            Pedestrian Obedience to Traffic Control Devices and Traffic Regulations

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

1. A pedestrian shall obey the instructions of any official traffic control device specially applicable to him, unless otherwise directed by a police officer.
2. Pedestrians are subject to traffic control and pedestrian control signals as provided for in 9.403.

### 9.1002            Pedestrians' Right of Way in Crosswalks

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

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

### 9.1003            Crossing at other than Crosswalks

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

1. Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway.
2. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway.
3. Between adjacent intersections at which traffic control devices are in operation pedestrians may not cross at any place except in a marked crosswalk.

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

### 9.1004            Drivers to Exercise Due Care

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

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

### 9.1005            Pedestrians to Use Right Half of Crosswalks

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

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

### 9.1006            Pedestrians on Roadways

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

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

### 9.1007            Pedestrian's 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.

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2. This section does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway nor from the duty to exercise due care to avoid colliding with any pedestrian.

### 9.1009 Blind Pedestrians' Right of Way

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

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

### 9.1010 Pedestrians Under Influence of Alcohol or Drugs

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

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

### 9.1011 Bridge and Railroad Signals

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

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

### 9.1012 Pedestrians Soliciting Rides or Business

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

1. No person may stand in a roadway for the purpose of soliciting a ride.
2. No person may stand in a roadway for the purpose of soliciting employment, business or contributions from the occupant of any vehicle.
3. No person may stand on or in proximity to a street or highway for the purpose of soliciting watching 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 is granted all of the rights and is subject to all of the duties applicable to the driver of any other vehicle under this chapter, except as to special regulations in this chapter and except as to those provisions of these ordinances which by their nature can have no application. For purposes of this chapter, the term "motorcycle" means motorcycles and motorized bicycles.

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### 9.1102            Riding on Motorcycles

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

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

### 9.1103            Operating Motorcycles on Roadways Laned for Traffic

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

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

### 9.1104            Clinging to Other Vehicles

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

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

### 9.1105            Footrests

The provision of North Dakota Century Code Section 39-10.2-05 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

### 9.1106            Equipment for Motorcycle Riders

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

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1. No person under the age of eighteen years may operate or ride upon a motorcycle unless protective headgear, which complies with standards established by the North Dakota Department of Transportation, is being worn on the head of the operator and rider, except when participating in a lawful parade. If the operator of a motorcycle is required to wear protective headgear, any passenger must also wear protective headgear regardless of the age of the passenger.
2. This section does not apply to persons riding within an enclosed cab or on a golf cart.
3. No person may operate a motorcycle if a person under the age of eighteen (18) years is a passenger upon that motorcycle and is not wearing protective headgear as provided in subsection 1.

### 9.1107 Other Applicable Law

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

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

## **Article 12 – Regulation for Bicycles**

### 9.1201 Effect of Regulations

1. It is a violation of this ordinance for any person to do any act forbidden or fail to perform any act required in this article. Any person who violates any of the provisions of this article may be assessed a fee not to exceed five dollars (\$5.00).
2. The parent of any child and the guardian of any ward may not authorize or knowingly permit any such child or ward to violate any of the provisions of this ordinance.
3. These regulations applicable to bicycles apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein. (Source: North Dakota Century Code Section 39-10.1-01)

### 9.1202 Traffic Ordinances Apply to Persons Riding Bicycles

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

### 9.1203 Obedience to Traffic Control Devices

1. Any person operating a bicycle shall obey the instructions of official traffic control devices applicable to vehicles, unless otherwise directed by a police officer.
2. Whenever authorized signs are erected indicating that no right or left or U turn is permitted, no person operating a bicycle may disobey the direction of any such sign, except where such person dismounts from the bicycle to make any such turn, in which event such person shall then obey the regulations applicable to pedestrians.

### 9.1204 Riding on Sidewalks

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

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

### 9.1205            Riding on Roadways and Bicycle Paths

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

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

### 9.1206            Clinging to Vehicles

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

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

### 9.1207            Carrying Articles

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

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

### 9.1208            Lamps and other Equipment on Bicycles

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

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

### 9.1209            Riding on Bicycles

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

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

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

9.1210            Parking

No person may park a bicycle upon a street other than upon the roadway against the curb or upon the sidewalk in a rack to support the bicycle or against a building or at the curb, in such manner as to afford the least obstruction to pedestrian traffic.

9.1211            Cycle Racing Prohibited

It shall be unlawful for any persons to run or engage in or cause to be run or be engaged in any bicycle or motorcycle race on any street, alley, highway or public place within the City, except when officially sanctioned to do so by the chief of police.

9.1212            Point System Not Applicable

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

Any violation of this chapter, or any moving violation as defined in Section 9.2210, or any nonmoving violation as defined in Section 9.2209 when committed on a bicycle as defined in Section 9.101, is not cause for the licensing authority to access points against the driving record of the violator pursuant to North Dakota Century Code Section 39-06.1-10. Any other legally authorized penalty for a criminal traffic offense or non criminal traffic violation is applicable to bicyclists.

### **Article 13 – Angle Parking**

9.1301            Angle Parking

The city engineer or other person authorized by the governing body may mark or sign streets upon which angle parking will be permitted (other than federal aid or state highways). Upon those streets which have been signed or marked for angle parking, no person may park or stand a vehicle other than at the angle to the curb or edge of the roadway indicated by such signs or markings.

9.1302            Angle Parking – Where

Angle parking shall also be permitted on the following streets:

1. On Main Avenue South between the right of way of the Red River and Western Railroad Company and Third Street South, on the North side of the streets running on the south sides of Lots 5,6,7 and 8 of Block 3 of Fort Hankinson
2. Along the north side of First Street Northeast between Main Avenue and First Avenue Northeast.

9.1303            Close to Curb

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

9.1304            Method of Parking – Penalty

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

### **Article 14 – Stopping, Standing or Parking Prohibited in Specific Places**

#### 9.1401            Parking Prohibited – All Times

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

Penalty shall not exceed \$25.00

#### Towing Zones

When No Parking Towing Zone signs are erected giving notice thereof, City Law Enforcement personnel may remove or cause to be removed to a place within the City selected for storage purposes, any nuisance vehicle and may impound and retain the same until the expense of removal, storage and impounding is paid, together with the amount of any fine, costs, bail or other claims of the City against the owner, or any other person lawfully entitled to the possession thereof.

#### 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 to the highway when it is practicable to stop, park or so leave such vehicle off such part of said highway, but in every event an unobstructed width of the highway of not less than twelve (12) feet opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicles shall be available from a distance of two hundred (200) 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 constitutes 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;

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- 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 in this reference.

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

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

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

### 9.1405            Additional Parking Regulations

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

- 1. Except as otherwise provided in this section, every vehicle stopped or parked upon a two way roadway must be so stopped or parked with the right hand wheels of such vehicle parallel to and within twelve (12) inches of the right hand curb or as close as practicable to the right edge of the right hand shoulder.
- 2. Except where otherwise provided by ordinance, every vehicle stopped or parked upon a one way roadway must be so stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right hand wheels within twelve (12) inches of the right hand curb or as close as practicable to the right edge of the right hand shoulder, or with its left hand wheels within twelve (12) inches of the left hand curb or as close as practicable to the left edge of the left hand shoulder.

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3. The City may permit angle parking on any roadway, except that angle parking is not permitted on any federal aid or state highway without first obtaining the written authorization of the director of the North Dakota Department of Transportation.
4. The North Dakota Department of Transportation with respect to highways under its jurisdiction may place official traffic control devices prohibiting or restricting the stopping, standing or parking of vehicles on any highway where in its opinion such stopping, standing or parking is dangerous to those using the highway or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic thereon. No person may stop, stand or park any vehicle in violation of the restrictions indicated by such devices.

### 9.1406            Stopping – Parking – Certain Purposes Prohibited

No person may park a vehicle upon any roadway for the principal purpose of:

1. Displaying such vehicle for sale;
2. Washing, greasing or repairing such vehicle except repairing such vehicle necessitated by an emergency.

### 9.1407            Stopping – Parking – Congested – Hazardous Places

The city engineer or other person designated by the governing body is hereby authorized to determine and designate by proper signs, places in which the stopping, standing or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic.

When official signs are erected at hazardous or congested places as authorized herein, no person may stop, stand or park a vehicle in any such designated place.

### 9.1408            Stopping – Parking – In Alleys

No person may park a vehicle within an alley, nor shall any person stop a commercial vehicle so as to leave available less than twelve (12) feet of the width thereof for free movement of vehicular traffic, nor shall any person stop in such a position as to block the driveway entrance to any abutting property.

### 9.1409            Parking Adjacent to Schools

1. The city traffic engineer or authorized person may erect signs indicating no parking upon either or both sides of any street adjacent to any school property when such parking would, in his opinion, interfere with traffic or create a hazardous situation.
2. When official signs are erected indicating no parking upon either side of a street adjacent to any school property as authorized herein, no person may park a vehicle in any such designated place.

### 9.1410            Parking Privileges for Mobility – Impaired – Certificate – Revocation

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

1. Any mobility impaired person who displays prominently upon an automobile parked by that person or under that person's direction and for that person's use, a distinguishing certificate or insignia for mobility impaired persons issued by the North Dakota Department of Transportation shall be entitled to courtesy in the parking of the automobile. Provided, however, that the City may prohibit parking on any street or highway for the purpose of creating a fire lane, or to provide for the accommodation of

## Ordinances - City of Hankinson, North Dakota

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

### 9.1411 Restricted vehicles on residential streets.

Parking of commercial trucks and vans of more than two (2) tons payload capacity, semi tractors and/or trailers, farm equipment, wheel loaders, excavators and non-recreational trailers over sixteen (16) feet in length or commercial vehicles shall be prohibited except when such vehicles and/or trailers are being used for the purpose of development, improvement, service or demolition on the adjacent site and shall be allowed to park there only for the duration of the work being done.

#### PENALTY PROVISION

Any violation of this ordinance shall be deemed a nuisance. Any person, firm or corporation violating any provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be subject to a fine, or imprisonment, or both. City Law Enforcement personnel shall give warning either verbally or by warning ticket for first violation. Second violation shall be fined \$25.00 and third violation shall be fined \$50.00.

If the owner allows a nuisance to exist or fail to abate a nuisance they, and each of them upon conviction thereof, shall be fined not more than five hundred dollars (\$500.00).

City Law Enforcement personnel may remove or cause to be removed to the City Hall or any other place within the City selected for storage purposes, any nuisance vehicle and may impound and retain the same until the expense of removal, storage and impounding is paid, together with the amount of any fine, costs, bail or other claims of the City against the owner, or any other person lawfully entitled to the possession thereof.

### 9.1412 Restriction on recreational vehicles and trailers

Overnight parking of recreational vehicles and trailers including boat trailers, RV campers, 4-wheeler trailers on residential streets shall be prohibited from 10 p.m. to 7 a.m.

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### PENALTY PROVISION

Any violation of this ordinance shall be deemed a nuisance. Any person, firm or corporation violating any provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be subject to a fine, or imprisonment, or both. City Law Enforcement personnel shall give warning either verbally or by warning ticket for first violation. Second violation shall be fined \$25.00 and third violation shall be fined \$50.00.

If the owner allows a nuisance to exist or fail to abate a nuisance they, and each of them upon conviction thereof, shall be fined not more than five hundred dollars (\$500.00).

City Law Enforcement personnel may remove or cause to be removed to the City Hall or any other place within the City selected for storage purposes, any nuisance vehicle and may impound and retain the same until the expense of removal, storage and impounding is paid, together with the amount of any fine, costs, bail or other claims of the City against the owner, or any other person lawfully entitled to the possession thereof.

#### 9.1413 Truck traffic restricted on residential streets

Commercial trucks and vans of more than two (2) tons payload capacity, semi tractors and/or trailers, and other heavy equipment are prohibited from traveling on any residential street with city limits and will be required to follow marked truck routes. Exception granted for delivery vehicles to commercial businesses.

Truck routes are as follows:

- a. Highway 11 (6<sup>th</sup> Street) from 4<sup>th</sup> Avenue SW to 3<sup>rd</sup> Avenue SE,
- b. Main Avenue from 7<sup>th</sup> Street South to City Corporate limits at junction with 92<sup>nd</sup> Street SE also known as County Road 15,
- c. 1<sup>st</sup> Street SE from Main Avenue to County Road 1, and
- d. One block east on 1<sup>st</sup> Street NE from Main Avenue.

### PENALTY PROVISION

Any violation of this ordinance shall be deemed a nuisance. Any person, firm or corporation violating any provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be subject to a fine, or imprisonment, or both. City Law Enforcement personnel shall give warning either verbally or by warning ticket for first violation. Second violation shall be fined \$100.00 and third violation shall be fined \$250.00.

If the owner allows a nuisance to exist or fail to abate a nuisance they, and each of them upon conviction thereof, shall be fined not more than five hundred dollars (\$500.00).

City Law Enforcement personnel may remove or cause to be removed to the City Hall or any other place within the City selected for storage purposes, any nuisance vehicle and may impound and retain the same until the expense of removal, storage and impounding is paid, together with the amount of any fine, costs, bail or other claims of the City against the owner, or any other person lawfully entitled to the possession thereof.

## **Article 15 – Reserve 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.

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

### **Article 16 – Time Limit Parking Zones**

#### 9.1601 Time Limit Parking Zones

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

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

### **Article 17 – Equipment of Vehicles**

#### 9.1701 Windshield – Must be Unobstructed and Equipped with Wipers – Tinted Windows

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

#### 9.1702 Child Restraint Devices – Evidence

1. If a child, under four years of age, is present in any motor vehicle, that motor vehicle must be equipped with at least one (1) child restraint system for each such child. The child restraint system must meet the standards adopted by the United States Department of Transportation for those systems (49 CFR 571.213). While the motor vehicle is in motion, each such child must be properly secured in the child restraint system in accordance with the manufacturer's instructions. If a child who is at least four and at most seventeen years of age is present in a motor vehicle, unless properly secured in an approved child restraint system, the child must be buckled in a seatbelt whenever the car is moving. Use of child restraint systems and seatbelts is not required in motor vehicles that were not equipped with seatbelts when manufactured.
2. Violation of this ordinance is not, in itself, evidence of negligence. The fact of a violation of this section is not admissible in any proceeding other than one charging the violation. (Source: North Dakota Century Code Section 39-21-41.2)

#### 9.1703 Use of Safety Belts – Enforcement

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

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

### 9.1704 Drawbar or Connection Between Vehicles – Precautions Required

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

### 9.1705 Modification of Motor Vehicle

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

1. The motor vehicle must be equipped with front and rear bumpers.
2. The maximum body height permitted for a motor vehicle is forty two (42) inches (106.68 centimeters). Measurement of body height is made from a level ground surface to the floor of the cargo area.
3. The maximum bumper height permitted is twenty seven (27) inches (68.58 centimeters). Measurement of bumper height is made from a level ground surface to the highest point on the bottom of the bumper.
4. The vehicle may be modified in accordance with the following:
  - a. Any modifying equipment must meet specialty equipment marketing association standards.
  - b. If tires placed on a motor vehicle have a diameter greater than that of the tires on the motor vehicle as manufactured, those tires must comply with Department of Transportation requirements.
  - c. The maximum outside diameter permitted for tires is forty four (44) inches (111.76 centimeters).
  - d. A horizontal bumper may be used to comply with the bumper height requirement of subsection 3. The horizontal bumper must:
    - Be at least three (3) inches (7.62 centimeters) in vertical width;
    - Extend the entire horizontal body width; and
    - Be horizontal, load bearing and attached to the vehicle frame to effectively transfer impact when engaged.
  - e. The maximum lift permitted in the suspension system is four (4) inches (10.16 centimeters)
5. A person charged with violating this ordinance has the burden of proceeding to show that the modifications are permitted under this section.

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

### 9.1706            Scope and Effect of Equipment Requirements – Penalty

1. It is unlawful for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which the owner knows to be in such unsafe conditions as to endanger any person, or which the owner knows does not contain those parts or is not at all times equipped with lamps and other equipment in proper condition and adjustment as required in this chapter, or which the owner knows is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this ordinance. Unless otherwise specifically provided in this chapter or in section 39-06.1-08 or 39-06.1-09 of the North Dakota Century Code, any person who, in violation of this ordinance, drives, or any owner who causes or knowingly permits to be driven upon a highway, any vehicle or combination of vehicles which that person knows is unsafe or improperly equipped is guilty of an infraction.
2. Nothing contained in this ordinance may be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter.
3. The provisions of this ordinance with respect to equipment on vehicles do not apply to implements of husbandry, road machinery, road rollers or farm tractors except as specifically made applicable.
4. The provisions of this ordinance with respect to equipment required on vehicles do not apply to motorcycles or motor driven cycles, except as specifically made applicable.
5. The provisions of this ordinance do not apply to vehicles moved solely by human power, except as specifically made applicable. (Source: North Dakota Century Code Section 39-21-46)

### 9.1707            Alteration of Odometers or Other Mileage Recorders – Penalty

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

## **Article 18 – Motorcycle Equipment**

### 9.1801            Purpose

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

It is the purpose of this chapter to establish a performance and equipment requirements for the manufacture, sale and safe operation of a motorcycle upon public highways, and to furnish administrators with a guide for registration eligibility and continued conformity as related to motorcycles. (Source: North Dakota Century Code Section 39-17-01)

### 9.1802            Manufacturer’s or Distributor’s Certification

1. The manufacturer or distributor shall provide a certification of the fact that a motorcycle or class of motorcycles is designed and manufactured for use upon public highways and complies with the

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- performance and equipment requirements of this chapter, and the rules and regulations promulgated hereunder.
2. The certificate shall be incorporated on the manufacturer's statement of origin (MSO) upon transfer of vehicle ownership. (Source: North Dakota Century Code Section 39-27-02)

### 9.1803            Frame – Chassis Requirements

1. The motorcycle frame chassis, including the suspension components and engine mountings, must be of substantial construction, capable of supporting the combined weight of all vehicle components and riders for which the vehicle is designed, and withstand normal road shocks and operational stresses without constituting a hazard to the riders or other users of the highway.
2. The wheelbase may not be less than forty (40) inches (101.6 centimeters). (Source: North Dakota Century Code Section 39-27-03)

### 9.1804            Brakes

1. Every motorcycle must have either a split service brake system or two (2) independently actuated service brake systems in accordance with rules adopted by the director of the North Dakota Department of Transportation. Brakes must act on the front and rear wheels.
2. Every motorcycle must meet the requirements for brake system effectiveness, fade and partial systems as specified in rules adopted by the director of the North Dakota Department of Transportation.
3. All linkage, cables, pivots and bearings must be free of excess (high) friction, with the front wheel brake cable so located and secured as not to become pinched between fork and frame members when wheel is turned completely to the right or left.
4. Brake actuating devices must be in an accessible location, unencumbered by vehicle components, and so positioned that adequate leverage and safe operation is ensured. Service brake system controls and operation requirements must be in accordance with rules adopted by the director of the North Dakota Department of Transportation. A suitable mechanism shall be provided for the purpose of automatically returning the actuating devices to normal position upon release.
5. Motorcycle brakes must be capable of being adjusted automatically or manually with means provided to prevent unintentional adjustment.
6. Each three wheel motorcycle must be equipped with a parking brake of a friction type with solely mechanical means to retain engagement. (Source: North Dakota Century Code Section 39-27-04)

### 9.1805            Brakes on Motor Driven Cycles

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

### 9.1806            Tires, Wheels and Rims

1. Motorcycle tires must be of pneumatic design with a minimum width of two and twenty five hundredths (2 25/100) inches (57.15 millimeters) designed for highway use.
2. Tires on two wheel motorcycles and the front tire on a three wheel motorcycle must have a load capacity rating at least equal to their respective gross axle weight ratings (GAWR). Each tire on the rear axle of a three-wheel motorcycle must have a load capacity rating at least equal to one half (1/2) the rear axle gross axle weight rating (GAWR).
3. Wheel rim diameters may not be less than ten (10) inches (25.4 centimeters) and shall otherwise comply with applicable state standards, as promulgated by the registrar of motor vehicles. Two wheel motorcycles using low pressure tires are exempt from this subsection, if the inflated height of the tire is

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twenty (20) inches (508 millimeters) or greater. (Source: North Dakota Century Code Section 39-27-05)

### 9.1807 Steering and Suspension Systems

1. Motorcycle steering and suspension systems must be designed and engineered to provide the operator with the means of safely controlling vehicle direction under all maneuvers required for normal and safe operation.
2. The rear wheel of a two wheel motorcycle must track behind a front wheel within one (1) inch (2.54 centimeters) with both wheels in a vertical plane when the vehicle is operating on a straight course. On a three wheel motorcycle, the two wheels mounted on the rear axle must have a wheel track distance no less than thirty (30) inches (76.2 centimeters) and the mid-point of the rear wheel track when the vehicle is proceeding on a straight course. The vehicle must be equipped with an adjustment feature that will provide proper wheel tracking.
3. The steering head must be provided with a bearing or similar device that will allow the steering shaft to turn freely in rotational motion only.
4. All motorcycles, except three wheel motorcycles, must meet the following specifications in relationship to front wheel geometry:  
Maximum Rake: 45 degrees – Trail: 14 inches (35.56 centimeters) positive  
Minimum Rake: 20 degrees – Trail: 2 inches (5.08 centimeters) positive

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

5. Handlebars must be of sturdy construction, adequate in size to provide proper leverage for steering and capable of withstanding a minimum force of one hundred (100) pounds (45.36 kilograms) applied to each handgrip in any direction. Handlebar grips must be located no more than fifteen (15) inches (38.1 centimeters) above the unoccupied seat with the handlebars located in a straight ahead position and shall be capable of vertical adjustment. The handlebars must provide a minimum of eighteen (18) inches (45.72 centimeters) between grip after final assembly.
6. Handlebars must be equipped with handgrips consisting of a material and surface patten to ensure firm, non slip gripping for the driver.
7. Every motorcycle must be equipped with a suspension system and such suspension system must be applicable to at least the front wheel. The suspension system must be effective in reducing road shock and designed for the purpose of maximizing vehicle stability. (Source: North Dakota Century Code Section 39-27-06)

### 9.1808 Fuel Systems

1. All fuel system components, including the tank, pump, tubing, hoses, clamps, etc. must be securely fastened to the motorcycle so as not to interfere with vehicle operation and be leak proof when the vehicle is in its normal operating attitude.
2. Fuel lines must be positioned in a manner to prevent their contact with the engine head, manifold, exhaust system or other high temperature surfaces or moving components. The fuel system must be adequately vented and provided with a fuel shutoff valve located between the fuel supply and the engine. (Source: North Dakota Century Code Section 39-27-01)

### 9.1809 Exhaust Systems – Prevention of Noise

Motorcycles must be equipped with an exhaust system incorporating a muffler or other mechanical device for the purpose of effectively reducing engine noise. Cutouts and bypasses in the exhaust system are prohibited. The system must be leak proof and all components must be securely attached to the vehicle and

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

### 9.1810 Mirrors

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

### 9.1811 Fenders

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

### 9.1812 Seat or Saddle

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

### 9.1813 Chain Guard

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

### 9.1814 Vehicle Stand

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

### 9.1815 Glazing

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

1. The glazing material must comply with the standards promulgated by rule of the director of the North Dakota Department of Transportation.
2. The metal support must be of a material which shall bend rather than fragment under impact.

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

### 9.1816            Horn

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

### 9.1817            Speedometer and Odometer

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

### 9.1818            Lighting Equipment

1. Every motorcycle must be equipped with lamps, reflective devices and associated equipment as required by and in compliance with standards promulgated by regulation of the registrar of motor vehicles.
2. A gearbox indicator light, if provided, must be located within the operator's field of vision.
3. A headlamp beam indicator light must be located within the operator's field of vision and illuminated automatically when the high beam of the headlamp is actuated. (Source: North Dakota Century Code Section 39-27-17)

### 9.1819            Lighting Equipment on Motor Driven Cycles

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

1. Every headlamp or headlamps on a motor driven cycle must be of sufficient intensity to reveal a person or a vehicle at a distance of not less than one hundred (100) feet (30.48 meters) when the motor driven cycle is operated at any speed less than twenty five (25) miles (40.23 kilometers) per hour and at a distance of not less than two hundred (200) feet (60.96 meters) when the motor driven cycle is operated at a speed of twenty five (25) or more miles (40.23 or more kilometers) per hour and at a distance of not less than three hundred (300) feet (91.44 meters) when the motor driven cycle is operated at a speed of thirty five (35) mile (56.33 kilometers) per hour.
2. In the event the motor driven cycle is equipped with a multiple beam headlamp or headlamps the upper beam must meet the minimum requirements set forth in Subsection 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 must be so aimed that when the vehicle is loaded none of the high intensity portion of light, at a distance of twenty five (25) feet (7.62 meters) ahead, shall project higher than the level of the center of the lamp from which it comes. (Source: North Dakota Century Code Section 39-17-17.1)

### 9.1820            Passenger Seat

Motorcycles designed to carry more than one person must be equipped with a securely mounted seat for each passenger located to the side or rear of the driver such that the passenger seat does not interfere with the driver's control or operation of the vehicle. In the case of a two wheel vehicle, the passenger seat must

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be located on the longitudinal centerline of the motorcycle. (Source: North Dakota Century Code Section 39-27-18)

### 9.1821            Footrests

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

### 9.1822            Highway Bars

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

### 9.1823            Equipment Approval

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

## **Article 19 – Lighted Lamps Required**

### 9.1901            When Lighted Lamps are Required

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

1. At any time from sunset to sunrise, and every farm tractor upon a highway within this state at any time from a half hour after sunset to a half hour before sunrise;
2. At any time when it is raining, snowing, sleeting or hailing or during other adverse driving conditions and these conditions do not render a person or vehicle on the highway clearly discernible at a distance of one thousand (1000) feet (304.8 meters) ahead; or
3. At any other time when visibility is impaired by weather, smoke, fog or other conditions or when there is insufficient light to render a person or vehicle on the highway clearly discernible at a distance of one thousand (1000) feet (304.8 meters) ahead.

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

## **Article 20 – Regulating the Kinds and Classes of Traffic on Certain Roads**

### 9.2001            Load Restrictions Upon Vehicles Using Certain Roadways

When signs are erected giving notice thereof, no person may operate any vehicle with a gross weight in excess of the maximum indicated weight at any time upon any street or part of a street so designated.

### 9.2002            Commercial Vehicles Prohibited from Using Certain Streets

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

### 9.2003            Size Restrictions Upon Vehicles Using Certain Highways

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

### 9.2004            Restrictions Upon Use of Streets by Certain Vehicles

1. The city traffic engineer or authorized person may determine and designate those heavily traveled streets upon which shall be prohibited the use of the roadway by motor driven cycles, bicycles, horse drawn vehicles or other non motorized traffic and shall erect appropriate signs giving notice thereof.
2. When signs are so erected giving notice thereof, no person may disobey the restrictions stated on such signs.

## **Article 21 – Criminal Traffic Violations**

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

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

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

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

2. A person violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five year period, of a class A misdemeanor for a third offense in a five year period, of a class A misdemeanor for the fourth offense in a seven year period, and of a class C felony for a fifth or subsequent offense in a seven year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence.
3. Upon conviction, the court may order the motor vehicle number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded

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- number plates must be sent to the director of the North Dakota Department of Transportation who must retain them for the period of suspension or revocation, subject to their disposition by the court.
4. A person convicted of violating this ordinance must be sentenced in accordance with this subsection.
    - a. For a first offense, the sentence must include both a fine of at least two hundred fifty dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.
    - b. For a second offense within five years, the sentence must include at least five days' imprisonment or placement in a minimum security facility, of which forty eight hours must be served consecutively, or thirty days' community service; a fine of at least five hundred dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
    - c. For a third offense within five years, the sentence must include at least sixty days' imprisonment or placement in a minimum security facility, of which forty eight hours must be served consecutively; a fine of one thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
    - d. For a fourth or subsequent offense within seven years, the sentence must include one hundred eighty days' imprisonment or placement in a minimum security facility, of which forty eight hours must be served consecutively and a fine of one thousand dollars.
    - e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 of the North Dakota Century Code.
    - f. For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section must be considered a prior offense if such offense was committed within the time limitations specified in this subsection.
    - g. If the penalty mandated by this section includes imprisonment or placement upon conviction of a violation of this ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment or placement under this section. (Source: North Dakota Century Code Section 39-08-01)

### 9.2102 Prior Offenses

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

### 9.2103 Reckless Driving – Penalty

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

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

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

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

### 9.2104 Accidents Involving Damage to Vehicle – Penalty

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

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

### 9.2105            Duty Upon Striking Unattended Vehicle – Penalty

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

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

### 9.2106            Duty Upon Striking Fixtures Upon a Highway

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

The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of the driver's name and address and of the registration number of the vehicle the driver is driving and shall upon request and if available exhibit his operator's or chauffeur's license and shall make report of such accident when and as required in Section 9.309.

### 9.2107            Penalty for Driving While License Suspended or Revoked – Impoundment of Vehicle Number Plates – Authority of City

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

1. Except as provided in Chapters 39-16 and 39-16.1 and Section 39-06.1-11 of the North Dakota Century Code, any person who drives a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state while that person's license or privilege so to do is suspended or revoked is guilty of a class B misdemeanor for the first, second or third offense within a five year period. Any subsequent offense within the same five year period is a class A misdemeanor.
2. If a suspension or revocation was imposed for violation of Section 39-08-01 of the North Dakota Century Code or equivalent ordinance or was governed by Section 39-06-31 or Chapter 39-20, the sentence must be at least four (4) consecutive days' imprisonment and such fine as the court deems proper. The execution of sentence may not be suspended or the imposition of sentence deferred under Subsection 3 or 4 of Section 12.1-32-02 of the North Dakota Century Code. Forfeiture of bail is not

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

### 9.2108 Operation of Snowmobiles

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

1. "Dealer" means every person, partnership, corporation or limited liability company engaged in the business of buying, selling or exchanging snowmobiles or who advertises or holds out to the public as engaged in the buying, selling or exchanging of snowmobiles or who engages in the buying of snowmobiles for resale.
2. "Operate" means to ride in or on and control the operation of a snowmobile.
3. "Operator" means every person who operates or is in actual physical control of a snowmobile.
4. "Owner" means a person, other than a lien holder, having the property in or title to a snowmobile entitled to the use or possession thereof.
5. "Person" includes an individual, partnership, corporation, limited liability company, association, the state and its departments, agencies and political subdivisions and any body of persons, whether incorporated or not.
6. "Register" means the act of assigning a registration number to a snowmobile.
7. "Registrar" or "Director" means the director of the Department of Transportation of this state as provided in Section 24-02-01.3 of the North Dakota Century Code.
8. "Roadway" means that portion of a highway improved, designed or ordinarily used for vehicular travel.
9. "Snowmobile" means a self propelled vehicle designed for travel on snow, ice or a natural terrain and steered by skis or runners. (Source: North Dakota Century Code Section 39-24-01)

### 9.2109 Rules for Operation of Snowmobiles

1. No person owning or having custody or control of a snowmobile shall operate or permit the operation thereof upon any real property or land within the City of Hankinson not owned or leased by such person except as elsewhere permitted by this ordinance, nor shall such person operate or permit to be operated any snowmobile upon any street, avenue, alley, roadway, berm, boulevard, sidewalk, ditch, or city owned property or right of way within the City of Hankinson, except for the use of the city streets and avenues and alleys or designated trail as permitted hereafter under the following circumstances and conditions:
  - a. Driving the snowmobile into the city limits and taking the most direct route to the point of destination within the City or driving the snowmobile out of the city limits and taking the most direct route from the point of departure to the city limits;
  - b. Taking the snowmobile to be repaired or serviced;
  - c. When driving the snowmobile for emergency and rescue work;
  - d. When normal vehicular traffic is prevented because of snow;
  - e. When retail dealers demonstrate a snowmobile within the city limits
  - f. Snowmobiles coming through town must use the trail.

