

REVISED
ORDINANCES
OF THE
CITY OF WALHALLA
NORTH DAKOTA

Enacted

September 4, 2012

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CHAPTER ONE

GOVERNMENT ORGANIZATION

ARTICLE 1 – Jurisdiction

1.0101 Over Persons and Property

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

1.0102 Defining City Limits

Description of the city limits of the City of Walhalla, North Dakota within Sections 19, 20, 21, 28, 29 and 30 in Township 163 North, Range 56 West of the 5th Principal Meridian, Pembina County, North Dakota more particularly described as follows:

1. Beginning at the quarter corner common to Sections 19 and 20 which is the true point of beginning; thence N89°38'43"E along the quarter line for 2,647.93 feet to the center of Section 20; thence N0°24'38"W for 604.85 feet to a point; thence N77°47'35"E for 372.85 feet to the tangent to spiral point on the Burlington Northern Railroad right-of-way; thence deflecting left along said right-of-way line on a 1057'22" curve for 734.30 feet to the circular curve to spiral point; thence deflecting left along said right-of-way line on a 10°00' spiral for 48.92 feet to the spiral to circular curve point; thence deflecting left along said right-of-way line on a 10°57'22" curve for 734.30 feet to the circular curve to spiral point; thence deflecting left along said right of way line on a 0°00' spiral for 48.3 feet plus or minus to a point on the east-west quarter quarter line of Section 20; thence N89°38'43"E along said quarter quarter line for 1,500.23 feet to the centerline of State Highway #32; thence S30°22'12"W along said highway centerline for 1,283.84 feet to the tangent to spiral point; thence deflecting right along said highway centerline on a 600' spiral for 132.56 feet to a point on the east -west quarter line of Section 20; thence N89°38'43"E along said quarter line for 575.93 feet to a point; thence S0°47'45"E for 2,626.79 feet to a point on the line between Sections 20 and 29; thence North 89°38'43"E along the line between Sections 20 and 29 for 300.00 feet to the section corner common to Section 20, 21, 28 and 29; thence N04°47'45"W along the line between Sections 20 and 21 for 350.00 feet to a point; thence N89°59'40"E for 1,320.53 feet to a point; thence S0°49'56"E for 350.00 feet to the west quarter quarter corner common to Sections 21 and 28; thence S56°40'E for 200.00 feet to the centerline of the Pembina River; thence S54°32'30"W along said river centerline for 332.19 feet to a point; thence S2°04'20"E for 333.76 feet to a point; thence S43°8'20"W for 155.70 feet; thence N63°42'10"W for 715.77 feet to a point; thence S74°09'50"W for 128.03 feet to a point; thence S50°54'20"W for 455.90 feet to a point; thence S71°13'45"W for 467.63 feet to a point; thence S49°03'05"W for 416.52 feet to a point; thence S22°09'45"W for 279.86 feet to a point; thence S62°19'30"W for 204.75 feet to a point; thence N52°16'05"W for 259.01 feet to a point; thence N29°05'15"W for 497.05 feet to a point; thence N57°14'05"W for 737.39 feet to a point; thence N46°08'25"W for 857.27 feet to a point; thence S64°04'15"W for 303.65 feet to a point; thence S3°59'25"E for 380.65 feet to a point; thence S7°56'20"W for 482.34 feet to a point; thence S47°04'25"E for 559.21 feet to a point; thence S33°25'25"E for 327.01 feet to a point; thence S10°16'05"W for 144.16 feet to a point; thence

S58°02'25"W for 207.80 feet to a point; thence S86°05'W for 1,260.52 feet to a point; thence S58°59'35"W for 264.10 feet to a point; thence S26°17'35"E for 104.05 feet to a point where the river centerline intersects the east-west quarter line of Section 29; thence S89°8'38"W along said quarter line for 1,444.08 feet to the quarter corner common to Sections 29 and 30; thence N0°12'W along the line between Sections 29 and 30 for 1,320.00 feet to the north quarter quarter corner common to Sections 29 and 30; thence S89°5'30"W along the quarter quarter line for 1,320.00 feet to a point; thence N0°29'12"W along the quarter quarter line for 1,320.00 feet to the east quarter quarter corner common to Sections 19 and 30; thence N01°30'W for 65.00 feet to the north right -of-way line of Pembina County Road #55; thence N89°5'30"E along said county road right -of-way line for 990.00 feet to a point; thence N0°01'30"W for 1,905.06 feet to a point; thence N89°35'30"E for 330.00 feet to a point on the line between Sections 19 and 20; thence N0°01'30"W along the line between Sections 19 and 20 for 656.69 feet more or less to the point of beginning. Said description contains 663 acres more or less. Bearings for the above description were deflected from an assumed bearing of N0°30'W along the west line of Section 20.

Amended by the following:

2. 1980 Walhalla Industrial Park that included the addition of Block B and is described to-wit: A parcel of land in the Southeast Quarter of Section 20, Township 163 North, Range 56 West of the Fifth Principal Meridian, more specifically described as follows: Commencing at the northeast corner of said Southeast quarter of said Section 20; thence on an assumed bearing of S89°39'52"W along the quarter line of 1,313.97 feet to the east right-of-way line of the Burlington Northern Railroad; thence S12°10'10"E 498.26 feet along said east right-of-way line to a ferrous aluminum survey monument on the south right-of-way line of State Highway #32, which is the point of beginning; thence northeasterly 186.90 feet along a spiral curve on said south right-of-way line of said State Highway #32 to an iron t-bar monument which is the beginning of a circular curve which is concave northwest and tangent to said spiral curve; thence northeast along said circular curve which is on the south right-of-way line of said Highway #32, having a radius of 1,019.93 feet and central angle of 06°15'36", 111.43 feet to an iron t-bar monument; thence N53°44'36"E 227.56 feet to a ferrous aluminum monument; thence S36°15'24"E 380.00 feet to a ferrous aluminum monument; thence S53°44'36"W 250.00 feet to a ferrous aluminum monument on the east property line of fifteenth street; thence S36°15'24"E 760.00 feet along said east line of fifteenth street to a ferrous aluminum survey monument on the south property line of Riverside Avenue; thence S53°44'36"W 765.84 feet along said south line of Riverside Avenue to a ferrous aluminum monument on the east right-of-way line of the Burlington Northern Railroad; thence N12°10'10"W 1,221.36 feet along said right-of-way line to the point of beginning. Said tract contains 15.44 acres, more or less, Blocks A, B, E, F and part of Block H and Central Avenue, Emmerling Avenue, Riverside Avenue, Fourteenth Street and Fifteenth Street adjacent thereto in Emmerling's first addition to the City of Walhalla, Pembina County, North Dakota, are including within the boundaries of this plat.
3. 1984 Annexation Plat including the ADM Plant: A parcel of land in the East half (E½) of Section 28, and the Southwest Quarter (SW¼) of Section 27, all in Township 163 North, Range 56 West of the Fifth Principal Meridian, Walhalla Township, Pembina County, North Dakota, described as follows: Beginning at the Southeast corner of said Section 28; thence N89°54'55"W on an assumed bearing

- along the south line of said Section 28 365.37 feet to a ferrous aluminum monument; thence N53°07'35"W 2,604.77 feet to a ferrous aluminum monument; thence along ~~33387~~ curve concave northeast having a central angle of 52°25'36", and a tangent length of 163.75 feet; a distance of 304.33 feet along the arc to a ferrous aluminum monument; thence N0041'59"W along a line which is parallel to and 33.00 feet east of the west line of said east half of Section 28, 1,110.39 feet to a ferrous aluminum monument; thence S57°10'57"E parallel to and 100.00 feet southwest of the centerline of the Burlington Northern Railroad 681.80 feet to a ferrous aluminum monument; thence N89°53'52"E along the south line of a roadway easement recorded as document number 154684 in the Pembina County Register of Deeds office, 92.00 feet to a ferrous aluminum monument; thence S57°10'57"E along the southwest right-of-way line of said railroad 3,846.24 feet to a ferrous aluminum monument on the right-of-way line of said railroad and the east line of the West Half of the Southwest Quarter (W½SW¼) of said Section 27; thence S005°11"E 501.65 feet along said east line; thence N89°08'23"W along said south line of Section 27 1,308.48 feet to the point of beginning. Said parcel contains 111.87 acres, more or less subject to easements, rights-of-way and reservations of record.
4. 1995 Brandt Addition: A part of the Northeast Quarter (NE¼) of Section 20, Township 163 North, Range 56 West of the Fifth Principal Meridian, described as follows: Commencing at the Northeast corner of the said Northeast Quarter; thence S88°5'21" W along the north line of said Section 20 a distance of 635.00 feet; thence S01°34'39"E a distance 950.00 feet to the point of beginning; thence continuing S01°34'39"E to a point on the 16th line a distance of 363.11 feet; thence N88°26'51"E along the sixteenth line to a point on the westerly right-of-way line of North Dakota State Highway #32 a distance of 201.51 feet; thence N202°25"E along said right -of-way a distance of 212.90 feet; thence continuing along said right-of-way a distance of 202.71 feet on a spiral curve; thence S88°5'21"W a distance of 209.97 feet; thence S01°34'39"E a distance of 23.00 feet; thence S88°25'21"W a distance of 145.00 feet to the point of beginning. Said parcel contains 2.39 acres more or less.
 5. 1996 Annexation Plat: A part of the Southeast Quarter (SE¼) of Section 20, Township 163 North, Range 56 West of the Fifth Principal Meridian, described as follows: Commencing at the southeast corner of said Southeast Quarter, said point being the point of beginning; thence N0°47'45"W along the east line of said Southeast Quarter to a point at the northeast corner of said Southeast Quarter a distance of 2,641.66 feet; thence N89°17'32"W along the north line of said Southeast Quarter a distance of 295.26 feet; thence S0°47'45"E to a point on the south line of said Southeast Quarter a distance of 2,641.66 feet; thence S89°17'32"E along the south line of said Southeast Quarter a distance of 295.26 feet to the point of beginning said parcel contains 17.90 acres more or less and is subject to county and township right-of-way.
 6. 1998 Southeast Industrial Park: That part of the West Half of the Southwest Quarter (W½SW¼), the Northeast Quarter of the Southwest Quarter (NE¼SW¼) and the south half of the Northwest Quarter (S½NW¼) of Section 28, Township 163 North, Range 56 West was surveyed and platted as Southeast Industrial Park addition to the City of Walhalla, Pembina County, North Dakota, Described as follows: Commencing at the southwest corner of said Section 28; Thence N02°47'39"W along the west line of said Section 28 a distance of 1,313.58 feet to the north line of the Southwest Quarter of the Southwest Quarter of Section 28 being the point of beginning; thence continuing N02°47'39"W along the west line of said Section 28 a distance of 1,313.58 feet to the north line of the Southwest Quarter of said Section 28; thence N87°44'34"E along the north line of the Southwest Quarter of said Section 28 a

distance of 450.00 feet; thence N02°47'39"W a distance of 40.00 feet; thence N87°44'34"E a distance of 1,340.47 feet; thence N03°15'21"W a distance of 696.25 feet; thence N69°33"W a distance of 54.41 feet; thence N03°15'21"W to the south line of the railroad right of way a distance of 148.87 feet; thence along the railroad right-of-way around a curve to the right through a central angle of 0°33'37" an arc distance of 144.47 feet having a chord bearing of S63°10'18"E; Thence S03°15'21"E a distance of 2,158.14 feet to the north line of the Southeast Quarter of the Southwest Quarter of said Section 28; thence S87°44'05"W along the north line of the Southeast Quarter of the Southwest Quarter of said Section 28 a distance of 681.37 feet; thence S03°15'21"E a distance of 719.40 feet; thence N76°05'46"W a distance of 749.56 feet; thence S02°47'29"E a distance of 352.84 feet; thence N87°43'36"E a distance of 99.37 feet; thence S02°47'39"E a distance of 450.00 feet to a point on the south line of said Section 28; thence S87°43'37" W along the south line of said Section 28 a distance of 50.00 feet; thence N02°47'39"W a distance of 150.00 feet; thence S87°43'36"W a distance of 313.00 feet; thence N02°47'39"W a distance of 300.00 feet; thence N87°43'36"E a distance of 243.63 feet; thence N02°47'39"W a distance of 358.66 feet; thence N76°05'46"W a distance of 285.56 feet; thence N25°15'04"W a distance of 462.00 feet to the point of beginning, containing 3,338,228 square feet or 76.64 acres more or less.

1.0103 Voting Precincts

The City of Walhalla is consolidated into one precinct for City elections, and at all City elections one ballot box and one poll book shall be kept and provided for the entire City.

1.0104 City Fines and Penalties Limited

The provisions of North Dakota Century Code 40-05-06 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

In case no other specific penalty is prescribed for the violation of any section or provision of any article of this ordinance or subsequent ordinances, any person found guilty of violating the same shall be punished by a fine not to exceed \$1000, or by imprisonment not to exceed 30 days, or both such fine and imprisonment in the discretion of the court; the court to have power to suspend any sentence and to revoke the suspension thereof.

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

ARTICLE 2 – City Council

1.0201 Regular Meetings

The City Council shall hold regular meetings at seven o'clock P.M. on the first Monday of every month. If any day designated for a meeting shall be a legal holiday, the meeting shall be held the following day. Such meetings may be adjourned from time to time and all action taken at such adjourned meetings shall be considered as taken at the regular meeting. One week intervening between sessions shall be construed as the interval necessary between the first reading and the second reading and passage of ordinances.

1.0202 Special Meetings – Notice Of

Special meetings shall be called by the Mayor whenever he shall deem it necessary for the transaction for the business of the City, or whenever requested by two members of the City Council. Special meetings shall be held on the date, hour, and place specified in the call issued by the Mayor.

The City Auditor shall give notice in writing of the date of the meeting and the purpose for which such meeting is called, and no business shall be transacted thereat except such as is stated in the notice. The City Auditor may serve such notice upon all members of the City Council who have not signed the request to the Mayor for such meeting, and such service may be personal or by mail.

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

All meetings of the City Council 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 North Dakota Century Code 44-04-20 and amendments.

1.0204 Quorum

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

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

1.0205 Reconsidering or Rescinding Votes at Special Meeting

The provisions of North Dakota Century Code 40-06-04 and all subsequent amendments are hereby incorporated by reference in this ordinance.

No vote of the City Council of a municipality shall be reconsidered or rescinded at a special meeting unless there is present at such special meeting as large a number of members as were present when such vote was taken.

1.0206 Standing Committees, Appointments of

The following standing committees shall be appointed by the Mayor at the organizational meeting of the City Council, and their reports shall be received in the following order unless otherwise consented to:

1. Board of Health
2. Streets and Alleys
3. Municipal Services

4. Police, Fire, and Traffic
5. Recreation and Ordinances
6. Financial and Building Permits
7. Ways and Means and City Buildings

Other committees as may be added by resolution or ordinance. Each committee shall consist of three members. The first named member of each committee shall be chairman thereof.

1.0207 Rules and Order of Business

Rules and order of business for the parliamentary government of the City Council shall be governed by Robert's Rules of Order.

ARTICLE 3 – Elective Officers

1.0301 City Council – Who Constitutes

The governing body of the City 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.

1.0302 Term of Office of Council Members

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

1.0303 Duties of Council Members

Each council member shall perform the duties provided by law and the ordinances of the City of Walhalla. He shall attend all regular and special meetings of the City Council, and of his particular committees, and the Board of Equalization, unless absent from the City or excused by the Mayor.

1.0304 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.

1.0305 When President and Vice President of a Council are Elected

The provisions of North Dakota Century Code 40-08-11 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.

1.0306 Vacancies on Council or in Office of Mayor – How Filled

The provisions of North Dakota Century Code 40-08-08 and 40-08-16 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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 15 days of the date of such vacancy appoint a person to fill such vacancy until the next City election, at which election the unexpired term shall be filled. Upon petition of five percent 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 15 days and before 4:00 p.m. of the 15th day of the date of such vacancy or of the vacancy being filled by appointment. If the petition is mailed, it shall be in possession of the council or its representative before 4:00 p.m. on the 15th day after the vacancy occurs or after the vacancy was filled by appointment.

If a vacancy occurs in the office of Mayor, the City Council may call a special City election to fill such vacancy for the unexpired term or may, after fifteen days from the date of such vacancy, elect one of its members to act as Mayor, the member so elected shall possess all of the rights and powers of the Mayor until the next election and until a Mayor is elected and qualified. Upon petition of five percent of the electors, as determined by the total number of votes cast in the City in the last general election, the council shall call a special election to fill a vacancy occurring more than six months prior to the next City election, provided such petition is submitted within 15 days of the date of such vacancy. During the interim between date when a vacancy occurs in the office of the Mayor and election and qualification of a successor, the president of the City Council shall be acting Mayor.

1.0307 Absence or Disability of Mayor – Who to be Acting Mayor

During the absence of the Mayor from the City or during his temporary disability, the president of the City Council shall be the acting Mayor and shall possess all of the powers of the Mayor. In the absence or disability of the Mayor and the president of the City Council, the vice president of the City Council shall be the acting Mayor.

1.0308 Mayor to Preside at Council Meetings – Voting Power of Mayor

The Mayor shall preside at all meetings of the City Council, but shall not vote except in case of a tie, when he shall cast the deciding vote.

1.0309 Mayor May Remove Appointive Officers – Reasons for Removal to be Given

The Mayor may remove any office appointed by him whenever he is of the opinion that the interests of the City demand such removal, but he shall report the reasons for such removal to the council at its next regular meeting.

1.0310 Mayor may Suppress Disorder and Keep Peace

The Mayor may exercise within the City limits the powers conferred upon the sheriff to suppress disorder and keep the peace.

1.0311 Mayor to Perform Duties Prescribed by Law – Enforced Laws and Ordinances

The Mayor shall perform all duties prescribed by law or by the City ordinances, and shall see that the laws and ordinances are faithfully executed.