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2. No snowmobile may be operated unless it is equipped with at least one (1) headlamp, one tail lamp and brakes, all in working order, which conform to standards prescribed by rule of the director pursuant to the authority vested in the director by state law.
3. The emergency conditions under which a snowmobile may be operated other than as provided by this article shall be such as to render the use of an automobile impractical under such conditions at such period of time and location.
4. It is unlawful for any person to drive or operate any snowmobile in the following ways which are declared to be unsafe and a public nuisance.
  - a. At a rate of speed greater than fifteen (15) miles per hour.
  - b. In a careless, reckless or negligent manner so as to endanger the person or property of another or to cause injury or damage to such person or property.
  - c. While under the influence of intoxicating liquor or a drug as defined in Section 39-24.1-01 of the North Dakota Century Code, or a combination thereof.
  - d. Without a lighted headlamp and tail lamp when required for safety.
  - e. In any tree nursery or planting in a manner which damages or destroys growing stock.
  - f. Without a manufacturer installed or equivalent muffler in good working order and connected to the snowmobile exhaust system.
  - g. Upon any private land when the private land is posted by the owner or tenant prohibiting trespassing. The name of the person posting the land must appear on each sign in legible characters. The posted signs shall be readable from the outside of the land and shall be placed conspicuously at a distance of not more than eight hundred eighty (880) yards (804.68 meters) apart, provided further that as to land entirely enclosed by a fence or other enclosure, posting of signs at or on all gates through the fence or enclosure constitutes posting of all the enclosed lands.
5. It is unlawful for any person to operate a snowmobile pursuant to Chapter 39-24 of the North Dakota Century Code without having in possession a valid driver's license or permit, except as provided by section 39-24-09.1.
6. When snowmobiles are operated within the right of way of any road, street or highway of this state pursuant to this chapter, during times or conditions that warrant the use of lights, such snowmobiles shall travel in the same direction as the direction of motor vehicles traveling on the side of the roadway immediately adjacent to the side of the right of way traveled by the snowmobile.
7. It is unlawful for any person to operate a snowmobile within a highway right of way as defined in subsection 37 of section 24-01-01.1 of the North Dakota Century Code between April 1 and November 1 of any year.
8. No snowmobile may be operated at any time within the right of way of any highway within this state while towing a sled, skid or other vehicle, unless the sled, skid or other vehicle is connected to the snowmobile by a hinged swivel and secure hitch.
9. No person under the age of eighteen years may operate, ride or otherwise be propelled on a snowmobile unless the person wears a safety helmet meeting United States Department of Transportation standards.
10. No person may operate a snowmobile, ATV or any other motorized wheeled vehicle at any time within the boundaries of any City Park property unless operated by City or Park personnel.

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.

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2. Any person violating the provisions of this section shall be liable to any person suffering injury as a result of the violation; and in addition, shall be guilty of a class B misdemeanor. (Source: North Dakota Century Code Section 30-10-65)

9.2111            Driving Without a License

No person shall drive any motor vehicle upon a highway in this City unless such person has a valid license as an operator, or is expressly exempted from licensing requirements, by the laws of this state.

9.2112            License to be Carried and Exhibited on Demand

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

Every licensee shall have the licensee's operator's license or permit in the licensee's immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of any district court, municipal court, a patrolman, peace officer or a field deputy or inspector of the State Highway Department. However, no person charged with violating this section may be convicted or assessed any court costs if the person produces in court, to the chief of police or in the office of the arresting officer an operator's license or permit theretofore issued to that person and valid and not under suspension, revocation or cancellation at the time of the person's arrest.

9.2113            Penalty

The provisions of North Dakota Century Code Section 39-12-21 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Any driver of a vehicle who refuses to stop and submit the vehicle and load to a weighing when directed to do so by any police officer or any agent of this state having police powers relating to motor vehicles is guilty of an offense.

### **Article 22 – Disposition to Traffic Offenses**

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

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

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

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

A halting officer employed by any political subdivision of the state may not take a person into custody or require that person to proceed with the officer to any other location for the purpose of posting bond, where the traffic violation was a non criminal offense under Section 39-06.1-02. The officer shall provide the person with an envelope for use in mailing the bond.

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

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The provisions of North Dakota Century Code Section 39-07-08 and all subsequent amendments shall be and are hereby incorporated by reference into this ordinance.

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

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

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

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

1. The halting officer has good reason to believe the person guilty of any felony or if the person is halted and charged with any of the offenses listed in Section 39-06.1-05 of the North Dakota Century Code, but not listed in subsection 2; or
2. The halting officer, acting within the officer's discretion, determines that it is inadvisable to release that person upon a promise to appear and if the person has been halted and charged with any of the following offenses
  - a. Reckless driving.
  - b. Driving in excess of speed limitations established by the state or by local authorities in their respective jurisdictions.
  - c. Driving while license or driving privilege is suspended or revoked for violation of NDCC Section 39-06-42, or an equivalent ordinance.
  - d. Operating a modified vehicle.
  - e. Driving without liability insurance in violation of NDCC Section 39-08-20.
  - f. Failing to display a placard or flag, in violation of any rule implementing NDCC Section 39-21-22, while transporting explosive or hazardous materials.
  - g. Operating an unsafe vehicle in violation of subsection 1 of NDCC Section 39-21-45.

Any person cited, in accordance with the provisions of Sections 39-07-07 and 39-07-08 of the North Dakota Century Code, for a traffic violation under state law or municipal ordinance, other than an offense listed in Section 39-06.1-05 of the North Dakota Century Code, is deemed to be charged with a non criminal offense. The person may appear before the designated official and pay the statutory fee for the violation charged at or before the time scheduled for a hearing. If the person has posted bond in person or by mail, the person may forfeit bond by not appearing at the designated time. If the person appears at the time scheduled in the citation, the person may make a statement in explanation of the person's action, and the official may at that time waive, reduce or suspend the statutory fee or bond, or both. If the person cited follows the foregoing procedures, the person is deemed to have admitted the violation and to have waived his right to a hearing on the issue of commission of the violation. The bond required to secure appearance

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before the official designated in the citation must be identical to the statutory fee established by Section 39-06.1-06 of the North Dakota Century Code. Within ten (10) days after forfeiture of bond or payment of the statutory fee, the official having jurisdiction over the violation shall certify to the licensing authority:

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

This section shall not be construed as allowing a halting officer to receive the statutory fee or bond, unless he is otherwise authorized by law to do so. (Source: North Dakota Century Code Section 30-06.1-02)

### 9.2204 Administrative Hearing – Procedures – Appeals – Stay Orders

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

1. A person cited for a traffic violation, other than an offense listed in Section 39-06.1-05 of the North Dakota Century Code, who does not follow one of the procedures set forth in Section 39-06.1-02, may request a hearing on the issue of commission of the violation charged. The hearing must be held at the time scheduled in the citation, or at the time scheduled in response to the person's request or at some future time, not to exceed ninety (90) days later, set at that first appearance.
2. At the time of a request for a hearing on the issue of commission of the violation, the person charged shall deposit with the official having jurisdiction an appearance bond equal to the statutory fee for the violation charged.
3. If a person cited for a traffic violation, other than an offense listed in Section 39-06.1-05 of the North Dakota Century Code, has requested a hearing on the issue of the commission of the violation charged and appears at the time scheduled for the hearing, and the state or City, as the case may be, does not appear or is not ready to prove the commission of a charged violation at the hearing, the official shall dismiss the charge.
4. If the official finds that the person had committed the traffic violation, the official shall notify the licensing authority of that fact, and whether the person was driving more than nine (9) miles (14.48 kilometers) per hour in excess of the lawful limit, stating specifically the miles (kilometers) per hour in excess of the lawful limit, if charged with a speeding violation, within ten (10) days of the date of the hearing. The fact that a person has admitted a violation, or has, in any proceeding, been found to have committed a violation, may not be referred to in 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, the person may, without payment of a filing fee, appeal that finding to the district court for trial anew. If, after trial in the appellate court, the person is again found to have committed the violation, there shall be no further appeal. Notice of appeal under this subsection must be given within thirty (30) days after a finding of commission of a violation is entered by the official. Oral notice of appeal may be given to the official at the time that the official adjudges that a violation has been committed. Otherwise, notice of appeal shall be in writing and filed with the official, and a copy of the notice must be served upon the prosecuting attorney. An appeal taken under this subsection may not operate to stay the reporting requirement of subsection 4, nor to stay appropriate action by the licensing authority upon receipt of that report.

The appellate court upon application by the appellant may: 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; order a stay and that the appellant be issued a temporary restricted driving certificate by the

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licensing authority to be effective for no more than one hundred twenty (120) days; or deny the application.

An application for a stay or temporary certificate under this subdivision must be accompanied by a certified copy of the appellant's driving record, for the furnishing of which the licensing authority may charge a fee of two dollars (\$2.00). Any order granting a stay or a temporary certificate must be forwarded forthwith by the Clerk of Court to the licensing authority, which shall issue a temporary certificate in accordance with the order in the manner provided by law. A court may not make a determination on an application under this subdivision without notice to the appropriate prosecuting attorney. A person who violates or exceeds the restrictions contained in any temporary restricted driving certificate issued pursuant to this subdivision is guilty of a traffic violation and must be assessed a fee of twenty dollars (\$20.00)

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 found a violation of a City ordinance, the city attorney shall prosecute the appeal. In all other cases, the appropriate state's attorney shall prosecute the appeal.

6. The state or the City, as the case may be, must prove the commission of a charged violation at the hearing or appeal under this section by a fair preponderance of the evidence. Upon an appeal under subsection 5, the court and parties shall follow, to the extent applicable, the North Dakota rules of Civil Procedure. If on the appeal from the finding of the official the finding is affirmed, costs may be assessed at the discretion of the trial judge.
7. As used in Sections 39-06.1-02, 39-06.1-03 and 39-06.1-04 of the North Dakota Century Code, the word "official" means a municipal judge or a magistrate or other qualified person appointed by the presiding judge of the judicial district, to serve as such official for all or a specified part of the judicial district.

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

### 9.2206 Offenses Excepted

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

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

1. Driving or being in actual physical control of a vehicle in violation of Section 9.2101.
2. Reckless driving or aggravated reckless driving in violation of Section 9.2103.
3. A violation of Chapter 12.1-16 of the North Dakota Century Code resulting from the operation of a motor vehicle.

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4. Leaving the scene of an accident in violation of Sections 39-08-04, 39-08-05, 4, 39-08-07, 39-08008 of the North Dakota Century Code, or equivalent ordinances.
5. Driving while license or driving privilege is suspended or revoked in violation of Section 39-06-42 of the North Dakota Century Code, or an equivalent ordinance.
6. Violating subdivisions b and c of subsection 5 of Section 39-24-09 of the North Dakota Century Code.
7. Operating a modified motor vehicle in violation of Section 39-21-45.1 of the North Dakota Century Code.
8. Driving without liability insurance in violation of Section 39-08-20 of the North Dakota Century Code.
9. Failing to display a placard or flag, in violation of any rule implementing Section 39-21-44 of the North Dakota Century Code, while transporting explosive or hazardous materials.
10. Operating an unsafe vehicle in violation of subsection 1 of Section 39-21-46 of the North Dakota Century Code.

9.2207            Amount of Statutory Fees

<b>Traffic Code Violation Type</b>	<b>Offense</b>	<b>Fine</b>
Failure to Obey Fire, EMS, PD	Non-Moving	\$50.00
Failure to Yield to Emergency Vehicle	Moving	\$50.00
Disregard Traffic Control Device	Moving	\$20.00
Unauthorized Signs on Road	Non-Moving	
Careless Driving - Basic Rule	Moving	\$30.00
Speed - RR Crossing	Moving	
Speed - School Zone	Moving	\$80.00
Speed - Blind Intersection	Moving	
Speed - Poor Visibility	Moving	
Speed - Restricted Zones	Moving	
Speed - up to 10 mph in excess	Moving	
Speed - in excess of 11 to 15 mph	Moving	
Speed - in excess of 15 to 20 mph	Moving	
Speed - greater than 20 mph	Moving	
Impeding Traffic	Moving	\$20.00
Illegal U-turn	Moving	\$20.00

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Improper Turn	Moving	\$20.00
Failure to Signal Turn	Moving	\$20.00
Disregard Stop Sign	Moving	\$20.00
Disregard Yield Sign	Moving	\$20.00
Enter RR Crossing	Moving	\$50.00
Improper Passing	Moving	\$20.00
Following to Close	Moving	\$20.00
Failed to Yield	Moving	\$20.00
Disregard School Bus	Moving	\$50.00
Improper Backing	Moving	\$20.00
Obstructed Drivers View	Moving	\$20.00
Following Emergency Vehicle	Moving	\$20.00
<b>Traffic Code Violation Type</b>	<b>Offense</b>	<b>Fine</b>
Crossing Fire Hose	Moving	\$20.00
Littering	Moving	\$20.00
Permit Unauthorized Driving	Moving	\$20.00
Driving Without License	Moving	\$20.00
No Driver's License in Possession	Moving	\$20.00
Load Restriction	Moving	\$20.00
Truck Route	Moving	
Oversize Vehicle	Moving	\$20.00

<b>Traffic Code Violation Type</b>	<b>Offense</b>	<b>Fine</b>
No Parking	Non-moving	\$20.00
Sidewalk	Non-moving	
Driveway	Non-moving	

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Intersection	Non-moving	
10' Fire Hydrant	Non-moving	
On Crosswalk	Non-moving	
10' of Crosswalk	Non-moving	
Within 15 of Traffic Sign	Non-moving	
Within 15 of RR Crossing	Non-moving	
Entrance to Fire Station	Non-moving	
Obstructing Traffic	Non-moving	
Double Parking	Non-moving	
Where Posted	Non-moving	
Parking in Alley	Non-moving	
Snow Emergency	Non-moving	

2. The fine required for the following infractions shall be as shown:

<b>Traffic Code Violation Type</b>	<b>Offense</b>	<b>Fine</b>
Pedestrians Soliciting Ride	Infraction	
Refusal to Weighing	Infraction	

3. The fine required for the following snowmobile violation infractions shall be as shown:

<b>Violation Type Snowmobiles</b>	<b>Offense</b>	<b>Fine</b>
Speed - Care Required	Infraction	\$30.00
Tree-Plant Area	Infraction	\$20.00
No Muffler	Infraction	\$20.00
Under Age 16	Infraction	\$20.00
Improper Crossing	Infraction	\$20.00
Failure to Stop Before Crossing	Infraction	
Failure to Yield	Infraction	\$20.00

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Violation of State Code	Infraction	
Speed More Than 15 mph	Infraction	
Towing Improper Sled	Infraction	
Improper Passing	Infraction	
Unlicenced Operator	Infraction	
Operate in Park	Infraction	
Carrying Bow/Firearm	Infraction	
Motor Running Attended	Infraction	
More than Two People	Infraction	
Disregard Traffic Sign	Infraction	
Use on Streets	Infraction	
Harassment Domestic Animals	Infraction	
On Private Property Without Permission	Class B Misdemeanor	

9.2208            “Nonmoving Violation” Defined

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

For the purpose of 9.2208, a “nonmoving violation” means sections 9.924, 9.932, 9.933 or the provisions of Article 13, Article 14, Article 15 or Article 16.

9.2209            “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 9.2207, a “moving violation means a violation of Article 5, Article 6, Article 9, Article 11, Article 17, Article 18, Article 19 or Article 21, except those sections for which a specific penalty is provided and those sections which are specifically listed in 9.2009.

9.2210            General Penalty for Violation of Chapter

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

Any person violating any of the provisions of this chapter for which another criminal penalty is not provided specifically is guilty of an infraction as defined in Section 12.1-32-01 of the North Dakota Century Code. As used in this section, the phrase “another criminal penalty” includes provision for payment of a

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fixed fee for violating another section of this chapter but does not include other administrative sanctions which may be imposed.

### 9.2211            Notification of Parents or Guardians of Juvenile Traffic Offenders

The municipal judge or municipal court clerk shall notify the parent or guardian of any juvenile appearing before the court on a traffic offense of the charge as contained in the citation, the penalty attached to the offense and the time and place of any court hearing on the matter.

### **Article 23 – Sections not Adopted**

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

### **Article 24 – Filing of Ordinance**

Incident to the adoption of certain portions of Title 39 of the North Dakota Century Code by reference, a copy of the text of the adopted code shall be filed in the office of the city auditor as required by North Dakota Century Code Section 40-05-01(1) for use and examination by the public.

### **Article 25 – Adoption of Amendments by Reference**

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

### **Article 26 – Severability Clause**

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

### **Article 27 – Penalties**

Any person who is convicted of violating or of failing to comply with any or the provisions of this ordinance may be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment not to exceed thirty (30) days, or both.

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### CHAPTER TEN

#### HEALTH

##### Article 1 – Board of Health

###### 10.101 Members

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

###### 10.102 Regulations

The Board of Health may make rules regarding any nuisance, source of filth, and any cause of sickness which are necessary for public health and safety. The Board of Health shall appoint a local health officer. (Source: North Dakota Century Code Section 23-35-08)

##### Article 2 – Local Health Officer – Term

###### 10.201 Duties of Local Health Officer – Term

1. A local health officer shall serve a term of five years, subject to removal or cause by the governing body or the district board of health. The health officer must be a physician licensed to practice medicine in this state and need not be a resident of the public health unit. The appointee shall qualify by filing the constitutional oath of office in the manner provided for the members of the board of health. If the state health officer finds a local health officer is failing to perform the duties of the position, the state health officer may report the case to the governing body. At the next meeting of the governing body or district board of health, the governing body or district board of health, and the board shall declare the office vacant and promptly shall appoint another physician to fill the unexpired term.
2. Within the jurisdiction of the board of health, a local health officer:
  - a. Shall keep a record of the official acts of the local health officer.
  - b. Shall enforce every law and rule relating to preservation of life and health of individuals.
  - c. May exercise the powers and duties of the board of health under the supervision of the board of health.
  - d. May make sanitary inspections of any place within the jurisdiction in which the local health officer finds a probability a health threatening condition exists.
  - e. May investigate public water and ice supplies suspected of contamination and initiate necessary condemnation proceedings.
  - f. May enforce school cleanliness; inspect any schools that may be overcrowded, poorly ventilated, or unsanitary; and, when necessary, report cases of any unsanitary or unsafe school building to the board of health for investigation.
  - g. May take any action necessary for the protection of public health and safety.
  - h. May determine when quarantine and disaffection is necessary for the safety of the public. The local health officer may establish quarantines consistent with procedures provided under chapter 23-07.6 of the North Dakota Century Code, and perform any acts required for disinfecting when necessary.
  - i. Shall maintain an office within the jurisdiction of the public health unit consistent with any terms of appointment.
  - j. May select and discharge any assistant health officer in the public health unit, consistent with any terms of appointment.

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3. A local health officer may request the assistance of a county sheriff or city health department in the same manner as provided under subsection 3 of section 23-35-09 of the North Dakota Century Code.

### 10.202 Penalty

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

## **Article 3 – Garbage, Refuse, Rubbish**

### 10.301 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 noncombustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.

### 10.302 Accumulation of Refuse Prohibited

No person shall permit or allow to accumulate in or about any yard, lot, place or premises; or upon any street or sidewalk, adjacent to or abutting upon any lot, block or place, or premises owned and occupied by that person, any and all refuse, nor allow such yard, lot, place or premises to be or remain in such condition.

### 10.303 Containers

All garbage and rubbish shall be placed by the person upon whose premises the same shall have been produced or accumulated, in watertight containers, which shall be protected against the access of flies and rodents.

No person shall place rubbish or garbage in a container owned by someone else or place rubbish or garbage on property of someone else for removal.

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

### 10.304 Burning

No garbage, refuse or rubbish shall be burned within the City limits.

### 10.305 Nuisance

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Failure to comply with the provisions of Sections 10.302, 10.303 and 10.304, shall constitute a public nuisance and be punishable as such under the terms of Chapter twelve of these ordinances.

### 10.306 City Collection

All garbage and rubbish as defined herein shall be collected by the city or franchised contractor as frequently as is necessary to maintain and preserve community cleanliness and sanitation, except that this section shall not require the collection of garbage and rubbish where streets and alleys are in a temporary condition which makes it impossible to do so and in case of the failure to collect such garbage and rubbish, such failure shall not relieve the occupant of the premises from the payment of the garbage and rubbish collection fees hereinafter provided for.

### 10.307 Fees

Fees for the collection of garbage and rubbish by the City or franchised contractor and the disposal thereof may be set by resolution by the governing body.

### 10.308 Fees – Payment – Collection

In all places where water service is provided, fees for garbage and rubbish collection shall be added to and collected as a part of the water bill and collected by the water department, but shall be separately stated on the bill. Garbage and rubbish collection bills shall be due and payable at the same time as the water bill, wither monthly or quarterly as the case may be. If such charge is not paid when due the water service to such premises shall be shut off by the water department in the same manner as is now provided for in the case of delinquency in payment of water bills and such service shall not be restored without the payment of the penalties now provided for.

In all places where water service is not provided, the fees for garbage and rubbish collection shall be paid to the Water Department of the City upon monthly or quarterly bills fro the Water Department. If the garbage and rubbish charge so established is not paid when due, such sum may be recovered by the City, in an action at law against the owner or occupant, or both, of the property so served.

The proceeds from the collection of the fees and charges shall be placed in the solid waste management fund, and all of the expense of the City, in the purchase and maintenance of equipment and in the collection and disposal of garbage and rubbish, shall be paid out of the solid waste management fund.

### 10.309 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 10.308.

### 10.310 Disposal of Refuse not Collected by the City

All other wastes as defined, and not included under garbage, rubbish and ashes, may be disposed of by the person creating such waste, by hauling such waste for disposal to such points as are designated or approved by the city health officer.

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### 10.311 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 Buildings & Public Improvement committee with the assistance of the city health officer. The committee shall, unless there is a franchised contractor, appoint such employees as shall be necessary to carry out the purposes of this article, which appointments shall be subject to the approval of the governing body.

### 10.312 Rules and Regulations

The health officer of the City shall prescribe such reasonable rules and regulations in connection with preparation, handling and disposition of garbage and rubbish as may be necessary to regulate, enforce and carry out the provisions of this chapter. The health officer may direct that the City garbage and rubbish collection crews shall not collect garbage and rubbish from any premises where such rules and regulations are not complied with and the failure to collect the same shall not relieve the owner or occupant of the premises from the payment of fees nor form the enforcement of the penalties of this code. In the absence of the City collection crews the health officer may give instructions to a franchised contractor.

## **Article 4 – Dangerous Buildings**

### 10.401 International Property Maintenance Code

An ordinance of the City of Hankinson adopting the 2015 edition of the International Property Maintenance Code, regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use; and the demolition of such existing structures in the City of Hankinson; providing for the issuance of permits and collection of fees therefore; repealing Ordinance 10.401 through 10.411 (Article 10-4) of the City of Hankinson and all other ordinances or parts of laws in conflict therewith.

The City Council of the City of Hankinson does ordain as follows:

Section 1. That a certain document on file with the City Auditor of the City of Hankinson, being marked and designated as the International Property Maintenance Code, 2015 edition, as published by the International Code Council, be and is hereby adopted as the Property Maintenance Code of the City of Hankinson in the State of North Dakota for regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures as herein provided; providing for the issuance of permits and collection of fees therefore; and each and all of the regulations, provisions, penalties, conditions and terms of said Property Maintenance Code on file in the office of the City of Hankinson are hereby referred to, adopted, and made a part hereof, as if fully set out in this legislation, with the additions, insertions, deletions and changes, if any, prescribed in Section 2 of this ordinance.

Section 2. the following sections are hereby revised:

Section 101.1. Insert City of Hankinson.

Section 112.4. Insert: not more than \$500.00

section 302.4. Insert: Six inches.

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Section 3. That Ordinance 10.401-10.411 of the City of Hankinson entitled Chapter 10 Dangerous Buildings of the ordinances in effect at the present time so they will be repealed by definite mention and all other ordinances or parts of laws in conflict herewith are hereby repealed.

Section 4. That if any section, subsection, sentence, clause or phrase of this legislation is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Hankinson City Council hereby declares that it would have passed this law, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 5. That nothing in this legislation or in the Property Maintenance Code hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in Section 3 of this law; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this legislation.

Section 6. That the City Auditor is hereby ordered and directed to cause this legislation to be published.

Section 7. That this law and the rules, regulations, requirements, orders and matters established and adopted hereby shall take effect and be in full force and affect from and after the date of its final passage and adoption and enactment.

### **ARTICLE 5 – Community Preservation and Improvements**

#### 10.501 Findings

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

#### 10.502 Definitions

For the purpose of this article, certain words and phrases are defined and shall be construed as set out in this section. Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

- a. **Building.** “Building” shall mean any structure used or intended for supporting or sheltering any use or occupancy.
- b. **Building Official.** “Building Official” shall mean the City building inspector or his or her designee(s).
- c. **Chief of Police.** “Chief of Police” shall mean the City Chief of Police or his or her designee(s) or any peace officer or any Law Enforcement Department with whom the City contracts for police services.
- d. **City Auditor.** “City Auditor” shall mean the City Auditor or his or her designee(s).
- e. **Owner.** “Owner” shall mean any person owning property, as shown on the last equalized assessment roll for City taxes and also includes the lessee, tenant or other person having control or possession of the property unless otherwise specified.
- f. **Property.** “Property” shall mean all real property including, but not limited to, front yards, side yards, back yards, driveways, walkways and sidewalks and shall include any building located on such property.
- g. **Junked** “Junked vehicles” shall mean any motor vehicle which:

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- i. Is inoperative or which does not have lawfully affixed thereto both an unexpired license plate or plates and which is wrecked; dismantled; partially dismantled; or discarded.

### 10.503            Unlawful Property Nuisance

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

- a. The exterior accumulation of dirt, litter or debris on the property.
- b. Clotheslines or clothes hanging in front yards, side yards, porches, or balconies, provided, however, that clotheslines and clothes hanging in rear yards are permitted;
- c. Trash, garbage, or refuse cans, bins, boxes, or other such containers stored in yards for an unreasonable period;
- d. Packing boxes, lumber, junk, trash, salvage materials, or other debris kept on the property for an unreasonable period;
- e. Attractive nuisances dangerous to children including abandoned, broken or neglected equipment, machinery, refrigerators and freezers, hazardous pools, ponds and excavations;

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- f. Broken or discarded furniture, household equipment and furnishings or shopping cars stored on the exterior of the property for an unreasonable period;
- g. Overgrown vegetation likely to harbor rats, vermin and other nuisances causing detriment to neighboring properties or property values or obstructing necessary view of drivers on public streets or private driveways;
- h. Dead, decayed, diseased, or hazardous trees, weeds, or other vegetation constituting unsightly appearance, dangerous to public safety and welfare, or detrimental to neighboring properties or property values;
- i. Graffiti or other words, letters, or drawings which remain on the exterior of any building or fence for an unreasonable period and are visible from a public street;
- j. Boats, trailers, vehicles or vehicle parts, or other articles of personal property which are located on the property in violation of this ordinance or any other city ordinance or state statute or are abandoned or left in a state of partial construction or repair for an unreasonable period of time in the designated paved parking area of the front yard, the back yard, side yard, driveway or sidewalk are prohibited and that semi-trailers are prohibited from being used as storage units in residential areas;
- k. Camper shells which are left for a unreasonable period of time in the front yard, driveway, side yard, sidewalk, or walkway and are visible from a public street; and
- l. Buildings which are abandoned, boarded up, partially destroyed, or left in a state of partial construction for an unreasonable period of time and such buildings which are unpainted or where the paint on the building exterior is mostly worn off.

10.504            Location or Presence of Junked Vehicles Within the City Deemed Public Nuisance:  
Exceptions

The location or presence of any junked vehicle or junked vehicles on any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the City of Hankinson shall be deemed a public nuisance and it shall be unlawful for any person or persons to cause or maintain such public nuisance by wrecking, dismantling, rendering inoperable, abandoning or discarding his or their vehicle or vehicles on the property of another or to suffer, permit or allow the same to be placed, located, maintained or exist upon his or their own real property; provided that this section shall not apply to (1) a vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property; (2) a vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or a junkyard; or (3) unlicensed inoperable vehicles stored on private property provided, however, that the vehicles and outdoor storage areas are maintained in such a manner that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means.

10.505            Declaration of Public Nuisance

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

10.506            Abatement Procedure: Notification of Nuisance

Whenever the City Building Official or the City's Chief of Police determines that any property within the City is being maintained contrary to one or more of the provisions of Section 10.503 of this article, the City

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Auditor shall give written notice (Notice to Abate) to the owner of said property stating the section(s) being violated. The notice to abate shall set forth a reasonable time limit, in no event less than seven calendar days, for correcting the violation(s) and may also set forth suggested methods of correcting the same and shall be served upon the owner in accordance with the provisions of subsection b covering service in person or by mail.

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

**NOTICE OF ADMINISTRATIVE HEARING ON ABATEMENT OF NUISANCE**

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

The nuisance conditions consist of the following: \_\_\_\_\_

The method(s) of abatement are: \_\_\_\_\_

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
City Auditor

Time and Date of Hearing: \_\_\_\_\_

Location of Hearing: \_\_\_\_\_

- c. Administrative Hearing by City Council. At the time stated in the notice, the City Council shall hear and consider all relevant evidence, objections, or protests relative to such alleged public nuisance and to the proposed method(s) of abatement which may include cleanup, rehabilitation, repair, removal, demolition of such property or such other method(s) which the City Auditor may deem appropriate. The hearing may be continued from time to time.

If the City Council finds that such public nuisance does not exist and that there is sufficient cause to abate the nuisance, the City Council shall prepare findings and an order, which shall

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specify the nature of the nuisance, the method(s) of abatement and the time within which the work shall be commenced and completed. The order shall include reference to the right to appeal set forth in Section 10.507 of this article. A copy of the findings and order shall be served on all owners of the property in accordance with the provisions of subsection b. In addition, a copy of the findings and order shall be forthwith conspicuously posted on the property.

- d. Procedure; No Appeal. In the absence of any appeal, the owner shall abate the nuisance on the property in the manner and means specifically set forth in the findings and order. In the event the owner fails to abate the nuisance as ordered, the City Council shall cause the nuisance to be abated by City employees or private contract. The costs shall be billed to the owner, as specified in Section 10.508 of this article. The City Council may authorized City employees or the City's contractors to enter upon the property for such purposes.

### 10.507            Appeal Procedure

The owner may appeal the City Council's finding and order to the District Court of Richland County, North Dakota within ten days of the date of service of the City Council's decision. If the tenth day falls on a weekend or legal holiday observed by the City, then the appeal may be filed on the next work day. The appeal shall contain:

- a. A specific identification of the subject property;
- b. The names and addresses of all appellants;
- c. A statement of appellant's legal interest in the subject property;
- d. A statement in ordinary and concise language of the specific order or action protested and the grounds for appeal, together with all material facts in support thereof;
- e. The date and signatures of all appellants; and
- f. The verification of at least one appellant as to the truth of the matters in the appeal.