1.0312 Inspection of Books, Records and Papers of City by Mayor

The Mayor, at any time, may examine and inspect the books, records and papers of any agent, employee or officer of the City.

1.0313 Ordinance or Resolution Signed or Vetoed by Mayor

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

1.0314 Message to Council

The Mayor annually and from time to time shall give the council information relative to the affairs of the City and shall recommend for consideration such measures that he may deem expedient.

1.0315 Mayor 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 18 years to aid in the enforcing of the laws and ordinances of the City.

1.0316 Police Chief and Policemen Appointed by Mayor

The Mayor may appoint any number of policemen which he and the City Council may deem necessary to preserve the peace of the City, and he shall appoint one of the number as Chief of Police. Such appointment shall be subject to approval of the council.

1.0317 Mayor May Administer Oath

The Mayor of the City may administer oaths and affirmations.

ARTICLE 4 – Elective Officers Other Than City Council

1.0401 Municipal Judge

There shall be elected each four years a Municipal Judge who shall hold office until a successor is elected and qualified. The Municipal Judge shall perform all the duties prescribed by law and the ordinances of this City. The Municipal Judge shall receive a salary as full compensation for all services rendered.

1.0402 Report to the City Auditor

It shall be the duty of the Municipal Judge to make and file a full report under oath, of all fees, fines, and other monetary considerations collected by the court during the preceding month, and showing the actions in which these amounts were collected. Until such report has been filed with the City Auditor, no salary shall be paid to the Municipal Judge.

1.0403 Fees to City Auditor

The Municipal Judge shall transfer the amount of fees, fines, and other monetary consideration collected in municipal court to the City Auditor at the end of each month.

1.0404 Court Hours

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

1.0405 Duties of Municipal Judge

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

ARTICLE 5 – Appointive Offices

1.0501 Appointive Officers

At the first regular meeting of the City Council after the election of the Mayor, or within a reasonable time thereafter, the Mayor shall appoint and submit to the City Council for their approval and confirmation, a City Auditor, a City Engineer, a City Assessor, a City Attorney, a Chief of Police, and a Health Officer, who shall be a practicing physician, as well as any other officers that may be provided for by ordinance.

The Mayor shall also appoint such number of police officers from time to time as he and the City Council shall deem necessary for the perseverance of good order in the City.

1.0502 Failure to Confirm Appointments

The said appointments shall be confirmed by a majority ballot of all the council members elected, except that in the case of a tie vote, the appointment shall be confirmed, and in case of the failure of the City Council to confirm any such appointees, the Mayor shall immediately make another appointment to be acted on in like manner by the City Council, and shall proceed until all of said offices are filled. The Mayor can a second time submit the name of any appointee who has once failed of confirmation by stating in writing with such appointment his reasons thereof; but an appointee twice rejected by the council cannot a third time be appointed by the Mayor. When in the opinion of the Mayor and City Council no suitable person is available for any appointive position, no appointment need be made, unless the state law requires otherwise.

1.0503 When Action on Appointments is Postponed

The City Council may, upon the concurrence of two-thirds of the council members elected, postpone action on such appointments to a special session of the council to be held within one week from the date of such adjournment and no later.

1.0504 Term of Appointive Officers

The appointive officers of the City shall hold their respective offices for two years, and until their successors are appointed and qualified.

1.0505 Removal of Officers

The Mayor shall have power to remove any officer appointed by him whenever he shall be of the opinion that the interests of the City demand such removal, but he shall report the reasons for such removal to the City Council at its next regular meeting following such removal.

1.0506 When Successor Ad Interim Appointed

A successor ad interim may be appointed by the Mayor to fill a vacancy caused by removal or death or disqualification of any officer; said officer shall qualify and be subject to the same liabilities and vested with the same rights of a duly qualified and confirmed officer until the next regular meeting of the City Council.

1.0507 Duties of City Auditor

The City Auditor shall perform all the duties required of him by law or ordinance. He shall issue the calls for all special meetings of the City Council when requested to do so by the Mayor. He shall keep a full and complete record of all meetings of the City Council, and of all receipts and disbursements. He shall issue all licenses and permits granted by or under the authority of the City Council, and shall perform such other duties as may from time to time by the City Council be imposed.

1.0508 Duties of City Attorney

The City Attorney shall be the legal advisor to the City, and shall represent the City in all litigated matters. He shall draft all ordinances, bonds, contracts, leases, conveyances and such other instruments required by the City when requested. He shall perform such other legal or professional services as may be required of him by the Mayor, the City Council, or the Chairman of any standing committee of the council. He may received additional compensation over and above his salary, whenever, in the opinion of the City Council, the circumstances warrant such additional compensation.

1.0509 Duties of City Engineer

The City Engineer shall have charge and control over all streets, plumbing, sewers, sidewalks, and City property generally. He shall perform all duties required by law or ordinance or a City Engineer or Street Commissioner. He shall have the powers of a police officer and shall be assistant Health Officer. He shall see that all installations of sewer and plumbing connections are in accordance with applicable laws and ordinances, and shall comply with all requirements of the City Council.

1.0510 Duties of City Assessor

The City Assessor shall perform all the duties proscribed by the laws of the State of North Dakota and the ordinances of the City. He shall attend all meetings of the Board of Equalization, and shall attend any meeting of the City Council when requested to do so by the Mayor or City Council and give such information as may be required.

1.0511 General Duties of Other Appointive Officers

All appointive officers shall perform such duties as required by the laws of the State of North Dakota relating to cities incorporated under general law, and the ordinances, rules and regulations of the City of Walhalla respecting their official duties, and such other duties as the Mayor and City Council shall from time to time by ordinance or resolution require.

ARTICLE 6 – Special Provisions Regarding City Officers

1.0601 Bonds of City Officers

The Auditor, Municipal Judge, Assessor, and such other officers as the City Council may direct, before entering upon the discharge of the duties of their respective offices, shall execute and deliver to the City their separate bonds payable to the City, conditioned for the honest and faithful performance of their official duties. Such bond shall be in an amount to be fixed by the City Council.

The bond of the City Auditor at all times shall be in an amount equal to at least to the maximum amount of money that shall be subject to his control at any one time. All official bonds shall be approved by the Mayor and filed in the office of the City Auditor. Such bonds shall conform to the provisions of law applicable to the bonds of the state officers and employees except that no personal surety shall be accepted on any such bond. The City shall not pay the premium on any bond except a bond written in the state bonding fund. The City Council may at any time require new and additional bonds of any officer.

1.0602 Oaths of City Officers

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

1.0603 Compensation of Mayor and Council Members

The Mayor shall receive such compensation as the City Council may direct by ordinance.

The Council members shall receive such compensation for their services as shall be fixed by ordinance.

1.0604 Salaries of City Officials and Appointive Officers

Salaries of City officials and appointive officers, except as otherwise provided by law, shall be in such sums and amounts as may be fixed from time to time by resolution of the City Council.

1.0605 Meals, Lodging, and Mileage – Amount Allowed

Each elective or appointive officer, employee, representative, or agent of this City, or of any of its subdivisions, boards or commissions may make claim and shall upon approval of such claim, be reimbursed for meals and lodging while representing the City on official business. Verification by receipt for such expense shall be required.

Mileage expenses shall be reimbursed at the rate provided for under state law for state officials and employees.

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

1.0606 Personal Interest in Contract by Public Officer – Prohibited

No contract for the furnishing of supplies to the City, or buying of property from the City shall be entered into by any officer of the municipality, provided, however, that such contracts may be entered into with an officer of the City, if such contract is unanimously approved by other members of the City Council by a finding unanimously adopted by such other members, and entered in the official minutes of the City Council, to be necessary for the

reason that the services or property are not otherwise available at equal cost. (Source: North Dakota Century Code section 40-13-05)

1.0607 Retiring Officer to Turn Over Books

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

1.0608 Administrative Policy and Procedure

Each officer shall:

1. Perform all duties required of their office by law or ordinance and such other duties not in conflict as may be required by the City Council.
2. Be immediately responsible to the City Council 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 City Council such new practices as appear to be of benefit to the service and to the public.
4. Submit such reports of activities of their departments as the governing board may request.
5. Be responsible for the proper maintenance of all City property and equipment used in their departments.
6. Establish and maintain records in sufficient detail to furnish all information needed for proper control of department activities and to form a basis for reports to the governing board.
7. Cooperate with other officers, departments and employees.
8. Have power to direct and supervise all department subordinates.
9. Be available during the hours designated by the City Council.

1.0609 Obstructing a Public Official – Prohibited

Every person who willfully delays or obstructs a public officer in the discharge or attempt to discharge any duty of his office shall be guilty of an infraction. Upon conviction, for a violation of this section, such person shall be fined not more than \$500.

ARTICLE 7 – Purchasing and Disposition of Property

1.0701 Competitive Bidding Requirements

All purchase of and contracts for supplies and contractual services with a cost in excess of \$7500 shall be based on competitive bids.

1.0702 Procedure

All supplies and contractual services except as otherwise provided herein, when the estimated cost thereof shall exceed \$2500 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 consecutive weeks and the opening of the bids so received not less than 21 days after the first publication thereof. The lowest responsible bidder shall be the lowest best bidder for the project considering past experience, financial condition, past work with the City Council, and other pertinent attributes identified in the advertisement for bids.

1.0703 Open Market Purchases – Emergency

When the City Council decides that an emergency requires the immediate purchase of supplies or contractual services, the purchases may be made without competitive bidding.

1.0704 Accounts Against City to be in Writing

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

1.0705 Further Verification May be Required

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

1.0706 Conveyance, Sale, Lease or Disposal of Property

If the value of real property to be conveyed, sold, or disposed of has an estimated value, as determined by the City Council, of more than \$2,500, such property shall be sold at public sale upon resolution by the City Council. A notice containing the where and what day and hour when the sale will be held shall be published in the City's official newspaper once each week for two consecutive weeks with the last publication being at least 10 days in advance of the date set for the sale. The notice shall specify whether the bids are to be received at auction or as sealed bids as determined by the City Council. The property advertised shall be sold to the highest bidder if his or her bid is deemed sufficient by the majority of the members of the City Council.

If the value of the real property to be conveyed, sold, or disposed of has a value estimated by the City Council to be less than \$2,500 upon the proper resolution of the City Council, such property may be sold at a private sale.

Leasing or renting of real property by the City shall be on such terms and conditions and for such duration as the City Council may establish.

The City, upon the proper resolution of the City Council, to cooperate with any City, county, school district or other public body, may convey sell, lease or dispose of real property to any City, county, school district or other public body at private sale. Said conveyance, sale, lease or disposal must be for the purpose of cooperating with said

City, county, school district or other public body, and the City Council must determine that said conveyance, sale, leasing or disposal of property is in the best interest for the development and administration of the City.

1.0707 Sale of Personal Property

If the value of personal property to be conveyed, sold, or disposed of has an estimated value, as determined by the City Council, of more than \$2,500.00, such property shall be sold at public sale upon resolution by the City Council. A notice containing the where and what day and hour when the sale will be held shall be published in the City's official newspaper once each week for two consecutive weeks with the last publication being at least 10 days in advance of the date set for the sale. The notice shall specify whether the bids are to be received at auction or as sealed bids as determined by the City Council. The property advertised shall be sold to the highest bidder if his or her bid is deemed sufficient by the majority of the members of the City Council.

If the value of the personal property to be conveyed, sold, or disposed of has a value estimated by the City Council to be less than \$2,500.00 upon the proper resolution of the City Council, such property may be sold at a private sale.

Leasing or renting of personal property by the City shall be on such terms and conditions and for such duration as the City Council may establish.

The City, upon the proper resolution of the City Council, to cooperate with any City, county, school district or other public body, may convey sell, lease or dispose of personal property to any City, county, school district or other public body at private sale. Said conveyance, sale, lease or disposal must be for the purpose of cooperating with said City, county, school district or other public body, and the City Council must determine that said conveyance, sale, leasing or disposal of property is in the best interest for the development and administration of the City.

ARTICLE 8 – Municipal Elections

1.0801 Qualified Electors in Municipal Elections – Restrictions

The provisions of North Dakota Century Code 40-21-01 and all subsequent amendments are hereby incorporated by reference in this ordinance.

Every resident of a municipality who is qualified to vote therein at general elections may vote at all municipal elections held therein.

1.0802 Polling Places – Polls Open – Notice

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

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

1.0803 Designation of Polling Places for Municipal Elections

The City Council, at the time of calling any general or special municipal election, or prior to the time of registration for said election, if said registration is required by law, shall by resolution, designate such voting precincts and polling places for said election as it may deem necessary for the conduct of the same, and shall, in giving notice of said election, designate such voting precincts and polling places.

1.0804 Compensation of Inspectors, Judges and Clerks at Municipal Elections

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

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

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

The provisions of North Dakota Century Code 40-21-06 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.

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

The provisions of North Dakota Century Code 40-21-07 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 60 days and before four p.m. on the 60th 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 corporate limits of the City. If a petition is mailed, it must be in the possession of the City Auditor before four p.m. on the 60th day prior to the holding of the election. In no case shall more than 300 signatures be required, and such signatures may be on separate sheets of paper. Each qualified elector who signs a petition shall add to the petition the petitioner's mailing address.

1.0807 Ballots in Municipalities – Makeup

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

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

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

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

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

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

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

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

1.0810 City Auditor to Notify of Election or Appointments

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

The City Auditor, within five days after the result of an election is declared or the appointment of an officer is made within the municipality, shall notify each person elected or appointed to municipal office of his election or appointment. Within the same period of time, the City Auditor shall also notify the state supreme court of the election or appointment of any Municipal Judge or alternate judge.

1.0811 New Election Upon Failure to Elect

The provisions of North Dakota Century Code 40-21-15 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 City Council may order a new election.

1.0812 Special Elections Conducted in Same Manner as General Elections

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

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

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

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

The person having the highest number of votes for any municipal office shall be declared elected to such office. In case of a tie vote in the election of any municipal officer, a recount must be conducted pursuant to Section 16.1-16-01 of the North Dakota Century Code. If a recount results in a tie vote, the choice shall be determined by a drawing of names in the presence of the City Council and in a manner it directs. A candidate involved in a tie vote may withdraw from consideration by signing a written statement to that effect in the presence of the filing officer of the election.

ARTICLE 9 – Walhalla Economic Development Corporation

1.0901 Creation

In order to improve the economic outlook within the City of Walhalla, the City has created an economic corporation named the Walhalla Economic Development Corporation in an effort to create employment opportunities; attract new businesses and industry; assist existing businesses and industry to expand or remain competitive. The creation of this enterprise is authorized under Article 3(j) of the City of Walhalla Home Rule Charter.

1.0902 Governing Body

The governing body of the Walhalla Economic Development Corporation will consist of three members selected by the Mayor and approved by the City Council who will serve two year terms. This governing body shall be required to report to the City Council of their activities on a quarterly basis, unless requested to report earlier by the Mayor or City Council. Funds budgeted to the Walhalla Economic Development Corporation must be approved by the City Council.

1.0903 Authority

1. Cooperate with and assist other economic development agencies or governmental entities to provide assistance for an area project that would be of economic benefit or for the betterment of the City of Walhalla;
2. Borrow money and otherwise incur indebtedness for the purpose of assisting qualified entities and issue its bonds, debentures, notes, securities, or other evidences of indebtedness, whether secured or unsecured, therefor and secure the same by mortgage, pledge, deed of trust, or other lien on it property, franchise, rights, and privileges of every kind and nature;
3. Purpose, receive, hold, lease, or otherwise acquire, and sell and convey, mortgage, lease, pledge, or otherwise dispose of its property;
4. Acquire by purchase or otherwise the good will, business, rights, property, and other assets, or any part thereof, that may be in furtherance of the corporate purposes provided herein, and to maintain, operate, sell, lease, or otherwise dispose of the same.

1.0904 Prohibited Acts

1. Spend funds other than as budgeted by the City Council or as specifically approved by the City Council.
2. Incur any indebtedness which would be deemed to be a general obligation of the City or which would be a lien against or encumber assets of the City, without the express consent of the City Council.

1.0905 Certain Economic Development Records Exempt from Disclosure

1. The following economic development records and information are not public records subject to North Dakota Century Code 44-04-18 and Section 6 of Article XI of the Constitution of North Dakota.
 - a. Records and information pertaining to a prospective location of a business or industry, including the identity, nature, and location of the business or industry, when no previous public disclosure has been made by the business or industry of the interest or intent of the business or industry to locate in, relocate within, or expand within the City. This exemption does not include records pertaining to the application for permits of license necessary to do

business or to expand business operations within the City except as otherwise provided by law.

- b. Trade secrets and commercial or financial information received from a person, business, or industry that is interested in or is applying for or receiving financing or technical assistance, or other forms of business assistance.
2. Section 44-04-19 and Section 5 of Article XI of the Constitution of North Dakota do not apply to that part of a meeting of the Walhalla Economic Development agency held to consider or discuss records and information exempt from public inspection under subsection 1 if:
- a. The partial disclosure of the meeting is authorized under this subsection by a motion made and carried in a meeting open to the public;
 - b. Only the records and information exempt from public inspection under subsection 1 are considered or discussed at the closed portion of the meeting, and;
 - c. Final action concerning the records and information is taken at a meeting open to the public.

1.0906 Confidentiality of Trade Secrets and Commercial and Financial Information

Trade secrets and commercial and financial information are confidential if of a privileged or confidential nature and obtained by any agency of the City or institution, department, or board from any person or organization under a contract or license agreement entered into by any agency, institution, department, or board of the City. The term "trade secrets" includes a computer software program and components of a computer software program which are subject to a copyright or a patent, and any formula, pattern, computation, program, devise, method, technic, or process supplied to any City agency, institution, department, or board which is the subject of efforts by the supplying person or organization to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons or organizations that might obtain economic value from its disclosure or use.

CHAPTER TWO

ORDINANCES

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CHAPTER TWO

ORDINANCES

ARTICLE 1 – Procedure

2.0101 Enacting Clause for Ordinances

The enacting clause for every ordinance adopted by the City shall be “Be it ordained by the City Council of the City of Walhalla.” Such caption, however, may be omitted where the ordinances are published in book form or are revised and digested.

2.0102 Procedure in Passing Ordinances

All ordinances shall be read twice and the second reading and final passage shall not be had in less than one week after the first reading. After the first reading and before final passage, an ordinance may be amended. Except as otherwise specifically provided, a majority of all of the members of the City Council must concur in the passage of an ordinance, and in the creation of any liability against the City, and in expending or appropriating money.

2.0103 Yea and Nay Vote on Passage – When Required

The yea and nay shall be taken and entered on the journal of the City Council’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.

2.0104 Reconsideration or Rescinding Vote

No vote of the City Council 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.

2.0105 Publication of Ordinances

The title and penalty clause of every ordinance imposing any penalty, fine, imprisonment or forfeiture for violation of its provisions, after the final adoption of such ordinance, shall be published in one issue of the official paper of the municipality.

2.0106 Effective Date of Ordinances

Ordinances finally approved by the City Council and which require publication shall take effect and be in force from and after the publication thereof, unless otherwise expressly provided in the ordinance. Ordinances which do not require publication shall take effect and be in force from and after the final approval thereof unless otherwise expressly provided therein.

2.0107 Effect of Repeal

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

2.0108 Enactment and Revision of Ordinances

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

The executive officer of a municipality may appoint, by and with the advice and consent of the City Council, one or more competent persons to prepare and submit to the City Council 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 City Council 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 City Council, and shall be valid and effective without publication in a newspaper or posting.

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

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

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

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

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

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

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

The provisions of North Dakota Century Code 40-11-12 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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

2.0112 Costs of Prosecution

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

2.0113 Judgment of Conviction

In all trials for offenses under the ordinances of the City, if the defendant is found guilty, the Municipal Judge shall render judgment accordingly. It may be a part of the judgment that the defendant stands committed until such judgment is complied with, and, at the discretion of the municipal court, the defendant may be required to work

for the municipality at such labor as the defendant's strength and health will permit under the provisions of North Dakota Century Code 40-18-12.

2.0114 Refusal to Work

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

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

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

2.0116 Sentencing Alternatives

The provisions of North Dakota Century Code 40-18-13 and all subsequent amendments are hereby incorporated by reference in this ordinance.

Subject to section North Dakota Century Code 40-05-06, the Municipal Judge may use the sentencing alternatives provided by North Dakota Century Code 12.1-32-02.

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CHAPTER THREE

PUBLIC PLACES AND PROPERTY

ARTICLE 1 – Construction and Repair

3.0101 Supervision

All construction maintenance and repair of public streets, alleys, sidewalks and other public ways shall be under the supervision of the City Engineer or Street Superintendent, who shall be charged with the enforcement of all ordinance provisions relating to such public places (except traffic ordinances) and is hereby authorized to enforce such ordinances.

3.0102 Construction and Repair – Permits

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

3.0103 Bond

Each applicant shall file a bond in the amount as determined by the City Council with surety to be approved by the City Council conditioned to indemnify the City for any loss or damage resulting from the work undertaken or the manner of doing the same.

3.0104 Specifications

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

3.0105 Application for Permit

An applicant for a permit hereunder shall file with the City Auditor an application showing:

1. Name and address of the owner, or agent in charge, of the property abutting the proposed work area.
2. Name and address of the party doing the work.
3. Location of the work area.
4. Attached plans or sufficient sketches showing details of the proposed alterations.
5. Estimated cost of the alterations.
6. Such other information as the City Engineer or Street Superintendent shall find reasonably necessary to the determination whether a permit should be issued hereunder.

3.0106 Standards for Issuance of Permit

The City Engineer or Street Superintendent shall issue a permit hereunder when it is determined:

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

3.0107 Sidewalks Built to Grade Specifications

All sidewalks shall be constructed in accordance with the elevations and grade therefore to be furnished by the City Engineer and shall be constructed under the direction and supervision of the City Engineer or under the direction and supervision of the Street Superintendent. All sidewalks shall meet the following requirements:

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

3.0108 Materials and Manner of Construction

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

3.0109 City Contractor

The City Auditor shall receive bids for the construction of sidewalks, driveways, curb and gutter and paving repairs as the City may find necessary to have done. Such bids shall be made upon blanks furnished by the City Engineer or Street Superintendent and shall conform to specifications filed with the City Auditor by the City Engineer or Street Superintendent and approved by the City Council.

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 City Council 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 City Council, running to the City, conditioned that said contractor shall satisfactorily comply with the specifications for construction.

3.0110 Failure of Owner to Repair or Clean

Upon the failure of any property owner to repair any sidewalk upon which his property abuts within three days after notice to repair the same, and upon his failure to remove snow and ice and other obstructions from such sidewalks within twenty-four hours after notice to remove such obstruction by the Chief of Police and cost thereof assessed against the property as provided by law. Such notice shall state the name of the owner of the premises, if known, and shall contain a description of the premises by lot number and block number, according to the plan of the City, and shall state what obstructions are to be removed, or what repairs are to be made on such sidewalk, and the time within which the same must be done. Notice of the presence of snow or ice shall be imputed from the fact of the falling or formation thereof.

3.0111 Failure of Owner to Repair or Clean Notice, How Served

Said notice of obstruction, other than ice or snow, shall be served on the owner of the premises personally if he is a resident of the City; but if he is not a resident of the City and the premises are occupied, then such notice shall be delivered personally such notice shall be posted on the premises.

3.0112 Injuring or Destroying Streets and Sidewalks Prohibited

No person shall injure or tear up any street, road, sidewalk, crosswalk, drain or sewer or any part of the aforesaid, or dig any holes, ditch or drain in any street, sidewalk, or public grounds, or remove any gravel, sod, sand, or earth from any street or road without authority from the City Council.

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

3.0201 Rubbish and Filth Depositing Prohibited

No person shall place, deposit, or cast, or cause to be placed, deposited, or cast upon any street, alley, gutter, sidewalk, or public ground within the City any timber, wood lumber, ashes, rubbish, offal, vegetables, papers, shavings, carcasses, earth, or any substance whatever, which may obstruct any such street, alley, gutter, sidewalk, or public ground, or impede, hinder, or endanger travel thereon, or which shall or may insure or disfigure the same or tend to the injury or disfigurement thereof, or tend to render the same unclean or a nuisance, nor shall any person or persons cause to suffer a wagon, carriage, cart, or other vehicle, or any box, crate, bale, package, merchandise, or other thing to stand upon, be in, or upon such street, alley, sidewalk, or public ground within the limits of the City. Nor shall any gate or door be kept or maintained that opens over or across the sidewalks.

3.0202 Notification to Owner to Remove

If any wood, lumber, timber, or rubbish of any kind or description mentioned in 3.0201 shall be found remaining or lying upon any street, alley, sidewalk, or public ground in the City, in violation of 3.0201, it shall be the duty of any police officer to forthwith notify by either written or verbal notice any person who may have placed or permitted to be placed such substance or thing upon the street, alley, sidewalk, or public ground, or who may be the owner or have control of such substance or thing to remove the same; and in case of such person or persons shall neglect or fail to remove such substance or thing within a reasonable time after being so notified, it shall be the duty of any police officer to remove the same or cause it to be removed from such street, alley, sidewalk, or public ground to some convenient or safe place within said City at the expense of such person or persons, to be recovered in an action to be brought in the name of the City. In addition thereto, such person or persons may be arrested for such neglect or failure and if found guilty fined not more than \$25 dollars.

3.0203 Articles That May Be Placed On Sidewalks

It shall, however, be lawful for any person to place and leave for a period of not exceeding one hour on three feet of the outer edge of the sidewalk in front of his store or in the alley in the rear of his premises or building, any goods, wares, merchandise, or things which he shall be in the act of receiving or delivering, but such goods shall not be packed or unpacked on the sidewalk or street. Provided, however, that nothing in this section be construed to allow the displaying of goods contained in boxes, crates, or barrels, or any article or thing unsightly or dangerous to pedestrians, or a nuisance.

3.0204 Permit Required for Building Materials in Street

The Mayor is authorized to grant any person permission for a limited time to place or keep any building materials upon any street in front of any lot when such materials are intended for and are about to be used by such person in the erection or repair of any building or other improvements, but such permission shall not authorize the obstruction of more than one half of the sidewalk and one-third of the driveway next to such lot, nor shall such material be placed so as to obstruct the free flow of water in the gutters. Every person to whom permission is granted as aforesaid shall cause all the timber, building material, rubbish, and debris arising thereon to be removed from the street and sidewalk at the expiration of the time limited by the Mayor.

3.0205 Carts, Etc. Prohibited on Sidewalks

No person shall place or cause to be placed any object or vehicle upon any sidewalk or crosswalk in the City so as to obstruct such sidewalk or crosswalk.

3.0206 Destruction of City Property – Prohibited – Penalty

It shall be unlawful for any firm, person or corporation to willfully and without just cause or excuse, to injure, deface or destroy any property owned by the City or held by the City for public use. Any person violating the

provisions of this section shall be guilty of an offense and be fined not more than \$1,000 or be imprisoned for not to exceed 30 days or by both such fine and imprisonment.

3.0207 Encroachments

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

3.0208 Openings in Streets to be Covered

It shall be unlawful for any person in the City to leave or keep open, uncovered or unguarded, any cellar door, pit, grading, or excavation, in the alley, sidewalk, street or public ground within the City, nor shall it be lawful for any person to suffer any such cellar door or vault, grading, or other opening or place of like nature connecting to the premises owned or occupied by him to remain in an unsecured or other unsafe condition so that persons may fall into or be otherwise injured by the same.

3.0209 Regulations for Wires and Poles

No person shall cut, remove, or break any telephone, telegraph, or electric light wires properly strung upon poles, running through or across any street in the City, for the purposes of moving buildings or any other purpose, except in the case of fire or to prevent the destruction of property, except as provided by the ordinances relating to house moving or under express orders of the City Council.

3.0210 Depositing of Waste in Streets Prohibited

It shall be unlawful for any person, firm, or corporation to throw, place, or leave upon any street, alley, or public ground within the City any paper or cloth, or waste material, or leave in any yard, or place where the same may blow or be liable to blow upon any street, alley, or public ground within the City.

3.0211 Spitting or Throwing Litter on Sidewalks Prohibited

No person shall spit or expectorate, nor throw fruit, fruit parings or skins, butts, or nut shells, or any other litter upon the sidewalks or crossings of any street, avenue, alley, or driveway, within the corporate limits of the City, nor in or upon the floors, stairs, or hallways within, or sidewalks leading to or from any depot or platform, connected therewith or leading thereto, whether or not such public building, theater, hall, or depot belongs to the City.

3.0212 Barbed Wire Fences Prohibited

No person or persons shall within the limits of the City erect, construct, or maintain any fences or enclosures of any premises, piece, or parcel of ground with what is known as barbed wire.

3.0213 Burning

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

3.0214 Posting of Handbills Prohibited

No person shall paste, stick, nail, or post handbills, placards, or posters, or make, print, or mark any work, letter or advertisement of any kind upon any private house, store, or other building, or upon any fence, wall, railing, telephone or electric light pole, or other private property nor shall paste, stick, nail or post any handbills, placards or posters of any kind or make, paint or mark any word, character or letter or advertisement up on any public building, bridge, fence railing or sidewalk, or any other property within the City, except in compliance with the requirements of law in posting of legal notices, and excepting his own property.

3.0215 Owner to Repair and Clean Sidewalks

Each and every property owner or occupant shall keep in repair all sidewalks upon which his property abuts, and shall keep the same free and clear of all snow and ice and obstructions of every kind.

3.0216 Sidewalk, Snow and Ice, Removal of

The owner or occupant of every building, tenement, or premises fronting upon any street within the City, and the owner of any unoccupied building or premises fronting on such street shall keep the sidewalk and gutter in front of his premises reasonably free from snow and ice, and shall, after and during snowfall, clear the snow off such sidewalks before ten o'clock A.M. of each day, and on corner lots where the premises run to the alleys, the owner or the occupant of such property shall keep one-half of the crossing adjoining said premises free from snow and rubbish.

3.0217 Removal of Snow and Ice by City

In case the owner of any lot in the City refuses or neglects to remove such ice and snow from the sidewalk in front of or along a lot therein, within the same time above stated or refuses to sprinkle ashes or sand on the same within the time specified for removal in such manner as to make such sidewalk safe for travel of pedestrians thereon, the same may be removed by or under the direction of the City Engineer or Street Superintendent of the City, or ashes or sand sprinkled thereon, and the necessary expenses shall be charged against the abutting property by special assessment in the manner prescribed by law. (Source: North Dakota Century Code section 40-29-18)

3.0218 Assessments by Street Superintendent When Work is Done by City

Whenever the Street Superintendent shall, pursuant to 3.0217 of this article, remove or cause to be removed any snow or ice from any sidewalk or sidewalks along or in front of any building, grounds or premises, the Street Superintendent shall assess the cost of the same against said property, and on or before the first day of May in each year, make and file in the office of the City Auditor a list showing separately the amount chargeable and assessed against each lot and tract and stating the name of the owner of each lot or tract as known to the Street Superintendent. (Source: North Dakota Century Code section 40-29-18)

3.0219 Snow and Ice Removal Assessments, Publication by Auditor, Hearing by City Council

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

3.0220 Street Cleaning – Snow Removal

Whenever, in the judgment of the City Council, City Engineer or Street Superintendent of the City, it shall be necessary that streets, alleys or public ways in the City shall be cleared of snow or ice or be cleaned by the use of street sweepers or other methods of cleaning such streets, or for marking for traffic purposes, the ordinances of the City regulating the parking of automobiles, trucks and other motor vehicles shall be suspended and it shall be unlawful for any automobile, truck or other motor vehicle to be parked or left standing between the hours hereinafter mentioned and during the period of time during which the said parking ordinances are suspended.

3.0221 Notice – Snow Removal or Street Cleaning

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

3.0222 Impounding Vehicles and Equipment

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

3.0223 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.

3.0224 Permit Required for Excavations

No person shall injure or tear up any sidewalk or crosswalk, drain, or sewer, or any part thereof, or dig any hole, ditch or strain in any street or sidewalk or public ground, or remove any gravel, earth, sand, or sod from any street or alley without procuring from the Mayor a permit to do so; provided, however, that the foregoing shall not apply to the digging of holes in any street or alley for the purposes of setting trees, fences, or posts, and any person or persons digging such holes as are herein permitted shall not leave the same upon any longer than is absolutely necessary to plant or set such trees, fences, or posts, and shall at all times suitable protect the same.

3.0225 Guarding of Excavations

Every person, firm, or corporation who shall make any excavation upon any street, alley, avenue or other public ground within the City, or upon any enclosed lot or ground with the City, shall place a guard or barrier around such excavation, the same to be substantially constructed at least three feet high with rails or boards not more than one foot apart, and shall maintain the same at all times until such work is completed and such excavations filled up; and during the night time a red light shall be placed and kept burning at each end of such barrier or obstruction.

3.0226 Application for Excavation Permits

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

3.0227 Excavations, Deposit Required

The Mayor shall require a cash deposit in such sum as he deems necessary to guarantee the restoration as said in section 3.0233.

3.0228 Making Excavations – Notice

It shall be unlawful to make any such excavation or tunnel in any way contrary to or at variance with the terms of the permit therefore. Proper bracing shall be maintained to prevent the collapse of adjoining ground, and in excavations, the excavation shall not have anywhere below the surface any portion which extends beyond the opening at the surface. No unnecessary damage or injury shall be done to any tree or shrub or the roots thereof.

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

3.0229 Restoration of Excavations

Any person, firm or corporation making any excavation or tunnel in or under any public street, alley or other public place in the City shall restore the surface to its original condition if there is no pavement there. Refills shall be properly tamped down, and any bracing in such tunnel or excavation shall be left in the ground. Any opening in a paved or improved portion of a street shall be repaired and the surface re-laid by the applicant, in compliance with the ordinances of the City and under the supervision of the Street Superintendent or City Engineer.

3.0230 Supervision of Excavations

Whenever permission shall be granted by the Mayor to any person to tear up any sidewalk or crosswalk, drain or sewer, dig any hole, ditch or drain as provided in 3.0225 the work shall be done under the supervision of someone so appointed by the Mayor, and such sidewalk, crosswalk, drain, sewer, or street, alley or public ground shall be restored to as good condition as it was before such excavation.

3.0231 Liability for Damages of Excavations

Any person making such excavations either with or without such permit shall be liable for any and all damages caused to any water pipe, sewer pipe, shutoff box, hydrant, conduit, cables, or manholes that may come in contact with during the progress of such work.

3.0232 Excavating Above Established Grades

Whenever the ground is of such a height as to interfere with the established grade of the streets in each block, excavation shall be made to the required depths to permit the conforming to said grades, and the earth and other material excavated shall be placed where directed by the City Council.

3.0233 City Buildings, Equipment and Vehicles – Smoking

Smoking is not permitted in City buildings, equipment and vehicles, except as provided under state law.

3.0234 Permit Required for Moving or Building Operations; Red Lights Required

No person shall, without having obtained permission from the Mayor, move or place for the purpose of moving, any building in or along any street within the City.

Any person, firm, or corporation engaged in any moving or building operation upon or adjoining any street, alley, or public ground, or sidewalk requiring the use of any portion of the street, alley, or sidewalk, or public ground shall cause a red light to be placed at each end of the said obstruction from sunset until sunrise during the time such obstruction continues, to warn of the danger in order to prevent accidents.

3.0235 Blasting

It shall be unlawful for any person to explode or cause to be exploded any dynamite, nitro-glycerin, or other explosive in the City, except by written permission from the Mayor.