### 10.508            Abatement by City

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

### 10.509            Limitations Period for Filing Judicial Action

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

### 10.510            Lien Procedure

- a. Record of Cost of Abatement. The City Auditor shall keep an account of the cost of abating such nuisance on each separate lot or parcel of land where the work is done by the City and shall render an itemized report in writing to the City Council showing the cost of abatement, including any salvage value. Before the abatement cost report is submitted to the City Council, a copy of the same shall be posted for at least five days upon the subject property, together with a notice of the date when said report shall be heard by the City Council for

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confirmation. A copy of said report and notice shall be served upon the owners of said property in accordance with the provisions of Section 10.506(b) of this article a least five calendar days prior to submitting the same to the City Council. Proof of said posting and said service shall be made by affidavit filed with the City clerk.

- b. Assessment Lien. The total cost for abating such nuisance, as so confirmed by the City Council, shall constitute a special assessment against the respective lot or parcel of land to which it relates, and upon recordation in the office of the County Register of Deeds of a Notice of Lien, as so made and confirmed, shall constitute a lien on said property for the amount of such assessment.

After such confirmation and recordation, a certified copy of the City Council’s decision shall be filed with the Richland County Auditor on or before October 1<sup>st</sup> of each year, whereupon it shall be the duty of said Auditor to add the amounts of the respective assessments to the next regular tax bills levied against said respective lots and parcels of land for municipal purposes and thereafter said amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection, and enforcement of municipal taxes shall be applicable to such special assessment.

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

- d. Notice of Lien. The Notice of Lien for recordation shall be in form substantially as follows:

NOTICE OF LIEN

(Claim of City of Hankinson)

Pursuant to the authority vested by the provisions of Ordinance No. \_\_\_ of the City of Hankinson, the City Council of the City of Hankinson did on or about the \_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, cause the property or condition hereinafter described to be rehabilitated or the building or structure on the property to be repaired, demolished or removed in order to abate a public nuisance on said real property; and the City Council of the City of Hankinson did on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, assess the cost of such abatement upon the real property hereinafter described; and the same has not been paid nor any part thereof; and that the City of Hankinson does hereby claim a lien on such rehabilitation, repair, or demolition in the amount of said assessment, to-wit: the sum of \$ \_\_\_\_\_; And the same, shall be a lien upon said real property until the same has been paid in full and discharged of record.

The real property hereinafter mentioned, and upon which a lien is claimed, is that parcel of land lying and being in the City of Hankinson, County of Richland, State of North Dakota, and particularly described as follows:

(description)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
City Auditor, City of Hankinson

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- e. Remedies. The City may use any other remedies permitted by law in recovery of its costs of abating such nuisances including small claims court, county court and district court actions.

10.511                    Removal with Permission of Owner or Occupant

If within ten days after receipt of notice from the City Auditor and/or his employees, of his duly authorized agent, to abate the nuisance, as herein provided, the owner or occupant of the premises shall give his written permission the City Auditor and/or his employees, or his duly authorized agent for removal of the junked motor vehicle from the premises, the giving of such permission shall be considered compliance with the provisions of Section 10.506.

10.512                    Disposal of Junked Vehicles

If such public nuisance is not abated by said owner or occupant after notice is given in accordance with this ordinance, official action shall be taken by the City of Hankinson to abate such nuisance. Junked vehicles or parts thereof may be disposed of by removal to a scrap yard, demolishers, or any suitable site for processing as scrap or salvage.

10.513                    Application

Nothing in this article shall affect ordinances that permit immediate removal of a vehicle left on public property which constitutes an obstruction to traffic.

10.514                    Alternative Actions Available; Violation an Infraction; Continuing Violations a Misdemeanor

Nothing in this article shall be deemed to prevent the City Council from ordering the commencement of a civil proceeding to abate a public nuisance pursuant to applicable law or from pursuing any other remedy available under applicable law. Violation of the provisions of this article constitutes an infraction, for which a fee of up to one hundred dollars may be assessed per each day violation continues. Violations which constitute infractions which occur for more than three days, shall constitute a class B misdemeanor with a penalty or fine of up to \$1,000.00 and/or jail sentence of up to 30 days for each violation exceeding the three infractions.

### **ARTICLE 6 – Sex Offenders**

#### **I. PURPOSE**

a. The City Council of the City of Hankinson, North Dakota, finds that Sex Offenders who are required to register as a sexual predator under the North Dakota Century Code, *Offenders against children and sexual offenders - Sexually violent predators - Registration requirement - Penalty (NDCC 12.1-32-15)*, present an extreme threat to the health, safety and welfare of children. It is the intent of this section to serve the City's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the City by creating areas around locations where children regularly congregate in concentrated numbers wherein certain registered sex offenders and sexual predators are prohibited from loitering or prohibited from establishing temporary or permanent residency.

#### **II. DEFINITIONS**

For the purposes of this Section, the following terms, words and the derivatives thereof shall have the meaning given herein.

a. SEX OFFENDER: Means an individual who has been convicted of or placed on deferred adjudication for a sexual offense involving a person less than seventeen (17) years of age for which the individual is

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required to register as a sex offender under the North Dakota Century Code. *NDCC 12.1-31-15; NDCC 12.1-32-15 (1) (e)*

- i. **SEXUALLY DANGEROUS INDIVIDUAL:** Means an individual who meets the definition specified in section *NDCC 25-03.3-01*.
- b. **PERMANENT RESIDENCE:** Means a place where the person abides, lodges or resides for fourteen (14) or more consecutive days.
- c. **TEMPORARY RESIDENCE:** Means a place where a person abides, lodges or resides for a period of fourteen (14) or more days in the aggregate, during any calendar year and which is not the person's permanent address, or a place where the person routinely abides, lodges or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.
- d. **CHILD:** Means a person less than eighteen (18) years of age or more than seventeen (17) years of age and incapable of providing self-care because of a serious health and mental condition. *NDCC 54.52.4-01(1); NDCC 14-12.2-01(1)*.
- e. **CHILD CARE FACILITY:** Means a family foster home for adults, family foster home for children, group home, or residential child care facility for children. *NDCC 50-11(4)*.
- f. **CHILD CARE INSTITUTION:** Means a child care program licensed to provide early childhood services on a regular basis for nineteen or more children aged five years through eleven years. *NDCC 50-11.1-02(22)*.
- g. **CHILD SAFETY ZONE:** As defined by the City of Hankinson, North Dakota, public parks, private and public schools, public library, amusement arcades, video arcades, indoor and outdoor amusement centers, public or commercial and semi-private swimming pools, child care facility, child care institution, public or private youth sports fields, crisis center or shelter, public or private youth center, scouting facilities and Offices for Child Protective Services. *NDCC 12.1-20-25*.
- h. **DATABASE:** The North Dakota Department of Public Safety's Sex Offender Database, the City Auditor of the City of Hankinson, or the Sex Offender Registration files maintained by the Sex Offender Registration files maintained by the Sex Offender Registration Officer of the County of Richland.
- i. **LOITER:** Means standing, sitting idly, whether or not the person is in a vehicle or remaining in or around an area.
- j. **PARK OR PLAYGROUND:** Means one of the following: Any land, including improvements to the land that is administered, operated or managed by the City of Hankinson for the use of the general public as a recreational area. City recreational areas include, but are not limited to, conservation area (s), jogging, hiking and bicycling trail (s), recreational center, or baseball field.
- k. **PLACES WHERE CHILDREN REGULARLY CONGREGATE:** Means the same as *Child Safety Zone*.
- l. **PUBLIC WAY:** Means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, shopping centers, parking lots, transportation facilities, restaurants, shops and similar areas that are open to the use of the public.
- m. **SCHOOL:** Means a private or public pre-school, private or public elementary school or private or public secondary school.

### III. SEX OFFENDER PROHIBITION

- a. It is an offense for a Sex Offender to establish a permanent residence or temporary residence within eight hundred (800) feet inclusive of streets or the real property comprising a school, child care facility, child care institution, park or play ground or other places where children regularly congregate.
- b. It is an offense for a Sex Offender to knowingly enter a Child Safety Zone.
- c. It is an offense for a Sex Offender to knowingly loiter on a public way within four hundred (400) feet inclusive of streets or a Child Safety Zone.
- d. A Sex Offender shall not on each October 30th and 31st (or any other date set by the City for trick-or-treaters) between the hours of 4:00 p.m. and 11:00 p.m., leave an exterior porch light on or otherwise invite trick-or-treaters to solicit the premises.

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### **IV. EVIDENTIARY MATTERS**

- a. **If a Sex Offender that is prohibited from being in a Child Safety Zone is found in a Child Safety Zone** by any Law Enforcement Officer, the Sex Offender is subject to punishment in accordance with this Ordinance.
- b. It shall be prima facie evidence that this section applies to such a person if that person's record appears in/on the Database and the Database indicates that the victim was less than seventeen (17) years of age.
- c. The distance of four hundred (400) feet inclusive of streets from a Child Safety Zone shall be measured on a straight line from the closest boundary of the Child Safety Zone.
- d. The distance of four hundred (400) feet inclusive of streets from a place where children congregate shall be measured on a straight line from the closest boundary line of the Sex Offender's residence to the closest boundary line of the school, child care facility, childcare institution, park or playground or other places where children regularly congregate.
- e. In the case of multiple residences on one property, measuring from the nearest property line of the residences to the nearest property line of the school, child care facility, child care institution, park or playground or other places where children regularly congregate.
- f. In cases of a dispute over measured distances, it shall be incumbent upon the person(s) challenging the measurement to prove otherwise.
- g. A map depicting the prohibited areas shall be created by the City of Hankinson and maintained by Richland County Law Enforcement. The City of Hankinson shall review the map annually for changes. Said map will be available to the public via the City Auditor.

### **V. EXCEPTIONS**

- a. The person required to register in/on the Database established the permanent residence or temporary residence and residency has been consistently maintained and the person has complied with all of the Sex Offender Registration laws of the State of North Dakota, prior to the date of the adoption of this ordinance.
- b. The place where children regularly congregate, as specified herein, within eight hundred (800) feet inclusive of streets of the permanent or temporary residence of the person required to register on/in the Database was opened after the person established the permanent or temporary residence and complied with all Sex Offender Registration laws of the State of North Dakota.
- c. The information on/in the Database is incorrect and, if corrected, this Section would not apply to the person who was erroneously listed on/in the Database.
- d. The person required to register on/in the Database was a minor when he or she committed the offense requiring such registration and was not convicted as an adult.
- e. The person required to register is required to serve a sentence at a jail, prison, juvenile facility or other correctional institution located within eight hundred (800) feet inclusive of streets of the real property comprising a school, child care facility, child care institution, park or playground or other places where children regularly congregate.
- f. The person required to register is under eighteen (18) years of age or a ward under guardianship, who resides with a parent or guardian.
- g. The person required to register has been exempted by a court order from registration as a sex offender under Chapter Twelve (12) *NDCC 12.1-32-15*; or
- h. The person required to register has had the offense for which the sex offender registration was required, reversed on appeal or pardoned.
- i. The person's duty to register on/in the Database has expired.
- j. Nothing in this provision shall require any person to sell or otherwise dispose of any real estate or home acquired or owned prior to the conviction of the person of a sex offender.

### **VI. PENALTIES**

- a. Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed the maximum amount allowed by law. Each day that a violation is permitted to exist shall constitute a separate offense and shall be punishable as such.

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### Article 7 - Tobacco

#### SECTION I - Definitions

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

1. *Bar* means a retail alcoholic beverage establishment licensed pursuant to the Hankinson Code of Ordinances. 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.
2. *Business* means a sole proprietorship, partnership, association, joint venture, corporation, or other business entity, either for profit or not for profit, including retail establishments where goods or services are sold and professional corporations and other entities where professional services are delivered.
3. *Electronic smoking device* means any 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.
4. *Employee* means an individual who is employed by an employer in consideration for direct or indirect monetary wages or profit, or an individual who volunteers services for an employer.
5. *Employer* means an individual, business, or private club, including a municipal corporation or trust, or the state and its agencies and political subdivisions that employs the services of one (1) or more individuals.
6. *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.
7. *Health care facility* means any office or institution providing health care services or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological or psychological conditions, 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.
8. *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.
9. *Minor* means a person under the age of 18 years.
10. *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 residence unless it is used as a licensed child care, adult day care, or health care facility.
11. *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 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

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- common areas in apartment buildings, condominiums, mobile home parks, retirement facilities, nursing homes, and other multiple-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 food production and marketing establishments; retail service establishments; retail stores including tobacco and hookah establishments; rooms, chambers, places of meeting or public assembly, including school buildings; shopping malls; sports arenas; theaters; and waiting rooms.
12. *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.
  13. *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 stands, private and public school cafeterias, kitchens, and catering facilities in which food is prepared on the premises for serving elsewhere, and a bar area within 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.
  14. *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.
  15. *Shopping mall* means an indoor public walkway or hall area that serves to connect retail or professional businesses.
  16. *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 device which creates a vapor, in any manner or any form, or the use of any oral smoking device for the purposes of circumventing the prohibition on smoking in this article.
  17. *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.
  18. *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.

### **SECTION II – Purchase or use of Tobacco Products by Minors**

- (a) It is an infraction for any person to sell or furnish to a minor, or procure for a minor, tobacco products in any form in which it may be smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other

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means. As used in this subsection, the term "sell" includes dispensing from a vending machine under the control of the actor. A violation of this subsection shall be an infraction with a maximum penalty of \$500.00.

- (b) It is 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 part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority.
- (c) It shall be unlawful for any minor to sell, possess, purchase, attempt to purchase, smoke or use tobacco products in any form in which such products may be smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means. However, an individual under 18 years of age may purchase and possess tobacco products as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority. A minor may sell tobacco products as a bona fide employee of a licensed tobacco retailer.
- (d) It is unlawful for a minor to present or offer to another individual a purported proof of age which is false, fraudulent, or not actually the minor's own proof of age, for the purpose of attempting to purchase or possess tobacco products in any form in which it may be smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means.
- (e) A violation of this section is a civil violation and there shall be a fee of \$25.00 for a minor 14 years of age or older who has been charged with a violation of this section.

### **SECTION III – Point of Sale of Tobacco Products**

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

- (a) Behind a counter in an area accessible only to the personnel of such business, or
- (b) In a locked container; provided, however, such restriction shall not apply to:
  - (1) 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
  - (2) Any places to which admission is restricted to persons eighteen years of age or older.

### **SECTION IV -- Smoking in Public Places and Places of Employment**

- I. Purpose  
This article is enacted to regulate smoking in public places and places of employment in order to protect the public health and welfare and to recognize the need for individuals to breathe smoke-free air.
- II. Smoking restrictions – Exceptions
  - 1. Except as otherwise provided herein, smoking is prohibited in all:
    - A. Public places;
    - B. Places of employment;
    - C. Indoor and outdoor areas of restaurants;
    - D. Indoor and outdoor areas of bars;
    - E. Areas within twenty (20) feet [6.10 meters] of any entrance, exit, operable window, air intake and ventilation systems of enclosed areas in which smoking is prohibited;
    - F. Areas designated as a nonsmoking area by a business, employer, the manager of a business, or a person in control of a public place or a place of employment;
    - G. Smoking shelters if food or alcoholic beverages are sold, served or consumed in the smoking shelter.
  - 2. The following areas, locations, or uses are exempt from the provisions of subsection 1:

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- A. Private residences, except when used as a child care, adult day care, or health care facility subject to licensure by the North Dakota Department of Human Services.
  - B. Outdoor areas of places of employment, except a sports arena, restaurant, or as otherwise prohibited herein.
  - C. Any area that is not commonly accessible to the public and which is part of an owner-operated business having no employee other than the owner-operator.
  - D. Outdoor areas of a bar holding a beverage license as defined by Hankinson Code of Ordinances provided that patrons entering such licensed premises must be at least twenty-one (21) years of age and further provided that no food is sold, served, or consumed in such outdoor areas, whether designated as an outdoor patio, terrace, deck, courtyard, sidewalk, porch, or other similar term.
  - E. Smoking shelters provide that no food or alcoholic beverages are sold, served, or consumed in the smoking shelter;
  - F. Smoking as part of a traditional American Indian spiritual or cultural ceremony.
3. An owner, operator, manager, or other person who owns or controls a public place or place of employment may seek a variance from the twenty-foot zone of exclusion set forth herein by making application to the director of the public health department. The variance may be granted upon the applicant showing by clear and convincing evidence that, given the unique circumstances presented by the location of the entrances, exits, windows that open, ventilation intakes, or other factors, smoke will not infiltrate or reach the entrances, exits, open windows, or ventilation intakes or enter into such public place or place of employment and that public health and safety will be adequately protected by a lesser distance from such entrances, exits, windows that open, and ventilation intakes.
  4. This section shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.
- III. Retaliation prohibited.  
No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or other person because that person asserts or exercises any rights afforded by this article or reports or attempts to prosecute a violation of this article. An employee who works in a setting where an employer allows smoking does not waive or surrender any legal rights the employee may have against the employer or any other party. Violations of this section shall be a Class B misdemeanor.
- IV. Right to designate nonsmoking areas.  
Nothing in this article shall prevent any business, employer, manager of a business, or person in control of a public place or a place of employment, or any owner of real property, from prohibiting smoking in any location, or part thereof, where smoking is otherwise allowed under this article.
- V. Posting of signs or symbols and other responsibilities of proprietors.  
The owner, proprietor, operator, manager, or other person in charge or control of a public place or place of employment where smoking is prohibited by this article shall:
1. Clearly and conspicuously post “no smoking” signs or the international “no smoking” symbol consisting of a pictorial representation of a burning cigarette in a circle with a bar across it in that place.
  2. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.
  3. Clearly and conspicuously post in every vehicle that constitutes a place of employment under this article at least one (1) sign, visible from the vehicle’s exterior, stating that smoking is prohibited.
  4. Remove all ash trays from any area where smoking is prohibited, except for ash trays displayed for sale and not for use on the premises.
  5. Communicate to all existing employees that smoking is prohibited in that place.
  6. Communicate to all prospective employees, upon their application for employment, that smoking is prohibited in that place.
  7. Direct a person who is smoking in violation of this article within the public place or place of employment under the control of such owner, proprietor, manager, or other person to extinguish

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the product being smoked. If the person does not stop smoking, the owner, proprietor, operator, manager, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, proprietor, operator, manager, or employee shall immediately report the violation to the Richland County Sheriff's Department. The refusal of the person to stop smoking or leave the premises in response to requests made under this section by an owner, proprietor, operator, manager, or employee shall not constitute a violation of this article by the owner, proprietor, operator, manager, or employee.

### VI. Penalty

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

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**CHAPTER ELEVEN**

**ANIMALS AND FOWL**

**Article 1 – General Regulations**

11.101 Purpose

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

11.102 Definitions

1. “Animal” includes every living animal except the human race.
2. “Altered Animal” means any animal that has been operated on to prevent it from procreating
3. “Owner” is a person having the right of property or custody of an animal, who keeps or harbors an animal or knowingly permits an animal to remain on or about any premises occupied by that person.
4. “Kennel” means any person, group of persons, partnerships or corporation engaged in breeding animals.
5. “Public Nuisance” shall include the following:
  - h. Any animal which interferes with a passerby or a passing vehicle.
  - i. Any animal which attacks another animal or person.
  - j. Any animal which trespasses on school grounds.
  - k. Any animal which runs at large or unrestrained.
  - l. Any animal which damaged private or public property.
  - m. Any animal, which barks, whines, howls or makes other sounds common to its species in an excessive or continuous manner.
  - n. Any foul or obnoxious odors resulting from the accumulation of excrement or other waste materials from an animal and which is offensive to surrounding residents.
6. “Dangerous Animal” includes any animal that:
  - a. When unprovoked, inflicts bite(s) on a human or a domestic animal either on public or private property;
  - b. Has a history, documented with a public agency of biting or attacking humans or domestic animals;
  - c. Has known propensity, tendency or disposition to attack, to cause injury, or otherwise threaten or endanger the safety of humans or domestic animals; or
  - d. Is not properly vaccinated for rabies.

11.103 General Provisions

Any person within the boundaries of Hankinson owning, keeping, harboring, or having custody of a dangerous animal as defined in this ordinance will:

1. Confine the animal within a building or secure enclosure and shall not take such animal out of such building or secure enclosure unless such animal is restrained.

Duly authorized members of a law enforcement agency, including but not limited to sheriffs, deputy sheriffs, police officers, high patrol officers, game wardens, conservation officers and other law

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enforcement officers while on official duty, shall be exempt from the provisions of this section for any working animal utilized in the performance of their official duties.

When, in the judgment of any court, an animal should be destroyed for humane reasons, such animal may not be redeemed.

### 11.104            Inspection

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

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

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

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

### 11.105            Keeping Animals in an Unhealthy/Unsanitary Manner

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

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

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### 11.106 License and Registration Required – Limitation of Total Cats and Dogs Allowed

All dogs and cats over the age of 90 days, male or female, not vicious or dangerous, kept or maintained by their owners in the City shall be licensed on or before the first day of March of each calendar year. Dog and cat licenses shall be issued by the collecting authority upon payment of an annual license fee. The City Council may designate (and modify) the collecting authority and annual license fee by resolution. The owner shall state at the time application is made for such license his name and address and the breed, color, sex of the animal, date of rabies inoculation of the animal, and whether or not the animal is neutered, spayed or de-sexed. A license shall not be issued unless proof is presented that the dog or cat has been inoculated against rabies within twenty-four (24) months preceding the application. The licensing provision of the section shall not apply to dogs or cats brought into the City of Hankinson for the purpose of participation in any dog or cat show, nor to “seeing-eye” dogs properly trained to assist blind persons when such dogs are actually kept for use by blind persons for the purpose of aiding them in going from place to place, nor to dogs owned by the City of Hankinson or any other political subdivision and used for law enforcement purposes.

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

### 11.107 Time to License Dogs or Cats

Dog and cat license shall be secured immediately after January 1<sup>st</sup> of each year and shall be in force from and after the date of procurement until the 1<sup>st</sup> day of January thereafter, when a new license must be paid for and secured. Said license shall be canceled unless the records of the City Auditor contain written evidence that a dog or cat has been inoculated against rabies at least once every two (2) years. If license is not obtained by March 1<sup>st</sup> of each year a late penalty fee as set by resolution by the City Council will be added to the license fee. Owner who fails to comply will be issued a warning citation by law enforcement officer. Fines for non-compliance will be at the law enforcement officer’s discretion not to exceed 30 days for owner to acquire animal license. If non-compliance continues beyond 30-day period, a \$50 fine will be imposed for each day of non-compliance.

### 11.108 Animal must have collar with rabies tag and license tag attached.

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

### 11.109 Register or list to be kept by City Auditor

It is hereby made the duty of any person who may be designated by the City Auditor of said City to list in a listing book or books to be prepared at the expense of the City and furnished to the Law Enforcement Agent in which such person shall enter the name or names of the owner or keepers of all dogs and cats in

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said City, the number of the house and street where owned or kept and the sex thereof and the amount of license thereon, as hereinbefore provided, and also the color of all such dogs and cats and such other descriptions identifying such dogs and cats as may be convenient.

### 11.110            Unlicensed Dogs and Cats Procedure

Any unlicensed dog or cat running at large within said City, or found upon any of the public grounds or streets of said City shall be picked up by the Richland County Sheriff's Department and transported to the veterinary clinic as contracted with the City. Costs incurred will be charged to the owner of the dog or cat and shall include costs for any and all shots, boarding, licensing and fines before animal is released to owner. If the owner is not known, the City of Hankinson will be responsible for boarding expense. Law enforcement officer shall make known to City information on any and all animals-at-large captured and transported to veterinary clinic whether owner is known or not.

### 11.111            Running at large prohibited – Vicious animals -- Rabies

A. Every person having the custody or control of any dog or cat shall prevent said animal from leaving the property limits of its owner or keeper without being effectively restrained by a chain or leash not exceeding six (6) feet in length, or, within a vehicle being driven or parked on the street. In the event any such dog or cat is found at large, the owner, custodian or keeper of such animal shall be guilty of a violation of this section.

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

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

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

E. Any dog or cat that is determined by the law enforcement officer to be fierce, dangerous, or vicious; any dog which interferes with the freedom of movement of persons in a public right-of-way as prohibited in subsection D of this section; or any dog or cat that is determined by law enforcement officer to be habitually at large is declared to be a public nuisance. The owner, custodian or keeper of any such animal shall be notified of said determination in writing and, upon request of the law enforcement officer shall surrender such animal for purposes of placement or destruction; provided, however, any said owner, custodian or keeper of any such animal shall have ten (10) days from the receipt of notification to appeal to the Hankinson Municipal Court and a hearing shall be held. In the event that the court affirms the determination of the law enforcement officer, the court shall:

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

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

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1. At the request of such official, confine any said animal for ten (10) days in a suitable secure enclosure or, if deemed necessary by said official, in the animal pound;
2. Immediately notify the law enforcement officer if any said animal escapes during the above-mentioned ten-day period;
3. Make any and all reports requested in reference to the general health and medical history of said animal; and
4. Surrender any said animal for such medical tests as are deemed necessary and submit said animal to treatment, or in the alternative, for destruction. Owner of animal shall be responsible for any and all expenses, fees, legal bills, fines and other pertinent costs.

G. The provisions of this section shall not apply to any dogs owned by the City of Hankinson or any other political subdivision and used for law enforcement purposes.

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

1. First Offense: Notice of the owner/keeper by the City Police Officer or other Peace Officer about the incident of the animal running at large.
2. Second Offense: Issuance of citation by the City Police Officer or other Peace Officer to the owner/keeper of the animal running at large. Penalty is twenty five dollars (\$25.00) to be paid to the City of Hankinson.
3. Third Offense: If caught the animal at large will be taken to the appropriate veterinary clinic by the City Police Officer or other Peace Officer. All expenses incurred will be the responsibility of the owner/keeper. Issuance of citation by the Police Officer or other Peace Officer to the owner/keeper of the animal running at large. Penalty is one hundred dollars (\$100.00) to be paid to the City of Hankinson.
4. Any Future Offenses: If caught the animal at large will be taken to the appropriate veterinary clinic by the City Police Officer or other Peace Officer. All expenses incurred will be the responsibility of the owner/keeper. Issuance of citation by the City Police Officer or other Peace Officer to the owner/keeper of the animal running at large. Penalty is one hundred dollars (\$100.00) to be paid to the City of Hankinson. Hearing set by the City Council to discuss future reprimands or actions to be taken if the animal continues similar activities. Owner/keeper will be notified by the City Council of the hearing date and will be encouraged to attend.

### 11.112            Public Nuisance

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

### 11.113            Impounded animals – Procedure for impounding unlicensed dog or cat

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

### 11.114            Impounded animals – Notice to owner and redemption

Not later than two (2) days after the impound of any dog or cat, the owner, if known, shall be notified, and a description of any dog or cat for which the owner is unknown shall be posted in the entryway or lobby of

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the impoundment facility. Verbal notice to the owner, a member of his family, or any individual in whose car and custody the owner has left such animal shall be sufficient. The owner of any dog or cat so impounded may reclaim such animal upon payment of the license fee, if unpaid, the costs of impoundment and maintenance, and all costs incurred in giving any needed rabies inoculations or any other medical fees occurred in the giving of any medical care or treatment which the pound facility determines to be reasonably necessary.

### **11.115            Impounded animals – Disposition of unclaimed or infected dogs and cats**

If at the expiration of three (3) days from the date of notice to the owner, or the posting of the description for animals of which the owner is unknown, such dog or cat shall not have been redeemed, it may be destroyed or placed with another individual willing to pay the required fees and costs. Any dog or cat which appears to be suffering from rabies or to be affected with another dangerous disease shall not be released but may be forthwith destroyed.

### **11.116            Muzzling**

Whenever it becomes necessary to safeguard the public from the dangers of rabies, the law enforcement officer shall request the mayor to issue a proclamation ordering every person owning or keeping a dog or cat to confine it secretly on his premises unless such dog or cat shall have a muzzle of sufficient strength to prevent its biting any person. Any unmuzzled dog or cat running at large during the time of the proclamation shall be seized and impounded, unless noticeably infected with rabies. All dogs and cats so noticeably infected with rabies and displaying vicious propensities shall be killed by the law enforcement officer without notice to the owner. If not noticeably infected with rabies, such unmuzzled dogs or cats shall be impounded for at least two (2) weeks; after which time they may be released to the owner upon payment of fees. Any dog or cat found to be infected with rabies during the impoundment shall be destroyed. If unclaimed after two (2) weeks and found not to be infected by rabies such dogs or cats may be summarily destroyed or placed with another individual. Nothing in this section shall be construed to require impounding of a dog or cat whose owner is unknown for a period longer than provided for in this section.

### **11.117            Rabies – Notice to police required**

If a dog or cat is believed to have rabies or has been bitten by a dog or cat suspected of having rabies, such animal shall be placed under the observation of a veterinarian, at the expense of the owner, for a period of two (2) weeks. The owner shall notify the law enforcement officer of the fact that his dog or cat has been exposed to rabies and at his discretion to the law enforcement officer is empowered to have such animal removed from the owner's premises to a veterinary hospital and there place under observation for a period of two (2) weeks at the expense of the owner.

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

### **11.118            Trespassing dogs or cats may be taken up by owner or occupant of property**

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

## **Ordinances - City of Hankinson, North Dakota**

### 11.119 Setting dogs or cats at large

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

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

5. First Offense: Notice of the owner/keeper by the City Police Officer or other Peace Officer about the incident of the animal running at large.
6. Second Offense: Issuance of citation by the City Police Officer or other Peace Officer to the owner/keeper of the animal running at large. Penalty is twenty five dollars (\$25.00) to be paid to the City of Hankinson.
7. Third Offense: If caught the animal at large will be taken to the appropriate veterinary clinic by the City Police Officer or other Peace Officer. All expenses incurred will be the responsibility of the owner/keeper. Issuance of citation by the Police Officer or other Peace Officer to the owner/keeper of the animal running at large. Penalty is one hundred dollars (\$100.00) to be paid to the City of Hankinson.

Any Future Offenses: If caught the animal at large will be taken to the appropriate veterinary clinic by the City Police Officer or other Peace Officer. All expenses incurred will be the responsibility of the owner/keeper. Issuance of citation by the City Police Officer or other Peace Officer to the owner/keeper of the animal running at large. Penalty is one hundred dollars (\$100.00) to be paid to the City of Hankinson. Hearing set by the City Council to discuss future reprimands or actions to be taken if the animal continues similar activities. Owner/keeper will be notified by the City Council of the hearing date and will be encouraged to attend

### 11.120 Accumulation of animal excrement

No person occupying any premises within the City of Hankinson shall permit the accumulation of animal excrement on the premises, or on any other premises. Violation of this ordinance shall result in fines and penalties as described in Ordinance 11.118.

### 11.121 Cruelty to Animals

No person shall willfully:

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

### 11.122 Keeping of Certain Animals Prohibited

It shall be unlawful to keep any live sheep, swine or pigs, horse, cattle, chickens, geese, ducks or poultry, or goats in the City. It shall be unlawful to keep any exotic animals in the City. This section shall not apply to any person, partnership or corporation keeping or handling such animals under consignment in the course of regular business or to a license auction market. (Adopted August 1, 2005.)

## Ordinances - City of Hankinson, North Dakota

### 11.123 Strays

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

### 11.124 Prohibited Barking and Annoying Dogs or Cats

It is unlawful for any person, owner or keeper of any dog or cat to harbor or maintain at any time within the said City of Hankinson any dog or cat which shall run out and bark at any person or other passing object upon or along any street, highway or public grounds with the limits of said City of Hankinson, or which by its barking, howling, whining or other disagreeable noises by it or them during day or night time, disturb the people in the locality where owned, kept or maintained.