3.0236 Noxious Weeds

All persons owning or occupying real estate in the City shall cause to be cut or pulled all noxious weeds growing thereon at such time and in such manner as will effectually prevent their bearing seed or when orders to do so are given by the Street Commissioner of the City, and such weeds shall thereafter be burned as soon as they are sufficiently dry.

3.0237 Installing Gas Pumps

It shall be unlawful to locate, build, construct, install, place, or replace any gasoline or oil filling station or pump in whole or in part upon any street or upon any curb, park, or boulevard space or public sidewalk in the City.

ARTICLE 3 – Regulations Governing Signs and Awnings

3.0301 Suspension of Signs Prohibited

No owner or occupant of any office, store, or other building shall fix, put up, erect, or suffer to remain fixed, put up, hung, or erected any sign, show bill, showcase, canvas, or other thing projecting from any building or store, or hanging over the sidewalk more than three feet in front of such store or building and less than eight feet above the sidewalk.

3.0302 Exceptions

3.0301 shall not be construed to forbid the following:

1. An owner or occupant of any store, office, or other building may maintain an electric sign, not more than ten feet in length, the bottom of which shall be as high above the sidewalk as the ceiling of the first floor of the building to which it is attached and in no case less than ten feet above the sidewalk, and said sign shall be securely fastened to the building by chains and braces.
2. Any merchant or other person may maintain an awning in front of his place of business extending no further than six feet from his store or building and at least eight feet from the sidewalk to the bottom of the awning.

3.0303 Suspension of Signs Declared a Nuisance

Any show bill, sign, showcase, canvas, signboard, swinging sign, fixture, or other thing suspended or placed over, or upon any sidewalk or alley or public place in violation of 3.0301 or 3.0302 is hereby defined and declared to be a nuisance, and the owner thereof, or the owner or occupant of the house, store or building in front or the rear of which the same may be placed or suspended, shall, within three days after notice to do so, remove and abate the same, in default whereof the City Council may cause the same to be abated and removed by the police and at the expense of the owner or occupant of the said premises, and the person offending against the provisions of this article shall also be liable to the penalty as hereinafter provided, each forty-eight hours the same shall remain after order to be removed by the police to be a separate offense.

ARTICLE 4 – Personal Property on Public Ways

3.0401 Definition

Abandoned personal property shall be any personal property, which has been located on a street, alley, other public way, or parking lot of the City or which has been removed from such a location to a public parking lot, City storage, or City building by proper authorities to prevent a nuisance, to safeguard the property or to avoid obstruction of the public ways.

3.0402 Removal

After a period of 48 hours shall have elapsed from the commencement of the abandonment, the City shall be entitled to take and store the property.

3.0403 Notice to Owner of Abandoned Vehicle

1. When an abandoned motor vehicle does not fall within the provisions of North Dakota Century Code 39-26-05, the unit of government taking it into custody shall give notice of the taking within 10 days.
2. The notice shall set forth the date and place of the taking, the year, make, model, and serial number of the abandoned motor vehicle and the place where the vehicle is being held, shall inform the owner and any lien holders or secured parties of their right to reclaim the vehicle under North Dakota Century Code 39-26-07, and shall state that failure of the owner or lien holders or secured parties to exercise their right to reclaim the vehicle shall be deemed a waiver by them of all rights, titles, and interest in the vehicle and a consent to the sale of the vehicle at a public auction pursuant to North Dakota Century Code 39-26-08.
3. The notice shall be sent by mail to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lien holders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lien holders, the notice shall be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned. Published notices may be grouped together for convenience and economy.

3.0404 Sale

60 days after such taking and storage, the City shall be entitled to sell the property subject to notice of sale published once in the official newspaper at least 10 days prior to the sale, the notice to contain a description of the abandoned property to be sold, and the time and place of sale.

3.0405 Bill of Sale

If no one claims the property prior to the time of sale, the City shall sell any and all of it and convey to the purchaser a merchantable title by bill of sale.

3.0406 When Proceeds May Be Claimed

At any time within six months after the sale, the owner of the property, upon written application, shall be entitled to receive the proceeds of the sale from the City, less the necessary expense of taking, storing, and selling the property.

3.0407 When Property May Be Reclaimed

The owner of the property may reclaim it at any time prior to the sale upon payment of the necessary expense of taking and storing.

3.0408 Annual Report – Unclaimed and Abandoned Property

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

ARTICLE 5 – Property Found On Private Lands

3.0501 Definitions

The following words or terms when used herein shall be deemed to have the meanings set forth below:

1. Abandoned vehicle shall include without limitation any vehicle which as remained on private property for a period of 48 continuous hours, or more, without consent of the owner or occupant of the property or for a period of 48 continuous hours, or more, after consent of the owner or occupant has been revoked.
2. Blighted structure shall include without limitation any dwelling, garage, or outbuilding, or any factory, shop, store, warehouse or any other structure or part of a structure which because of fire, wind, or other natural disaster, or physical deterioration, is no longer habitable as a dwelling, nor useful for the purpose for which it may have been intended.
3. Building materials shall include without limitation lumber, bricks, concrete, or cinder blocks, plumbing materials, electric wiring or equipment, heating ducts or equipment, shingles, mortar, concrete or cement, nails, screws, or any other materials used in constructing any structure.
4. Junk shall include without limitation parts of machinery or motor vehicles, unused furniture, stoves, refrigerators, or other appliances, remnants of wood, metal, or any other castoff material of any kind, whether or not the same could be put to any reasonable use.
5. Junk automobiles shall include without limitation any motor vehicle which is not licensed for use upon highways of the state for a period in excess of 60 days and shall also include whether licensed or not any motor vehicle which is inoperative for any reason for a period in excess of 60 days, provided that there is exempted from this definition unlicensed by operative vehicles which are kept as a stock in trade of a regularly licensed and established new or used automobile dealer.
6. Person shall include all natural persons, firms, co-partnership, corporations, and all associations of natural person, incorporated or unincorporated, whether acting by themselves or by a servant, agent, or employee. All persons who violate any of the provisions of this article, whether as owner, occupant, lessee, agent, servant, or employee shall, except as herein otherwise provided, be equally liable as principals.
7. Trash and rubbish shall include any and all forms of debris not herein otherwise classified.

3.0502 Storage of Junk, Junk Automobiles – Contrary to Public Health and Safety

It is hereby determined that the storage or accumulation of trash, rubbish, junk, junk automobiles, abandoned vehicles, building materials, and the maintenance of blighted structures upon any private property within the City tends to result in blighted and deteriorated neighborhoods, increase criminal activity, spread vermin and disease and is contrary to the public peace, health, safety, and general welfare of the community.

3.0503 Unlawful to Store or Accumulate Junk, Junk Automobiles, Etc.

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

3.0504 Unlawful to Dismantle Automobile Except on Business Premises

It shall be unlawful for any person to dismantle, cut up, remove parts from, or otherwise disassemble any automobile, whether or not the same be a junk automobile, abandoned vehicle or otherwise, or any appliance or machinery, except in a completely enclosed building, or upon the business premises of a duly licensed junk dealer, junk buyer, dealer in used auto parts, dealer in secondhand goods, or junk gatherer.

3.0505 Unlawful to Maintain Blighted Structure

It shall be unlawful for any person to keep or maintain any blighted or vacant structure, dwelling, garage, outbuilding, factory, shop, store, or warehouse unless the same is kept securely locked, the windows kept glazed or neatly boarded up and otherwise protected to prevent entrance thereto by unauthorized persons or unless such structure is in the course of construction in accordance with a valid building permit issued by the City and unless such constructed is completed within a reasonable time.

3.0506 Unlawful to Store Building Materials Except on Business Premises

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

3.0507 City Board of Health May Remove Junk Automobiles or Abandoned Vehicles

1. The City Board of Health may remove or cause to be removed any junk automobile or abandoned vehicle, or parts of either, from any unenclosed private property after having notified in writing the owner or occupant of such property of its intention to do so at least 48 hours prior to such removal.
2. Such notice shall be served personally upon the owner or occupant of the property, if occupied, or may be posted in a conspicuous place upon vacant or unoccupied property. Such junk automobiles or abandoned, or part of either, shall be removed to the automobile pound, and disposed of in accordance with law.
3. Such removal by the City Board of Health shall not excuse or relieve any person of the obligation imposed by this ordinance to keep his property free from storage or accumulation of junk automobiles or abandoned vehicles, or parts of junk automobiles or abandoned vehicles, or parts of junk automobiles or abandoned vehicles, or parts of either, nor from the penalties for violation thereof.

3.0508 Disposition of Junk Automobiles or Abandoned Vehicles of No Value

Any junk automobile, abandoned vehicle, or part of either removed from unenclosed private property as provided by 3.0507, or coming into the possession of the City Board of Health by abandonment on public property in the City, which is determined by the City Board of Health to be of no value other than as scrap metal shall be disposed of by the City in such a manner as to eliminate the unsightly accumulation of such worthless hulks and the hazards to public health attendant thereto with the least practicable delay.

ARTICLE 6 – Street Names and Numbers

3.0601 Designation of Street Names and Numbers

1. Designation of Street Names and Numbers

- a. Street names of all public streets located within the City limits and street numbers for all dwelling units and places of business on all public and private streets shall be assigned by the City Auditor in accordance with directions which, from time to time, may be issued by the City Council.
- b. The City Auditor shall keep a record of all numbers assigned under this ordinance.

2. Posting of Designated Street Address

- a. The owner or occupant or person in charge of any unit, house, or building to which a number has been assigned, or for which a previously assigned number is amended, will be notified in writing by the City Auditor of the number or amended number, assigned to the same at any time after the adoption of this ordinance.
- b. Within 60 days after the receipt of such written notification from the City Auditor, the owner or occupant or person in charge of a house or building to which a number has been assigned, shall affix the number in a conspicuous manner in conspicuous place, as hereinafter required.
- c. It shall be the duty of such owner or occupant or person in charge thereof, upon affixing the new number, to remove any different number which might be mistaken for, or confused with, the number assigned to the structure by the Code Administrator.
- d. Each principal building shall display the number assigned on the main structure of the premises to which said number has been assigned in the form of Arabic numerals at least four inches high and one and one-half inches across, and said number shall be installed on the side of the structure facing the street to which the number relates, and as near to an entrance to the structure as conveniently possible. In case a principal building is occupied by more than one business or family dwelling unit, each separate unit must be displayed a separate number, when separate numbers have been so assigned.
- e. Numerals indicating the official numbers for each dwelling unit, business, or building shall be posted in a manner as to be legible and distinguishable from the street on which the property is located. However, should the structure so designated by the assigned number be located 50 feet or more from the street to which the numbers refer, said numbers must be displayed, within 50 feet of said street, near a sidewalk or driveway, and said numbers shall be kept clearly visible during all seasons.

3. New Structures

- a. Numbers will be assigned to each proposed lot or tract on the surveyor's copies of final subdivision plats by the City Auditor, which the approval of the City Council.
- b. No building permit shall be issued for any principal building until the owner or developer has procured from the City Auditor, the official number of the premises. Final approval for a Certificate of Occupancy of any principal building erected or repaired after the effective date of this ordinance shall be withheld until permanent and proper numbers have been displayed in accordance with the requires of subdivision 2.

4. Penalties

- a. In the event that the owner, occupant, or person in charge of any house or building refuses, or fails, to comply with the terms of this ordinance by failing to affix the number assigned within 60 days after notification, or by failing within said period of 60 days to remove any old numbers affixed to such house, house entrance, or elsewhere, which may be confused with the number assigned thereto, or by failing to maintain such numbers, continuously thereafter, until lawfully amended, that person shall be punished by a fine not to exceed \$1000 per occurrence. Each day of such noncompliance shall constitute a separate offense.

ARTICLE 7 – Trees – Shade Tree Committee

3.0701 Definitions

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

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

3.0702 Shade Tree Committee – Terms – Compensation

The Shade Tree Committee for the City shall consist of five members, who shall be appointed by the Mayor with the approval of the City Council.

The terms of Committee members shall be three years. In the event that a vacancy occurs during the term of any committee member, a successor shall be appointed for the unexpired portion of the term.

Members of the Committee shall serve without compensation.

3.0703 Operation and Duties

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

It shall be the responsibility of the Committee to study, investigate, counsel and develop and/or update annually a written plan for the care, preservation, trimming, planting, replanting, removal or disposition of trees and shrubs in public ways, streets and alleys. Such plan will be presented annually to the City Council and upon their acceptance and approval shall constitute the official comprehensive City Tree Plan for the City.

The Committee, or its agent, shall be responsible for the planting, pruning, and removal of all trees located within the street right-of-ways, easements, alleys, and parks of the City.

The Committee, when requested by the City Council, shall consider, investigate, make findings, report and recommend upon any special matter of question coming within the scope of its work.

3.0704 Public Tree Care

The City shall have the right to plant, trim, spray, preserve 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 when servicing City utilities or to preserve or enhance the symmetry and beauty of such public grounds. The Committee may remove or cause or order to be removed, any tree or part thereof which is in 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.

3.0705 Private Tree Care

The owner of land abutting on any street may, when acting within provisions of this ordinance, plant, prune, spray, or fertilize trees in that part of the street abutting his land not used for public travel. A street tree permit shall be required from the Committee only when the owner of the property intends to remove a tree or deviate from the rules and regulations contained in this ordinance.

Applications for permits must be made to the Committee not less than 48 hours in advance of the time the work is to be done.

3.0706 Street Trees to be Planted

The following list constitutes the official street tree species for the City. No species other than those included in the list may be planted as street trees without permission of the Committee.

1. Small Trees – 15-25 feet
 - a. Flowering crabapple (species)
 - b. Little Lead Linden
 - c. Schubert Chokecherry
2. Medium Trees – 25-40 feet
 - a. May Day Tree
 - b. Ohio Buckeye
 - c. Sugar Maple
 - d. Mountain Ash (American and European)
3. Large Trees – 40 feet plus
 - a. Silver Maple
 - b. American Elm
 - c. Hackberry
 - d. Green Ash
 - e. Bur Oak
 - f. American Linden

The following tree species may not be planted as street trees in the City:

1. Cottonwood
2. Poplar
3. Siberian Elm
4. Willow
5. Box Elder

3.0707 Tree Spacing

The spacing of street trees will be in accordance with the three size classes listed in 3.0706. All large trees shall be planted 40 feet to 60 feet on center; all medium trees shall be planted a minimum of 35 feet on center; and all small trees shall be planted a minimum of 25 feet on center.

3.0708 Distance from Curb and Sidewalk

The distance trees may be planted from curbs or curb lines and sidewalks will be in accordance with the three species size classes listed in 3.0706, and no trees may be planted closer to any curb or sidewalk than the following: small trees, two feet; medium trees, three feet; and large trees, four feet.

3.0709 Distance from Street Corners, Fireplugs, Driveways and Alley Right-of-Ways

No street tree shall be planted closer than 20 feet of any street corner, measured from the point of nearest intersecting curb or curb lines. No street tree shall be planted closer than 10 feet of any fireplugs, driveways, and alley right-of-ways.

3.0710 Utilities

No street trees other than those species listed as small trees in 3.0706 may be planted under or within 10 lateral feet of any overhead utility wire, or over or within five lateral feet of any underground water line, sewer line, transmission line or other utility.

3.0711 Tree Care by Public Utilities

No street or park trees shall be trimmed, cut, removed, or otherwise disturbed by or under the direction of any public utility company to afford clearance for wires or any other purpose without first giving advance notice to the Committee. The Committee shall have the right to require the public utility company to perform such work in accordance with rules or regulations issued by the Committee.

3.0712 Arborists License and Bond

It shall be unlawful for any person or firm to engage in the business or occupation of trimming, pruning, treating, or removing street or park trees within the City without first applying for and procuring a license. The license shall be free annually in advance; provided, however, that no license shall be required of any public service company or City employee doing such work in the pursuit of their public service endeavors.

Before any license shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amount of \$100,000 for bodily injury and \$100,000 for property damage indemnifying the City or any person injured or damaged resulting from the pursuit of such endeavors as herein described.

3.0713 Corner Clearance Trimming

Every owner of any tree overhanging any street or right-of-way within the City shall trim the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight feet above the surface of the street or right-of-way. Said owners shall remove all dead, diseased, or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The City shall have the right to trim any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light, or interferes with the visibility of any traffic control device or sign, such trimming to be confined to the area immediately above the right-of-way.

3.0714 Dead or Diseased Tree Removal on Private Property

The City shall have the right to cause the removal of any dead or diseased trees on private property within the City, when such trees constitute a hazard to life and property, or harbor insects or disease which constitutes a potential threat to other trees within the City. The Committee will notify in writing the owners of such trees. Removal shall be done by said owners at their own expense within sixty days after the date of service of notice. In the event of failure of owners to comply with such provisions, the City shall have the authority to remove such trees and charge the cost of removal on the owner's property tax notice.

3.0715 Interference with Shade Tree Committees

It shall be unlawful for any person to prevent, delay, or interfere with the Committee, or any of its agents, or servants, while engaging in or about the planting, cultivating, mulching, pruning, spraying, or removing of any street trees, park trees, or trees on private grounds, as authorized in this ordinance.

3.0716 Severability

In case any section of this ordinance is held invalid by a Court of competent jurisdiction, the invalidity shall extend only to the section affected and other sections of this ordinance shall continue in full force and effect.

3.0717 Penalty

Any individual, firm, or corporation who violates any of the provisions of this ordinance shall upon conviction thereof, be subject to a maximum \$1000 fine, together with the costs of prosecution and in default of payment thereof shall be imprisoned in the City jail until such costs are paid, but not exceeding 30 days.

ARTICLE 8 – Additions to the City, How Platted

3.0801 Additions to the City, How Platted

Any addition which may be made to the City of any lands adjoining the same and any lands within the City which may be laid out in lots or blocks, shall be so laid out, surveyed, and platted that they shall conform to the regular blocks, streets, avenues, and alleys, of any addition adjoining such lands or addition proposed to be laid out and the streets, avenues, and alleys shall correspond with and conform to the previously established streets, avenues, and alleys with which they may connect and shall be continuous thereof in width and direction.

3.0802 Application for Approval of Additions to the City

When any person may wish to lay out or plat any addition of lands adjoining or within the City with blocks irregular in size, and with streets, avenues, and alleys diverging in direction from that of the original Townsite of Walhalla and the additions thereto, he may apply to the City Council that such lands or proposed additions may be so laid out and the platted subject to the approval of the City Council.

3.0803 Improvements in Addition to Comply With This Chapter

No public improvements shall be made by the City in any addition or plat hereafter made which does not conform to the requirements of this chapter.

ARTICLE 9 – Penalty

3.0901 Penalty for Violation of Chapter

Any person, firm, or corporation violating any of the terms or provisions of this chapter shall, upon conviction, be punished by a fine of not to exceed five hundred dollars, or imprisonment not to exceed 30 days, or by both such fine and imprisonment in the discretion of the court, the court to have power to suspend said sentence and to revoke the suspension thereof.

CHAPTER FOUR

FIRE PROTECTION AND PREVENTION

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CHAPTER FOUR

FIRE PROTECTION AND PREVENTION

ARTICLE 1 – Organization and Regulation of the Fire Department

4.0101 Establishment of Fire Department

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

4.0102 Supervision by Fire Chief

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

4.0103 Volunteer Fire Department

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

4.0104 Officers of Fire Department

The officers of the volunteer fire department of the City shall consist of a Fire Chief, Assistant Fire Chief, President, Vice-President, Secretary, Treasurer, and Training Officer, who shall be duly elected from the membership of said department, plus such other officers as the members thereof deem necessary. Said officers are to be elected in January of each year.

4.0105 Fire Chief – Powers, Salary

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

4.0106 Duties of Fire Chief

The Fire Chief shall have the following duties and powers:

1. To keep records. The Fire Chief shall cause to be kept, in books for that purpose, a full and complete record of the organization of the department, its membership, vacancies, appointments and dismissals, and of all notices issued by the department. The Fire Chief shall also keep a record of all transactions of the department, all fires occurring in the City, and the cause thereof when ascertainable, and of all property placed in the Fire Chief's charge. Such records shall always be open to the inspection of any member of the City Council.
2. To command and control. It shall be the duty of the Fire Chief to preserve order and discipline at all times in the department, and to require and force a strict compliance with the ordinances of the City relating to the department and the rules and regulations pertaining thereto. At all fires the Fire Chief shall have sole and absolute control and command over all persons connected with the fire department of the City.

3. To make reports. The Fire Chief shall make a report after each call for service, and at such other times when required to do so to the City Council. At the end of each calendar year, the Fire Chief shall file an annual report in with the City Auditor. The Fire Chief shall report upon the condition of the fire department, the number of fires that have occurred in the City since the last report, and during the year in the annual report, and the cause of the same, so far as can be ascertained, the number of buildings destroyed or injured, the names of the owners or occupants of the same as nearly as can be ascertained, and the amount of loss upon the buildings and other property. The Fire Chief shall also file reports on fires to the state fire marshal as required by North Dakota Century Code section 18-01-06.
4. To make annual inventory. The Fire Chief shall, by the end of June in each year, make a complete list and of all fire department property, stating its condition. The Fire Chief shall also report as to such new apparatus or supplies as in the Fire Chief's judgment may be needed to properly maintain the department.
5. To prepare a budget. The Fire Chief shall prepare a budget of the cost of providing for and maintaining the fire department of the City during the succeeding fiscal year.
6. To keep property in good condition. The Fire Chief shall keep property in good condition and see that all fire department equipment and facilities are kept clean and in good working condition.
7. To have charge of alarm system. The Fire Chief shall have charge of the fire alarm systems of the City.
8. To control crowds at fires. The Fire Chief may prescribe limits in the vicinity of any fire within which no persons, except those admitted by the Fire Chief's order, are allowed.
9. To order removal of property. The Fire Chief may order the removal of property whenever it shall become necessary for the preservation of such property from fire, to prevent the spreading of fire, or to protect adjoining property.
10. To command assistance. The Fire Chief may command assistance from persons in attendance at any fire for the extinguishing of fires.
11. To prescribe badge and uniform. The Fire Chief may prescribe the badge and uniform to be worn by the members of the fire department.

4.0107 Fire Chief to Report New Equipment Needed

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

4.0108 Police Powers of Fire Department

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

4.0109 Unlawful to Hinder Fire Department

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

4.0110 Right of Way – Fire Department Vehicles

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

4.0111 Driving Over Fire Hoses

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

4.0112 False Alarms of Fire

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

4.0113 Taking Fire Equipment

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

4.0114 Entering Fire Department

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

4.0115 Fire Department Service Outside Corporate Limits

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

ARTICLE 2 – Fire Limits

4.0201 Fire Limits, Defined

The areas included in the Fire Limits shall be the same as the City limits as defined in 1.0102.

4.0202 Alterations and Additions In Fire Limits

No wooden building shall be erected, built, or placed within the fire limits, and no wooden building within said fire limits shall be repaired without permission of the City Council, except as hereinafter provided.

4.0203 Fire Limits, Permit Required For

No person shall build, construct, erect, enlarge, remodel, or remove any building in the City without first from the City Council of the City. Application for such permit shall be considered and such permit shall be granted only at a regular, adjourned, or special meeting of the City Council at which at least a majority of the council members elected are present. A permit shall be granted if the proposed building will not violate any law of the State or ordinance of the City if the City Council makes the specific finding that said building or repairs shall not constitute a fire hazard to adjoining property or buildings; or otherwise it shall be refused.

4.0204 Fire Limits, Buildings, In Common Construction Of

Every building hereafter built, constructed, erected, enlarged, or moved onto any lot within the fire limits of the City shall be built or consist of stone, iron, wood, cement, or other incombustible material, and shall be constructed with both party and outside walls, excepting elevators which may be built of wood, with roof and sides thoroughly sheathed with corrugated iron, except that the building may be constructed, erected, or enlarged and built of wood if the City Council makes the finding that said building will not constitute a fire hazard to adjoining property or buildings and a permit is granted therefore pursuant to 4.0203.

4.0205 Wooden Buildings, Defined

The term “wooden buildings” whenever used in this article shall be understood to embrace and mean all buildings, tenements, houses, stables, sheds, shacks, boxcars, passenger coaches, and structures of every description, the outer walls or roofs or any part thereof which are in whole or in part constructed or built of wood.

4.0206 Wooden Buildings, Expense of Removal

The expenses of such removal shall be reported by the building inspector to the City Council and the City Council may direct that the expense of such removal shall be paid by the owner or builder of such building, by suit or otherwise.

4.0207 Wooden Buildings, Declared A Nuisance

Any wooden building which may be erected, enlarged, removed, repaired, or in the process of erection, enlargement, removal, or repair contrary to this article, shall be deemed a nuisance, and upon information it shall be the duty of the building inspector, after due notice to the owner or builder thereof, to abate the same by an order in writing and to require the City Engineer to raze such building to the ground.

4.0208 Defective Chimneys, Fireplaces, Stoves, Etc., Declared A Nuisance

Every chimney, smokestack, fireplace, hearth, stove, stove pipe, oven, boiler, and any other apparatus whatever, or the plant within the fire limits of the City, in any such manner as to be in an unsafe condition and liable to cause such building or any adjoining building to be set on fire thereby or therefrom, shall be decreed nuisance, and shall be abated as set forth in section 4.0209.

4.0209 Nuisance, Notice to Abate, Failure to Obey Notice

It is hereby made the duty of the building inspector of the City, whenever, it shall come to his knowledge that such a nuisance exists, to immediately notify the agent or occupant of any such building or plant, by a written notice duly served, to at once abate the same, and to cause such chimney, smokestack, fireplace, hearth, stove, oven, stovepipe, boiler, or other apparatus to be removed or put in a safe condition within 10 days after the service of said notice, and in the meantime to cease used of the same. If said owner, agent, or occupant, shall disregard, fail, or refuse to carry out of the provisions of this section then and in that case the officer serving such notice is hereby authorized and directed to enter upon said premises and to remove the same; every day's violation of the provisions of this section after the expiration of the time subject to said owner, agent, or occupant to the penalty is herein prescribed.

ARTICLE 3 – Fire Hazards

4.0301 Explosives, Prohibited Near Open Lights

No person shall weigh, sell, or handle by candle, lamp or gas light, or any other open light, any gunpowder, or other explosive, unless the same is contained in sealed vessels made of incombustible material, and no person shall bring or have any such light or fire or any burning substance within 15 feet of any such explosive at any time.

4.0302 Explosives, Storage of Limited

No person shall store or keep within the limits of the City more than 25 pounds of any one kind of gunpowder, dynamite, nitroglycerine or similar explosive at any one time.

4.0303 Fire Pits, Bonfires, Where Prohibited, Regulations Governing

1. A fire pit may be used in residential areas for the sole purpose of recreational use, not in violation of 4.0307. A fire pit will include commercially sold units and privately built units and must include a cover for the purposes of containment and extinguishing a flame.
2. It shall be unlawful for any person to set or cause any bonfire at any place within the fire limits of the City, or at any point within 50 feet of any dwelling, bar or other structure. Any person setting, or causing to be set, any bonfires, or other fire in violation of Section 1, shall be responsible for any and all damages that may occur to any person by reason thereof.

4.0304 Disposal of Combustible Materials

No person occupying property within the Fire Limits of the City shall permit any hay, straw, chips, shavings, leaves, barrels, boxes, paper, manure, wood, or any combustible material whatever, or anything capable of catching or communicating fire to be or remain upon the lot or lots or premises occupied by such person either as lease or owner or otherwise for a longer period than 24 hours, and it is hereby made the duty of every person occupying property within the City, and every owner thereof, to see that all shavings and combustible materials shall be cleared and removed from the premises so occupied or owned within the Fire Limits of the City at least once each day.

4.0305 When Hay and Straw is a Nuisance

It is hereby declared a public nuisance, affecting the safety of the property of the inhabitants of the City, and unlawful to stack, place, or deposit in stacks, any hay or straw within the limits of said City. Provided, that hay or straw may be kept within the limits of the City by being stored in barns, buildings, and sheds.

4.0306 Failure to Abate Nuisance

Any person who by himself or another, creates or upon due notice fails to abate any nuisance as described in 4.0305 shall be subject to the penalty as hereinafter provided.

4.0307 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.

4.0308 Carrying Fire, When Prohibited

It shall be unlawful for any person to carry fire, in, or through any street, building, or lot or other public or private place unless the same be in some closed and secure metal vessel.

4.0309 Regulations Governing Burning Chimneys

No person shall set fire or burn out any chimney or flue except in the day time or when it may be raining, or when the roof of the building is covered with snow; and any person using any chimney or flue shall cause the same to be cleaned out or swept out as often as may be necessary to prevent the dangerous accumulation of soot and to keep such chimney or flue in a safe and fireproof condition.

4.0310 Chimneys, How Constructed and Cared For

All chimneys shall be built of brick or stone, well laid in lime mortar, and shall be smoothly plastered on the inside thereof, and so constructed that such chimney will settle with the rest of the building.

No chimney or flue shall be built or used in any loft unless there are stairs leading thereto, or it is otherwise easy to access at all times. Chimneys shall be kept in good repair, the points properly pointed up so as to preclude the possibility of fire or flame reaching any inflammable or combustible material. A metal stopper with a flange at least one inch in width shall be provided for all openings in chimneys and used when the stovepipe is removed there from. It shall be the duty of every person owning or occupying any building within the City to clean or cause to be cleaned the chimney flues thereof as often as may be necessary to keep the same in the safe condition and to prevent fire.

4.0311 Stovepipe, How Secured

It shall be unlawful for any person to place or permit any stovepipe to pass directly through the roof or side of a building, or through more than one ceiling or partition, leading into a chimney; or for such stovepipe to be placed within four inches of any wood partition or other combustible material; or to connect the same with any chimney unless there is a fireproof thimble inserted in such chimney, and bedded in mortar.

ARTICLE 4 – Fire Prevention

4.0401 Adoption of Fire Codes

There is hereby adopted by the City Council, for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosions, that certain code known as the Fire Prevention Code recommended by the American Insurance Association, consisting of the most recent edition thereof and the whole thereof, of which code not less than two copies have been and now are filed in the office of the City Auditor to the City, and not less than one copy has been and now is filed in the office of the Bureau of Fire Prevention and the same are hereby adopted and incorporated as fully as if set out at length herein, and from the date of which this ordinance shall take effect, the provisions thereof shall be controlling within the City limits.

ARTICLE 5 – Firearms, Fireworks and Explosives

4.0501 Firearms not to be Furnished to Minors

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

4.0502 Exploding Firearms

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

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

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

4.0504 Fireworks Defined

The provisions of North Dakota Century Code 23-15-01 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

4.0505 Sale of Fireworks – Permit Required

No person, firm or corporation shall sell or offer to sell any fireworks in the City of Walhalla without first having secured a permit from the City Auditor. A permit shall not be issued until due application is made on forms furnished by the City Auditor and until the payment of \$25.00 fee for said permit. Any permit so issued shall be valid only for the amount of time allowed for the sale of fireworks by state law. No person under the age of 18 shall be issued a license to sell fireworks.

4.0506 Lighting of Fireworks

No person shall light fireworks within 300 feet of a fireworks stand.

4.0507 Exceptions

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

4.0508 Fees

All fees collected pursuant to the above section shall be deposited in the general fund of the City.

ARTICLE 6 – Penalty for Violation of this Chapter

4.0601 Penalty for Violation of 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 City Council 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 \$1,000 or by imprisonment for not to exceed 30 days or by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each ten days that prohibited conditions are maintained shall constitute a separate offense.

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

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CHAPTER FIVE

POLICE DEPARTMENT

ARTICLE 1 – Organization and Regulations

5.0101 Organization

The Police Department shall consist of the Chief of Police and as many police officers as may be authorized by the City Council.

5.0102 Additional Officers – Emergency

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

5.0103 Duties of Chief of Police

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 City Council. The chief shall be responsible for the performance by the Police Department of its functions and all persons who are members of the Police Department shall serve subject to the orders of the Chief of Police. The Chief of Police shall have the authority to administer oaths to police officers under the chief's supervision.

5.0104 Rules and Regulations

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

5.0105 Duties of Police – General

The provisions of North Dakota Century Code 40-20-05(1) and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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 miles in all directions outside the City limits, police officers shall perform the duties and exercise the powers of peace officers as defined and prescribed by the laws of the State of North Dakota.

5.0106 Duties of Police – Hot Pursuit – Defined

The provisions of North Dakota Century Code 40-20-05(2) and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

A police officer in "hot pursuit" may continue beyond the one and one-half mile limit to make an arrest, in obedience to a warrant or without a warrant under the conditions of North Dakota Century Code 29-06-15, whenever obtaining the aid of peace officers having jurisdiction beyond that limit would cause a delay permitting

escape. As used in this subsection, “hot pursuit” means the immediate pursuit of a person who is endeavoring to avoid arrest.

5.0107 Duties of Police – Service of Process, Etc.

The provisions of North Dakota Century Code 40-20-05(3) and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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 City Council.

ARTICLE 2 – Powers and Duties

5.0201 Money or Property of Arrested Persons

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

5.0202 Arrested Persons

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

5.0203 Stolen, Abandoned, Lost Property

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

5.0204 Traffic Administration

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

5.0205 Witness Fees and Mileage of Municipal Police Officers

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

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CHAPTER SIX

ZONING – LAND USE PLANNING

ARTICLE 1 – Definitions

6.0101 Definitions

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

1. Accessory Building – A subordinate building or portion of the main building, the use of which is incidental that of the main building or to the main use of the premises such as garages and tool sheds.
2. Alley – A public or private thoroughfare which affords only a secondary means of access to property abutting thereon.
3. 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.
4. Amendment – Any change, revision or modification of the text of the ordinances or the zoning district map.
5. Basement – A story having part, but not more than one- half of its height above grade. A basement is not counted as a story for the purpose of height regulations if subdivided and used for dwelling purposes.
6. Building – A structure designed, built or occupied as a shelter or roofed enclosure for persons, animals or property, including tents, lunch wagons, dining cars, camp cars, trailers and other roofed structure on wheels or other supports used for residential, business, mercantile, storage, commercial, industrial, institutional, assembly, educational or recreational purposes. For the purposes of this definition “roof” shall include an awning or other similar covering, whether or not permanent in nature.
7. Building Area – That portion of the lot that can be occupied by the principal use, thus excluding the front, rear, and side yards.
8. Building Height of – The vertical distance from the grade to the highest point of the coping of a flat roof or the deck line of a mansard roof or to the mean height level between eaves and ridge for gable, hip and gambrel roofs.
9. Building Line – The line between which and the street line or lot line no building or other structure or portion thereof, except as provided in this Code, may be erected above the grade level. The building line is considered a vertical surface intersection the ground on such line.
10. Conditional Use – Any use which the City Council shall set specific conditions, all of which must be met prior to the approval of said use in the district.
11. Council – The Walhalla City Council.
12. Dwelling – Is a building designed or used as the living quarters for one or more families.
13. Dwelling House – Is a detached house designed for an occupied exclusively as the residence of not more than two families each living as an independent housekeeping unit.