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

1. First Offense: Notification of the person, owner or keeper about the incident of the dogs or cats barking or annoying activity by the City Police Officer or other Peace Officer.
2. Second Offense: Issuance of citation by the City Police Officer or other Peace Officer to the owner or keeper of the dog or cat that is barking or annoying. Penalty is twenty five dollars (\$25.00) to be paid to the City of Hankinson.
3. Third Offense: Issuance of citation by the City Police Officer or other Peace Officer to the owner or keeper of the dog or cat that is barking or annoying. Penalty is one hundred dollars (\$100.00) to be paid to the City of Hankinson. Hearing set by City Council to discuss future reprimands or actions to be taken if dog continues similar activities. Person, owner or keeper will be notified by the City Council of this hearing and will be encouraged to attend.
4. Any Future Offenses: Issuance of citation by the City Police Officer or other Peace Officer to the person, owner or keeper of the dog or cat that is barking or annoying. Penalty is one hundred dollars (\$100.00) to be paid to the City of Hankinson. Hearing set by City Council to discuss future reprimands or actions to be taken if dog continues similar activities. Person, owner or keeper will be notified by the City Council of this hearing and will be encouraged to attend.

### 11.125 Procedure of Person Receiving Citations on any Violations Involving Animals to Include Dogs or Cats

Citations will be issued by the City Police Officer or other Peace Officer to any person, owner or keeper of animals to include dogs that violate the animal running at large or barking and annoying dogs or cat section of the City Ordinances. Such citations will be issued on second or subsequent violations.

When receiving a citation involving the above mentioned violations you have the option to:

1. Pay the appropriate fee to the City of Hankinson by sending it via mail to PO Box 478, Hankinson ND, 58041-0478, or delivering it in person to 319 Main Ave S. The appropriate fee must be received by the City of Hankinson within 14 days of receiving the citation.
2. Request a hearing on the citation. This will be done by notifying the Judge of your request for hearing by mail, phone or person within 14 days of receiving the citation. The Judge will notify person requesting the hearing of the date and time of the hearing.
3. Failure to use either of the procedures above could result in a warrant being issued for the person receiving the citation.

## **Ordinances - City of Hankinson, North Dakota**

### 11.201 Alternative Actions Available: Violation an Infraction; Continuing Violations A Misdemeanor.

Nothing in this article shall be deemed to prevent the City Council from ordering the commencement of a civil proceeding to abate a public nuisance, any animal known to be in violation of this Chapter or from pursuing any other remedy available under applicable law. Except as otherwise specifically provided for, violation of the provisions of this article constitutes an infraction, for which a fee of up to One Hundred Dollars (\$100.00) may be assessed per each day the violation continues. Violations which constitute infractions which occur for more than Three (3) days, shall constitute a Class B Misdemeanor with a penalty or fine of up to One Thousand Dollars (\$1,000.00) and/or jail sentence of up to Thirty (30) days for each violation exceeding the Three (3) infractions. (Adopted August 1, 2005.)

**Ordinances - City of Hankinson, North Dakota**

**CHAPTER TWELVE**

**PUBLIC NUISANCES**

**Article 1 – Sanitary Nuisances**

12.101            Residence – When Sewer and Water Required

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

The term “proper conditions” when used in this section shall be construed to mean connections with the water mains and sanitary sewers which are equipped and furnished with proper valves and fittings so as to enable such water connections to be used at all times. Sanitary toilets and drains and such equipment shall at all times be kept in repair and in a manner so as to make them available for household use and in condition to be used at all seasons of the year.

12.102            Outhouses – Cesspools – A Nuisance

The use, construction, maintenance, building or erection of any outhouse, privy, vault or cesspool within this City is hereby declared to be a nuisance and a menace to public health, when in violation of Section 12.101.

12.103            Outhouses – Cesspools – Exceptions

1. Private sewage system and private water supplies may be constructed to serve new buildings to be built in areas not included in Section 12.101, providing such lot area complies with the requirements of any zoning requirements.
2. Private sewage systems and private water systems may be installed in existing buildings in areas not included in Section 12.101.
3. Each private sewage system or private water supply hereafter altered or constructed shall conform to the State Health Department Standards.

12.104            Outhouses – Cesspools – Offensive Odors

It shall be unlawful for the owner or occupant of any lot or piece of ground within the corporate limits of this City to permit any private sewer system to emit any offensive odors or to become dangerous or injurious to public health or offensive to sense of smell of the people of the City. Any private sewer system emitting such odor is hereby declared to be a nuisance and a menace to the public health of the City.

12.105            Outhouses – Cesspools – Cleaning of

In the cleaning of the private septic tank and sewage systems the contents thereof shall be removed in containers fitted so as to prevent the escape of odors or materials therefrom and disposed of in a manner approved by the City health officer.

The pumping of a private sewage system on the surface of the ground or hauling contents thereof in such a manner as to allow the material to spill on the ground, street or public ways is hereby declared to be a public nuisance.

## **Ordinances - City of Hankinson, North Dakota**

### 12.106 Dead Animals

Any person who owned or had possession or control of a dead animal prior to its death shall remove or cause the same to be removed within five (5) hours from the time the animal dies and have the same buried or disposed of in some other sanitary way approved by the City health officer. Any dead animal remaining in any street, alley or other public place in this City, or in any private premises within this City, for more than five (5) hours after the animal shall have died, is hereby declared to be a nuisance. Any person allowing any animal which that person controlled or possessed, prior to its death, to remain in any street, alley or public place, or on any private premises within the City for more than five (5) hours after its death shall be guilty of a violation of this article.

### 12.107 Water Pools – Putrid Substances

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

## **Article 2 – Smoke – Gases**

### 12.201 Smoke, Dust, Ashes, Cinders, Gases – A Nuisance

The emission of dense smoke, ash, dust, cinders or noxious gases from any machine, contrivance or form the smoke stack or chimney of any building or premises in such quantities as to cause injury or detriment to any person or persons or to the public, or to endanger the comfort, health or safety of any person or persons, or in such manner as to cause or tend to cause damage or injury to property, is hereby declared to be a public nuisance.

### 12.202 Smoke, Dust, Ashes, Cinders, Gases – Prohibited

No person, persons, association or corporation shall cause, permit or allow the escape from any smoke stack or chimney into the open air, of such quantities of dense smoke, ash, dust, soot, cinders, acid or other fumes, dirt, or other material, or noxious gases, in such place or manner as to cause injury, detriment or nuisance to any person or persons, or to the public, or to endanger the comfort, health or safety to any such person or persons, or the public, or in such manner as to cause or have a natural tendency to cause injury or damage to business or property.

## **Article 3 – Radio Interference and Noise Control**

### 12.301 Radio Interference Prohibited

It shall be unlawful for any person knowingly to maintain, use, operate or cause to be operated within this City, any machine, device, appliance, equipment or apparatus of any kind whatsoever, the operation of which shall cause reasonably preventable electrical interference with radio reception within said municipal limits. The maintenance, use or operation within the City of any machine, device, appliance, equipment or apparatus of any kind so as to interfere with radio reception in violation hereof is hereby declared a public nuisance.

### 12.302 Loud, Disturbing, Unnecessary Noises – Prohibited

## **Ordinances - City of Hankinson, North Dakota**

The making, creating or maintenance of loud, unnatural or unusual and disturbing noises are a detriment to public health, comfort, convenience, safety and welfare, and are hereby declared to be unlawful and a public nuisance. The following acts, among others, are declared to be prohibited noises in violation of this section, but such enumeration is not exclusive:

1. The sounding of horns or signaling devices on any motor vehicle or motorcycle on any street or public place except as a danger warning.
2. Radios, phonographs, etc. The using, operating or permitting to be played, used or operated, any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated, and who are voluntary listeners thereto. The operations of any such set, instrument, phonograph, machine or device in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.
3. Yelling, shouting, etc. Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 pm and 7:00 am, or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office, or in any dwelling, hotel or other type of residence, or of any persons in the vicinity.
4. Schools, courts, churches, hospitals. The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while the same are in use, or adjacent to any hospital, which unreasonably interferes with the workings of such institution, or which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed indicating that a school, hospital, or court is in the vicinity.

### 12.303            Noisy Parties – Penalty

1. Noisy parties prohibited. No person shall participate in any party or other gathering of people giving rise to noise, disturbing the peace, quiet or repose of another person within the City of Hankinson.
2. Order to disperse – refusal prohibited. When a police officer determines that a gathering is creating such a noise disturbance, the officer may order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disperse immediately. No person shall refuse to leave the premises after being ordered by a police officer to do so.
3. Tenant or owner – cooperation required. Every owner of such premises, or tenant in charge of such premises, who has knowledge of the disturbance shall cooperate with such police officer and shall make reasonable effort to stop the disturbance.
4. Violations – prima facie evidence. The following shall be prima facie evidence in any prosecution under this section of the owner's or tenant's violation of this section:
  - a. As to tenants, and owner if owner resides on the premises, if twice or more on the same day or if on successive days, the Police Department is called upon to enforce the terms of this section either by citizen complaint or by personal investigation of peace officer.
  - b. As to the owner if the owner does not reside at the premises, if after owner receives written notice of three violations of this section by his tenants at any premises owned by owner in the City of Hankinson within a six month period, and after receipt of such written notice, the Police Department is called upon to enforce this section either by citizen complaint or by personal investigation of a peace officer,
5. Every person, firm or corporation violating this ordinance shall, upon conviction thereof, be punished by a fine not to exceed five hundred dollars (\$500.00).

## **Article 4 – Automobiles – Personal Property**

### 12.401            Automobiles, Personal Property – When a Nuisance

## **Ordinances - City of Hankinson, North Dakota**

Unsheltered storage of old, used, stripped, junked and other automobiles not in good, safe operating condition, and of any other vehicles, machinery implements and/or equipment and personal property of any kind which is no longer safe for the purposes for which it was manufactured, for a period of thirty (30) days or more (except in a licensed junk yard) within the City, and any motor vehicle, animal and article of personal property which constitutes an obstruction to, hazard or detriment to public traffic, snow removal operations, public safety and public health, or which may be abandoned or unclaimed within the City, is hereby declared to be a nuisance and shall be abated in the manner prescribed in this article. Property must be stored in an enclosed building or within fencing that obstructs the view of such property.

### **12.402            Abatement Required by Owners**

The owner, owners, tenants, lessees and/or occupants of any lot within the corporate limits of this City upon which such storage is made, and also the owner/owners and/or lessees of the property involved in such storage (all of whom are hereinafter referred to collectively as “owners”), shall jointly and severally abate the nuisance by the prompt removal of the personal property into completely enclosed buildings authorized to be used for storage purposes, if within the corporate limits of the City, or otherwise to remove it to a location outside of corporate limits.

### **12.403            Abatement Required – Penalty for Failure**

If the owners allow a nuisance to exist or fail to abate a nuisance they, and each of them upon conviction thereof, shall be fined not more than five hundred dollars (\$500.00) for each infraction and a separate infraction shall be deemed committed on each day during or on which day the nuisance is permitted to exist.

### **12.404            Removal and Impoundment by City**

The police department may remove or cause to be removed to the City Hall, or any other place within the City selected for storage purposes, any personal property described in 12.401, and may impound and retain the same until the expense of removal, storage and impounding is paid, together with the amount of any fine, costs, bail or other claims of the City against the owner, or any other person lawfully entitled to the possession thereof.

### **12.405            Removal and Impoundment – When Sold**

If not reclaimed and redeemed by the true owner or the person lawfully entitled to the possession thereof within a period of thirty (30) days after impounding, any article of personal property described in 12.401 may be sold and disposed of by the police department in the manner hereinafter provided. Notice that such property will be sold shall be published once, at least six (6) days prior to the sale, in the official newspaper. Such notice shall specify a description of the property to be sold and the time and place of sale. Any sale may be postponed or discontinued by public announcement at the time of the sale where there are not bidders or when the amount offered is grossly inadequate, or for other reasonable cause. The City may become a purchaser of any or all property at the sale. The chief of police shall give the purchaser at the sale a certificate of purchase of purchase of such property.

### **12.406            Removal and Impoundment Proceeds**

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

**Ordinances - City of Hankinson, North Dakota**

**Article 5 – Grass and Noxious Weeds**

12.501            Definition

Whenever used in this ordinance, the term “noxious weeds” shall mean and include all weeds of the kind known as Canada Thistle, sow thistle, quack grass, leafy spurge (Euphorbia esula or Ruphrobia virgata), field bindweed, Russian knapweed, (Centaurea picris), hoary cress (Lapidium draba, Lepidium reoebs, abd Humenophysa pubescens), dodder, or any similar unwanted vegetation over eight inches in height.

12.502            Weeds and High Grasses Prohibited

No owner of any lot, place or area within the City or the agent of such owner, shall permit on such lot, place or area and the one-half of any road or street lying next to the lands or boulevards abutting thereon, noxious weeds, GRASS MORE THAN SIX (6) INCHES IN HEIGHT or other deleterious, unhealthy growths.

12.502A           Hay Bales

Baling of hay on residential or commercial property located within six hundred (600) feet of a residential or commercial structure shall be prohibited. Baling of hay is restricted to the outskirts of the City on residential or commercial property and beyond as long as bales are removed within seven (7) days of baling or a fine will be issued to property owner.

Penalty for first infraction of this ordinance 12.502a shall be a citation by law enforcement of not less than \$50.00 if such bales remain on property after seventh (7<sup>th</sup>) day and same penalty exists for each succeeding day until bales have been removed.

12.503            Notice to Destroy

The City AUDITOR is hereby authorized and empowered to notify in writing the owner of any lot, place, or area within the City or the agent of such owner, to cut, destroy, and/or remove any noxious weeds AND HIGH GRASSES found growing, lying, or located on such owner’s property or upon the one-half of any road or street lying next to the lands or boulevards abutting thereon. The notice shall be by registered or certified mail addressed to said owner or agent of said owner at their last know address and shall give such owner or agent a minimum of five days to cut or destroy the noxious weeds AND MOW HIGH GRASSES. The City is only required to give this notice one time each summer and after having given such notice may summarily follow the procedures set forth in Section 12.504 each time any lot, place or area violates Sections 12.501 and 12.502.

12.504            Action Upon Non Compliance

Upon the failure, neglect, or refusal of any owner or agent to cut, destroy and/or remove noxious weeds AND HIGH GRASSES growing, lying or located upon the owner’s property or upon the one half of any road or street lying next to the lands or boulevards abutting thereon, after receipt of the written notice provided for in 12.503 or within five days after the date of such notice in the event the same is returned to the City because of inability to make delivery thereof, provided the same was properly addressed to the last know address of such owner or agent, the CITY AUDITOR is hereby authorized and empowered to pay for the cutting, destroying, and/or removal of such noxious weeds or to order their removal by the City.

12.505            Costs Assessed to Property

### **Ordinances - City of Hankinson, North Dakota**

When the City has effected the removal of such noxious weeds AND HIGH GRASSES or has paid for their removal, the actual cost thereof, if not paid by the owner prior thereto, shall be charged and assessed against the property upon which the noxious weeds were cut or destroyed. An assessment list showing the lots or tracts to be assessed with the cost against each lot or tract shall be prepared as are other special assessment lists and shall be approved by the governing body. Such assessments shall be subject to the same procedure for certification to the county auditor, payment and collection as are other special assessments under state law.

**Ordinances - City of Hankinson, North Dakota**

**CHAPTER THIRTEEN**

**OFFENSES**

**Article 1 – In General**

13.101 Criminal Contempt

1. The municipal court has power to punish for contempt of its authority for the following offenses:
  - a. Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
  - b. Misbehavior of any of its officers in their official transactions; or
  - c. Disobedience or resistance to its lawful writ, process, order, rule, decree or command.
2. A criminal contempt proceeding under this section is not a bar to subsequent prosecution for a specific offense if the court certifies in the judgment of conviction of criminal contempt, or the order terminating the proceeding without acquittal or dismissal, that a summary criminal contempt proceeding was necessary to prevent repetition of misbehavior disruptive of an ongoing proceeding and that subsequent prosecution as a specific offense is warranted.
3. This section shall not be construed to deprive a court of its power, by civil contempt proceedings, to compel compliance with its lawful writ, process, order, rule, decree or command or to compensate a complaint for losses sustained by reason of disobedience or resistance thereto, in accordance with the prevailing usage's law and equity, including the power of detention.

13.102 Hindering Proceedings by Disorderly Conduct

A person is guilty of an offense if the person recklessly or intentionally hinders an official City proceeding by noise or violent or tumultuous behavior or disturbance.

13.103 Fleeing or Attempting to Elude a Police Officer

Any driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police vehicle, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a class B misdemeanor. A signal complies with the section if the signal is perceptible to the driver and the police officer giving such signal is in uniform, prominently displaying the officer's badge of office, and the vehicle is appropriately marked showing it to be an official police vehicle. (Source: North Dakota Century Code Section 39-10-71).

13.104 Interference with Officers

No person in the City shall resist any police or fire officer, any member of the police or fire departments, or any person duly empowered with police or fire authority, while in the discharge or apparent discharge of duty, or in any way interfere with or hinder in the discharge of duty.

13.105 False Alarms or False Reports

No person in the City shall intentionally make, turn in, or give a false alarm of fire, or of need for police or ambulance assistance, or aid or abet in the commission of such act. No person in the City shall make to, or file with, the police department of the City any false, misleading or unfounded statement or report concerning the commission or alleged commission of any crime occurring in the City.

**Article 2 – Offenses Against Persons**

## Ordinances - City of Hankinson, North Dakota

### 13.201 Simple Assault

1. A person is guilty of an offense if that person:
  - a. Willfully causes bodily injury to another human being; or
  - b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. Consent to the conduct causing bodily injury by all persons injured by the conduct is a defense if:
  - a. Neither the injury inflicted nor the injury threatened is such as to jeopardize life or seriously impair health;
  - b. The conduct and the injury are reasonable foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or
  - c. The conduct and the injury are reasonable foreseeable hazards of an occupation or profession or of medical or scientific experimentation conducted by recognized methods and the persons subjected to such conduct or injury, having been made aware of the risks involved, consent to the performance of the conduct or the infliction of the injury.
3. Assent does not constitute consent, within the meaning of this ordinance, if:
  - a. It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense and such incompetence is manifest or known to the actor;
  - b. It is given by a person who by reason of youth, mental disease or defect, or intoxication, is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature of harmfulness of the conduct charged to constitute the offense; or
  - c. It is induced by force, duress or deception. (Source: North Dakota Century Code Sections 12.1-17-01, 08)

### 13.202 Sexual Assault

1. A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense if:
  - a. That person knows or has reasonable cause to believe that the contact is offensive to the other person;
  - b. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders that other person incapable of understanding the nature of that other person's conduct;
  - c. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct, by administering or employing without the victim's knowledge, intoxicants, a controlled substance as defined in Chapter 19-03.1 of the North Dakota Century Code, or other means for the purpose of preventing resistance;
  - d. The other person is in official custody or detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over that other person;
  - e. The other person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare; or
  - f. The other person is a minor, fifteen years of age or older, and the actor is an adult. (Source: North Dakota Century Code Section 12.1-20-07).

### 13.203 Harassment

- A person is guilty of an offense if, with intent to frighten or harass another, the person:
- a. Makes a telephone call or transmits by Internet or other means anonymously or in offensively course language;

## Ordinances - City of Hankinson, North Dakota

- b. Makes repeated telephone calls, whether or not a conversation ensues, or repeated Internet transmissions to another, with no purpose of legitimate communication; or
- c. Communicates a falsehood by telephone or Internet transmission and causes mental anguish. (Source: North Dakota Century Code Section 12.1-17-07(1)(b), (c), (d).)

### Article 3 – Offense Against Property

#### Division 1. Property Destruction and Criminal Intrusion.

##### 13.301 Criminal Mischief – Penalty

A person is guilty of an offense if that person:

1. Willfully tampers with tangible property of another so as to endanger person or property; or
2. Willfully damages tangible property of another. Conduct is punishable as criminal mischief under this ordinance when pecuniary loss, if intentionally caused, is not in excess of one hundred dollars (\$100.00); if recklessly caused, is not in excess of two thousand dollars (\$2,000.00); and if the damages to tangible property are not by means of an explosive or a destructive device.
3. The penalty for the offense of criminal mischief may not exceed a fine of one thousand dollars (\$1,000.00), imprisonment from thirty (30) days, or both such fine and imprisonment. (Source: North Dakota Century Code Sections 12.1-21-05 and 40-05-06)

##### 13.302 Tampering with or Damaging a Public Service

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

1. Tampering with or damaging the tangible property of another;
2. Incapacitating an operator of such service; or
3. Negligently damaging the tangible property of another by fire, explosive or other dangerous means. (Source: North Dakota Century Code Section 12.1-21-06).

##### 13.303 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 13.301 or tampering with or damaging a public service under 13.302.

1. Whenever it is an element of the offense that the property is of another, it is a defense to a prosecution under those sections that the other has consented to the actor’s conduct with respect to the property.
2. Property is that “of another” if anyone other than the actor has a possessory or proprietary interest therein. (Source: North Dakota Century Code Section 12.1-21-07 and 0892)).

##### 13.304 Criminal Trespass

A person is guilty of an offense if, knowing that the person is not licensed or privileged to do so, that person enters or remains in any place as to which notice against trespass is given by actual communication to the actor by the person in charge of the premises or other authorized person or by posting in a manner reasonably likely to come to the attention of intruders. (Source: North Dakota Century Code Section 12.1-22-03 (3).)

#### Division 2. Theft and Related Offenses

## **Ordinances - City of Hankinson, North Dakota**

### 13.305            Consolidated Theft Offenses

1. Conduct denominated theft in 13.306 to 13.308 constitutes a single offense designed to include the separate offenses hereto fore 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 13.306 to 13.308, which fairly apprises the defendant of the nature of the charges against the defendant, shall not be deemed insufficient because it fails to specify a particular category of theft. The defendant may be found guilty of theft under such charge if the defendant's conduct falls under 13.306 to 13.308, so long as the conduct proved is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case that must be met. (Source: North Dakota Century Code Section 12.1-23-01).

### 13.306            Theft of Property

A person is guilty of theft if that person:

1. Knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof;
2. Knowingly obtains the property of another by deception or by threat with intent to deprive the owner thereof, or intentionally deprives another of his property by deception or by threat; or
3. Knowingly receives, retains or disposes of property of another which has been stolen, with intent to deprive the owner thereof. (Source: North Dakota Century Code Section 12.1-23-02).

### 13.307            Theft of Services

A person is guilty of theft if:

1. The person intentionally obtains services, known by the person to be available only for compensation, by deception, threat, false token or other means to avoid payment for the services; or
2. Having control over the disposition of services of another to which the person is not entitled, the person knowingly diverts those services to his own benefit or to the benefit of another not entitled thereto.

Where compensation for services is ordinarily paid immediately upon their rendition, as in the case of hotels, restaurants, and comparable establishments, absconding without payment or making provision to pay is prima facie evidence that the services were obtained by deception. (Source: North Dakota Century Code Section: 12.1-23-03).

### 13.308            Theft of Property Lost, Mislaid or Delivered by Mistakes

A person is guilty of theft if the person:

1. Retains or disposes of property of another when that person knows it has been lost or mislaid; or
2. Retains or disposes of property of another when that person knows it has been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property; and with intent to deprive the owner of it, he fails to take readily available and reasonable measures to restore the property of a person entitled to have it. (Source: North Dakota Century Code Section 12.1-23-04).

### 13.309            Thefts Punishable Under City Ordinances

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Theft under 13.306 to 13.308 may be punished as an offense against the City ordinances if the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that he was stealing, or which the actor could reasonably have anticipated to have been the property or services involved, does not exceed two hundred fifty dollars (\$250.00) and if:

1. The theft was not committed by threat;
2. The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft;
3. The defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of official duties;
4. The property stolen is not a firearm, ammunition, explosive or destructive device, or an automobile, aircraft or other motor propelled vehicle;
5. The property does not consist of any government file, record, document or other government paper stolen from any government office or from any public servant;
6. The defendant is no in the business of buying or selling stolen property and he does not receive, retain or dispose of the property in the course of that business.
7. The property stolen does not consist of any implement, paper or other thing uniquely associated with the preparation of any money, stamp, bond or other document, instrument or obligation of the State of North Dakota;
8. The property stolen does not consist of livestock taken from the premises of the owner.
9. The property stolen does not consist of a key or other implement uniquely suited to provide access to property the theft of which would be a felony or was not stolen to gain such access.
10. The property stolen is not a card, plate, or other credit device existing for the purpose of obtaining money property, labor, or services on credit, or is a debit card, electronic fund transfer card, code or other means of access to an account for the purpose in initiating electronic fund transfers. (Source: North Dakota Century Code Section 12.1-23-05)

### 13.310 Defrauding Secured Creditors – Penalty

A person is guilty of an offense if he destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with intent to prevent collection of the debt represented by the security interest or if he makes false statements at the time of sale as to the existence of security interests.

### 13.311 Retail Theft – Shoplifting

1. Presumption. Any person concealing upon that person's person or among that person's belongings, or causing to be concealed upon the person or among the belongings of another, unpurchased merchandise displayed, held, offered or stored for sale in a retail mercantile establishment and removing it to a point beyond the last station for receiving payments in that retail mercantile establishment shall be prima facie presumed to have so concealed such merchandise with the intention of permanently depriving the merchant of possession or of the full retail value of such merchandise.
2. Detention of Suspect – Procedure. Any peace officer or merchant who reasonable believes that a person has committed, or is in the process of committing theft may detain such person, on or off the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:
  - a. To require the person to identify himself;
  - b. To verify such identification;
  - c. To determine whether such person has in the person's possession unpurchased merchandise and, if so, to recover such merchandise;
  - d. To inform a peace officer of the detention of the person and surrender custody of that person to a peace officer;

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- e. In the case of a minor, to inform a peace officer, the parents, guardian or other private person interested in the welfare of that minor of this detention and to surrender custody of said minor to the person informed.
3. Definitions. As used in this section, unless the context requires otherwise:
  - a. An item is “concealed” within the meaning of this section if, even though there is some notice of its presence, the item itself is not visible through ordinary observation.
  - b. “Full retail value” means the merchant’s stated or advertised price of the merchandise.
  - c. “Merchandise” means any item of tangible personal property and specifically includes shopping carts.
  - d. “Merchant” means any owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, franchise or independent contractor or such owner or operator.
  - e. “Person” means any natural person or individual.
  - f. “Premises of a retail mercantile establishment” includes, but is not limited to, the retail mercantile establishment, any common use areas in shopping centers, and all parking areas set aside by a merchant, or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of said retail mercantile establishment.
  - g. “Retail mercantile establishment” means any place where merchandise is displayed, held, offered or stored for sale to the public.
  - h. “Shopping cart” means those push carts of the type or types which are commonly provided by grocery stores, drugstores or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store.
4. Theft of unpurchased merchandise, displayed, held, offered or stored for sale in a mercantile establishment from that establishment when open for business is “shoplifting” for which the offender may be assessed a penalty upon conviction not exceeding one thousand dollars (\$1,000.00), imprisonment of thirty (30) days, or both such fine and imprisonment. (Source: North Dakota Century Code Sections 51-21-01, 51-21-01, 51-21-03 and 40-05-06).

### 13.312                    Defenses and Proof as to Theft and Related Offenses

1. It is a defense to a prosecution under this article that:
  - a. The actor honestly believed that he had a claim to the property or services involved which he was entitled to assert in the manner which forms the basis for the charge against him; or
  - b. The victim is the actor’s spouse, but only when the property involved constitutes household or personal effects or other property normally accessible to both spouses and the parties involved are living together. The term “spouse”, as used in this section includes persons living together as husband and wife.
2. It does not constitute a defense to a prosecution for conducts constituting an offense in violation of this article that:
  - a. Stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed;
  - b. A facility or an opportunity to engage in such conduct, including offering for sale property not stolen as if it were stolen, was provided; or
  - c. Mere solicitation that would not induce an ordinary law abiding person to engage in such conduct was made by a law enforcement officer to gain evidence against a person predisposed to engage in such conduct.
3. It is a prima facie case of theft under this article if it is shown that a public servant or an officer, director, agent, employee of , or a person connected in any capacity with a financial institution has failed to pay or account upon lawful demand for money or property entrusted to him as part of his official duties or if an audit reveals a shortage or falsification of his accounts.

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- a. 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.
- b. Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business, or without the usual induce of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen. (Source: North Dakota Century Code Section 12.1-232-09).

### 13.313 Definitions

In this article:

1. "Dealer in property" means a person who buys or sells property as a business.
2. "Deception" means:
  - a. Creating or reinforcing a false impression, including false impressions as to fact, law, status, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not substantially perform the promise unless it is part of a continuing scheme to defraud; or
  - b. Preventing another from acquiring information which would affect his judgment of a transaction; or
  - c. Failing to correct a false impression which the actor previously created or reinforced, or which he knows to be influencing another to whom he stands in fiduciary or confidential relationship; or
  - d. Failing to correct an impression which the actor previously created or reinforced and which the actor knows to have become false due to subsequent events; or
  - e. Failing to disclose a lien, adverse claim, or other impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained or in order to continue to deprive another of his property, whether such impediment is or is not valid, or is or is not a matter of official record; or
  - f. Using a credit card, charge plate or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer (i) where such instrument has been stolen, forged, revoked or canceled, or where for any other reason its use by the actor is unauthorized, and (ii) where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument; or
  - g. Any other scheme to defraud. The term "deception" does not, however, include falsifications as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares in communications addressed to the public or to a class or group.
3. "Deprive" means:
  - a. To withhold property or to cause it to be withheld wither permanently or under such circumstances that a major portion of its economic value, or its use and benefit, has, in fact, been appropriated; or
  - b. To withhold property or to cause it to be withheld with the intent to restore it only upon the payment of a reward or other compensation; or
  - c. To dispose of property or use it or transfer any interest in it under circumstances that make its restoration, in fact, unlikely.
4. "Fiduciary" means a trustee, guardian, executor, administrator, receiver or any other person acting in a fiduciary capacity, or any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

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5. "Financial institution" means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.
6. "Obtain" means:
  - a. In relation to property, to bring about a transfer or purported transfer of an interest in the property, whether to the actor or another; or
  - b. In relation to services, to secure performance thereof.
7. "Property" means any money, tangible or intangible personal property, property (whether real or personal) the location of which can be changed (including things growing on, affixed to, or found in land and documents although the rights represented thereby have no physical location), contract right, chose in action, interest in or claim to wealth, credit or any other article or thing of value of any kind. "Property" also means real property, the location of which cannot be moved if the offense involves transfer or attempted transfer of an interest in the property.
8. "Property of another" means property in which a person other than the actor or in which a government has an interest without consent, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person or government might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another that has a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement. "Owner" means any person or a government with an interest in property such that it is "property of another" as far as the actor is concerned.
9. "Receiving," means acquiring possession, control or title, or lending out the security of the property.
10. "Services" means labor, professional service, transportation, telephone, mail or other public service, gas, electricity and other public utility services, accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or other property.
11. "Stolen" means property which has been the subject of theft or robbery or a vehicle which is received from a person who is then in violation of North Dakota Century Code Section 12.1-23-06.
12. "Threat" means an expressed purpose, however communicated, to:
  - a. Cause bodily injury in the future to the person threatened or to any other person; or
  - b. Cause damage to property; or
  - c. Subject the person threatened or any other person to physical confinement or restraint; or
  - d. Engage in other conduct constituting a crime; or
  - e. Accuse anyone of a crime; or
  - f. Expose a secret or publicize an asserted fact, whether true or false, tending to subject a person living or deceased, to hatred, contempt or ridicule or to impair another's credit or business repute; or
  - g. Reveal any information sought to be concealed by the person threatened; or
  - h. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
  - i. Take or withhold official action as a public servant, or cause a public servant to take or withhold official action; or
  - j. Bring about or continue to strike, boycott or other similar collective action to obtain property or deprive another of his property which is not demanded or received for the benefit of the group which the actor purports to represent; or
  - k. Cause anyone to be dismissed from his employment, unless the property is demanded or obtained for lawful union purposes; or
  - l. Do any other act which would not in itself substantially benefit the actor or a group he represents but which is calculated to harm another person in a substantial manner with respect to his health, safety, business, employment, calling, career, financial condition, reputation or personal relationship. Upon a charge of theft, the receipt of property in consideration for taking or withholding official action shall be deemed to be theft by threat regardless of whether the owner voluntarily parted with his property or he initiated the scheme.

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13. "Traffic" means:

- a. To sell, transfer, distribute, dispense or otherwise dispose of to another person; or
- b. To buy, receive, possess or obtain control of, with intent to sell, transfer, distribute, dispense or otherwise dispose of to another person. (Source: North Dakota Century Code Section 12.1-23-10)

### 13.314            Making or Uttering Slugs

1. A person is guilty of an offense if that person makes or utters a slug or slugs which do not exceed fifty dollars (\$50.00) in value with intent to deprive a supplier of property or service sold or offered by means of a coin machine or with knowledge that he is facilitating such a deprivation by another person.
2. In this section:
  - a. "Slug" means a metal, paper or other object which by virtue of its size, shape or any other quality is capable of being inserted, deposited or otherwise used in a coin machine as an improper but effective substitute for a genuine coin, bill or token;
  - b. "Coin machine" means a coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle designed (i) to receive a coin or bill of a certain denomination or a token make for the purpose; and (ii) in return for the insertion or deposit thereof, automatically to offer, provide, assist in providing, or permit the acquisition of property or a public or private service.
  - c. "Value" of the slugs means the value of the coins, bills or tokens for which they are capable of being substituted.

## **Article 4 – Offenses Against Public Order, Health, Safety and Sensibilities**

Division 1. Riot

### 13.401            Engaging in a Riot

1. A person is guilty of an offense if that person engages in a riot.
2. "Riot" means a public disturbance involving an assemblage of five (5) or more persons, which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government function. (Source: North Dakota Century Code Section 12.1-25-01(2) and 12.1-25-03)

### 13.402            Disobedience of Public Safety Orders Under Riot Conditions

A person is guilty of an offense if, during a riot as defined in 13.401 (2) or which when one is immediately impending, he disobeys a reasonable public safety order to move, disperse or refrain from specified activities in the immediate vicinity of the riot. A public safety order is an order designated to prevent or control disorder, or promote the safety of persons or property, issued by the senior law enforcement official on the scene. (Source: North Dakota Century Code Section 12.1-25-04).

Division 2. Disorderly Conduct

### 13.403            Disorderly Conduct

1. An individual is guilty of violating the ordinances of this City, if with intent to harass, annoy or alarm another person or in reckless disregard of the fact that another is harassed, annoyed or alarmed by the individual's behavior, the individual:
  - a. Engages in fighting or in violent, tumultuous or threatening behavior;
  - b. Makes unreasonable noise;

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- c. In a public place, uses abusive or obscene language, or makes an obscene gesture;
- d. Obstructs vehicular or pedestrian traffic, or the use of a public facility;
- e. Persistently follows a person in or about a public place or places;
- f. While loitering in a public place for the purpose of soliciting sexual contact, the individual solicits such contact;
- g. Creates a hazardous, physically offensive, or seriously alarming condition by any act that serves no legitimate purpose; or
- h. Engages in harassing conduct by means of intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person. (Source: North Dakota Century Code Section 12.1-31-01).

### 13.404 Defense when Conduct Consist of Constitutionally Protected Activity

Ordinance 13.403 does not apply to constitutionally protected activity. If an individual claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim, as a matter of law, and, if found valid, shall exclude evidence of the activity. (Source: North Dakota Century Code Section 12.1-31-01(2).)

### Division 3. Gambling

#### 13.405 Gambling

- 1. It shall be an infraction to engage in gambling.
- 2. "Gambling" means risking any money, credit, deposit or other thing of value for gain, contingent, wholly or partially, upon lot, chance, the operation of gambling apparatus, or the happening or outcome of an event, including an election or sporting event, over which the person taking the risk has no control. Gambling does not include:
  - a. Lawful contests for skill, speed strength or endurance in which awards are made only to entrants or to the owners of entries; or
  - b. Lawful business transactions or other acts or transactions now or hereafter expressly authorized by law.
- 3. "Gambling apparatus" means any devise, machine, paraphernalia or equipment that is used or usable in playing phases of any gambling activity, whether that activity consists of gambling between person, or gambling by a person involving the playing of a machine. Gambling apparatus does not include an amusement game or device as defined in North Dakota Century Code Section 53.04-01, or an antique "slot" machine twenty five (25) years old or older which is collected and possessed by a person as a hobby and is not maintained for the business of gambling.
- 4. This ordinance shall not apply to gambling or games of chance conducted by a licensee under the authority of a valid license issued by the State of North Dakota.

### Division 4. Sexual Offenses

#### 13.406 Prostitution

- 1. A person is guilty of the offense of prostitution if that person:
  - a. Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business;
  - b. Solicits another person with the intention of being hired to engage in sexual activity.
- 2. Testimony of a person against his or her spouse shall be admissible to prove offenses under this section involving the spouse's prostitution.
- 3. In this section:
  - a. A "house of prostitution" is any place where a person under the control, management or supervision of another regularly carries on prostitution.

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- b. An “inmate” is a prostitute who acts as such or in through the agency of a house of prostitution.
- c. “Sexual activity” means sexual act or sexual contact as those terms are defined in North Dakota Century Code Sections 12.1-29-03,04,05)

### 13.407 Unlawful Cohabitation

A person is guilty of an offense if he or she lives openly and notoriously with a person of the opposite sex as a married couple without being married to the other person. (Source: North Dakota Century Code Section 12.1-20-10)

### Division 5. Sunday Business or Labor

### 13.408 Business or Labor on Sunday

1. Except as otherwise provided in this section, it is a class B misdemeanor for any person between the hours of twelve midnight and twelve noon on Sunday to engage in or conduct business or labor for profit in the usual manner and location, operate a place of business open to the public, or authorize or direct that person’s employees or agents to take action prohibited under this section. This subsection shall not apply to any person who in good faith observes a day other than Sunday as the Sabbath, if that person refrains from engaging in or conducting business or labor for profit and closes the place of business to the public between the hours of twelve midnight and twelve noon on the day observed as the Sabbath. (Source: North Dakota Century Code Section 12.1-30-01)
2. Except for items sold at hobby shows, craft shows, fairs, exhibits, occasional rummage sales including garage sales or other sales for which a sales tax permit is not required, and tourist attractions that derive at least fifty percent (50%) of their annual gross sales from seasonal or tourist customers, the sale or rental of any of the following items between the hours of twelve midnight and twelve noon on Sunday is prohibited:
  - a. Clothing other than work gloves and infant supplies;
  - b. Clothing accessories;
  - c. Wearing apparel other than that sold to a transient traveler under emergency conditions;
  - d. Footwear;
  - e. Headwear;
  - f. Home, business, office or outdoor furniture;
  - g. Kitchenware;
  - h. Kitchen utensils;
  - i. China;
  - j. Home appliances;
  - k. Stoves;
  - l. Refrigerators;
  - m. Air conditioners;
  - n. Electric Fans;
  - o. Radios;
  - p. Television sets;
  - q. Washing machines;
  - r. Dryers;
  - s. Cameras;
  - t. Hardware other than emergency plumbing, heating, cooling or electrical repair or replacement parts and equipment;
  - u. Tools other than manually driven hand tools;
  - v. Jewelry;
  - w. Precious or semiprecious stones;

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- x. Silverware;
  - y. Watches;
  - z. Clocks;
  - aa. Luggage;
  - bb. Motor vehicles other than the daily rental of vehicles by business whose sole activity is automobile rental;
  - cc. Musical instrument;
  - dd. The sale of audio or video recordings, records or tapes. Rental of these items is permitted;
  - ee. Toys other than those customarily sold as novelties or souvenirs;
  - ff. Mattresses;
  - gg. Bed coverings;
  - hh. Household linens;
  - ii. Floor coverings;
  - jj. Lamps;
  - kk. Draperies;
  - ll. Blinds;
  - mm. Curtains;
  - nn. Mirrors;
  - oo. Cloth piece goods;
  - pp. Lawnmowers;
  - qq. Sporting or recreational goods other than those sold or rented on the premises where sports or recreational activities are conducted;
  - rr. Paint and building and lumber supplies. (Source: North Dakota Century Code Section 12.1-30-02)
3. Subject to the limitations of this subsection and subsection 2, a business specified in this section may operate in the business' usual manner, location, and for its usual purposes. The businesses authorized under this subsection to operate on Sunday include:
- a. Restaurants, cafeterias or other prepared food service organizations;
  - b. Hotels, motels and other lodging facilities;
  - c. Hospitals and nursing homes, including the sale of giftware on the premises;
  - d. Dispensaries of drugs and medicines;
  - e. Ambulance and burial services;
  - f. Generation and distribution of electric power, water, steam, natural gas, oil or other fuel used as a necessary utility;
  - g. Distribution of gas, oil and other fuels;
  - h. Telephone, telegraph and messenger services;
  - i. Heating, refrigeration and cooling services;
  - j. Railroad, bus, trolleys, subway, taxi and limousine services;
  - k. Water, air and land transportation services and attendant facilities;
  - l. Cold store warehouse;
  - m. Ice manufacturing and distribution facilities and services;
  - n. Minimal maintenance of equipment and machinery.
  - o. Plant and industrial protection services;
  - p. Industries where continuous processing or manufacturing is required by the very nature of the process involved.
  - q. Newspaper publication and distribution;
  - r. Newsstands;
  - s. Radio and television broadcasting;
  - t. Motion picture, theatrical and musical performances;
  - u. Motor vehicle stations that sell motor fuel and motor oil, and that customarily provide daily repair services or products for any of the following systems or parts of a motor vehicle: (i) Air conditioning system; (ii) Batteries, (iii) Electrical system; (iv) Engine cooling system (v)

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Exhaust system; (vi) Fuel system; (vii) Tires and tubes; (viii) Emergency work necessary for the safe and lawful operation of the motor vehicle.

- v. Athletic and sporting events;
- w. Parks, beaches and recreational facilities;
- x. Scenic, historic and tourist attractions;
- y. Amusement centers, fairs, zoos and museums;
- z. Libraries;
- aa. Educational lectures, forums and exhibits;
- bb. Service organizations (USO, YMCA, etc);
- cc. Coin operated laundry and dry cleaning facilities;
- dd. Food stores operated by an owner or manager in addition to not more than six employees working in the store at one time on a Sunday; (Note: the governing body of a City may, by ordinance increase the number of employees);
- ee. Bait shops for the sale of live bait and fishing tackle;
- ff. From April 1<sup>st</sup> through June 15<sup>th</sup>, floral nurseries for the sale of bedding plants and nursery stock;
- gg. From November 20<sup>th</sup> through December 24<sup>th</sup>, Christmas tree stands;
- hh. Hobby shows, craft shows, fairs, exhibits;
- ii. Occasional rummage sales, including garage sales or other sales for which a sales tax permit is not required.
- jj. Community festivals licensed or authorized by the governing body of a City or the board of county commissioners.
- kk. Premises licensed to dispense beer and alcoholic beverages within the limits prescribed in North Dakota Century Code Sections 5-02-05 and 5-02-05.1.
- ll. Credit apparel services, lodging and travel reservation services, and, notwithstanding subsection 2, telemarketing of goods and services. (Source: North Dakota Century Code Section 12.1-30-03)

### Division 7. Alcohol Related Offenses

#### 13.409 Persons Less than Twenty One (21) Years Prohibited – Exceptions

1. Any person under twenty one (21) years of age manufacturing or attempting to manufacture alcoholic beverages, purchasing or attempting alcoholic beverages, consuming or having recently consumed alcoholic beverages other than during a religious service, being under the influence of alcoholic beverages, or being in possession of alcoholic beverages, or furnishing money to any person for such purchase, or entering any licensed premises where alcoholic beverages are being sold or displayed, except as provided in Subsection 2, is guilty of an offense. The court may, under this Section, refer the person to an outpatient addiction facility licensed by the state department of human services for evaluation and appropriate counseling or treatment. The offense of consumption occurs where consumption takes place or where the offender is arrested. For purposes of this section, possession means the power and capability to exercise dominion and control over the alcoholic beverage.
2. Except as permitted in the Section, any licensee who dispenses alcoholic beverages to a person under twenty one (21) years of age, or who permits such a person to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of an offense, subject to the provisions of Sections 5-01-08, 5-01-08.1 and 5-01—8.2. Any person under twenty one (21) years of age may remain in a restaurant where alcoholic beverages are being sold if the restaurant is separate from the room in which alcoholic beverages are opened or mixed and gross sales of food are at official duty. Any person under twenty one (21) years of age may remain in an area of a site where beer, wine, or sparkling wine is sold in accordance with the conditions of an event permit issued pursuant to Section 5-02-01.1 of the North Dakota Century Code. Any person who is nineteen (19) years of age or older but under twenty one (21) years of age may be employed by the restaurant to serve and collect money

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for alcoholic beverages, if the person is under the direct supervision of a person twenty one (21) or more years of age, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages. Any establishment where alcoholic beverages are sold may employ persons from eighteen (18) to twenty one (21) years of age to work in the capacity of musicians under the direct supervision of a person twenty one (21) or more years of age. (Source: North Dakota Century Code Section 5-01-08 and 5-02-08).

### **13.410            Misrepresentation of Age – Obligations of Licenses**

Any person who shall misrepresent or misstate his age or the age of any other person, or shall misrepresent his age through presentation of any document purporting to show that person to be of legal age to purchase alcoholic beverages is guilty of an offense. Any licensee may keep a book and may require anyone who has shown documentary proof of his age, which substantiates his age to allow the purchase of alcoholic beverages, to sign the book if the age of that person is in question. The book must show the date of the purchase, the identification used in making the purchase and the appropriate numbers of such identification, the address of the purchaser, and the purchaser's signature. (Source: North Dakota Century Code Section 5-01-08.1).

### **13.411            Bottle Clubs Prohibited**

Any person operating an establishment whereby persons are allowed to bring their own alcoholic beverages on the premises where the proprietor sells soft drinks, mix, ice, or charges for bringing such beverages on the premises, are guilty of an offense. (Source: North Dakota Century Code Section 5-01-10).

### **13.412            Public Intoxication – Assistance – Medical Care**

A peace officer has authority to take any apparently intoxicated person to the person's home, to a local hospital, to a detoxification center, or, whenever that person constitutes a danger to himself or others, to a jail for purposes of detoxification. A duly licensed physician of a local hospital has authority to hold that person for treatment up to seventy two (72) hours. That intoxicated person may not be held in jail because of intoxication more than twenty four (24) hours. An intoxicated person may not be placed in jail unless a jailer is constantly present within hearing distance and medical services are provided when the need is indicated. Upon placing that person in a hospital, detoxification center, or jail, the peace officer shall notify the intoxicated person's family as soon as possible. Any additional costs incurred by the City on account of an intoxicated person shall be recoverable from that person. (Source: North Dakota Century Code Section 5-01-05.1).

### **13.413            No Prosecution for Intoxication**

No person may be prosecuted solely for public intoxication. Law enforcement officers may utilize standard identification procedures on all persons given assistance because of apparent intoxication. (Source: North Dakota Century Code Section 5-01-05.2).

## **Division 8. Protection of Minors**

### **13.414            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

## **Ordinances - City of Hankinson, North Dakota**

denuded human figures posed or presented in a manner to exploit sex, lust or perversion for commercial gain.

2. As used in this section:
  - a. "Nude or partially denuded human figures" means less than completely and opaquely covered human genitals, pubic regions, female breasts or a female breast, if the breast or breasts are exposed below a point immediately above the top of the areola, or human buttocks; and includes human male genitals in a discernible turgid state even if completely and opaquely covered.
  - b. "Where minors are or may be invited as a part of the general public" includes any public roadway or public walkway.
  - c. The above shall not be construed to include a bona fide school, college, university, museum, public library or art gallery. (Source: North Dakota Century Code Section 12.1-27.1-03.1).

### Division 9. Regulation of Minors

#### 13.415 Curfew, General Regulations – Penalty

1. As used in this section, unless the context or subject matter otherwise requires:
  - a. "Juvenile" for the purpose of this ordinance means a person less than sixteen (16) years of age.
  - b. "Parents" means the legally appointed father and/or mother, or the natural father and/or mother, or the person or persons in charge of or in control of said juvenile is herein defined including a bona fide employer of said juvenile.
  - c. "Curfew hour" means the time of night, which is designated as 11 o'clock pm, except Friday and Saturday nights, which is 1 o'clock am.
2. It shall be unlawful for any juvenile as herein defined to be abroad upon the streets, alleys, public grounds of the City, public places of amusement, or retail or wholesale business establishments, between the curfew hour and 5:00 o'clock am of the following day unless accompanied by a parent as defined herein. Any juvenile violating this provision of this ordinance, in addition to the other punishments prescribed in this ordinance, shall be detained by the authorities until picked up by parent as defined herein.

It shall be unlawful for any parents to allow their juveniles as herein defined to be abroad upon the streets, alleys, public grounds of the City, public places of amusement, or retail or wholesale business establishments between the curfew hour and 5:00 o'clock am of the following day unless accompanied by a parent as herein defined.

3. A violation of this section shall be an infraction. Any person, firm, or corporation violating any of the terms or provisions of this article shall, upon conviction thereof, be punished by a fine not to exceed five hundred dollars (\$500.00).

## **Article 5 – Sentencing**

#### 13.501 Classification of Offenses

Offenses against the ordinance of this City are divided into two (2) classes, as follows:

1. Offense, for which a maximum penalty of thirty (30) days imprisonment, a fine of one thousand dollars (\$1,000.00), or both, may be imposed.
2. Infraction, for which a maximum fine of five hundred dollars (\$500.00) may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which he was convicted, been previously convicted of an offense classified as an infraction in state statutes or the ordinances of this or any other North Dakota City may be sentenced as though convicted of an offense. If the prosecution contends that the infraction is punishable as an offense, the complaint shall

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- so specify unless the prosecution is unable with reasonable effort to learn of the prior conviction prior to execution of the complaint.
3. All violations of the provisions of the ordinances of this City are offenses unless specifically labeled infractions or unless a different classification or punishment is specifically authorized.
  4. The penalties listed shall not be construed to prohibit the utilization of the sentencing alternatives, other than a fine or imprisonment, provided by Section 12-1-32-02 of the North Dakota Century Code and 13.502, for the violation of a City ordinance, nor does this section limit the use of deferred or suspended sentences. (Source: North Dakota Century Code Sections 12.1-32-01 and 40-05-06).

### 13.502 Sentencing Alternatives

1. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
  - a. Payment of the reasonable costs of the person's prosecution;
  - b. Probation;
  - c. A term of imprisonment, including intermittent imprisonment;
  - d. A fine;
  - e. Restitution for damages resulting from the commission of the offense;
  - f. Restoration of damaged property or other appropriate work detail;
  - g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction or mental disease or defect;
  - h. Commitment to a sexual offender treatment program.

Sentences imposed under this subsection shall not exceed in duration the maximum sentences of imprisonment provided in 13.501 or as provided specifically in an ordinance defining an offense.

This subsection shall not be construed as permitting the unconditional discharge of an offender following conviction. This subsection shall not be construed to prohibit utilization of North Dakota Century Code Section 40-18-13 relating to suspension of sentence, nor shall this subsection limit the conditions, which can be imposed on a probationer under 13.507, 13.508, or 13.509.

2. Credit against any sentence to a term of imprisonment must be given by the court to a defendant for all time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal.
3. A court may suspend the execution of all or a part of the sentence imposed. The court shall place the defendant on probation during the term of suspension.
4. A court, upon application or its own motion, may defer imposition of sentence. The court must place the defendant on probation during the period of deferment. An order deferring imposition of sentence is reviewable upon appeal from a verdict or judgment. In any subsequent prosecution, for any other offense, the prior conviction for which imposition of sentence is deferred may be pleaded and proved, and has the same effect as if probation had not been granted or the information or indictment dismissed under Section 12.1-32-07.1 of the North Dakota Century Code.
5. A court may, prior to imposition of sentence, order the convicted offender committed to an appropriate licensed public or private institution for diagnostic testing for such period of time as may be necessary, but not to exceed thirty (30) 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.
6. All sentences imposed must be accompanied by a written statement by the court setting forth the reasons for imposing the particular sentence. The statement must become part of the record of the case.

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7. If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing, unless, upon motion of the defendant, the court orders the term to commence at some other time. (Source: North Dakota Century Code Section 12.1-32-02).

### 13.503            Procedure for Trial of Infraction – Incidence

1. Except as provided in this subsection, all procedural provisions relating to the trial of criminal cases as provided in the statutes or rules relating to criminal procedure shall apply to the trial of a person charged with an infraction. A person charged with an infraction is not entitled to be furnished counsel at public expense nor to have a trial by jury pursuant to North Dakota Century Code Section 40-18-19 unless he may be subject to a sentence of imprisonment under subsection 2 of 13.501.
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 procedures 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 13.502, except that a term of imprisonment may not be imposed except in accordance with subsection 3 of 13.506 or subsection 2 of 13.501.
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, 13.501 or 13.502, or as the context may otherwise indicate differentiation between the infraction classification and the offense classification, the term “offense” refers to all violations of the ordinances of this City including infractions. (Source: North Dakota Century Code Section 12-32-03.1)

### 13.504            Special Sanction for Organizations

When an organization is convicted of an offense, the court may, in addition to any other sentence which may be imposed, require the organization to give notice of its conviction to the persons or class of persons ostensibly harmed by the offense, by mail or by advertising in designated areas or by designated media or otherwise. (Source: North Dakota Century Code Section 12.1-32-03).

### 13.505            Factors to be Considered in Sentencing

The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations regarding the desirability of sentencing an offender to imprisonment.

1. The defendant’s criminal conduct neither caused nor threatened serious harm to another person or his property.
2. The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property.
3. The defendant acted under strong provocation.
4. There were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant’s conduct.
5. The victim of the defendant’s conduct induced or facilitated its commission.
6. The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury, which was sustained.
7. The defendant has no history or 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.

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9. The character, history and attitudes of the defendant indicate that he is unlikely to commit another crime.
10. The defendant is particularly likely to respond affirmatively to probationary treatment.
11. The imprisonment of the defendant would entail undue hardship to himself or his dependents.
12. The defendant is elderly or in poor health.
13. The defendant did not abuse a public position of responsibility or trust.
14. The defendant cooperated with law enforcement authorities by bringing other offenders to justice, otherwise cooperated.

Nothing herein shall be deemed to require explicit reference to these factors in a pre sentence report or by the court at sentencing. (Source: North Dakota Century Code Section 12.1-32-04).

### **13.506            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 factor:
  - a. The ability of the defendant to pay without undue hardship.
  - b. Whether the defendant, other than a defendant organization, gained money or property as a result of commission.
  - c. Whether the sentence to pay a fine will interfere with the defendant's capacity to make restitution.
  - d. Whether a sentence to pay a fine will serve a valid rehabilitative purpose.
2. The court may allow the defendant to pay any fine or costs imposed in installments. When a defendant is sentenced to pay a fine or costs, the court shall not impose at the same time an alternative sentence to be served in the event that the fine or costs are not paid.
3. If the defendant does not pay any fine or costs imposed, or make any required partial payment, the courts, upon motion of the prosecuting attorney or on its own motion, may issue an order to show cause why the defendant shows that his default is excusable, the court may, after hearing, commit him to imprisonment until the fine, or costs or both, are fully paid or discharged by labor as provided in North Dakota Century Code Section 40-18-12.

The Court may not commit a person under this section when the sole reason for his nonpayment is his indigence. An order of commitment under this subsection shall not be for a period in excess of thirty (30) days. As used in this subsection, "fine" does not include a fee established pursuant to section 9.2208 of these ordinances. (Source: North Dakota Century Code Section 12.1-32-05 and Section 40-11-12)

### **13.507            Incidents of Probation**

1. Unless terminated as provided in subsection 2, the period during which a sentence to probation shall remain conditional and be subject to revocation is two (2) years.
2. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
3. Notwithstanding the fact that a sentence to probation can subsequently be modified or revoked, a judgment, which includes such a sentence, constitutes a final judgment for all other purposes. (Source: North Dakota Century Code Section 12.1-32-06.1)

### **13.508            Conditions of Probation – Revocation**

1. The conditions of probation must be such, as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law abiding life or to assist the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commits another offense during the period for which the probation remains subject to revocation.

## **Ordinances - City of Hankinson, North Dakota**

2. When imposing a sentence to probation, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:
  - a. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip the defendant for suitable employment.
  - b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
  - c. Attend or reside in a facility established for the instruction, recreation or residence of persons on probation.
  - d. Support the defendant's dependents and meet other family responsibilities.
  - e. Make restitution or reparation to the victim of the defendant's damage or injury, which was sustained, or perform other reasonable assigned work. When restitution, reparation or assigned work is a condition of probation the court shall proceed as provided in 13.509.
  - f. Pay a fine imposed after consideration of the provisions of 13.506.
  - g. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without prescription.
  - h. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.
  - i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
  - j. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.
  - k. Report to a probation officer at reasonable times as directed by the court or the probation officer.
  - l. Submit to a medical examination or other reasonable testing for the purpose of deterring the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
  - m. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
  - n. Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.
  - o. Serve a term of imprisonment of up to one half of the maximum term authorized for the offense of which the defendant was convicted or one year, whichever is less.
  - p. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed for the defendant. When reimbursement of indigent defense costs and expenses is imposed as a condition of probation, the court shall proceed as provided in subsection 3 or section 12.1-32-08.
  - q. Provide community service for the number of hours designated by the court.
  - r. Refrain from any subscription to, access to, or use of the Internet.
4. When a defendant is sentenced to probation, the defendant must be given a certificate explicitly setting forth the conditions on which he is being released.
5. The court, upon notice to the probationer may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the period for which the sentence remains conditional. If the defendant violates a condition at any time before the expiration or termination of the period, the court may continue the defendant on the existing probation with or without modifying or enlarging the conditions, or may revoke the probation and impose any other sentence that was available under 13.502 at the time for the initial sentencing.
6. Jurisdiction over a probationer may be transferred from the court that imposed the sentence to another court of this state, with the concurrence of both courts. Retransfer of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection exercise all powers permissible under this chapter over the defendant. (Source: North Dakota Century Code Section 12.1-32-07).

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### 13.509            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 determination as to:
  - a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages must be limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action;
  - b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property;
  - c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitation purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which may not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition of conditions of probation established pursuant to this subsection. Any payments made pursuant to such order must be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, unless the court directs otherwise, be 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. (Source: North Dakota Century Code Section 12.1-32-08).

### 13.510            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 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 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. (North Dakota Century Code Section 12.1-32-11).

## **Article 6 – Penalties**

Any person who is convicted of violating or of failing to comply with any of the provisions of the ordinances contained in this chapter for which a penalty is not specifically set forth, may be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment not to exceed thirty (30) days, or both. (Source: North Dakota Century Code Section 40-05-06).

**Ordinances - City of Hankinson, North Dakota**

**CHAPTER FOURTEEN**

**FRANCHISE**

**Article 1 – Grant of Franchise**

14.101            Power to Grant

The governing body may grant to any person, firm, partnership, association, corporation, company or organization of any kind a franchise or special right or privilege to operate or do business in the City, but such franchise shall be subject to the provisions of this article. (Source: North Dakota Century Code Section 40-05-01-(57) ).

14.102            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.

14.103            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.

14.104            Insurance

Any grantee of a franchise by the City shall carry and keep in force a public liability policy of insurance, insuring the grantee of the franchise and the City against any and all liability, of not less than two hundred fifty thousand dollars (\$250,000.00) for any one person, property damage, personal injury, or death, and five hundred thousand dollars (\$500,000.00) for any one accident resulting in property damage, personal injury, or death. The City may demand proof of such insurance coverage in an insurance company licensed to do business in the State of North Dakota. (Source: North Dakota Century Code Section 32-12.1-03).

**Ordinances - City of Hankinson, North Dakota**

**CHAPTER FIFTEEN**

**BUILDING CODE**

**Article 1 - Adoption of Code**

15.101            Adoption of Code

The erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, uses, height, area and maintenance of buildings or structures in the City shall meet with the provisions of the rules and regulations of the North Dakota State Building Code and any future updates and amendments to that code, a copy of which is on file with the city auditor. That code is hereby adopted and made a part of this chapter by reference with the exception of the following sections affecting local conditions in the City.

15.102            Clarification of Code

For the purpose of clarifying the Building code adopted above:

1.        “Municipality” or “City” shall mean the City of Hankinson.
2.        Any reference of fire limits within the City shall mean the fire limits set out in chapter four.
3.        Inspections by the City’s building inspector shall only be conducted on and required of new residences, new commercial buildings, and additions to residences and commercial buildings, which include new foundations to either a residence or a commercial building.
4.        Water and Sewer Supervisor shall inspect residential and commercial buildings for any defects in water and sewer system as described in International Property Maintenance Code in effect at time of inspection with authorization from City of Hankinson Ordinance 7.308 Powers and Authority of Inspectors.
5.        Building Official, as appointed by the City, shall inspect residential and commercial buildings for any defects and dilapidation as described in International Property Maintenance Code in effect at time of inspection.

**Article 2 - Building Permits**

16-06-02            Permits

1.        No structure or land used for any purposes including accessories thereto, shall hereafter be built, altered or removed until a permit has been obtained from the City Auditor. A permit shall be required when a structure is greater than one hundred (100) square feet and/or if the project cost, including labor and materials, is greater than two thousand dollars (\$2000.00) during the calendar year and shall exclude shingling and siding projects.
2.        Fees under the Building Code shall be as established by Resolution and adopted by the City Council.

## **Ordinances - City of Hankinson, North Dakota**

### **Article 3 - Demolition of Property, Removal of Foundation, City Council Approval, Capping Water and Sewer Lines**

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

Failure to obtain proper building permit for demolition of property shall be subject to fines as indicated in Ordinance 1.104.

### **Article 4 - Fencing and Screening Requirements**

#### **15.401            Definitions**

1. FENCE: Any permanent partition, structure, gate or any artificially constructed structure of any material or combination of material erected as a dividing marker, barrier or enclosure, including hedges or living bushes or shrubs, encircling either wholly or any portion of any area.
2. HEIGHT: The average distance between the top element in the fence and the adjacent grade over a straight section of fence with no corners.
3. PROTECTIVE MEASURES FENCE: A fence erected for the express purpose of protecting an enclosed area and the property therein, or a fence intended to deny access to a dangerous property or location.

#### **15.402            Requirements**

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

#### **15.403            Permit**

1. Any person desiring to build or cause to be built a fence upon property within the corporate limits of the City of Hankinson shall first apply to the Zoning Department (City Hall) for a permit to do so. Application for such permit shall contain any and all information, including drawings, required and necessary for the determination of whether the erection of such fence would be contrary to the provisions of this ordinance or the laws of the State of North Dakota. Any permit issued under the provisions of this ordinance in which construction has not been completed within six (6) months from the date of issuance, shall expire. Permit extensions may be granted by the Zoning Administrator not to exceed one (1) six (6) month extension. Permit fees shall be set by the City Council by resolution.