14. Dwelling, Multi-Family – Is a dwelling or group of dwellings on one plot containing separate living units for three or more families, but which have joint services or facilities for both.
15. Dwelling, Single Family – A building having accommodations and used exclusively by one family.
16. 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.
17. Family – 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.
18. Garage, Private – A building or part thereof accessory to a main building and providing for the storage of automobiles and in which no occupation or business for profit is carried on.
19. Home Occupation – Any occupation or activity carried on in a dwelling by a member of members of the immediate family residing therein. Home occupation shall include the use of a dwelling as an office by a doctor, dentist, lawyer, clergyman or other person outside the immediate family residing therein and not employing more than one person outside the immediate family residing therein.
20. Lot – 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.
21. Lot of Record – A lot, the description of which is recorded in the County Register of Deeds Office.
22. Mobile Home – A structure, able to be transported in one or more sections, to be used as a dwelling with or without a permanent foundation.
23. Mobile Home Park – A tract of land designed and developed to accommodate mobile homes on lots on a purchase, lease, or rental basis.
24. Non-Conforming Use – 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.
25. Parking Space – An area enclosed or unenclosed, sufficient in size to store one automobile, together with a driveway connecting the parking space with a street or alley and permitting ingress and egress of an automobile.
26. Plat – A map of a subdivision recorded in the office of the County Register of Deeds.
27. Set back – The distance between the lot line and the building line, and/or any projection of the building thereof.
28. Sign – Any outdoor advertising having a permanent location on the ground or attached to or painted on a building, including bulletin boards, billboards and name plates.
29. Store – That portion of a building, other than a cellar, included between the surface of any floor and the surface of the floor next above it, or, if there is no floor above it, then the space between the floor and ceiling next above it.
30. Street – All property dedicated or intended for public or private street, highway, freeway, or roadway purpose or subject to public or private easement therefor.

31. Structure – 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.
32. Subdivision – The division of land into two or more lots for the purpose of the sale or leave for building development
33. Use – 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.
34. Variance – A relaxation of the provisions of the regulations so that it will not be contrary to the public interest and the purpose and intent of these regulations.
35. Yard – An open space other than a court, on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in this chapter.
36. Yard, Front – 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.
37. Yard, Rear – 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.
38. Yard, Side – An open unoccupied space on the same lot with the building situated between the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a lot line.

ARTICLE 2 – Planning and Zoning Commission

6.0201 Authority

The authority for this chapter is granted by North Dakota Century Code Chapters 40-47 and 40-48.

6.0202 Purpose and Intent

The purpose of these regulations is to conserve and stabilize the value of property; to provide adequate open space for light and air; to secure safety from fire, panic, and other dangers; to prevent undue concentration of population; to lessen congestion on streets, roads, and highways; to facilitate adequate provisions for utilities and facilities, such as transportation, water, sewerage, school parks, and other public requirements; to promote health, safety, morals, and general welfare.

6.0203 Planning and Zoning Commission

The Planning and Zoning Commission shall consist of not more than 10 members. Of the 10 members, one member shall be a resident living in the one-half mile non-incorporated area. The executive officers, the City Engineer, and the City Attorney shall be ex-officio members of the commission.

6.0204 Duties

1. Establish rules and procedures for administering the Land Development Code.
2. Hold public hearings on all applications for subdivision plats, amending the Zoning District Map and the text of these regulations.
3. Recommend approval, denial or modifications of all applications for amendment after the public hearing to the City Council.
4. Make recommendations to the City Council with respect to development permits for the commencement of any development as defined in these regulations.
5. Publish notice of the public hearings in the official municipal newspaper of general circulations at least one week prior to the said hearing.
6. Receive and file all applications for plats of subdivisions amendments to these regulations, the “zoning district map” and development permits.
7. Inspect buildings and maintain records.
8. File complaints against any person, persons, firm, or corporation for violation of any of the provisions of any of the regulations.
9. Issue certificates of compliance.
10. Report all zoning violations to the City Council for appropriate action.

6.0205 Jurisdiction

The jurisdiction of these regulations shall include all lands within the corporate limits of the City and an area extending one-half mile in all directions from the corporate boundaries of the City.

6.0206 Amendments

The City Council may from time to time on its own motion or on petition or by recommendation of the Planning and Zoning Commission amend, supplement, or repeal provisions of these regulations after public hearing.

ARTICLE 3 – General Provisions

6.0301 Use and Area Districts Established

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

6.0302 Maps and Boundaries

The boundaries of these districts are hereby established as shown on a map entitled “The Zoning Map of the City of Walhalla” which is on file in the office of the City Auditor. This map, with all explanatory matter thereon, is hereby made a part of this chapter.

6.0303 Annexed Property

Property which has not been included within a district and which has become a part of the City by annexation shall automatically be classified as lying and being in the residential district until such classification has been changed by an amendment to the zoning ordinances as prescribed by law.

6.0304 Severability

If any section, provision, or portion of these regulations are adjudged invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby.

6.0305 Continuing Existing Use

Any building, structure, or use lawfully existing at the time of enactment of the regulations may be continued except certain nonconforming uses as provided in section 2, subsection C of the Walhalla Land Development Code. Nothing in the regulations shall prevent the strengthening or restoring to a safe condition any part of any building or structure declared unsafe by the Code Administrator, the North Dakota State Fire Marshal, or City Health Board.

6.0306 Zoning Affects Every Structure and Use

No building, structure, or land shall hereafter be used and no building or part thereof or structure shall be erected, constructed, reconstructed occupied, moved, altered, or repaired except in conformity with the regulations herein specified for the class of district which it is located.

6.0307 Development

1. The following activities or uses shall constitute development:

- a. A change in the type of use of a building, structure, or land.
- b. A reconstruction or alteration of the size of a building, structure, or land.
- c. A material increase in the intensity of use of land, such as an increase in the number of businesses, offices, or dwelling units in a structure or parcel of land.
- d. Commencement of extraction or excavation on a parcel of land.
- e. Demolition of a structure.
- f. Deposit of refuse, solid or liquid waste, or fill on a parcel of land.

- g. Alteration of a use which has been abandoned for a period of one year.
 - h. Alteration or cuts in existing street curbs.
2. The following activities or uses do not constitute development:
- a. The maintenance or improvement of a public road or railroad tract not involving substantial engineering redesign if the work is carried out on land within the boundaries of the right-of-way.
 - b. Work by any utility not involving substantial engineering redesign for the purpose of inspection, repair, renewal, or construction on established rights-of-way of any streets, mains, pipes, cables, power lines, towers, poles, tracts, or the like.
 - c. Work for the maintenance, renewal improvement of any building or structure, if the work affects only the interior or the decoration of the exterior of the building or structure.

6.0308 Water and Sewage Facilities

To protect the subsurface water supply from pollution and to protect the public health and abate nuisance and odor, construction of privies and cesspools shall be prohibited, in the corporate limits of the City, unless otherwise permitted by the City Council.

6.0309 Conditionally Permitted Uses

Applications for approval of a conditional use shall be submitted to the Planning and Zoning Commission.

The Planning and Zoning Commission shall hold a public hearing before action is taken on the application for approval of a conditionally permitted use. Notice of said hearing shall be published in the official newspaper of general circulation at least one week prior to the hearing.

No application for a condition use shall be granted unless the Planning and Zoning Commission shall find all of the following conditions present:

- 1. The conditional use will not be detrimental to or endanger the public health, safety, or general welfare.
- 2. The existing permitted uses in the neighborhood will not in any manner be substantially impaired or diminished by the establishment of the conditional use.
- 3. The conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- 4. Adequate utilities, access roads, drainage, and other necessary site improvements have been or are being provided.
- 5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- 6. The conditional use shall conform to all applicable regulations of the district in which it is located.
- 7. Based upon the Planning and Zoning Commission's finding of the above listed conditions, the City Council shall grant or deny a conditional use.

6.0310 Land Suitability

No land shall be divided, subdivided, or developed for a use which is not deemed suitable by the Planning and Zoning Commission for reasons of soil limitations, inadequate drainage or any other condition likely to be harmful to the health, safety, or welfare of the future residences of the area or harmful to the overall community.

The subdivider or developer as a part of the pre-application procedure for subdivisions must request a determination of land suitability providing that he shall provide all necessary maps, data, and information for such a determination to be made.

The City Council shall deny or approve the recommendations made by the Planning and Zoning Commission in regard to land suitability.

ARTICLE 4 – Application of Regulations

6.0401 Application of Regulations, Extraterritorial Zoning

Except as provided in this chapter:

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

6.0402 Extraterritorial Zoning

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

ARTICLE 5 – Non-Conforming Uses

6.0501 Non-Conforming Uses

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

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

ARTICLE 6 – Zoning Districts

6.0601 Zoning Map

The location and boundaries of the zoning districts are hereby established as shown on the map entitled “Zoning Map” and is hereby made a part of the regulations. A zoning district map is also on file in the office of the City Auditor. The Planning and Zoning Commission shall regularly update the “Zoning District Boundary Line” resulting from amendments to the Zoning Ordinance.

Location of Zoning District Boundaries: The following rule shall apply with respect to the boundaries of the zoning districts.

1. The zoning district boundary lines of said map are intended to follow lot lines, the centerlines of streets or alleys, the centerlines of streets or alleys projected, railroad right-of-ways, or the corporate limits lines, all as they existed at the time of the enactment of the zoning ordinance, but where a district boundary line does not clearly coincide with lot lines, it shall be determined by scaling.
2. Questions concerning the exact location of district boundary lines shall be determined by the Board of Adjustment according to rules and regulations which it may adopt.

6.0602 Use Districts

1. The City is hereby divided into the following Use Districts to be known as:
 - a. Residential Districts – Single-Family
 - b. Residential Districts – Multi-Family
 - c. Mobile Home Districts
 - d. Commercial Districts
 - e. Industrial Districts
 - f. Agricultural Districts
 - g. Greenbelt Districts

6.0603 Residential Districts - Single Family

1. Permitted Uses in a single-family district:
 - a. Dwelling houses occupied by not more than one family
 - b. Publicly owned and operated buildings
 - c. Churches and parish houses
 - d. Hospitals
 - e. Nursing and Rest Homes
 - f. Homes for the Aged
 - g. Playgrounds and Parks

- h. Cemeteries
- 2. Conditionally Permitted Uses:
 - a. Two family dwellings
 - b. Double wide mobile homes over 20 feet in width, with a full foundation
- 3. Setback Requirements
 - a. One automobile off street parking space for each living unit shall be provided.
- 4. Building code and structure requirements
 - a. Any structure built or moved into Walhalla must meet the specific regulations set by the City building code. Any structure moved into the City that is deemed unsightly or unsafe by the City Council or not meeting building code requirements must require a performance bond for the approximate amount needed to rehabilitate the structure which dollar amount is also to be determined by the City Council. The inspection of the house by a person appointed by the City Council, and the acquisition of the performance bond must be done before the structure is moved into the City.
- 5. Area Regulations
 - a. No single family residence shall hereafter be erected, established, or altered on a lot having a lot area of less than 7000 square feet,
 - b. Have a minimum lot width of not less than 50 feet measured along the front building line, and
- 6. Yard Regulations
 - a. A front yard of not less than 20 feet.
 - b. A side yard on each side of not less than 8 feet.
 - c. A rear yard of not less than 20 feet.
- 7. Height Regulations
 - a. There shall be no height limitations, except as imposed by the Planning and Zoning Commission in light of other structures and units in the area of proposed unit or units.

6.0604 Residential Districts – Multi-Family

- 1. Permitted Uses:
 - a. All uses permitted and as regulated in single family residential districts
 - b. Multi-family dwellings
 - c. Private clubs
 - d. Lodges or social buildings
 - e. Hotels, motels, tourist camps

- f. Home occupations
- 2. Conditionally Permitted Uses:
 - a. All conditionally permitted uses in single family residential districts
 - b. Municipal buildings
- 3. Area Regulations
 - a. No single family residence shall hereafter be erected, established, or altered on a lot having a lot area of less than 13,000 square feet,
 - b. Have a minimum lot width of not less than 75 feet measured along the front building line, and
- 4. Yard Regulations
 - a. A front yard of not less than 25 feet.
 - b. A side yard on each side of not less than 5 feet.
 - c. A rear yard of not less than 25 feet.
- 5. Height Regulations
 - a. There shall be a maximum height of four stories, not to exceed 50 feet.

6.0605 Mobile Home District

- 1. Permitted Uses:
 - a. Independent mobile homes located in a well drained area.
 - b. Parks and playground
 - c. Mobile home service buildings such as coin operated washers and dryers, for use of residents of the mobile home park.
 - d. Office for manger of the mobile home park.
 - e. Storage building for blocks, skirts, pipe, and other material and equipment required to set up a mobile home.
 - f. Storage buildings used for storage of vehicles used to tow mobile homes.
 - g. Accessory uses and buildings including swimming pools, bath houses, patios, etc, for use of mobile home residents.
- 2. Mobile Home Park Requirements
 - a. Mobile home parks shall contain a minimum of two acres of land and a maximum of eight mobile homes per gross acres.

- b. A minimum of ten percent of the gross site area shall be devoted to open space and recreational facilities unless the mobile home park is in close proximity to a City park (two blocks).
- c. Each mobile home space shall be at least 40 feet wide and an area of 5000 square feet.
- d. There shall be a minimum of 16 feet between structures.
- e. No building shall exceed 35 feet in height.
- f. Underground utility hookups shall be provided to each lot in the park. These utilities shall include water, sewer, electricity, telephone and natural gas.
- g. Off-street parking of one parking space for each mobile home unit shall be provided.
- h. All lots in the park shall be accessible at all times to emergency vehicles.
- i. Each mobile home shall have a setback of a minimum of ten feet within the park and 20 feet setbacks from other public roads adjoining the mobile home park.
- j. Where the park is served by private streets, those streets shall conform to the following:
 - i. Where parking is to be allowed on both sides of the street, a driving surface of 34 feet within a 40 feet right-of-way shall be provided.
 - ii. Where parking is prohibited on both sides of the street, a driving surface of 24 feet within a 40 feet right-of-way shall be provided.
- k. Each mobile home space shall be provided with garbage stands and cans.
- l. All regulations of North Dakota Regulatory Agencies and Departments relating to mobile homes shall be complied with.

6.0606 Commercial District

1. Permitted Uses:

- a. All single and multi-family dwelling units on floors other than ground floor
- b. Hospitals and nursing homes
- c. Hotels and Motels
- d. Retail stores and shops.
- e. Service establishments.
- f. Business and professional offices.
- g. Eating establishments.
- h. Funeral homes and mortuaries.
- i. Transportation services.
- j. Amusements and recreation.

- k. Wholesale businesses.
 - l. Any other building or use similar to the uses herein listed in the type of services or goods sold.
 - m. Any accessory use customarily incident to a use herein listed.
2. Conditionally Permitted Uses:
- a. Lumber yards
 - b. Warehouses
 - c. Apartments
3. Height Regulations
- a. There shall be a maximum height of 60 feet.

6.0607 Industrial District

1. Permitted Uses:
- a. Agriculture
 - b. Blacksmith and welding shops
 - c. Lumber yards
 - d. Fertilizer plants
 - e. Warehouses
 - f. Radiator repair shop
 - g. Heavy equipment sales, service, and repair
 - h. Fuel storage tanks and chemical storage tanks
 - i. Manufacturing and processing of wood, metal, concrete, and blacktop mix
 - j. Motor vehicle and farm implement sales, storage, service, and repair
 - k. Seed processing and treating plants where there is no excessive emission of dust, husks, or other particulate matter in the air.
 - l. Truck and railroad terminals
 - m. Public utility and public service uses.
 - n. Any accessory use customarily incident to a use herein listed.
2. Intensity of Use Regulations

- a. A buffer strip, which is approved by the City Council, shall provide a sight and sound barrier when an industrial zone is abutting a residential district or mobile home district. The buffer strip shall be adequately maintained by the property owner.
 - b. The open storage of materials other than waste materials or salvage automobiles may be permitted when located at least 100 feet from any residential district or mobile home district, and at least 30 feet from any street right of way line or other lot line. All material shall be handled with care to control dust and odor. All combustible material shall be stored in such a way as to permit free access to firefighting equipment.
3. Height Regulations
- a. There shall be a maximum height of:
 - i. 45 feet when less than 150 feet from a residential district zone
 - ii. 75 feet when more than 150 feet from a residential district zone
 - 1. Any person building a structure over 75 feet in height within 150 feet of a residential district zone must first obtain approval from the City Council and conform to any restrictions issued thereby before construction may begin.

6.0608 Agricultural District

1. Permitted Uses:

- a. General farm operations
- b. Single family non-farm dwellings on a tract of land three acres or larger.
- c. Churches and similar places of worship and parish residences.
- d. Golf course and other land recreational use.
- e. Public and parochial schools.
- f. Temporary structures incidental to construction work, but only of the period of such work.
- g. Utility lines and facilities necessary for public service but not including buildings for offices, exchanges, or storage.
- h. The buildings, structures, and operations incidental to the operation of a farm.
- i. Stands for sale of agricultural products or commodities raised on the premises.

2. Conditionally Permitted Uses:

- a. Airport or heliport
- b. Cemetery or crematory
- c. Radio, television, navigation, or military control station, transmitter, or tower
- d. Animal hospital or kennel

- e. Grain elevators
- f. Sanitary landfills and incinerator sites
- g. Wrecking, salvage, or junk yard
- h. Skeet, trap, or rifle ranges
- i. Mineral extraction, including sand or gravel

6.0609 Greenbelt Zone

1. Description and Purpose

The purpose of the green belt zone is to preserve the natural state of the Pembina River Valley, to provide a recreational and scenic area and prohibit land uses that would cause erosion of banks, phosphate and nitrate, pollution of the river and deterioration of the plants, water (aquifer), and wild life within the zone, and to provide for city parks. The green belt zone is 200 feet from the river's edge on both sides of the Pembina River and the area of Riverside Park, the Walhalla Public School and Walhalla School Park, St. Boniface School, historical park and cemeteries. This zone includes all parts of the Pembina River and banks within the one mile zoning jurisdiction of the city.

2. Permitted Uses:

- a. Bike trails
- b. Natural trails
- c. City parks
- d. Forest harvesting under a forest management plan, approved by the North Dakota State Forest Service.