#### **15.404            General Fencing and Screen Construction Guidelines for Residential Districts**

1. Following requirements are for Residential R-1 and R-2 Zoning.
2. Fences are permitted in the buildable area and in any required yard. Fences must adhere to surveyed property lines and shall not be constructed on street or alley right of ways.

### **Ordinances - City of Hankinson, North Dakota**

3. Fences along the sides and front edge of any required front yard shall be a maximum of 2 feet 6 inches in height, except for open fences such as split rail or chain link without privacy slats, which permit a direct vision through at least 75 percent of the fence surface area, shall be allowed a maximum height of 4 feet.
4. Fences along sides and rear edges of the required side and rear yards shall be allowed a maximum height of 6 feet.
5. All fencing and screening shall meet visibility requirements for intersections by not impeding vision between a height of 2 feet 6 inches and 10 feet within 30 feet from the intersection curb lines, or within 20 feet from the intersecting property lines if there is no curb.
6. Fences are allowed to be constructed up to the property line. Be advised the owner of the fence must maintain and keep the fence in good condition without encroaching onto the neighboring property. Also, if the fence is set back away from the property line, the area between the property line and fence must be maintained.
7. No fence shall be constructed or maintained with electrified wire, barbed wire, or other spiked or sharp-edged materials which may pose injurious to public health and safety.
8. Posts and other supporting structure used in the construction of the fence shall be faced inward toward the fence owner's property being fenced.
9. It shall be the responsibility of the property owner to locate property corner pins prior to installing fences. If the property corner pins cannot be located, then the owner shall have the property surveyed by a Registered Professional Surveyor.

15.405            **General Fencing and Screen Construction Guidelines for Commercial, Agricultural and Industrial Districts**

1. Following requirements are for Commercial C-1, C-2, Agricultural, and Industrial Zoning.
2. Fences in light commercial areas shall conform to the provisions of the residential fences. Fenced in industrial or agricultural districts shall conform to the provisions attached to residential fences except where the Zoning Authority determines it would be in the public welfare to add to fence height or to add security materials onto the fence. In such cases, fences shall not exceed 10 feet in height.

15.406            **Temporary Fences**

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

15.407            **Required Inspections**

1. Site inspection - prior to construction and after the property corner pins have been located and exposed.
2. Final - when fence is completed.

15.408            **Permit Holder Responsibility**

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

15.409            **Maintenance of Nuisances**

## **Ordinances - City of Hankinson, North Dakota**

1. Fences must be maintained so as not to endanger life or property. Any fence which, through lack of repair, type of construction, or otherwise imperils life or property, shall be deemed a nuisance. The Zoning Authority or Zoning Administrator shall notify the owner of the property on which such a fence is located of the existence of such a nuisance. the owner must then abate said nuisance within six (6) days after receiving such notice. In the case of immediate danger to life or property, the Administrator may require immediate abatement.

15.410

### **Violation and Penalty**

1. In any case where there shall be a violation of any city ordinance for which no penalty is provided, the person violating the same shall be subject to a fine of not more than Five Hundred Dollars (\$500.00) for each offense; a person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of the city ordinances is committed, continued or permitted, under City Ordinance 1.104.

**Ordinances - City of Hankinson, North Dakota**

**CHAPTER SIXTEEN**

**ELECTRICAL CODE**

**ORDINANCE NO. 2007-06**

**AN ORDINANCE REPEALING CHAPTER 16 – ELECTRICAL CODE**

Be it ordained by the City Council of the City of Hankinson, North Dakota, that Chapter 16 – Electrical Code is hereby repealed in its entirety.

Dated this 2nd day of July, 2007

**Ordinances - City of Hankinson, North Dakota**

**CHAPTER SEVENTEEN**

**PERSONNEL POLICIES**

**Article 1 – Personnel Policies and Procedures**

17.101            Adoption of Policies

The personnel policies and procedures of the City shall be as set out in the City Policy Manual and shall include any future amendments as adopted by the council. A copy of the manual shall be on file with the City Auditor.

**Ordinances - City of Hankinson, North Dakota**

**HOME RULE CHARTER FOR THE CITY OF HANKINSON**

**Article 1 – Incorporation**

1.101            Incorporation

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

**Article 2 – Governing Body to Exercise Powers**

1.201            Exercising of Powers

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

**Article 3 – Powers of City**

1.301            General Powers

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

1.302            Enumeration of Powers

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

1. To acquire, hold, operate, and dispose of property within or without the corporate limits, and exercise the right of eminent domain for such purposes.
2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to levy and collect taxes, excises, fees, charges and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings and improvements; to contract debts, borrow money, issue bonds, warrants, and other evidence of indebtedness; to establish charges for any City or other services, and to establish debt and mill levy limitations, provided that the mill levies ordered imposed by the governing body on taxable property subject to ad valorem taxation shall not exceed in total the sum of levies authorized by state statutes and the constitution for cities of similar classification to that of the City of Hankinson, however, the governing body shall be permitted to promulgate the City budget without regard to the specific dedications of mill levies to specific purposes.

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

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

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

### **Article 4 – Initiative and Referral of Ordinances**

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

1.401            Initiative

## Ordinances - City of Hankinson, North Dakota

A petition to initiate an ordinance shall be presented to the City Auditor for approval as to form prior to circulation. Each petition shall have printed thereon: "Initiation of City Ordinance Providing For \_\_\_\_\_" and shall accurately identify and summarize the true nature of the initiated ordinance and set forth the text of the ordinance. A request for approval shall be presented over the names and signatures of three (3) or more qualified electors who shall constitute the "Committee for the Petitioners" and who shall represent and act for the petitioners. Within ten (10) days after receipt of the petition, the City Auditor shall either approve the petition for circulation if it is in proper form and contains the full text of the measure or if the City Auditor does not approve the petition, he or she shall give written notice to the Committee of the Petitioners of his or her reason for not approving their petition.

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

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

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

If a majority of the qualified electors voting on an initiated ordinance vote in favor thereof, it shall become a valid and binding ordinance of the City. The governing body may not repeal or make any material amendment to an initiated ordinance except by a three-fourths (3/4) vote of the members thereof for a period of six (6) years after the date of election adopting such ordinance, thereafter such ordinance may be repealed or amended the same as any ordinance. An initiated ordinance may be referred as provided in 1.402.

### 1.402 Referendum

The citizens of Hankinson shall have the right to refer ordinances, except those ordinances implementing public projects upon which an election or a referendum has already been held pursuant to law or this Charter, or which provide for meeting obligations of bonded indebtedness incurred by a prior ordinance or a prior election or referendum and except for the annual budget and appropriation. Qualified city electors at least equal in number to fifteen (15) percent of the number of electors voting in the City for the office of governor in the last election may, by referendum petition, suspend the operation of any ordinance enacted by the governing body, except emergency ordinances approved by at least three fourths (3/4) of all members of the governing body. An emergency ordinance shall contain a clause declaring an emergency. The filing of referendum petitions against one or more items, sections or parts of any ordinance, shall not prevent the remainder from going into effect. Referendum petitions shall be filed with the City Auditor not later than thirty (30) days before and 4:00 o'clock pm on the 30<sup>th</sup> day after adoption of the ordinance.

Each petition shall have printed thereon: "Referral of City Ordinance \_\_\_\_\_; providing for \_\_\_\_\_"; and shall accurately identify and summarize the true nature of the referral and set forth the text of the ordinance. A petition to refer an ordinance shall be presented to the City Auditor for approval as to form prior to circulation. A request for approval shall be presented over the names and

## **Ordinances - City of Hankinson, North Dakota**

signatures of three (3) or more qualified electors who shall constitute the "Committee for the Petitioners". Within ten days (10) after receipt of the petition, the City Auditor shall either approve the petition for circulation if it is in proper form and contains the full text of the measure proposed to be referred or if the City Auditor does not approve the petition, he or she shall give written notice to the committee for the petitioners of his or her reason for not approving their petition.

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

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

If a referendum petition is filed against an emergency ordinance such ordinance shall be in effect until voted upon by the electors. If the ordinance is then rejected by a majority of the votes cast thereon, it shall be thereby repealed as of the tenth (10<sup>th</sup>) day after the election.

### 1.403 Petition, Certification, Publication, and Limitation

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

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

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

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

Within ten (10) days after the filing of a petition to initiate or refer an ordinance, the City Auditor shall examine the petition and ascertain whether or not the petition is signed by the requisite number of qualified electors. The City Auditor shall attach to the petition his or her certificate showing the results of the examination and if the petition is insufficient he or she shall state in his or her certificate the reasons therefore. If the City Auditor's certificate shows the petition to be insufficient, it may be corrected or amended within ten (10) days from the date of the certificate. Within ten (10) days after such amendment, the City Auditor shall make an examination of the amended petition, and if the certificate attached thereto shall show the amended petition to be insufficient, it shall be returned to the person filing the same without prejudice to the filing of a new petition to the same effect. If the petition is sufficient, the City Auditor shall so certify and submit it to the governing body of the municipality without delay.

The City Auditor shall cause any initiated or referred ordinance to be submitted to the qualified electors under this Charter to be published once in a newspaper published in the municipality. The publication shall be made not more than twenty (20) days nor less than five (5) days before the submission of the initiated or referred ordinance to a vote.

## **Ordinances - City of Hankinson, North Dakota**

Any number of proposed or referred ordinances may be voted on at the same election in accordance with the provision of this Charter. There shall be not more than one special election in any period of six (6) months for such purposes.

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

### **Article 5 – Referendum by Governing Body**

#### 1.501            Referendum by Governing Body

Before adopting ordinances, the governing body may on its own motion submit questions to the electorate for an advisory vote of the people at any City wide election specified by the governing body. If a question is submitted in the form of a proposed ordinance and it is approved by a majority of the votes cast thereon, and the governing body thereafter adopts the ordinance within six (6) months of such vote, such ordinance shall not be subject to referral by petition.

### **Article 6 – Separability Clause**

#### 1.601            Separability Clause

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

### **Article 7 – Plenary and Implied Powers of the Governing Body**

#### 1.701            Powers

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

### **Article 8 – Succession in Government**

#### 1.801            Right of Officers and Employees Preserved

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

#### 1.802            Continuance of Present Officers

All persons holding executive and administrative office at the time this Charter takes effect shall continue in office and shall continue the performance of their duties until provisions shall have been made by the

## **Ordinances - City of Hankinson, North Dakota**

governing body for the performance of such duties in some other manner of the discontinuance of such office.

### 1.803 Continuance of Present Offices, Departments, or Agencies

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

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

### 1.804 Continuance of Appointive Boards and Commissions

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

### 1.805 Continuance of Contracts and Franchises

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

### 1.806 Pending Actions and Proceedings

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

### 1.807 Ordinances to Remain in Force

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

The adoption of this Charter or any amendment thereof shall never be construed to destroy any property, action, claims for relief, claims and demands of any nature or kind whatever vested in the City under and by virtue of this Charter theretofore existing or otherwise accruing to the City, but all such claims for relief, claims or demands vest in and inure to the City and to any persons asserting any such claims against the City as fully and completely as though the said Charter or amendment had not been adopted hereunder. The adoption of this Charter or any amendment shall never be construed to affect the right of the City to collect by special assessment any special assessment theretofore levied under any law or Charter for the purpose of public improvements, not affect any right of any contract or obligation existing between the City and any person, firm, or corporation for the making of any such improvements and for the purpose of collecting any such special assessments and carrying out of any such contract.

### 1.808 Concurrent Referendums

## **Ordinances - City of Hankinson, North Dakota**

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

### 1.809            Inauguration of Government Under this Charter

If a majority of the qualified electors of the City voting on the question, vote to ratify this Charter, the provisions of this Charter shall go into effect upon the filing of the Charter by the governing body with the Secretary of State, the Clerk of the District Court for Richland County, and the office of the City Auditor, within ninety (90) days.

## **Article 9 – Changing the Form of Government**

### 1.901            Changing Form of Government

Changes in the form of government may be proposed on motion of the governing body or may be proposed by petitions bearing the signatures of qualified city electors equal to fifteen (15) percent of those voting for the office of governor in the last election. Proposals for changing the form of government shall be voted upon at a special election called by the governing body or at the next regular municipal election, whichever shall occur first, provided that at least thirty (30) days have passed after the motion of the governing board or the filing of petitions with the City Auditor. The form and procedures concerning any petition hereunder shall be in all respects in accordance with the provision for initiated and referred measures as set forth in Article 4 herein.

## **Article 10 – Construction**

### 1.1001          Construction

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

## **Article 11 – Method of Amendment and Repeal**

### 1.1101          Amendment and Repeal

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

## **Title 18 – Sales and Use Tax**

### 18.101          Definitions

All terms in North Dakota Century Code Chapters 57-39.2 and 577-40.2, including any future amendments, are adopted by reference. All references to the North Dakota Century Code include amendments thereto.

## **Ordinances - City of Hankinson, North Dakota**

### 18.102            City Sales and Use Tax to Parallel State Law

The City sales and use tax imposed herein shall parallel to the State of North Dakota Sales and Use Tax Law. All of the exemptions applicable for state sales and use tax apply to the City of Hankinson sales and use taxes, including exemptions for tax exempt entities (schools, counties, state agencies, etc.).

### 18.103            Sales Tax Imposed

Except as otherwise provided in this Chapter, a tax of one percent (1%) is imposed upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within the corporate limits of the City of Hankinson, North Dakota. Such sales tax shall be applied to the following:

1. Tangible personal property, consisting of goods, wares, or merchandise.
2. The furnishing or service of gas, communications services, or steam other than steam used for processing agricultural products.
3. Tickets or admissions to places of amusement or entertainment or athletics events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin.
4. The leasing or renting of a hotel or motel room or tourist court accommodations.
5. Magazines and other periodicals.
6. The leasing or renting of tangible personal property, the transfer of title to which has not been subject to a retail sales tax or a use tax under this article.
7. Sale of alcoholic beverages and tobacco products as defined in NDCC Section 57-39.2-03.2.

### 18.104            Use Tax Imposed

Except as otherwise provided in this Chapter, an excise tax of one percent (1%) is imposed on the storage, use or consumption in the City of Hankinson on:

1. The purchase price of tangible personal property purchased at retail for storage, use or consumption within the City except to the extent such property has already been subjected to a sales or use tax in another state or political subdivision as provided in NDCC Section 57-40.2-11.
2. The fair market value, at the time it is brought into the City, of tangible personal property not originally purchased for storage, use or consumption in the City, at the time which it is brought into the City of Hankinson.
3. Alcoholic beverages and tobacco products as defined in NDCC Section 57-39.2-03.2.
4. Tangible personal property used by a contractor or subcontractor to fulfill a contract as defined in NDCC Section 57-40.2-03.3. The tax applies only to bids submitted on or after the effective date of this ordinance.

### 18.105            Exemptions

There are specifically exempted from the provisions of this Chapter and from the computation of the amount of tax imposed by it the following:

1. All sales, storage, use or consumption of tangible personal property, which are exempt from imposition and computation of the sales or use tax of the State of North Dakota are specifically exempt for the provisions of this Chapter.
2. Sales to contractors that are exempt, pursuant to Subsection 15 of NDCC Section 57-39.2-04 shall be exempt from any City sales tax, but contractors shall be subject to the City use tax on those items used

## **Ordinances - City of Hankinson, North Dakota**

within the City that would be taxed, pursuant to NDCC Section 57-04.2-03.3, on which the City sales tax has not previously been paid.

### 18.106           Refunds

Refunds allowed by the State of North Dakota for sales and use taxes paid are also allowed by this Ordinance under the same terms and conditions provided for in the North Dakota Century Code.

### 18.107           Maximum Tax Imposed

No single transaction involving one or more items is subject to a tax in excess of Twenty Five Dollars (\$25.00).

### 18.108           Collection and Administration

The tax commissioner and the city auditor shall have the powers enumerated in the provisions of NDCC Chapters 57-39.2 and 57-40.2 relating to the collection and administration of the sales and use tax including all administrative rules adopted by the tax commissioner. The tax commissioner is authorized to establish rate tables integrating the tax imposed by this Ordinance with other state, county and city taxes.

### 18.109           City Auditor Empowered to Contract With State Tax Commissioner

The city auditor is authorized to contract with the tax commissioner for the administration and collection of taxes imposed by this Ordinance. The city auditor has all the powers granted the commissioner and in the absence of a valid contract with the commissioner or failure of the commissioner to perform the delegated duties, shall perform those duties in the place of the commissioner.

### 18.110           Corporate Officer Liability

Officers of any corporations required to remit taxes imposed by this Ordinances are personally liable for the failure of the corporation to file required returns or remit required payments.

The dissolution of the corporation shall not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The tax, penalty, and interest due may be assessed and collected pursuant to the provisions adopted by this Ordinance.

### 18.111           Dedication of Tax Proceeds

All revenues raised and collected under this Ordinance, less administrative expenses, shall be dedicated to infrastructure expenses, real property tax reduction, economic development, or any other project enhancing the general welfare of the community. All revenues shall be placed in the general fund of the City of Hankinson.

### 18.112           Compensation

City sales and use tax permit holders shall not be compensated for collecting and paying the sales tax.

### 18.113           Effective Date

This Ordinance shall be in full force and effect following its final passage, adoption, and publication. The tax shall be implemented and take effect on October 1, 1997.

## **Ordinances - City of Hankinson, North Dakota**

### 18.114            Saving Clause

Should any section, paragraph, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.

## **AN ORDINANCE ADOPTING SECTION 18.2 – CITY LODGING TAX**

BE IT ORDAINED, by the City Council of the City of Hankinson, Richland County, North Dakota, hereby adopts Hankinson City Ordinance 18.2, a City Lodging Tax, to provide as follows:

### 18.201            Definitions

1. "Gross receipts" - shall mean receipts of retailers for the leasing or renting, for periods of less than 30 consecutive calendar days or one month, of hotel, motel, or tourist court accommodations within the corporate limits of the city of Hankinson.
2. "Retailer" - shall mean any person, firm or corporation in the business of leasing or renting hotel, motel or tourist court accommodations for periods of 30 or less consecutive calendar days or one month.
3. "Visitors Promotion Fund" - shall be comprised of the funds created by collection of the tax imposed by this ordinance, less any amount which may be retained by the city for the collection of such tax.

Source: N.D.C.C. Section 40-57.3.01

### 18.202            Tax on gross receipts

A tax is hereby imposed upon gross receipts as defined herein, which tax shall be computed on a monthly basis by each and every hotel, motel or tourist court located within the corporate limits of the city of Hankinson. Said tax shall be in addition to the state sales tax on rental accommodations provided in section 18.103. The amount of such tax shall be two percent (2%) to be placed in the visitors promotion fund of the Hankinson Visitors Committee in accordance with N.D.C.C. Section 40-57.3-02.

### 18.203            Collection of tax

The tax administrator shall be the North Dakota State Tax Commissioner. The city auditor is hereby authorized and directed to contract with the North Dakota State Tax Commissioner for the administration and collection of taxes established under this chapter, subject to confirmation of the contract by the city governing body.

### 18.204            Tax receipts – Utilization – Visitors Promotion Fund.

There is hereby created a fund to be known as the visitors promotion fund, and all taxes collected pursuant to this ordinance, less costs of administration as herein provided, shall be placed in this funds and utilized for the purpose of promoting, encouraging, and attracting visitors to come to the city of Hankinson and use the travel and tourism facilities within such city.

Source: N.D.C.C. Section 40-57.3-02.

### 18.205            Administration of fund--Hankinson Visitors Committee

The visitors promotion fund shall be administered by the Hankinson Visitors Committee pursuant to agreement with the city of Hankinson. This committee shall consist of five (5) members and the members shall receive no compensation payable from the visitors promotion fund except reimbursement for necessary expenses.

Source: N.D.C.C. Section 40-57.3-02

### 18.206            Budget

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The operating budget for the Hankinson Visitors Committee shall be established annually by the board of directors of the Hankinson Visitors Committee and thereafter, submitted to the City Council for its approval.

### **18.207            Failure to comply - Penalty**

If any retailer, as defined herein, shall fail to make payment as required by this article or to file the necessary report within the time provided, or, if upon audit, is found to owe additional tax, such retailer shall be subject to a penalty of five percent (5%) of the amount of tax due, plus interest of one percent (1%) of such tax for each month of delay or a fraction thereof. The City Council, if satisfied that the delay was excusable, may waive all or any part of such penalty and interest. Any penalty and interest paid shall be utilized in the same manner as other receipts under this chapter.

## **ORDINANCE NO. 2009-04**

### **AN ORDINANCE TO ESTABLISH AND REGULATE A ONE PERCENT (1%) CITY SALES, USE, AND GROSS RECEIPTS TAX DEDICATED TO A COMMUNITY CENTER PROJECT**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HANKINSON, RICHLAND  
COUNTY, NORTH DAKOTA:

#### **SALES, USE, AND GROSS RECEIPTS TAX**

##### **Definitions.**

All terms defined in chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2 of the North Dakota Century Code (N.D.C.C.), including any future amendments, are adopted by reference. All references to the N.D.C.C. include amendments adopted by the North Dakota Legislative Assembly.

##### **Collection and Administration.**

Where not in conflict with the provisions of this Ordinance, the provisions of N.D.C.C. chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2, and all administrative rules adopted by the Tax Commissioner, pertaining to the collection and administration of the retail sales, use, and gross receipts tax, including provisions for liability, refund, penalty, interest or credit, govern the administration by the North Dakota Office of State Tax Commissioner (hereinafter "Tax Commissioner") of the taxes imposed by this Ordinance.

##### **Sales Tax Imposed.**

Subject to the provisions of N.D.C.C. §40-05.1-06, and except as otherwise provided by this Ordinance, or the sales and use tax laws of the State of North Dakota, a tax of one percent (1%) is imposed upon the gross receipts of retailers from all sales at retail, including the leasing or renting of tangible personal property, within the corporate limits of the City of Hankinson, North Dakota.

##### **Use Tax Imposed.**

Subject to the provisions of N.D.C.C. §40-05.1-06, and except as otherwise provided in this Ordinance, or the sales and use tax laws of the State of North Dakota, an excise tax is imposed upon the storage, use, or consumption within the corporate limits of the City of Hankinson, North Dakota of tangible personal property purchased at retail for storage, use, or consumption in this city, at the rate of one percent (1%) of the purchase price of the property. An excise tax is imposed on the storage, use, or consumption within the corporate limits of the City of Hankinson, North Dakota of tangible personal property not originally purchased for storage, use, or consumption in this city at the rate of one percent (1%) of the fair market value of the property at the time it was brought into this city.

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### **Gross Receipts of Alcoholic Beverages.**

Subject to the provisions of N.D.C.C. §40-05.1-06, and except as otherwise provided in this Ordinance, a gross receipts tax of one percent (1%) is imposed upon all gross receipts from the sale of alcoholic beverages within the city. A person who receives alcoholic beverages for storage, use, or consumption in this state is subject to tax on storage, use, or consumption of those alcoholic beverages at the rate of one percent (1%).

### **Gross Receipts of New Farm Machinery and New Farm Irrigation Equipment.**

Subject to the provisions of N.D.C.C. §40-05.1-06, and except as otherwise provided in this Ordinance, a gross receipts tax of one percent (1%) is imposed upon all gross receipts from the sale of new farm machinery and new farm irrigation equipment within the city. A person who receives new farm machinery or new farm irrigation equipment for storage, use, or consumption in this state is subject to tax on storage, use, or consumption of that machinery and/or equipment at the rate of one percent (1%).

### **Exemptions.**

This Ordinance does not provide for any additional exemptions from imposition and computation of the city sales and use tax other than those provided by state law.

With respect to the purchase price of tangible personal property used by a contractor or subcontractor to fulfill a contract as defined in §57-40.2-03.3, N.D.C.C., the tax imposed by this section fully applies to all purchases on and after January 1, 2010 irregardless of when the contract bids were submitted.

### **Maximum Tax Imposed.**

Any patron or user paying a tax imposed by this Ordinance in excess of Twenty-five Dollars (\$25.00) upon any single transaction of one or more items may obtain a refund of the excess tax payment by filing a request for refund upon the forms provided by the Tax Commissioner.

### **Contract with Tax Commissioner.**

The Hankinson City Auditor is hereby authorized to contract with the Tax Commissioner for administration and collection of taxes imposed by this Ordinance. The City Auditor has all powers granted to the Tax Commissioner and in the absence of a valid contract with the Tax Commissioner or failure of the Tax Commissioner to perform the delegated duties, shall perform these duties in place of the Tax Commissioner.

### **Dedication of Tax Proceeds.**

The proceeds of the taxes provided for herein shall be dedicated solely to creation, construction, maintenance, repair and operation of a Community Center.

### **Compensation.**

City sales, use and gross receipts tax permit holders are allowed to retain a portion of tax collected under this ordinance to help recover administrative expenses. This compensation shall equal three percent (3%) of the city tax due.

### **Effective Date.**

This Ordinance shall take effect after its passage, approval, and publication, but not prior to January 1, 2010.

### **Termination Date.**

This Ordinance shall terminate on January 1, 2030 or until all such obligations for which payments of sales tax dollars collected pursuant to this ordinance have been pledged have been paid in full and/or otherwise satisfied, whichever is later.

## **Ordinances - City of Hankinson, North Dakota**

### **Section 19 – Flood Damage Prevention Ordinance – No Map**

#### 6.1101        FINDINGS OF FACT

- (1)        The flood hazard areas of the City of Hankinson and its extraterritorial zoned areas are subject to periodic inundation which can endanger life, result in loss of property, create health and safety hazards, disrupt commerce and governmental services, cause extraordinary public expenditures for flood protection and relief, and impair the tax base, all of which adversely affect the public health, safety, and general welfare.
- (2)        Flood losses caused by the cumulative effect of obstructions in the special flood hazard areas cause increases in flood heights and velocities. Inadequately floodproofed, elevated or otherwise unprotected structures also contribute to the flood loss.

#### 6.1102        STATEMENT OF PURPOSE

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

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

#### 6.1103        METHODS OF REDUCING FLOOD LOSSES

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

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

## Ordinances - City of Hankinson, North Dakota

6.1104

### DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

1. "Appeal" - A request for a review of the Building Official's or designee's interpretation of any provision of this ordinance or a request for a variance.
2. "Base flood or 100-year flood" - The flood having a one percent chance of being equaled or exceeded in any given year.
3. "Base Flood Elevation" (BFE) - The height of the base flood or 100-year flood usually in feet above mean sea level.
4. "Basement" - Any area of the building having its floor subgrade (below ground level) on all sides.
5. "Best Available Data" (BAD) - Water elevation information from any source used to estimate or determine a base flood elevation (i.e. high water mark).
6. "Conveyance or hydraulic conveyance" - A geometric characteristic of a river or watercourse at a given point that determines the flow-carrying capacity at that point.
7. "Development" - Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the special flood hazard area.
8. "Flood Insurance Rate Map" (FIRM) - The official map issued by the Federal Emergency Management Agency where special flood hazard areas are designated as Zone A, AE, AO, AH, A1-A30 or A-99.
9. "Flood Insurance Study" (FIS) - The official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Map, and the water surface elevation of the base flood.
10. "Flood" or "flooding" - A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters and/or; from the unusual and rapid accumulation or runoff of surface waters from any source.
11. "Floodproofing" (Dry) - Protection provided a structure, together with attendant utilities and sanitary facilities, which is watertight two feet above the base flood elevation with walls that are substantially impermeable to the passage of water.
12. "Floodway or regulatory floodway" - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
13. "Lowest floor" - The lowest floor of a structure including the basement.
14. "Manufactured home" - A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle", but does include "mobile home".
15. "Manufactured Home Park or Subdivision" - A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
16. "New construction" - Structures for which the "start of construction" commenced on or after the effective date of this ordinance.
17. "Reasonably safe from flooding" - Base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area, and that any subsurface waters related to the base flood will not damage existing or proposed buildings.
18. "Recreational vehicle" - A vehicle which is:
  - (a) built on a single chassis;
  - (b) 400 square feet or less when measured at the largest horizontal projection;

## Ordinances - City of Hankinson, North Dakota

- (c) designed to be self-propelled or permanently towable by a light duty truck;
  - (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use; including, but not limited to;
  - (e) travel trailers, trailers on wheels, park-model trailers, and other similar vehicles.
19. "Special Flood Hazard Area" (SFHA) - An area of land that would be inundated by a flood having a one percent chance of being equaled or exceeded in any given year.
20. "Start of construction" - includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.
21. "Structure" - A walled and roofed building, including manufactured homes and gas or liquid above-ground storage tanks.
22. "Substantial damage" - damage of any origin sustained by a structure whereby the cost of restoring the building to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
23. "Substantial improvement" - any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:
- 1) Before the improvement or repair is started; or
  - 2) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- 1) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or
  - 2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.
24. "Variance" - a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

### 6.1105 GENERAL PROVISIONS

#### 1. LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all special flood hazard areas within the zoning jurisdiction of the City of Hankinson, including the extraterritorial zoning area.

## **Ordinances - City of Hankinson, North Dakota**

### 2. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS

The special flood hazard areas identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for Richland County, North Dakota and incorporated areas effective December 18, 2009 with an accompanying Flood Insurance Rate Map is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file at 319 Main Avenue South, Hankinson, North Dakota 58041.

### 3. COMPLIANCE

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations.

### 4. GREATER RESTRICTIONS

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

### 5. INTERPRETATION

In the interpretation and application of this ordinance, all provisions shall be:

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

### 6. WARNING AND DISCLAIMER OR LIABILITY

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

### 6.1106 ADMINISTRATION

#### 1. ESTABLISHMENT OF DEVELOPMENT PERMIT

A development permit shall be obtained before construction or development begins within any special flood hazard area established in Section 6.1105-2 (Basis for Establishing the Special Flood Hazard Areas). Application for a development permit shall be made on forms furnished by the Building Official or designee thereof and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill storage materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- (1) Elevation in relation to mean sea level, of the lowest floor of all structures;

## **Ordinances - City of Hankinson, North Dakota**

- (2) Elevation in relation to mean sea level to which any structure has been floodproofed;
  - (3) Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in Section 6.1108-8 (Nonresidential Construction); and,
  - (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
2. DESIGNATION OF THE BUILDING OFFICIAL OR DESIGNEE.  
The Building Official or designee is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.
3. DUTIES AND RESPONSIBILITIES OF THE BUILDING OFFICIAL OR DESIGNEE.  
Duties of the Building Official or designee shall include, but not be limited to:
- 1) Permit Review
    - (1) Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
    - (2) Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.
    - (3) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 6.1110(1) are met.
  - 2) Use of Other Base Flood Data  

When base flood elevation data has not been provided in accordance with Section 6.1105-2 (Basis for Establishing the Special Flood Hazard Areas), the Building Official or designee shall obtain, review, and reasonably utilize any base flood elevation data and floodway data available (known as best available data) from a federal, state, or other source, as criteria for requiring that new construction, substantial improvements, or other development in the floodplain are administered in accordance with Section 6.1108-6. (Specific Standards).
  - 3). Information to be Obtained and Maintained
    - (1) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
    - (2) For all new or substantially improved flood proofed structures:
      - (i) obtain and record the actual elevation (in relation to mean sea level) to which the structure has been flood proofed;
      - (ii) maintain the flood proofing certifications required in Section 6.1106-1(3).
    - (3) Maintain for public inspection all records pertaining to the provisions of this ordinance.
  - 4) Alteration of Watercourses  

The responsible person shall:

## Ordinances - City of Hankinson, North Dakota

- (1) Notify nearby communities, water resource districts, and the North Dakota State Engineer, as necessary, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished; and,
- (3) Notify the appropriate water resource district prior to removal or placement of fill within two hundred feet of the bank of a body of water during normal flow or stage.

### 5) Interpretation of Flood Insurance Rate Map (FIRM) Boundaries

Make interpretation where needed, as to the exact location of the boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 6.1107.

## 6.1107 VARIANCE PROCEDURE

### 1. Appeal Board

- (1) The Board of Adjustment as established by the City Council shall hear and decide appeals and requests for variances from the requirements of this ordinance.
- (2) The Board of Adjustment shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the \_\_\_\_\_ Building Official or designee in the enforcement or administration of this ordinance.
- (3) Those aggrieved by the decision of the Board of Adjustment, or any taxpayer, may appeal such decision to the City Council, as provided in NDCC 40-47-11 and any decision of the City Council on the appeal from a decision of the Board of Adjustment may be appealed to the District Court in the manner provided in NDCC §28-34-01.
- (4) In passing upon such applications, the Board of Adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance; and:
  - (i) the danger that materials may be swept onto other lands to the injury of others;
  - (ii) the danger to life and property due to flooding or erosion damage;
  - (iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (iv) the importance of the services provided by the proposed facility to the community;
  - (v) the necessity to the facility of a waterfront location, where applicable;
  - (vi) the availability of alternative locations, for the proposed use which are not subject to flooding or erosion damage;
  - (vii) the compatibility of the proposed use with existing and anticipated development;
  - (viii) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - (ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (x) the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  - (xi) the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

## **Ordinances - City of Hankinson, North Dakota**

- (5) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre to less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xi) in Section 6.1107-1(4) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (6) Upon consideration of the factors of Section 6.1107-1(4) and the purposes of this ordinance, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
- (7) The Building Official or designee shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

### 2. Conditions for Variances

- (1) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.
- (2) Variances shall not be issued within the identified floodplain if any increase in flood levels during the base flood discharge would result.
- (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (4) Variances shall only be issued upon:
  - (i) a showing of good and sufficient cause;
  - (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and,
  - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, cause fraud on or victimization of the public as identified in Section 6.1107-1(4), or conflict with existing local laws or ordinances.
- (5) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

## 6.1108 PROVISIONS FOR FLOOD HAZARD REDUCTION

### 1. GENERAL STANDARDS

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

### 2. ANCHORING

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

### 3. CONSTRUCTION MATERIALS AND METHODS

## **Ordinances - City of Hankinson, North Dakota**

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

### 4. UTILITIES

- (1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,
- (3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

### 5. SUBDIVISION PROPOSALS

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or 5 acres (whichever is less).

### 6. SPECIFIC STANDARDS

In all special flood hazard areas where base flood elevation data have been provided as set forth in Section 6.1105-2 (Basis for Establishing the Special Flood Hazard Areas) or Section 6.1106 2) (Use of Other Base Flood Data), the following provisions are required:

### 7. RESIDENTIAL CONSTRUCTION

New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated on fill to at least one foot above the base flood elevation.

### 8. NONRESIDENTIAL CONSTRUCTION

Construction and substantial improvement of any nonresidential structure shall either have the lowest floor, including basement, elevated on fill to at least one foot above the base flood elevation or, together with attendant utility and sanitary facilities shall:

- (1) Be flood proofed to at least two feet above the base flood elevation, so that below this elevation the structure is watertight with walls substantially impermeable to the passage of water.

## **Ordinances - City of Hankinson, North Dakota**

- (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- (3) Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Section 6.1106-(2).

### 6.1109 MANUFACTURED HOMES

- (1) Manufactured homes shall be anchored in accordance with Section 6.1108.
- (2) All manufactured homes or those to be substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated on fill to at least one foot above the base flood elevation, and is securely anchored to an adequately anchored foundation system.

### 6.1110 FLOODWAYS

Located within the special flood hazard areas established in Section 6.1105-2 (Basis for Establishing the Special Flood Hazard Areas) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- (1) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) If Section 6.1110 (1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 6.1108-8 (Provisions for Flood Hazard Reduction).

### 6.1111 PENALTIES FOR VIOLATIONS

- (1) Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violations on conditions and safeguards established in connection with grants or variances or conditional uses, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be punished by a fine not exceeding \$1,000 or by imprisonment not to exceed 30 days or by both such fine and imprisonment for each such offense, and in addition shall pay costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.
- (2) Nothing herein contained shall prevent the City Council from taking such other lawful action as is necessary to prevent or remedy any violation.

**Ordinances - City of Hankinson, North Dakota**

**FRANCHISE AGREEMENTS**

**OTTER TAIL POWER COMPANY**

**ORDINANCE NO. 2008-02**

An Ordinance granting to Otter Tail Corporation, a Minnesota Corporation, its successors and assigns, permission to erect, construct, install, and maintain within the City of **Hankinson, North Dakota**, an electric light and power system and transmission line and to operate the same and to install conduits, poles, wires, pipes, and other fixtures in, upon, and under the streets, alleys, bridges, and public grounds of said City for the purpose of furnishing electric light, heat, and power to said City and the inhabitants thereof.

BE IT ORDAINED, BY THE CITY COUNCIL OF THE CITY OF **Hankinson, North Dakota**, hereinafter called the "City":

Section 1

There is hereby granted to Otter Tail Corporation, a Minnesota corporation, its successors and assigns, hereinafter called the "Grantee", for a period of twenty (20) years from and after the passage and approval of this Ordinance and during all of said time, subject to the conditions and requirements hereinafter set forth, permission to construct, install, and maintain an electric light and power system and transmission line and to operate and maintain the same within and through the City and to transmit electricity to and from the other towns or cities for the purpose of light, power, and heat and to erect, construct, install, and maintain conduits, poles, wires, pipes, and other necessary fixtures and attachments upon and under the streets, alleys, bridges, and public grounds of said City for the purpose of furnishing and selling electricity for light, heat, and power and such other purposes for which electricity may be used by the inhabitants of said City, said permission and franchise to become operative and continue under the conditions hereinafter set forth.

Section 2

Said Grantee shall use poles, wires, cross arms, equipment, and devices to conform with the standards of construction adopted by the National Electrical Safety Code of the United States, Department of Commerce, and all apparatus connected therewith shall be located so as not to obstruct the avenues, streets, and alleys of said City or to endanger persons or property or to hinder or to obstruct the use of said avenues, streets, and alleys or public places by the inhabitants of said City, or public in general, or to interfere with any street, sidewalk, curb, gutter, or park improvements that the City may deem proper to make along the lines of said avenues, streets, and public places.

Section 3

All conduits, poles, wires, and pipes installed by virtue of this Ordinance shall be erected in such places and in such manner as not unnecessarily to encroach upon streets, alleys, bridges, or public grounds of said City, and so as not to unnecessarily obstruct the use thereof for the ordinary purpose of travel thereon, and the erection thereof shall be subject to the reasonable supervision and direction of the City Council of the said City. Whenever practicable, all poles shall be set in alleys, and poles now in position upon or along the streets, whenever practicable shall be removed, and the locations of all of said poles shall be designated by the Mayor under the supervision of the City Council of said City.

All poles where set in alleys shall be set at or near the boundary line thereof, and where set in streets shall be located at such distances as shall be directed by the City from the property line of the abutting owner, and shall be placed so as not to interfere with the construction or placing of any water pipes, sewers, or drains or the flow of water therefrom which has been or may be placed by authority of said City. In the event that said Grantee shall

## **Ordinances - City of Hankinson, North Dakota**

make any unnecessary obstructions of said streets, alleys, public grounds, or places not designated by the City Council, the City may cause the removal of such obstructions and charge and collect from such Grantee the actual cost of such removals.

### **Section 4**

During the construction, maintenance, or enlargement of any part of said electric light, and power system, said Grantee shall not unnecessarily impede or block travel in said streets and highways in said City and shall leave all streets, highways, alleys, sidewalks, curbs, lanes, and public places and all grounds disturbed by said construction in good condition upon the completion of said work.

The City reserves the right to make and adopt, and the rights and privileges hereby granted shall at all times be and remain subject to such reasonable regulations of a police nature as it may deem necessary for the best interest of the City, but the City will not by any such regulations or by acts of its own or agents do anything to prevent or interfere with the Grantee carrying on its business in accordance with the franchise hereby granted.

### **Section 5**

Whenever the said Grantee in erecting, constructing, and maintaining said lines or poles, shall take up any of the pavements, sidewalks, crossings, or curbs on any of the avenues, streets, and alleys, or public places in said City or shall make any excavations thereon, such excavations shall be refilled and the sidewalk, crossing, or curb replaced under the direction of the City and any excavation so made shall be properly lighted at night during the construction, and in case of the failure to do so on the part of the said Grantee, then the City may do the same at the expense of said Grantee and said Grantee agrees to pay said City for the reasonable cost or value of said work. Said Grantee shall be liable for all loss or damage caused by the negligence of Grantee, which may result to persons or property within the said City, caused by it, or its agents, servants, or employees in erecting, operating, and maintaining the said electric system within said City, and shall at all times save the City harmless from any and all damages to persons or property in erecting, operating, or maintaining said electric system.

### **Section 6**

There is granted to said Grantee, its successors and assigns, during the term hereof, permission and authority to trim all trees in alleys, streets, and public grounds of said City so as to remove all parts of said trees interfering with the proper erection, maintenance, and operation of poles, cables, wires, masts, or other fixtures, or appliances installed or to be installed pursuant to authority hereby granted.

Said Grantee shall have full right and authority to assign to any person, persons, firm or corporation all the rights that are given it by this Ordinance, provided, that the assignee of such rights by accepting such assignment shall become subject to the terms and conditions of this Ordinance.

### **Section 7**

The Grantee shall use due diligence and care in furnishing electric service as herein provided but shall not be liable for any loss or damage which may arise from failure of the service, either partial or total, but this shall not be construed to exempt said Grantee from liability for negligence.

### **Section 8**

The rates to be charged by said Grantee in the said City shall be filed with the Public Service Commission of the State of North Dakota, and no increase or decrease in said rates shall be made except in accordance with the rules and regulations of the Public Service Commission.

**Ordinances - City of Hankinson, North Dakota**

Section 9

This contract shall be subject to any present or future laws of a regulatory nature enacted by the State of North Dakota, or any amendment or addition to such laws, and further shall be subject to the rules and regulations laid down by the Public Service Commission of the State of North Dakota.

Section 10

It is further expressly and specifically provided that all permits, licenses, and franchises heretofore granted by the City giving or purporting to give permission to any person, persons or corporation to construct, install, or maintain an electrical line or system in, upon, or through the streets, alleys, or public grounds of the City for the purpose of furnishing light, heat, and power to the City or its inhabitants, be, and the same hereby are in all respects revoked, cancelled, and annulled, with the exception of a Limited Franchise granted to Dakota Valley Electric Cooperative, Inc., by the City of Hankinson as Ordinance 2006-01 adopted on October 2, 2006, which grants the right and privilege as shall be exercised by the Grantee (Dakota Valley Electric Cooperative, Inc.) only for the limited purpose of furnishing electric service to the following described areas or places: That part of the Southwest Quarter (SW 1/4) of Section Eighteen (18), Township One Hundred Thirty (130) North, Range Forty Nine (49) West, Richland County, North Dakota lying North of the Canadian Pacific Railroad

Section 11

The City reserves the right, if not prohibited by the laws of the State of North Dakota, to make charge of the Grantee for this franchise of such percent as determined by resolution adopted by the City Council of the gross revenue received by the Grantee in the City of Hankinson from the users of electrical service distributed to them by the Grantee in the City of Hankinson, which charge shall be subject to review of the City of Hankinson City Council at the first meeting in January of each and every year of the franchise period.

Section 12

This Ordinance shall take effect and be in full force from and after its passage and approval by the City Council. The said Grantee shall specify its acceptance of this franchise in writing, to be filed with the City Auditor and in no event shall this Ordinance be binding on said Grantee until the filing of such acceptance.

Approved this 5th day of May, 2008.

FIRST READING: March 3, 2008  
SECOND READING: May 5, 2008  
ADOPTED: May 5, 2008

**DAKOTA VALLEY ELECTRIC COOPERATIVE**

**ORDINANCE NO. 2006-09**

**CITY OF HANKINSON  
NON-EXCLUSIVE AND LIMITED FRANCHISE**

AN ORDINANCE GRANTING TO DAKOTA VALLEY ELECTRIC COOPERATIVE, INC., A NORTH DAKOTA COOPERATIVE CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO ERECT, CONSTRUCT, INSTALL AND MAINTAIN WITHIN THE CITY OF HANKINSON, NORTH DAKOTA AN ELECTRIC POWER DISTRIBUTION SYSTEM AND TO OPERATE THE SAME AND TO INSTALL

**Ordinances - City of Hankinson, North Dakota**

CONDUITS, POLES, WIRES, PIPES And OTHER FIXTURES IN, UPON AND UNDER THE STREETS, ALLEYS, BRIDGES AND PUBLIC GROUNDS OF SAID CITY FOR THE PURPOSE OF FURNISHING ELECTRICITY TO SAID CITY AND THE INHABITANTS THEREOF

BE IT ORDAINED, by the Governing Body of the City of Hankinson, hereafter called City:

SECTION 1. FRANCHISE:

(a) Term Franchise. There is hereby granted to Dakota Valley Electric Cooperative, Inc, a North Dakota electric cooperative corporation, its successors and assigns, hereinafter called the Grantee, for a period of twenty (20) years from and after the passage and approval of this Ordinance, subject to the conditions and requirements hereinafter set forth, permission to construct, operate and maintain an electric power distribution system within and through the City and to transmit electricity to and from other points for the purpose of furnishing electricity and to construct and maintain conduits, poles, wires, pipes, and other necessary fixtures and attachments upon and under the streets, alleys, bridges, and public grounds of said City for the purpose of furnishing and selling electricity for all purposes for which electricity may be used by the inhabitants of said City.

(b) Non-exclusive Grant. This ordinance shall not be construed to grant any exclusive right, privilege, or franchise to the Grantee. The City reserves the right to grant a similar use of said streets, alleys and public ways to any person at any period of this franchise.

(c) Limited Franchise. The right and privilege herein granted shall be exercised by the Grantee only for the limited purpose of furnishing electric service to the following described areas or places:

That part of the Southeast Quarter (SE 1/4) of Section Eighteen (18), Township One Hundred Thirty (130) North, Range Forty Nine (49) West, Richland County, North Dakota described as follows:

Beginning at the Northeast Corner of Said Southeast Quarter (SE 1/4);

Thence S 02° 32'24" E along the East line of said Southeast Quarter (SE 1/4) for a distance of One Thousand Eight Hundred

Nineteen and Thirty Seven Hundredths (1819.37) feet to a point on the North Right-of-way line of the Canadian Pacific Railroad;

Thence N 84° 25'08" W along said Railroad Right-of-way line for a distance of Two Thousand Six Hundred Fifty Six and Fifty One Hundredths (2656.51) feet to a point on the West line of said Southeast Quarter (SE 1/4);

Thence N 02° 38'11" W along the West line of said Southeast Quarter (SE 1/4) for a Distance of One Thousand Four Hundred Fifty Eight and Seventeen Hundredths (1458.17) Feet to the Northwest corner of said Southeast Quarter (SE 1/4);

Thence N 87° 45'58" E along the North line of said Southeast Quarter (SE 1/4) for a distance of Two Thousand Six Hundred Thirty Two and Thirty Seven Hundredths (2632.37) feet to the Northeast Quarter of said Southeast Quarter (SE 1/4), the point of beginning.

Said Tract contains 98.98 Acres, more or less.

Said Tract subject to Rights-of-way and Easement Recorded and unrecorded.

AND

That part of the Southeast Quarter (SE 1/4) of Section Seventeen (17), Township One Hundred Thirty (130) North, Range Forty Nine (49) West, Richland County, North Dakota described as follows:

Commencing at the Southeast Corner of Said Southeast Quarter (SE 1/4);

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Thence N 02° 48'20" W along the East line of said Southeast Quarter (SE 1/4) for a Distance of Forty Six and Eighty Eight Hundredths (46.88) Feet to a point on the Northerly Right-of-way line of the Canadian Pacific Railroad, said Right-of-way line is parallel to and Fifty (50) feet Northerly of the Main tract centerline, the point of beginning;

Thence N 84° 25'25" W along said Canadian Pacific Railroad Right-of-way line for a distance of Two Thousand Six Hundred Seventy Six and Seventy Three Hundredths (2676.73) feet to a point on the West line of said Southeast Quarter (SE 1/4);

Thence N 02° 40'38" W along the West line of said Southeast Quarter (SE 1/4) for a Distance of Two Hundred Forty Seven and Nine Hundredths (247.09) Feet;

Thence N 87° 17'44" E parallel to the South line of said Southeast Quarter (SE 1/4) for a distance of Two Thousand Six Hundred Forty Seven and Fifty Nine Hundredths (2647.59) feet to a point on the East line of said Southeast Quarter (SE 1/4);

Thence S 02° 48'20" E along the East line of said Southeast Quarter (SE 1/4) for a distance of Six Hundred Thirty Two and Sixty One Hundredths (632.61) feet to a point of beginning.

And:

That part of the Southeast Quarter (SE 1/4) of section Seventeen (17), Township One Hundred Thirty (130) North, Range Forty Nine (49) West, Richland County, North Dakota described as follows:

Commencing at the Southeast Corner of Said Southeast Quarter (SE 1/4);

Thence S 87° 17'44" W along the South line of said Southeast Quarter (SE 1/4) for a distance of Three Hundred Seventy Two and Twenty Six Hundredths (372.26) feet to a point on the Southerly Right-of-way line of the Canadian Pacific Railroad, said Right-of-way line is parallel to and fifty (50) feet Southerly of the main track centerline, the point of beginning;

Thence continue S 87° 17'44" W along the South line of said Southeast Quarter (SE 1/4) for a distance of Two Thousand Two Hundred Seventy Six and Eighty Five Hundredths (2276.85) feet to the Southwest corner of said Southeast Quarter (SE 1/4);

Thence N 02° 40'38" W along the West line of said Southeast Quarter (SE 1/4) for a distance of Three Hundred Thirty One and Thirty Six Hundredths (331.36) feet to a point on said Southerly Right-of-way line of the Canadian Pacific Railroad;

Thence S 84° 25'25" E along said Canadian Pacific Right-of-way line for a distance of Two Thousand Seventy One and Fifty Six Hundredths (2071.56) feet to the point of beginning

Said Tract contains 35.40 Acres, more or less.

Said Tract subject to Rights-of-way and Easement Recorded and unrecorded.

AND

That part of the Southwest Quarter (SW 1/4) of section Seventeen (17), Township One Hundred Thirty (130) North, Range Forty Nine (49) West, Richland County, North Dakota described as follows:

Commencing at the Southwest Corner of Said Southwest Quarter (SW 1/4);

Thence N 02° 32'28" W along the West line of said Southwest Quarter (SW 1/4) for a distance of Eight Hundred Seventeen and Eighty Three Hundredths (817.83) feet to a point on the Northerly Right-of-way line of the Canadian Pacific Railroad, said Right-of-way line is parallel to and fifty (50) feet Northerly of the main track centerline, the point of beginning;

Thence continue N 02° 32'28" W along the West line of said Southwest Quarter (SW 1/4) for a distance of Two Hundred Forty Seven (247.00) feet;

Thence S 84° 25'25" E parallel to said Canadian Pacific Railroad Right-of-way

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line for a distance of Two Thousand Six Hundred Seventy Five and Forty Hundredths (2675.40) feet to a point on the East line of said Southwest Quarter (SW 1/4);

Thence S 02° 40'38" E along the East line of said Southwest Quarter (SW 1/4) for a distance of Two Hundred Forty Seven and Nine Hundredths (247.09) feet to a point on said Northerly Right-of-way line of the Canadian Pacific Railroad;

Thence N 84° 25'25" W along said Canadian Pacific Railroad Right-of-way line for a distance of Two Thousand Six Hundred Seventy Five and Ninety Nine Hundredths (2675.99) feet to the point of beginning.

Said Tract contains 15.02 Acres, more or less.

Said Tract subject to Rights-of-way and Easement Recorded and unrecorded.

#### **SECTION 2. CONSTRUCTION, OPERATION AND MAINTENANCE**

(a) Grantee shall use materials and equipment which conform with the standards of construction adopted by the National Electrical Safety Code of the United States of American, Department of Commerce.

(b) All conduits, poles and wires installed by virtue of this Ordinance shall be erected in such places and in such a manner as not unnecessarily to encroach upon streets, alleys, bridges, or public grounds of said City and so as not to unnecessarily obstruct the use thereof for the ordinary purpose of travel thereon and the erection thereof shall be subject to the reasonable supervision and direction of said city.

(c) All poles, conduits and wire shall be placed so as not to interfere with the construction or placing of any water pipes, sewers, or drains or the flow of water therefrom, which has been or may be placed by authority of said City.

(d) During the construction, maintenance or enlargement of any part of said electric power distribution system, said Grantee shall not unnecessarily impede or block travel in said streets and alleys in said City and any excavation made shall be properly lighted at night during the construction. The Grantee shall leave all streets, alley, sidewalks, curbs, and public places and all grounds disturbed by said construction in good condition upon the completion of said construction.

(e) Grantee shall be liable for all loss or damage caused by the negligence of Grantee, which may result to persons or property within the said City caused by it, or its agents, servants, or employees in erecting operating and maintaining the said electric system within said City and shall at all times save the City harmless from any and all damages to persons or property in erecting, operating or maintaining said electric system within said City and shall at all times save the City harmless from any and all damages to persons or property in erecting, operating or maintaining said electric system.

(f) The City reserves the right to make and adopt, and the rights and privileges hereby granted shall at all times be and remain subject to such reasonable regulations of a police nature, as it may deem necessary for the best interests of the City, the City will not, by any such regulations or by its acts of its own or agents, do anything to prevent or interfere with the Grantee carrying on its business in accordance with the franchise hereby granted.

#### **SECTION 3. TRIMMING TREES:**

There is granted to Grantee permission and authority to trim all trees in alleys, streets, and public grounds of said City so as to remove all parts of said trees interfering with the proper erection, maintenance and operation of poles, wires, or other fixtures or appliances installed or to be installed pursuant to authority hereby granted.

#### **SECTION 4. ASSIGNMENT**

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Grantee shall have full right and authority to assign to any person, persons, firm or corporation all the rights that are given it by the Ordinance, provided that the assignees of such rights, by accepting such assignment shall become subject to the terms and conditions of this Ordinance.

### **SECTION 5. LIABILITY**

The Grantee shall use due diligence and care in furnishing electric service as herein provided but shall not be liable for any loss or damage which may arise from failure of the service, either partial or total, but this shall not be construed to exempt said Grantee from liability for negligence.

### **SECTION 6. REGULATORY LAWS**

This ordinance shall be subject to any present or future laws of a regulatory nature applicable to Grantee and enacted by the State of North Dakota, or any amendment or addition to such laws

### **SECTION 7. FRANCHISE FEES**

The City reserves the right, if not prohibited by the laws of the State of North Dakota, to make charge of the Grantee for this franchise of such percent as determined by resolution adopted by the City Council of the gross revenue received by the Grantee in the City of Hankinson from the users of electrical service distributed to them by the Grantee in the City of Hankinson, which charge shall be subject to review of the City of Hankinson City Council at the first meeting in January of each and every year of the franchise period.

### **SECTION 8. APPROVAL AND ACCEPTANCE**

This ordinance shall take effect and be in full force from and after its passage and approval, The Grantee shall specify its acceptance of this franchise in writing, to be filed with the auditor and in no event shall this Ordinance be finding on Grantee until the filing of such acceptance

Approved December 4, 2006

First Reading: November 6, 2006  
Second Reading: December 4, 2006  
Final Passage: December 4, 2006

**Ordinances - City of Hankinson, North Dakota**

**MONTANA DAKOTA UTILITIES**

**ORDINANCE NO. 2007-08**

**AN ORDINANCE GRANTING TO MONTANA-DAKOTA UTILITIES, CO.,  
A DIVISION OF MDU RESOURCES GROUP, INC., A CORPORATION,  
ITS SUCCESSORS AND ASSIGNS,  
THE FRANCHISE AND RIGHT TO CONSTRUCT, MAINTAIN AND OPERATE,  
WITHIN AND UPON, IN AND UNDER THE STREETS,  
ALLEYS AND PUBLIC GROUNDS OF THE CITY OF HANKINSON  
A GAS DISTRIBUTION SYSTEM FOR TRANSMITTING AND  
DISTRIBUTING NATURAL OR MANUFACTURED GAS, OR  
A MIXTURE OF BOTH, FOR PUBLIC AND PRIVATE USE**

Be it ordained by the City Council of the City of Hankinson, North Dakota, hereinafter called the "City":  
that Chapter \_\_\_\_\_ is hereby repealed and reenacted to provide as follows:

**SECTION I:**

For convenience, herein, said municipal corporation is designated and referred to as "Municipality" and Montana-Dakota Utilities Co., is designated and referred to as "Grantee". Any reference to either includes their respective successors and assigns.

**SECTION II:**

There is hereby granted to Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., a corporation, Grantee, its successors and assigns, subject to the limitations herein stated, the right and franchise to occupy now and use of the streets, alleys and public grounds of the Municipality as now, or hereafter constituted, for the purpose of constructing, maintaining, and operating, within, upon, in and under the same, a gas distribution system for transmitting and distributing natural or manufactured gas, or a mixture of both, for public and private use.

**SECTION III:**

Grantee shall maintain an efficient distribution system for furnishing natural or manufactured gas, or a mixture of both for public and private use at such reasonable rates as may be approved by the Public Service Commission of the State of North Dakota and under such orders, rules or regulations as may be issued by a federal or state agency having jurisdiction thereof.

**SECTION IV:**

This franchise shall not be exclusive and shall not be construed to prevent the Municipality from granting to any other party the right to use the streets, alleys, and public grounds of the Municipality for like purposes.

**SECTION V:**

The Municipality reserves any right it may have, under its police power, or otherwise, to control or regulate the use of said streets, alleys, and public grounds by Grantee.

**SECTION VI:**

Grantee shall indemnify and save and hold the Municipality harmless from any loss or damage due to the construction, installation, and maintenance of its distribution system, and its use of the streets, alleys, and public grounds of the Municipality.

**SECTION VII:**

Grantee shall have the right to assign this franchise to any party, or corporation, but all obligations of Grantee hereunder shall be binding upon its successors and assigns.

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### **SECTION VIII: RESTRICTIONS**

- Subd. 1. All gas pipes, mains, regulators and other property and facilities shall be located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic, travel upon and use of public ways of City. In installing, repairing, maintaining, removing, or replacing said gas pipes, mains and appurtenances, Company shall, in all cases, place the public ways, in, on, under, or across which the same are located in as good condition as they were prior to said operation.
- Subd. 2. Company shall provide field locations for all its underground facilities when requested by City within a reasonable period of time. The period of time will be considered reasonable if it compares favorably with the average time required by the Cities in the county to locate municipal underground facilities for Company. ("County" refers to the County in which City is located).

### **SECTION IX. RELOCATING**

- Subd. 1. Whenever City shall grade, regrade or change the line of any public way, or construct or reconstruct any City utility system therein and shall, in the proper exercise of its police power, and with due regard to reasonable working conditions, when necessary order Company to relocate permanently its mains, services and other property located in said public way, Company shall relocate its facilities at its own expense. City shall give Company reasonable notice of plans to grade, regrade or change the line of any public way or to construct or reconstruct any City utility system therein.
- Subd. 2. Any relocation, removal or rearrangement of any Company facilities made necessary because of the extension into or through City of a federally aided highway project shall be governed by the provisions of North Dakota or Federal Statutes as supplemented or amended.
- Subd. 3. Nothing contained herein shall relieve any person, persons, or corporations from liability arising out of the failure to exercise reasonable care to avoid injuring Company's facilities while performing any work connected with grading, regrading or changing the line of any public way, or with the construction or reconstruction of any City utility system.

### **SECTION X.**

Franchise Fee. The City reserves the right, if not prohibited by the laws of the State of North Dakota, to make charge of the Grantee for this franchise of not to exceed 3% of the gross revenue received by the Grantee in the City of Hankinson from the users of natural or manufactured gas service distributed to them by the Grantee in the City of Hankinson, per year, which charge shall be subject to change of the City by the Hankinson City Council at the first meeting in January of each and every year of the franchise period.

### **SECTION XI.**

Within thirty (30) days after Grantee is notified of passage and final approval of this Ordinance, Grantee shall file with the clerk or auditor of the Municipality its written acceptance of this franchise.

### **SECTION XII.**

This franchise shall continue and remain in full force and effect for a period of twenty (20) years from the date upon which this ordinance shall become effective as provided by law.

Dated this 5<sup>th</sup> day of November, 2007.

First Reading: August 6, 2007

**Ordinances - City of Hankinson, North Dakota**

Second Reading: November 5, 2007  
Date of Adoption: November 5, 2007

**RED RIVER TELEPHONE**

**ORDINANCE 2009-03**

**AN ORDINANCE GRANTING TO RED RIVER TELEPHONE ASSOCIATION, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO USE AND OCCUPY THE STREETS, ALLEYS AND OTHER PUBLIC PLACES OF THE CITY OF HANKINSON, NORTH DAKOTA, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND OPERATING A GENERAL TELEPHONE AND TELECOMMUNICATIONS SYSTEM WITHIN SAID CITY.**

BE IT ORDAINED by the City Council of the City of Hankinson, North Dakota:

Section 1. That Red River Rural Telephone Association, a Minnesota corporation, its successors and assigns, are hereby granted the right to use and occupy the streets, alleys and other public places of the City of Hankinson, North Dakota, for a term of ten (10) years from the effective date hereof, for the purpose of constructing, maintaining and operating a general telephone and telecommunications system within said City.

Section 2. That the rights herein granted are subject to the exercise of the police power as the same now is or may hereafter be conferred upon said City.

Section 3. That Red River Rural Telephone Association agrees to repair any damages caused by the repair or maintenance of the lines or poles, erection of new poles or lines and any damages caused by existing lines or poles falling upon public or private property.

Section 4. That this ordinance shall be in full force and effect and shall constitute a binding contract between the City of Hankinson, North Dakota, and Red River Telephone Association when it shall have been enacted according to law and files with the City Auditor.

Section 5. Red River Telephone Association agrees to notify Hankinson City Auditor and Street Supervisor 24 hours in advance of burying telephone or telecommunications lines within City of Hankinson, North Dakota, street and alley right of ways, and other public places, and to provide information regarding placement and depth of such lines prior to initiation of project. City of Hankinson reserves the right to reject such placement.

Dated this 3<sup>rd</sup> day of August, 2009.  
First Reading: April 6, 2009  
Second Reading: August 3, 2009  
Adopted: August 3, 2009

**Ordinances - City of Hankinson, North Dakota**

**Ordinance 2010-09**

AN ORDINANCE AUTHORIZING THE GRANT OF CABLE COMMUNICATIONS FRANCHISES IN THE CITY OF HANKINSON; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE(S).