3. Area Requirements

- a. Other than the development of narrow trails and controlled forest cutting; the land, water, and plants must remain in their natural state.

ARTICLE 7 – Subdivision Regulations

6.0701 Procedures for Subdivision Approval

1. Pre-application procedure

- a. Prior to the filing of an application for approval of a preliminary plat, the subdivider shall consult the Planning Commission for advice and assistance in reviewing the procedures and requirements of this regulation and other ordinances, and any data or plans which may affect the proposed development.
- b. This step does not require formal application fee or filing of a plat.

2. Preliminary plat procedure

- a. Prior to submitting a final plat for approval, the subdivider shall prepare a preliminary plat of the proposed subdivision and construction plans for improvements can be installed conforming with the requirements set forth in these regulations. The subdivider shall file with the City Council an application in writing seeking the approval of said plat, accompanied by three copies of the plat. Said application shall be submitted at least one week prior to a regularly scheduled meeting of the Planning and Zoning Commission.
- b. The preliminary plat shall include land surrounding the area to be developed even though a small portion thereof is proposed for the development. The Planning and Zoning Commission will check the preliminary plat to insure that it conforms with the adopted comprehensive plan, ordinance, and requirements set forth in these regulations.
- c. The Planning and Zoning Commission shall approve, approve with modifications, or disapprove the preliminary plat within 30 days of receipt of the plat.

3. Final plat procedures

- a. If the preliminary plat has been approved or conditionally approved, the subdivider shall submit three copies of the final plat or a certified survey map prepared by a registered land surveyor or engineer.
- b. The Planning and Zoning Commission shall hold a public hearing before action is taken in accordance with the North Dakota Century Code.
- c. After the final plat meets the requirements of this code and has been submitted within three months of the approval date of the preliminary plat and the conditions have been met, the City Council shall approve the final plat of the subdivision.
- d. App improvements required by this regulation shall be made or guaranteed in a manner acceptable to the City Council.
- e. The subdivider's concluding procedure shall be to file the final plat with the Pembina County Register of Deeds.

6.0702 Plat and Data Submission Requirements

1. Preliminary plat

- a. The preliminary plat shall be based on a survey and shall be submitted in three copies at a scale of 200 feet or less to one inch and show correctly on its face the following:

- i. The proposed name of the subdivision, which shall not duplicate or closely approximate the name of any other subdivision.
- ii. An accurate description of the property involved in according to the real estate records of Pembina County.
- iii. The names and addresses of the owners of the record, the subdivider and the registered surveyor who prepared the plat.
- iv. The names of adjoining subdivisions and the names of record owners of adjoining parcels of unplatted land.
- v. The boundary lines, accurate in scale, of the tract to be subdivided.
- vi. Existing sewers, water mains, culverts, and other underground structures within the tract and immediately adjacent thereto with pipe sizes and grades indicated.
- vii. The location, width, and names of all existing or platted streets or other public ways and easements within or immediately adjacent to these tract, corporate lines, section and quarter section lines, and other important features such as existing permanent buildings, water courses, railroad lines, etc.
- viii. The layout, proposed names and widths of proposed streets, alleys, and easements; the location and approximate sizes of proposed catch basins, culverts, and other drainage structures, the layout, numbers and approximate dimensions of proposed lots.
- ix. Proposed front-yard setback and other setback lines.
- x. The width and approximate dimensions of all parcels of land intended to be dedicated or reserved for public use, or to be reserved in the deeds for the common use of property owners in the subdivision, with the purpose, conditions or limitations of such dedication or reservation indicated.
- xi. Copies of any proposed restrictions.
- xii. A notation stating “preliminary plat – not for record”.

2. Final plat

- a. The final plat of the proposed subdivision shall be prepared by a registered surveyor or engineer and shall conform to the requirements of the preliminary plat and any additions attached thereto by the City Council.

6.0703 Design Standards

1. Streets

- a. The arrangement, classifications, extend, width, grade, and location of all streets shall conform to the adopted comprehensive plan and shall be designed in relation to existing and planned streets, topographic conditions, public convenience and safety, and the proposed uses of the land to be served by such streets.
- b. Provide for the continuation or appropriate projection of existing principal streets in surrounding areas.

- c. Minor streets shall be laid out that their use by through traffic will be discouraged.
- d. Dead-end streets shall not be permitted without a suitable turn-around with a diameter of no less than 75 feet.
- e. Where a subdivision borders on or contains a railroad right-of-way or highway right-of-way, the City Council may require a street approximately parallel to and on each side of such right-of-way, at a distance suitable for the appropriate use of the intervening land. Such distances shall be determined with due regard for the requirements of approach grades and future grade separations.
- f. Streets shall be laid out so as to intersect any other street at right angles (90 degrees).
- g. All street names shall be subject to the approval of the City Council.

2. Utility easements

- a. Easements across lots or centered on rear or side lot lines shall be provided for utilities where necessary and for such purposes shall be at least 20 feet wide.

3. Drainage way easements

- a. Where a subdivision is traversed by a water course, drainage way, channel or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially with the lines of such water course, as will be adequate for the purpose. Parallel streets or parking may be required in connection therewith.

4. Blocks

- a. The length, width, and shape of blocks shall be suited to the planned use of land, zoning requirements, convenient access, control and safety of street traffic.

5. Lots

- a. The size, shape, and orientation of lots shall be appropriate for the location of the proposed subdivision and for the type of development and use contemplated.
- b. The subdividing of land shall provide each lot with access to the public street.

6.0704 Required Improvements

1. Survey monuments

- a. Monuments shall be placed at all block corners, angle points, points of curves in streets, lot corners, and at the intermediate points as required by the Planning and Zoning Commission as noted on the plat plan.

2. Municipal water lines

- a. Municipal water mains shall be provided to each lot within the subdivision

3. Municipal sewage system

- a. Municipal sanitary sewers shall be provided to each lot within the subdivision.

4. Installation of improvements

- a. The improvements specified herein shall be installed and approval of the final plat shall be given only after the work has been completed or there shall have been filed with the City one of the following:
 - i. A duly completed and executed survey bond in an amount sufficient to complete the work with surety satisfaction to the City.
 - ii. Other arrangements satisfactory to the City to complete the work.

5. Improvement adjustments

- a. Deviations from the above regulations may occur through variances and applications for conditionally permitted uses. When property owners are allowed to deviate from the required improvements (municipal water, sewer, etc.) they must sign a certificate of compliance stating they will hook up to the City water and sewer if and when it passes through their property. They will relinquish their rights to object to the required improvement as the improvements help promote the health, safety, and welfare of the local residents.

6.0705 Discussion of Map

1. Property North of Hornung Addition, owned by Solveg Hornung, and John Rock McDonald to remain agricultural until Hornung's designated R-1, with McDonald's designated mobile park area.
2. Oak Trailer Park – It was discussed that Block 85 be left R-1, in the long range plan. Starting with lot 25 thru 32 and lot 38 thru 42 to be left as a buffer zone so that trailers may be put in lots where trailers are at present, but residential lots will remain R-1. Not to be designated commercial.
3. Blocks 56 and 42 are designated as Public School (building) and Public Park. There are no residences in either area so they will remain as indicated.
4. East half of blocks to be zoned commercial, between Mickie Deimert residence and Mick's Repair, south to James Mathison and Stanley Metelmann's lot, to serve as a buffer zone between R-1 and Industrial.
5. Green Belt Area – It was discussed that the green belt be established in the flood plain or up to 300 feet from each bank, if the land is unusable for a period of three years, that the city will negotiate with the land owner to remain or return to natural state and designated to:
 - a. Bike trails
 - b. Nature trails
 - c. Forest harvesting under forest management plan, approved by the North Dakota Forest Service.

ARTICLE 08 – Floodplain

6.0801 Findings of Fact, Purpose and Objectives

1. Findings of fact

- a. The flood hazard areas of the City are subject to periodic inundation which can endanger life, result in loss of property, create health and safety hazards, disrupt commerce and government 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.
- b. Flood losses caused by the cumulative effect of obstructions in the special flood hazard areas cause increases in flood heights and velocities. Inadequately flood proofed, elevated or otherwise unprotected structures also contributed to the flood loss.

2. Statement of purpose

- a. 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:
 - i. To protect human life and health;
 - ii. To minimize expenditure of public money for costly flood control projects;
 - iii. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 - iv. To minimize prolonged business interruptions;
 - v. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
 - vi. To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
 - vii. To ensure that potential buyers are notified that property is in an area of special flood hazard;
 - viii. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions

3. Method of reducing flood losses

- a. In order to accomplish its purposes, the ordinance includes methods and provisions for:
 - i. 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;
 - ii. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

- iii. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- iv. Controlling, filling, grading, dredging, and other development which may increase flood damage; and
- v. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

6.0802 Definitions

1. 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.
 - a. "Appeal" means a request for a review of the City Auditor's interpretation of any provision of this ordinance or a request for a variance.
 - b. "Area of special flood hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.
 - c. "Base flood" means the flood having a one percent chance of being equaled or exceeding in any given year.
 - d. "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations located within the area of special flood hazard.
 - e. "Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
 - i. The overflow of inland or tidal waters and/or;
 - ii. The unusual and rapid accumulation of runoff of surface waters from any source.
 - f. "Flood Insurance Rate Map (FIRM)" means the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.
 - g. "Flood Insurance Study" means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Map, the water surface elevation of the base flood, and identifies the floodway.
 - h. "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
 - i. "Lowest floor" means the lowest floor of the lowest enclosed area including basement. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable flood proofing design requirements of this ordinance.
 - j. "Manufactured home" means a structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when

connected to the required utilities. It includes recreational vehicles or travel trailers placed on a site for more than 180 consecutive days.

- k. “Manufactured home park or subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
- l. “New construction” means structures for which the “start of construction” commenced on or after the effective date of this ordinance.
- m. “Start of construction” includes substantial improvement, and means the date of 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 of 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.
- n. “Structure” means a walled and roofed building, manufactured home or liquid storage tank that is principally above ground.
- o. “Substantial improvement” means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:
 - i. Before the improvement or repair is started, or
 - ii. If the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.
 - iii. The term does not 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.
- p. “Variance” means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

6.0803 General Provisions

- 1. Lands to which this ordinance applies
 - a. This ordinance shall apply to all areas of special flood hazards within the jurisdiction of the City.
- 2. Basis for establishing the areas of special flood hazard

- a. The areas of special flood hazard identified by the Federal Emergency Management Agency is a scientific and engineering report entitled "The Flood Insurance Study for the City of Walhalla", accompanied by the most recent Flood Insurance Rate Map and all subsequent revisions thereto is hereby adopted by reference and declared to be a part of this ordinance.

3. Compliance

- a. 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

- a. 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

- a. In the interpretation and application of this ordinance, all provisions shall be:
 - i. Considered as minimum requirements;
 - ii. Liberally construed in favor of the City Council; and
 - iii. Deemed neither to limit nor repeal any other powers granted under state statutes.

6. Warning and disclaimer liability

- a. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City, 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.

6.0804 Administration

1. Establishment of development permit

A development permit shall be obtained before construction or development begins within any area of special flood hazard established 6.0803(2). Application for a development permit shall be made on forms furnished by the City Auditor 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, full storage materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- a. Elevation in relation to mean sea level, of the lowest floor of all structures;
- b. Elevation in relation to mean sea level to which any structure has been flood proofed;
- c. Certification by a registered professional engineer or architect that the flood proofing methods for any non-residential structure meet the flood proofing criteria in 6.0805(2); and

- d. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

2. Designation of the City Auditor

The City Auditor 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 City Auditor

Duties of the City Auditor shall include, but not be limited to:

a. Permit review

- i. Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
- ii. 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.
- iii. 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 6.0805(3)(1) are met.

b. Use of other base flood data

- i. When base flood elevation data has not been provided in accordance with 6.0803(2), the City Auditor shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source, as criteria for requiring that new construction, substantial improvements or other development in the floodplain are administered in accordance with 6.0805(2).

c. Information to be obtained and maintained

- i. 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.
- ii. For all new or substantially improved flood- proofed structures:
 - 1. Obtain and record the actual elevation (in relation to mean sea level) to which the structure has been flood proofed;
 - 2. Maintain the flood proofing certifications required in 6.0804(1)(c).
- iii. Maintain for public inspection all records pertaining to the provisions of this ordinance.

d. Alteration of watercourses

- i. Notify adjacent communities and the North Dakota State Engineer prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- ii. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

- e. Interpretation of Flood Insurance Rate Map (FIRM) Boundaries
 - i. Make interpretation where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in 6.0804(4)
4. Variance procedure
- a. Appeal Board
 - i. The Flood Damage Prevention Appeal Board as established by the City shall hear and decide appeals and requests for variances from the requirements of this ordinance.
 - ii. The Flood Damage Prevention Appeal Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the City Auditor in the enforcement or administration of this ordinance.
 - iii. Those aggrieved by the decision of the Flood Damage Prevention Appeal Board, or any taxpayer, may appeal such decision to the District Court, as provided in North Dakota Century Code 27-05-06.
 - iv. In passing upon such applications, the Flood Damage Prevention Appeal Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance and:
 - 1. The danger that materials may be swept onto other lands to the injury of others;
 - 2. The danger to life and property due to flooding or erosion damage;
 - 3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - 4. The importance of the services provided by the proposed facility to the community;
 - 5. The necessity to the facility of a waterfront location, where applicable;
 - 6. The availability of alternative locations, for the proposed use which are not subject to flooding or erosion damage;
 - 7. The compatibility of the proposed use with existing and anticipated development;
 - 8. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area;
 - 9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - 10. 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;
 - 11. 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.

- v. 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 1-11 in 6.0804(4)(a)(iv) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- vi. Upon consideration of the factors of 6.0804(4)(a)(iv) and the purposes of this ordinance, the Flood Damage Prevention Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
- vii. The City Auditor shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

b. Conditions for variances

- i. 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;
- ii. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result;
- iii. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
- iv. Variances shall only be issued upon:
 - 1. A showing of good and sufficient cause;
 - 2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - 3. 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 6.0804(4)(a)(iv), or conflict with existing local laws and ordinances.
- v. 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 reduces lowest floor elevation.

6.0805 Provisions for Flood Hazard Reduction

1. General standards

In all areas of special flood hazards the following standards are required:

- a. Anchoring
 - i. All new construction and substantial improvements (including additions) shall be anchored to prevent flotation, collapse or lateral movement of the structure.
 - ii. 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.

b. Construction materials and methods

- i. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- ii. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- iii. 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.

c. Utilities

- i. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- ii. 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
- iii. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

d. Subdivision proposals

- i. All subdivision proposals shall be consistent with the need to minimize flood damage;
- ii. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- iii. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and
- iv. 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).

2. Specific standards

In all areas of special flood hazards where base flood elevation data have been provided as set forth in 6.0803(2) or 6.0804(3)(b), the following provisions are required:

a. Residential construction

- i. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated above the base flood elevation.

b. Nonresidential construction

- i. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation; or together with attendant utility and sanitary facilities shall:

1. Be flood proofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces and exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - a. a minimum of two openings having a total net area of not less than one square foot of enclosed area subject to flooding shall be provided;
 - b. the bottom of all openings shall be no higher than one foot above grade;
 - c. openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters; and
3. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the official as set forth in 6.0804(3)(b).

c. Manufactured homes

- i. Manufactured homes shall be anchored in accordance with 6.0805(1)(a)(ii).
- ii. All manufactured homes or those to be substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and is securely anchored to an adequately anchored foundation system.

3. Floodways

Located within areas of special flood hazard established in 6.0803(2) 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:

- a. 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.
- b. If 6.0805(3)(a) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of 6.0805.

6.0806 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 safe guards 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 \$1000 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 from taking such other lawful action as is necessary to prevent or remedy any violation.

ARTICLE 9 – Enforcement

6.0901 Walhalla City Council

1. Duties of the City Council

- a. Approve or deny all final plats, building permits, variances, and conditional uses.
- b. All amendments to the text of these regulations and the “Zoning District Map” shall be approved by the City Council after a public hearing by the Planning and Zoning Commission.
- c. Investigate and note the violation of the provisions of these regulations and take action.

6.0902 Building or Development Permit Fee

1. It shall be unlawful for any person to begin any development or building without obtaining a building permit.
2. There shall be no fee for building permits or review of subdivision plats.
3. Any building permit issued pursuant of these provisions shall expire one year from the date of issuance.

6.0903 Certificate of Compliance

1. No building or structure shall be occupied until a certificate of compliance shall have been issued by the City Council for determining the conformity with the specifications for the development permit has been issued.

6.0904 Violations and Penalties

1. It is declared unlawful for any person to violate any of the terms and provisions of these regulations or other official control adopted by the City Council pursuant thereto. Violation thereof shall be a misdemeanor and may be punished by a fine of not to exceed \$1000 for each and every day that any violator fails to comply with the provisions of these regulations. Whenever a violation of these regulations occurs, any person may file a complaint in regard hereto. All fines for violation shall be paid to the City Auditor and shall be credited to the general fund of the City.