The City of Hankinson hereby ordains:

**SECTION 1. SHORT TITLE AND DEFINITIONS**

- 1.) Short Title. This Ordinance shall be known and cited as the Cable Communications Regulatory Ordinance.
- 2.) Definitions. For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.
  - (a) "Basic Cable Service" means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. §543(b)(7).
  - (b) "Cable Programming Service" means any Video Programming provided over a Cable System, regardless of service tier other than:
    - Video Programming carried on the Basic Service Tier;
    - Video Programming offered on a pay-per-channel or pay-per-program basis; or
    - A combination of multiple channels of pay-per-channel or pay per-program Video Programming offered on a multiplexed or time-shifted basis so long as the combined service:
      - consists of commonly-identified Video Programming; and
      - is not bundled with any regulated tier of service.Cable Programming Service as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. §543(1)(2) and 47 C.F.R. 76.901(b) (1993).
  - (c) "Cable Service" means the one-way transmission to Subscribers of Video Programming, or other programming service, and Subscriber interaction, if any, which is required for the selection of such Video Programming or other programming service.

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- (d) "Cable System" or "System" shall have the meaning ascribed to it in federal law.
- (e) "Council" means the Hankinson, North Dakota City Council.
- (f) "Franchise" means an initial authorization, or renewal thereof issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System or other MVPD facility.
- (g) "Franchise Area" means the area within the legal boundaries of the Grantor.
- (h) "Grantee" is the Person which is granted a Franchise in City pursuant to this Ordinance, its agents and employees, lawful successors, transferees or assignees.
- (i) "Grantor" is the City of Hankinson.
- (j) "Gross Revenue" means only that monthly revenue received from Basic Cable Service, Cable Programming Service, and Pay Television directly by the Grantee from the operation of its System within Franchise Area. The term "Gross Revenues" shall not include any other revenue billed or received by the Grantee including franchise fees, late fees, any fees itemized and passed through as a result of franchise imposed requirements or any taxes or fees on services furnished by Grantee imposed directly on any Subscriber or user by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit.
- (k) "Multichannel Video Program Distributor" or "MVPD" means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, an OVS provider, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.
- (l) "Open Video Services" or "OVS" means any video programming Services provided to any person by a Franchisee certified by the FCC to operate an Open Video System pursuant to Section 47 U.S.C. 573, as may be amended, regardless of the Facilities used.
- (m) "Pay Television" means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.
- (n) "Person" is any person, firm, partnership, association, corporation, company, or other legal entity.

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- (o) "Standard Installation" means any residential installation which can be completed using a drop of one hundred fifty (150) feet or less.
- (p) "Street" means the surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway, or drive, or any easement or right-of-way now or hereafter held by Grantor.
- (q) "Subscriber" means any Person who lawfully receives Cable Service.
- (r) "Video Programming" means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

### SECTION 2. GRANT OF AUTHORITY AND GENERAL PROVISIONS

- 1.) Franchise Required. It shall be unlawful for any Person to construct, operate or maintain a Cable System or MVPD facility or to provide Cable Service, Video Programming or other MVPD services, including OVS, in the Grantor without a Franchise authorizing the same, unless applicable federal or State law prohibits the Grantor's enforcement of such a requirement.
- 2.) Grant of Franchise. Any Franchise that is granted in City shall be subject to the terms and conditions contained herein.
- 3.) Grant of Nonexclusive Authority.
  - (a) A Grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Streets, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in Franchise Area, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in Franchise Area of a Cable System.
  - (b) A Franchise shall be nonexclusive, and Grantor reserves the right to grant a similar use of said Streets to any MVPD at any time, provided, however, that all Franchises shall contain the same terms and conditions as this Franchise in order that one MVPD is not granted a competitive advantage over another. In the event a MVPD commences operation without a Franchise or is granted a Franchise to operate by the Grantor, the terms and conditions of which do not comply with this Ordinance, other Grantees shall have the right either (i) to opt in to the competitor's Franchise by providing ten (10) days prior written notice to the Grantor; or (ii) to petition the Grantor for modifications to its Franchise, in which case the Grantor shall work in good faith with the affected Grantee(s) to review and adopt modifications which the Grantee(s) deem necessary, review and approval by Grantor shall not be unreasonably denied.
  - (c) Before granting an additional franchise, the Grantor shall give written notice to all Grantees of any new application, identifying the applicant for such

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additional Franchise and providing at least thirty (30) days prior notice of the date, time, and place at which the Grantor shall consider and/or determine whether such additional Franchise should be granted.

(d) Every Franchise shall apply to the entire service area of the Grantor, as it exists now or may later be configured.

(e) In the event Grantor grants one or more additional Franchises or one or more non-franchised MVPD's commence providing Cable Service in the Grantor, a Grantee shall have the right to terminate or reduce the term of this Franchise in its sole discretion.

(f) Neither City nor Grantee(s) may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any other ordinance and this Franchise, the Franchise shall control.

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

5.) **Territorial Area Involved.** A Franchise shall be granted for the corporate boundaries of Grantor, as it exists from time to time. In the event of annexation by Grantor, or as development occurs, any new territory shall become part of the area covered, provided, however, that Grantee(s) shall not be required to extend service beyond its present System boundaries unless there is a minimum of twenty-five (25) homes per cable mile as measured from the last fiber node or terminating amplifier.

6.) **Written Notice.** All notices, reports, or demands required to be given in writing under this Ordinance shall be deemed to be given when delivered personally to any officer of Grantee or Grantor's Administrator of this Ordinance as specified in a Franchise.

### SECTION 3. APPLICATION FOR NEW FRANCHISE

1.) An application for an initial Franchise to provide Video Programming shall be in writing on a form provided by the City which shall contain where applicable:

(a.) Applicant name and business address of Applicant.

(b.) A statement as to the proposed Franchise Area, and whether Applicant holds an existing authorization to access the Rights-of-Way in the City and a map of the areas where such authorization exists if for an area other than the entire City.

(c.) Resume of prior history of Applicant, including the legal, technical, and financial expertise of Applicant in the Cable Service field.

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- (d.) List of officers, directors, and managing employees of Applicant and resumes of each.
  - (e.) A proposed construction and schedule to provide Cable Service or Video Programming to Subscribers.
  - (f.) A certificate of insurance consistent with the requirements of this Ordinance.
  - (g.) A description of the Cable System the Applicant intends to build, including its capacity, the types of equipment proposed for use and the Cable Services or Video Programming which will be offered.
  - (h.) A description of the financial qualifications of the Applicant to construct and operate the System including a balance sheet, income statement sources and uses of funds statement and pro forma projections for at least three (3) years of operation subsequent to System completion.
  - (i.) A proposed plan for Public, Educational, and Government Access Channels, including funding, facilities, and equipment and capacity on the System to be dedicated for educational and governmental use.
- 2.) The Initial Franchise Application may be evaluated according to the following criteria, and approved within one-hundred eighty (180) days after City deems the Application is complete. In the event Applicant is already authorized to occupy the Rights-of-Way, the time for review and approval will be ninety (90) days.
- (a.) The evidence of legal, technical and financial ability required in the Applicant's proposal will be such as to assure the ability to complete the entire System within a reasonable time from the date the Franchise is granted. The City will also consider the Applicant's ability to operate the System and provide the necessary Cable Services or Video Programming in compliance with the terms of this Ordinance.
  - (b.) The City Administrator or designee shall prepare a report and make his or her recommendations respecting such application to the City Council
  - (c.) A public hearing shall be set prior to any grant of a Franchise, at a time and date approved by the City Council. Within thirty (30) days after the close of the hearing, the City Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise(s) should be granted, and, if granted subject to what conditions.
  - (d.) The City may consider any additional information that it deems applicable.

## Ordinances - City of Hankinson, North Dakota

### SECTION 4 CONSTRUCTION AND OPERATIONS STANDARDS

#### 1.) Conditions on Street Use.

(a) A Grantee shall obtain all required permits from Grantor before commencing any construction upgrade or extension of the System.

(b) The Grantor shall impose no permit fees upon a Grantee.

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

(d) A Grantee shall, on request of any Person holding a moving permit issued by Grantor, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and a Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.

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

(f) Nothing contained in this Ordinance shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities.

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

(h) A Grantee shall at all times construct and operate its System in accordance with applicable FCC Technical specifications.

(i) In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such systems or property has been installed in any street or public place without complying with the requirements of this Ordinance, or the rights granted hereunder have been terminated, cancelled or have expired, Grantee shall, subject

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to the rights of the City to acquire the system as specified in Section 3.1.(j) herein, promptly remove from the streets, or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City.

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

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

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

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

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

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

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

### SECTION 5. SYSTEM PROVISIONS AND PUBLIC SERVICES

- 1.) Operation and Maintenance of System. A Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.
- 2.) Service to Schools and City. A Grantee shall, subject to the line extension requirements of Section 2.5 herein, provide one (1) Drop and one (1) outlet of Basic Cable Service at no cost to public and parochial elementary and secondary schools in City, and one (1) City building to be mutually agreed upon by City and a Grantee.
- 3.) PEG Channel. The Grantee shall allocate one channel to the City as a public, educational or governmental access channel. Until such time as the city files a written request with Grantee for full-time use of the channel, Grantee shall have the right to use that portion of the channel capacity that is not being used by the City. Grantee shall have a reasonable period of time after notification to vacate its use of the channel. Grantee shall assist the City in obtaining the necessary licenses and frequency clearance to enable the City to use said channel.
- 4.) Emergency Use. In the case of any emergency or disaster, a Grantee shall, upon request of the City Council, make available its facilities to the City for emergency use. A Grantee shall comply with the mandatory alert requirements of federal law.
- 5.) Lockout Device. Upon the request of a Subscriber, Grantee shall provide by sale or lease a Lockout Device.

### SECTION 6. OPERATION AND ADMINISTRATION PROVISIONS

- 1.) Indemnification of Grantor.
  - (a) A Grantee shall indemnify, defend, and hold harmless Grantor, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise of a Franchise granted pursuant to this Ordinance, except claims covered by worker's compensation insurance or any claims arising from or related to Grantor's negligence. Nothing in this Ordinance relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Street or public place or with the construction or reconstruction of a sewer or water system.
  - (b) In order for Grantor to assert its rights to be indemnified, defended, and held harmless, Grantor must with respect to each claim:

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- (1) Promptly notify a Grantee in writing of any claim or legal proceeding which gives rise to such right;
- (2) Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
- (3) Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph two (2) above.

2.) Insurance. A Grantee shall maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of Grantor in its capacity as such. The policies of insurance shall be in the sum of not less than Three Hundred Thousand Dollars (\$300,000) for personal injury or death of any one Person, and One Million Dollars (\$1,000,000) for personal injury or death of two or more Persons in any one occurrence, Three Hundred Thousand Dollars (\$300,000) for property damage to any one Person and One Million Dollars (\$1,000,000) for property damage resulting from any one act or occurrence.

3.) Franchise Fee.

- (a) A Grantee will pay Grantor a monthly franchise fee in the amount of three (3%) percent of Grantee's Gross Revenues.
- (b) The franchise fee shall be payable monthly, together with a brief report showing the basis for the computation.
- (c) The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by Grantee is due.

### SECTION 7. REVOCATION, ABANDONMENT, AND SALE OR TRANSFER

1.) Grantor's Right to Revoke. Grantor reserves the right to revoke, terminate or cancel a Franchise, if after strictly following the procedures required by Section 7.2 herein, it is determined that a Grantee has violated any material provision of its Franchise or this Ordinance and has failed to substantially cure said violation.

2.) Procedures for Revocation.

- (a) Grantor shall provide a Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee sixty (60) days subsequent to receipt of the notice in which to substantially cure the violation or to provide adequate assurance of performance. Together with the notice required

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herein, Grantor shall provide Grantee with written findings of fact which are the basis of the revocation.

(b) Grantee shall be provided the right to a public hearing affording due process before the Grantor Council prior to revocation, which public hearing shall follow the sixty (60) day notice provided in paragraph (a) above. Grantor shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.

(c) After the public hearing and upon written determination by Grantor to revoke the Franchise, Grantee may appeal said decision with an appropriate state or federal court or agency.

(d) During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires.

(e) Upon satisfactory correction by Grantee of the violation upon which said notice was given, the initial notice shall become void.

3.) Sale or Transfer of Franchise. No sale or transfer of a Franchise shall take place without the written approval of the Grantor, which approval shall not be unreasonably withheld. All of the rights, privileges, obligations, duties, and liabilities created by this Franchise shall pass to and be binding upon the successor or assign of a Grantee. Said approval shall not be required where a Grantee grants a security interest in its Franchise and assets to secure indebtedness.

### SECTION 8. MISCELLANEOUS PROVISIONS

1.) Franchise Renewal. Any renewal of a Franchise shall be done in accordance with applicable federal law.

2.) Amendment of Franchise. A Grantee and Grantor may agree, from time to time, to amend a Franchise. Such written amendments may be made at any time.

3.) Marketing. A Grantee shall have the right to conduct direct selling in the Franchise Area, including door to door sales, notwithstanding any peddler or solicitor laws or regulations to the contrary.

4.) Severability. If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, unenforceable or unconstitutional by a decision of any authority or court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance and the remainder shall remain in full force and effect.

### SECTION 9. PUBLICATION, EFFECTIVE DATE

1.) Publication; Effective Date. If applicable, this Ordinance shall be published in accordance with law. The effective date of this Ordinance shall be 7-6-2011.

**Ordinances - City of Hankinson, North Dakota**

Passed and adopted this 6<sup>th</sup> day of July, ~~200~~<sup>2010</sup>.

2.) Acceptance.

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

(b) Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.

Passed and adopted this 6<sup>th</sup> day of July, ~~200~~<sup>2010</sup>.

CITY OF HANKINSON

By: [Signature]  
Its: [Signature]

MIDCONTINENT COMMUNICATIONS

By: \_\_\_\_\_

Its: \_\_\_\_\_

Midcontinent Communications Investor, LLC  
Managing Partner of Midcontinent  
Communications

Date: \_\_\_\_\_

First reading: June 7, 2010  
Second reading: July 6, 2010  
Adoption: July 6, 2010

**ORDINANCE 2015-02**

**Red River Communications Cable Communications Regulatory Ordinance**

An Ordinance Authorizing the Grant of Cable Communications Franchise in the City of Hankinson, Setting Forth Conditions Accompanying the Grant of the Franchise:

**The City of Hankinson hereby ordains:**

**Section One: Short Title and Definitions**

1) Short Title: The Ordinance shall be known and cited as the Cable Communications Regulatory Ordinance.

2.) Definition: For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall," is always mandatory and not merely directory. The word "may," is directory and discretionary and not mandatory.

- (a. "Basic Cable Services" means any service tier which includes the lawful retransmission of local broadcast signals and any public, educational, and government access programming required by the franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S. C. §542(b)(7).
- (b. "Cable Programming Service" means any Video Programming provided over a Cable System regardless of service tier other than:

Video Programming carried on the Basic Service Tier

Video Programming offered on a pay-per-channel program basis:  
or

A Combination of multiple channels of pay-per-channel or pay-per-program Video Programming offered on a multiplexed or time-shifted basis so long as the combined service

Consists of commonly identified Video Programming; and

Is not bundled with any regulated tier of service.

Cable Programming Service as defined herein shall not be inconsistent with the definitions set for in 47 U. S. C. §543(1 & 2) and 47 C.F.R. 76.901(b)(1993).

- (c. Cable Service" means the one way transmission to Subscribers of Video Programming, or other programming services and Subscriber interaction, if any, which is required for the selection of such Video Programming or other programming service.
- (d. "Cable System," or "System," shall have the meaning described in Federal Law.
- (e. "Council," means the Hankinson, North Dakota City Council
- (f. "Franchise," means the initial authorization or renewal thereof issued by a

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franchising authority, whether such authorization is designed as a franchise permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System or other MVPD facility.

- (g. "Franchise Area," means the area within the legal boundaries of the Grantor.
- (h. "Grantee," is the Person which is granted a Franchise in City pursuant to the Ordinance, its agents and employees, lawful successors, transferees or assignees.
- (i. "Grantor," is the City of Hankinson
- (j. "Gross Revenue," means only the monthly revenue received from Basic Cable Programming Services and Pay Television directly by the Grantee from the operation of its System within the Franchise Area. The term "Gross Revenues," shall not include any other revenue billed or received by the Grantee including franchise fees, late fees, any fees itemized and passed through as a result of franchise imposed requirements or any taxes or fees on services furnished by Grantee imposed directly on any Subscriber or users by any municipality, state or other governmental unit and collected by Grantee for such governmental unit.
- (k. "Multichannel Video Program Distributor," or "MVPD," means a person such as , but not limited to a cable operator, a multichannel, multipoint, distribution service, a direct broadcast satellite service, an OVS provider, or a television receive only satellite program distributor, who makes available for purchase by subscribers or customers multichannel video programming.
- (l. "Open Video Services," or "OVS," means any video programming Services provided to any person by a Franchise certified by the FCC to operate as an Open Video System pursuant to Section 47 U.S.C. §573 as may be amended, regardless of the Facilities used.
- (m. "Pay Television," means the delivery over the System of pay-per-channel of pay-per-program audio visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.
- (n. "Person (s)," is any person, firm, partnership, association, corporation, company, or other legal entity.
- (o. "Standard Installation," means any residential installation which can be completed using a drop of one hundred-fifty (150) feet or less.
- (p. "Street," means the surface of and the space above and below, any, public street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway,, or drive, or any easement or right-of-way now or hereafter held by Grantor.
- (q. "Subscriber," means any Person who lawfully receives Cable Service.
- (r. "Video Programming," means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

### Section Two: Grant of Authority and General Provisions

- 1.) Franchised Required: It shall be unlawful for any Person to construct, operate or maintain a Cable System or MVPD facility or to provide Cable Service, Video Programming or other

## Ordinance – City of Hankinson, North Dakota

MVPD services including OVS, in the Grantor, without a Franchise authorizing the same unless applicable Federal law or State law prohibits Grantor enforcement of such a requirement.

- 2.) **Grant of Franchise:** Any Franchise that is granted in City shall be subject to the terms and conditions contained herein:
- 3.) **Grant of Nonexclusive Authority**
  - (a.) A Grantee shall have the right and privileges to construct, operate and maintain in, upon, along, across, above and under the streets, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in Franchise Area, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in Franchise Area of a Cable System.
  - (b.) A franchise shall be nonexclusive and Grantor reserves the right to grant a similar use of said Streets to any MVPD at any time, provided, however, that all Franchises shall contain the same terms and conditions as this Franchise in order that one MVPD is not granted a competitive advantage over another. In the event a MVPD commences operation without a Franchise or is granted a Franchise to operate by Grantor, the terms and conditions of which do not comply with this ordinance, other Grantee shall have the right either (i) to opt in to the competitors Franchise by providing ten (10) days prior written notice to the Grantor, or (ii) to petition the Grantor for modifications to its Franchise, in which case the Grantor shall work in good faith with the affected Grantee (s), to review and adopt accommodations which the Grantee(s), deem necessary, review and approval by Grantor shall not be unreasonably denied.
  - (c.) Before granting an additional Franchise, the Grantor shall give written notice to all Grantees of any new application, identifying the applicant for such additional Franchise and providing at least thirty (30) days prior notice of the date, time and place at which the Grantor shall consider and/or determine whether such additional Franchise should be granted.
  - (d.) Every Franchise shall apply to the entire service area of the Grantor, as it exists now or may later be configured.
  - (e.) In the event Grantor grants one or more additional Franchises or one or more non-franchised MVPDs commences providing Cable Services in the Grantor, a Grantee shall have the right to terminate or reduce the term of this Franchise at its sole discretion.
  - (f.) **Neither City nor Grantee may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any other Ordinance and this Franchise, the Franchise shall control.**
- 4.) **Franchise Term:** A Franchise shall be in effect for a period of up to eleven (11) years from the date of acceptance by a Grantee, unless renewed, revoked, or terminated sooner as herein provided:
- 5.) **Territory Area Involved:** A Franchise shall be granted for the corporate boundaries of Grantor, as it exists from time-to-time. In the event of annexation by Grantor, or as development occurs, any new territory shall become part of the area covered, provided, however, that Grantee (s) shall not be required to extend service beyond its present System boundaries unless there is a minimum of twenty-five (25) homes per cable mile as measured from the last fiber node or terminating amplifier.
- 6.) **Written Notice:** All notices, reports or demands required to be given in writing under this Ordinance shall be deemed to be given when delivered personally to any officer by Grantee to Grantor's Administrator of this Ordinance as specified in a Franchise.

### Section Three: Application for New Franchise

- 1.) An application for an initial Franchise to provide Video Programming shall be in writing on a form provided by the City which shall contain where applicable:
  - (a.) Applicant name and business address of Applicant

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- (b. A statement as to the proposed Franchise Area, and whether Applicant holds and existing Authorization to access the Rights of Way on the City and a map of the area where such authorization exists if for an area other than the entire City.
  - (c. Resume of prior history of Applicant, including the legal, technical, and financial expenses of Applicant in the Cable Services field.
  - (d. List of officers, directors, and managing employees of Applicant and resumes of each.
  - (e. A proposed construction schedule to provide Cable Service or Video Programming to Subscribers.
  - (f. A certificate of Insurance consistent with the requirements of this Ordinance.
  - (g. A description of the Cable System the Applicant intends to build, including its capacity, the types of equipment proposed for use and the Cable Services or Video Programming which will be offered.
  - (h. A description of the financial qualifications of the Applicant to construct and operate the System including a balance sheet, income statement, sources and uses of funds statement and pro forma projections for at least three (3) years of operations subsequent to System completion.
  - (i. A proposed plan for Public, Educational and Government Access Channels, including funding, facilities, and equipment and capacity on the System to be dedicated for educational and governmental use.
- 2.) The initial Franchise Application may be evaluated according to the following criteria and approved within one hundred eighty (180) days after City deems the Application complete. In the event Applicant is already authorized to occupy the Rights-of-way, the time for review and approval will be ninety (90) days.
- (a. The evidence of legal, technical and financial ability required in the Applicant proposal will be such as to assure the ability to complete the entire System within a reasonable time frame from the date the Franchise is granted. The City will also consider the Applicant's ability to operate the System and provide the necessary Cable Services or Video Programming in compliance with the terms of this Ordinance.
  - (b. The City Administrator or designee shall prepare a report and make his or her recommendation respecting such application to the City Council.
  - (c. A public hearing shall be set prior to any grant of a Franchise at a time and date approved by the City Council. Within thirty (30) days after the close of the hearing, the City Council shall make a decision based upon the evidence received at the hearing as to whether or not the Franchise (s) should be granted, and, if granted subject to what conditions.
  - (d. The City may consider any additional information that it deems applicable.

### Section Four: Construction and Operations Standards

#### 1.) Conditions and Street Use

- (a. A Grantee shall obtain all required permits from Grantor before commencing any construction upgrade or extension of the System.
- (b. The Grantor shall impose no permit fees upon a Grantee.
- (c. If at any time during the period of this Franchise, Grantor shall elect to alter, or change the grade or location of any Street, alley or other public way, a Grantee shall as its own expense, upon reasonable notice by Grantor, remove and relocate its poles, wires. Cables, conduits, manholes and other fixtures of the System. If Grantor reimburses other occupants of the Street, a Grantee shall be likewise reimbursed.
- (d. A Grantee shall, on request of any person holding a moving permit issued by Grantor, temporarily move its wires, or fixtures to permit the moving of buildings with the expenses of such temporary removal to be paid by the Person requesting the same, and the Grantee shall be given not less than ten (10) days advanced

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notice to arrange for such temporary changes.

- (e. A Grantee shall have the authority to trim any trees upon and overhanging the Streets, alleys, sidewalks or public easements of Grantor so as to prevent the branches of such trees from coming in contact with wires and cables of the Grantee.
- (f. Nothing contained in this Ordinance shall relieve any Person from liability arising from the failure to exercise reasonable care to avoid injuring Grantee's facilities.
- (g. In areas where all other utility lines are placed underground, Grantee shall construct and install its cables, wires, and other facilities underground. In any area where one or more public utilities are aerial, Grantee may construct and install its cables, wires, and other facilities from the same pole with the consent of the owner of the pole.
- (h. A Grantee shall at all times construct and operate its System in accordance with applicable FCC technical specifications.
- (i. In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such systems or property has been installed in any street or the rights granted without complying with the requirements of this Ordinance, or the rights granted hereafter have been terminated, cancelled or have expired, Grantee shall, subject to the rights of the City to acquire the system as specified in Section 3.1.(j) herein, promptly remove from the streets, or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City.
- (j. Any property of Grantee to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the City an instrument to be approved by the City, transferring to the City ownership of such property.
- (k. All cable and passive equipment for cable television reception service installed by Grantee at a Subscriber's location shall remain the property of the Grantee and Grantee shall have the right to remove said cable and equipment. Upon termination of service to any subscriber, the Grantee shall promptly remove all its above ground facilities and equipment from the premises of such subscriber upon request.
- (l. No poles or wire holding structures shall be erected by the Grantee without prior approval of the designated representative of the City Council with regard to locations, height, type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City Council or its designated representative determine that the public convenience would be enhanced thereby.
- (m. Where poles or other wire-holding structures already existing in use in serving the City are available for use by the Grantee, but does not make arrangements for such use, the City Council may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.
- (n. Where the City or a public utility serving the City desires to make use of poles or other wire holding structures of the Grantee but agreement therefore with the Grantee cannot be reached, the City Council may require the Grantee to permit such use for such consideration as is just and reasonable and upon such terms as the Council determines use would enhance the public convenience and would not unduly interfere with the Grantee's operations.
- (o. Grantee shall at all times maintain on file with the City Auditor a schedule setting forth all the rates and charges to be made to subscribers for basic cable service, including installation charges.
- (p. During the term hereof, the City may regulate rates only if authorized to do so by Federal Communications Commission regulation and then such regulation shall only be in accordance with the provision of such regulations.

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### Section Five: System Provisions and Public Services

- 1.) Operation and Maintenance of System: A Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.
- 2.) Service to Schools and City: A Grantee shall subject to the extension requirements of Section 2.5 herein, provide one (1) drop and one (1) outlet of Basic Cable Service at no cost to public and parochial elementary and secondary schools in City, and one (1) City building to me mutually agreed upon by City and Grantee.
- 3.) PEG Channel: The Grantee shall allocate one channel to the City as a public, educational and governmental access channel. Until such time as the city files written request with Grantee for full-time use of the channel. Grantee shall have the right to use that portion of the channel capacity that is not being used by the City. Grantee shall have a reasonable period of time after notification to vacate its use of the channel. Grantee shall assist the City in obtaining the necessary licenses and frequency to clearance to enable the City to use said channel.
- 4.) Emergency Use: In the case of any emergency or disaster, a Grantee shall, upon request of the City Council, make available its facilities to the City for emergency use. A Grantee shall comply with the emergency alert requirements of the Federal law.
- 5.) Lockout Device: Upon request of a Subscriber, Grantee shall provide by sale or lease a Lockout Device.

### Section Six: Operation and Administration Provisions

- 1.) Indemnification of Grantor:
  - (a. A Grantee shall indemnify, defend and hold blameless Grantor, its officers, boards, committees, commissioners, elected officials, employees, and agents from and against all liability, damages and penalties which they may legally be required to pay as a result of the exercise of a Franchise granted pursuant to this Ordinance, except claims covered by worker's compensation insurance or any claims arising from or related to Grantor's negligence. Nothing in this Ordinance relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Street, or public place or with construction or reconstruction of a sewer or water system.
  - (b. In order for Grantor to assert its rights in the indemnification, defended, and held harmless, Grantor must with respect to each claim:
    1. Promptly notify a Grantee in writing of any claim or legal proceeding which gives use to such right;
    2. Afford Grantee the opportunity to participate in and fully control any compromise, settlement, or other resolution or disposition of any claim or proceeding; and
    3. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph two (2) above.
- 2.) Insurance: A Grantee shall maintain in full force and effect at its sole expense a comprehensive general liability insurance policy, including contractual liability coverage, in protection of Grantor in its capacity as such. The policies of insurance shall be in the sum of not less than Three Hundred Thousand Dollars (\$300,000) for personal injury or death of any one Person and One Million Dollars (\$1,000,000) for personal injury or death of two or more Persons in any one occurrence, Three Hundred Thousand Dollars (\$300,000) for property damage to any one Person and One Million Dollars (\$1,000,000) for property damage resulting from any one act or occurrence.
- 3.) Franchise Fee:

## **Ordinance – City of Hankinson, North Dakota**

- (a. A Grantee shall pay Grantor a monthly Franchise Fee in the amount of three (3%) percent of Grantee's Gross Revenues.
- (b. The franchise fee shall be payable monthly, together with a brief report showing the basis for the computation.
- (c. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payments by Grantee is due.

### **Section Seven: Revocation, Abandonment, and Sale or Transfer**

- 1.) Grantor's Right to Revoke: Grantor reserves the right to revoke, terminate, or cancel a Franchise, if after strictly following the procedures required by Section 7.2, herein, it is determined that a Grantee has violated any material provision of its Franchise or this Ordinance and has failed to substantially cure such violation.
- 2.) Procedures for Revocation:
  - (a. Grantor shall provide a Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee sixty (60) days subsequent to receipt of the notice in which to substantially cure the violation or to provide adequate assurance of performance. Together with the notice required herein, Grantor shall provide Grantee with written findings of fact which are the basis for the revocation.
  - (b. Grantee shall be provided the right to a public hearing affording due process before the Grantor Council prior to revocation, which public hearing shall follow the sixty (60) day notice provided in paragraph "a" above. Grantor shall provide Grantee with the written notice of its decision together with written findings of fact supplementing said decision.
  - (c. After the public hearing and upon written determination by Grantor to revoke the Franchise, Grantee may appeal said decision with an appropriate State or Federal court or agency.
  - (d. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof expires.
  - (e. Upon satisfactorily correction by Grantee of the violation upon which said notice was given, the initial notice shall become void.
- 3.) Sale or Transfer of Franchise: No sale or transfer of a Franchise shall take place without the written approval of the Grantor, which approval shall not be unnecessarily withheld. All of the rights, privileges, obligations, duties, and liabilities created by this Franchise shall pass to and be binding upon the successor or assignee of a Grantee. Said approval shall not be required where a Grantee grants a security interest in its Franchise and assets to secure indebtedness.

### **Section Eight: Miscellaneous Provisions**

- 1.) Franchise Renewal: Any renewal of a Franchise shall be done in accordance with the applicable Federal law.
- 2.) Amendment of Franchise: A Grantee and Grantor may agree from time-to-time to amend a Franchise. Such written amendments may be made at any time.
- 3.) Marketing: A Grantee shall have the right to conduct direct selling in the Franchise Area, including door-to-door sales, notwithstanding any peddler or solicitor laws or regulations to the contrary.
- 4.) Severability: If any section, sentence, clause, or phrase of this Ordinance is for any reason to be invalid, unenforceable or unconstitutional by a decision of any authority or court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance and the remainder shall remain in full force and effect.

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Section Nine: Publication, Effective Date

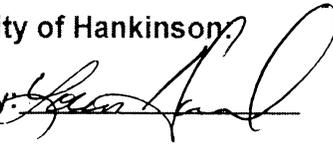
- 1.) Publication, Effective Date: If applicable, this Ordinance shall be published in accordance with law. The effective date of this Ordinance shall be OCTOBER 5, 2015.

Passed and adopted this 5<sup>th</sup> day of OCTOBER 2015.

- 2.) Acceptance:  
(a. Grantee shall accept this Franchise by executing same. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. With its acceptance, Grantee shall also deliver any insurance certificates required herein that have not been previously delivered.

Passed and adopted this 5<sup>th</sup> day of OCTOBER 2015.

City of Hankinson.

By: 

Mayor of Hankinson

Red River Communications

By: 

Its: General Manager  
Red River Rural Telephone Association  
Abercrombie, ND

Date: 10-5, 2015

First reading: September 8, 2015

Second reading: October 5 2015

Adoption: October 5, 2015