ARTICLE 10 – Park District

6.1001 Park Limits

1. All of Block 42 of the Original Townsite of the City of Walhalla, County of Pembina, State of North Dakota (School Park)
2. Tract of land lying in the South Half (S½) of Section 20 and the North Half (N½) of Section 29, Township 163, Range 56 West of the Fifth Principal Meridian more described as: A tract of land bounded by the south line of Riverside Avenue, of the City of Walhalla, the easterly line of Tenth Street produced southeasterly, the center line of the Pembina River and the center line of Seventh Street produced southeasterly, except a piece of land 380 feet long and 100 feet wide, the length of which is adjacent to the south line of Riverside Ave and the width of which is adjacent to the east line of Tenth Street produced, except a portion of the Great Northern Railway company's spur track right of way as the same is of record and exception the City of Walhalla's well property. This tract contains 22.837 acres. (Park near river)
3. All of Block 86 of the First Southwest Addition of the City of Walhalla, County of Pembina, State of North Dakota. (Baseball Diamonds)
4. All of Block 69 in Hornung's First Addition of the City of Walhalla, County of Pembina, State of North Dakota. (Baseball Diamonds)
5. Lots 4, 5, and 6 of Block 63 in Mager's First Addition in the City of Walhalla, County of Pembina, State of North Dakota. (Baseball Diamonds)

6.1002 Definitions

1. Riverside Park – The name Riverside Park shall refer to all land located in Blocks one through eight inclusive of the Park Addition to the City of Walhalla.
2. Central Park – The name Central Park shall refer to the entire Block 42 of the Original Town site of Walhalla.
3. Oak Park – The name Oak Park shall refer to Block 86 of the Southwest Addition to the City of Walhalla.
4. “Pool Area” – The term pool area shall mean the building located alongside the swimming pool located in Riverside Park as well as the swimming pool itself and the area inside the fence which surrounds the swimming pool.
5. Tennis Courts – The term tennis courts shall mean all the area inside the fence of the tennis courts located in Central Park.

6.1003 Curfew

There shall be a curfew established as to Riverside Park and it shall be unlawful for any person to drive through or be in Riverside Park after 10:00 P.M. unless camping or having the expressed written permission of the Park Board to be in the park after the time established as curfew.

6.1004 Vehicles, Where Prohibited in Parks

It shall be unlawful for any licensed motorized vehicles, motor bikes, go-carts, snow machines, or bicycles or the like to drive or park on any property located in Riverside Park, Central Park, or Oak Park unless it is on an established roadway, parking lot, or trail which has been prepared for such traffic and designated as a roadway,

parking lot, or bicycle path by the Park Board. Any person who is caught either parked or driving on any park property which is not either a roadway, parking lot, or designated bicycle path shall be in violation of this ordinance.

6.1005 Trespassing

It shall be unlawful for any person to be inside the pool area or parking buildings when they are not opened for the use of the public. Any person found trespassing inside the pool area or other buildings owned by the Park Board shall be in violation of this ordinance.

6.1006 Vehicles Prohibited on Tennis Courts

It shall be unlawful for any person to use any motorbikes, bicycles, roller skates, skateboards, or the like inside or on the tennis courts located in Central Park. Any persons found trespassing inside the tennis courts with such vehicles or devices and charged with a violation of this section shall have such vehicles or devices confiscated by the appropriate authorities until such time as a hearing can be held on such charge before the City Magistrate.

6.1007 Penalty

Any person violating any of the provisions of this ordinance shall, for each such offense, be punished by a maximum fine of \$500.

ARTICLE 11 – Walhalla Municipal Airport

6.1101 Airport Limits

1. Part of the Southwest Quarter (SW¹/₄) of the Section Sixteen in Township 163, North of Range 56 West of the Fifth Principal Meridian, described by metes and bounds as follows: Beginning at a point on the Southwest Corner of said Quarter, thence North 2,632.2 feet, thence S89°25'E a distance of 825 feet, thence South 833 feet, thence S4°28'E at a distance of 1,569.6 feet thence S89°25'E a distance of 688.9 feet, thence South 700 feet, thence N89°25'W a distance 2,613 feet to the point of beginning. This tract contains 92.90 acres, more or less.
2. A tract of land lying in the West Half (W¹/₂) of Section 16, Township 163 North, Range 56 West of the 5th Principal Meridian, more particularly described as follows: Commencing at the Northwest corner of the West Half (W ¹/₂) of said Section 16; thence Easterly along the section line S89°01 '27"E for 100.00 feet; thence S0°04'20"W for 123.75 feet to the south line of drainage ditch right-of-way, this being the point of beginning: Thence from the said point of beginning Easterly along the right-of-way line S89°01 '27"E for 555.07 feet; thence southerly S3°14'45"E for 361.72 feet; thence S8°57'223"E for 3,403.08 feet to the existing airport property line; thence Northwesterly along said property line N44°28'00"W for 547.30 feet; thence Northerly N0°00'00"E for 833.00 feet to the East-West ¹/₄ line of said Section 16; thence Westerly along said ¹/₄ line N89°25'00"W for 125.00 feet; thence Northerly N0°04'20"E for 300.00 feet; thence Westerly N89°25'00"W for 600.00 feet to the East right-of-way line of North Dakota Highway #32; thence Northerly along said right-of-way line N0°04'20"E for 2,201.17 feet to the point of beginning; said tract containing 43.50 acres (1,894,854 S.F.)

CHAPTER SEVEN

WATERWORKS AND SEWER SYSTEM

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7.0501 Penalty

CHAPTER SEVEN

WATERWORKS AND SEWER SYSTEM

ARTICLE 1 - Utility Established

7.0101 Waterworks and Sewer Departments

The system of sewers and drains, together with all catch basins, manholes, flush tanks, and all other appurtenances thereto now constructed, build, as erected, together with such changes, additions, and alterations as the City Council shall from time to time see fit to make shall constitute the sewer system of the City.

7.0102 Waterworks System

The waterworks, together with all pumping plants, buildings, and machinery therein, water mains, hydrants, and connections as now constructed and erected, or hereafter constructed or erected, shall constitute the system of waterworks of the City, subject to such change and additions as the City Council shall from time to time see fit to make.

7.0103 Waterworks and Sewer Department Created

There shall be a waterworks and sewer department in the City, which shall consist of the City Engineer and City Auditor and such other employees as the City Council may from time to time determine.

7.0104 Care and Control

The City Engineer and the police shall have the care and control of all pipelines and all property belonging to the waterworks and sewer department.

7.0105 Duties of Auditor

It shall be the duty of the City Auditor to perform the following acts:

1. To issue permits to tap mains or make connections with the same, service pipes or extensions, or to make extensions, and to keep a record of all permits issued;
2. To receive all money for the waterworks system, keep a correct account of the same owed to the City from the users of the waterworks system, and make a monthly account of the same;
3. To keep a record of any and all applications made for water service and to direct the maintenance department to turn off water where payment for water service is not made;
4. To issue permits to non-patrons of the water system authorizing them to procure water from the service pipe of patrons.

7.0106 Waterworks and Sewer Department, Power to Spend Money

Said City Engineer and City Auditor shall have no power to make any expenditure or incur any debt without first having been ordered to do so by the City Council.

7.0107 Waterworks and Sewer Department, Deliver Books to Successor

On the expiration of his term of office, the City Auditor, on demand, shall deliver to his successor in the office all books, records, and property of every description in his possession belonging to the City or appertaining to his office.

7.0108 City Council to Prescribe Rules

It shall be the duty of the City Council to prescribe such rules and regulations for the government of the waterworks and sewer systems as they shall deem expedient for the welfare and efficiency of said departments.

7.0109 Statutory Authority

The provisions of North Dakota Century Code 40-33-16 and all subsequent amendments shall be and hereby incorporated by reference into this ordinance.

Any City owning a system for the distribution of water for fire protection and other public purposes and for selling water to its inhabitants and industries, but for which the water supply is unsuitable or inadequate, may contract to purchase water at wholesale for such purposes from any person, firm, public or private corporation, or limited liability company able and willing to furnish the same, upon such terms and during such period, not exceeding forty years, as the City Council shall deem appropriate. Any such contract shall be authorized by an ordinance submitted to the voters for approval by a majority of those voting on the proposition before it takes effect. In and by such ordinance and contract, the City may bind itself:

1. To establish and maintain rates and charges for supplying water by it to its inhabitants and industries, either according to a prescribed schedule agreed upon or sufficient to produce net stated amounts for specified periods during the life of the contract, or both, and to appropriate and use the same for payments to become due under the contract, and, if the contract so provides, the City shall be obligated to pay for such water solely out of such net revenues;
2. To pay, at an agreed rate or rates, for all water taken by the City under such contract and not resold by it; and
3. To do and perform any other acts or things which, in the discretion of the City Council, are deemed reasonable and appropriate for the procurement of such water on the most efficient and economical basis.

If any payments under any contract are to be made solely out of net revenues, the contract may fix and prescribe the method or basis on which net revenues are to be computed.

7.0110 Authority to Contract

The City Council is hereby authorized to enter into a contract with a treated water supply company, for the purpose of water for distribution for fire protection and other public purposes and for selling water to its inhabitants and industries.

ARTICLE 2 – Meters and Rates

7.0201 Meters Required

All residences, commercial buildings, other structures or entities, in existence in the City on November 1, 1991, and using the City's water services, shall be required to have installed a water meter meeting the approval of the City Council and procured from the City at cost, such cost to include the cost of the meter, expenses of installation and testing. The purpose of this section is to require all water used through the City water system to be metered.

Any individual or entity who is the owner of a residence, commercial building, or other structure as of November 1, 1991, and who does not have a water meter installed in said residence, commercial building, or other structure, shall receive a notice from the City that said individual or entity is to immediately install a water meter on their water line. Any individual or entity not complying with said notice shall be guilty of an offense and shall be fined a sum not exceeding \$1000 for each offense. Each day subsequent to such notice in which the individual or entity shall fail to comply with said notice, by installing a water meter, shall be deemed a separate offense.

7.0202 Meters Required, Installation of

The said meter shall be installed under the supervision of the City and the cost of installation shall be paid by the person having such meter installed.

7.0203 Lien for Charges

All unpaid charges for water shall be a lien upon the premises to which the water was furnished. No permit to use water shall be issued unless the owner of the premises signs the application and agree in said application that all charges for water shall be allowed as a lien upon the premises.

7.0204 Meters to be Sealed

All meters shall be sealed by the City when installed and if the seal is broken the person having such meter installed shall be guilty of an offense and shall also be responsible to the City for any damage to the meter not the fault of the City, and pay the cost of repairing the same.

7.0205 Reading of Meters

Water meters shall be read as often and at such times as may be determined by the City Council, and all meters must at all times be accessible for reading.

7.0206 Testing of Meters

A user of water may have his meter tested by requesting the same and paying the cost thereof, such cost to be determined by the City Council.

7.0207 Water Rates to be Set By City Council

Amounts charged for water used from the City Main shall be determined by the City Council, and the City Council shall have the power to fix a minimum rate for all users. The City Council shall also have the power to fix a rate to be charged as a hook-up fee, which fee shall be assessed against all property in the City which is connected to the City water main whether or not water service is being used. A property owner may remove his property from the list of property charged a hook-up fee by removing the structure, if any, on the property and discontinuing the City water service.

7.0208 When Bills are Due

A water bill shall be due and payable when presented for collection

7.0209 Failure to Pay Water Bill

Failure of a user of water to pay his bill promptly shall result in the water being shut off and not turned on again until all water rents then due are paid, with an additional sum of \$50 for turning on the same.

7.0210 When Meter Fails to Register

Should any water meter or meters become inoperative, this water user shall pay the same as for the previous month.

7.0211 Joint and Several Liability of Owners and Occupants: Billing and Payment After Notice of Termination

The owner and occupant of each premises whether residence or business shall be jointly and severally liable for all charges for water service during the period of their respective ownership or occupancy and until receipt of written notice by the City of the termination of such ownership or occupancy. All such charges having been properly billed to the owner or occupant of any premises served and not paid may be recovered by the City in a civil action in any court of competent jurisdiction against either the owner or the occupant or both of them.

7.0212 Charges to Constitute Lien on Premises; Assessment and Collection of Lien

All water charges whether for the water service or for other fees shall constitute a lien upon the respective lot, lots, tracts, and premises receiving water service; and all such charges which have been properly billed to the owner or occupant of the premises served and which are more than 30 days past due on September 30 of each year shall be certified by the City Auditor to the County Auditor between the 1st and the 10th day of October of each year; and the City Auditor, in so certifying such charges, shall specify the amount thereof, the description of the premises served and the name of the owner thereof; and the amount so certified shall be extended by the County Auditor on the tax rolls against such premises and collected by the County Treasurer and paid to the City Auditor in the same manner as other county and municipal taxes are assessed, certified, collected, and returned.

ARTICLE 3 – Rules and Regulations

7.0301 Who May Take

No person except a patron of the waterworks shall take any water from the hydrant or service pipes of a patron, without first obtaining a permit, for which a fee of \$3 per quarter shall be charged and collected in advance. The City Auditor shall give his receipt for said payment; and the patron from whose hydrant or service pipe the water is taken may demand and receive said receipt from said non-patron user and shall be entitled to credit in the amount of said receipt, provided that said credit may be applied to that part of his bill in excess of the minimum charge.

7.0302 Defacing or Injuring of Waterworks

No person shall willfully or carelessly break, injure, mar, deface, interfere with, or disturb any building, machinery, apparatus, fence, fixture, vault, reservoir, pipes, pipeline, or any other attachment connected with the waterworks and sewer system; or any public hydrant or stop cock, stop cock box, water supply or service pipe, or any part thereof, nor shall any person deposit anything in the stop cock box or commit any act tending to obstruct or impair the intended use of the above-mentioned things, without the permission of the City Council.

7.0303 Injuring or Obstruction of Sewer

No person shall cast or throw or cause to be cast or thrown into any drain or sewer within the City any filthy substance or substance calculated to cause any obstruction, nuisance, or injury in or to the same.

7.0304 Permit Required for Excavations in Street or Alley

Excavations in streets and alleys shall be made in such manner as to impede travel as little as possible, and the City Engineer shall determine the length of time such excavations shall remain open. When unnecessarily delayed he may direct the number of workmen to be increased to hasten the work to such an extent as he may deem necessary.

7.0305 Excavation Near Water Main or Sewer, When Allowed

No person shall make any excavation in any street, alley, or highway within the City nearer than four feet to any water pipe or sewer pipe, except on special permission in writing from the City Council.

7.0306 Permit Required to Construct Cellar, Vault, Well, Etc.

No person shall construct or cause to be constructed or made, any sewer, vault, cellar, cistern, or well in any of the streets, alleys, or public grounds in the City of Walhalla without express authority from the City Council.

7.0307 Opening of Hydrants

All hydrants erected in the City for the purpose of extinguishing fire in said City are hereby declared to be public hydrants, and no person or persons, other than members of the fire department and those specially authorized by the City Council, and then only for the use of said department shall open any of the said hydrants, or attempt to draw water from the same or in any manner interfere with any of said hydrants.

7.0308 Wrenches, By Whom to be Used

No member of the fire department shall let out or suffer any person not connected with the said department to take the wrenches furnished said department to be used in case of fire, or suffer the same to be taken from any house or office of said department, except for purposes connected with the fire department.

7.0309 City Engineer to Supervise Work on Streets

All work done on the streets and alleys contemplated by this chapter must be done under the supervision of the City Engineer, and subject to his direction and disapproval.

7.0310 Application for Permit to Connect service with Supply Pipe

All applications for the tapping of or connecting with any water main or service pipe must be made in writing. The same must reach the City Auditor at least one day before any work is commenced. All applications shall be accompanied by an accurate description of the premises and of the water service required.

7.0311 Taps, When and by Whom Made

No person except one authorized by the City Council will be permitted, under any circumstances, to tap the mains of the waterworks or insert stopcocks therein; all service cocks must be inserted at the place designated by the City Engineer and only of the size specified in the written report.

7.0312 When Service Pipe is to Have Separate Stop Cock

Service pipes intended to supply two or more distinct preemies or tenements must be provided with a separate and distinct stop cock and box for each tenement, but no more than two buildings shall be supplied from one service pipe.

7.0313 Cost of Connecting and Repair, Paid by Whom

Person desirous of taking water from or connecting in any manner with the waterworks system of the City must pay all the expense thereof and shall pay the cost of the corporation cock, stop cock, and iron shut-off box attached.

All service pipes, stop cocks, corporation cocks, and other fixtures from the main to the curb line and including the shutoff box must be laid and attached and kept in repair and kept from the frost at the expense of the applicant or consumer, but said service pipes will and shall remain under the control of the City, such applicant waiving and releasing all claim thereto of control except the duty of keeping the same in repair and protecting the same as herein provided.

In case the same are allowed to get out of repair, or are damaged by frost or otherwise, and the said person so taking water therefrom fails, neglects or refuses to repair or fix the same, after 24 hours notice, then and in the event the City shall have the right to either shut off, repair, or fix the same, in its discretion, and assess the cost thereof against the property which the same service pipe or fixture supplies.

7.0314 Water Not to be Supplied to Others, Penalty

No owner or occupant of any building, premises or other enclosure into which water has been or shall be introduced shall be allowed to supply water to the other persons or families. If so supplied the water will be cut off without notice and all payments previously made to the City for water rents shall be forfeited in addition to the penalty set forth in 7.0401.

7.0315 City Officials to have Access to Premises

The Board of Health or City Engineer or Chief of Police or other officers connected with the waterworks shall have the free access at all hours of the day to all parts of every building in which the City water is delivered and consumed, for the purpose of examining pipes and fixtures.

7.0316 When Water is to be Turned On

The City water will not be turned into any private house or service pipe except upon the order of the proper authorities.

7.0317 Consumers Outside City

Any firm, person, or corporation desiring to use water from the City waterworks outside of the corporate limits of the City may connect with said waterworks at the most convenient point, and at his or their sole expense, with the exception that the necessary extension within the City shall be made in accordance with the terms of this chapter. The City Council shall reserve the right to discontinue at any time without notice the furnishing of water to any consumer outside the corporate limits of the City.

7.0318 Discontinuance of Water

Any person desiring to discontinue the use of water must give written notice thereof to the City Auditor previous to the expiration of the time for which payment has been made or become due and unpaid; otherwise the party shall be liable for rent for the ensuing month. In every case where the water has been shut off in pursuance of such notice or for failure to pay the water rent thereof, the water shall not be turned on again until the person desiring such water supply shall have paid to the City Auditor, the sum of \$50 and all the rents due to the City for the use of said water.

7.0319 Shutting Off Water in Case of Fire or Repairs or Construction

It shall be the duty of all consumers of water as soon as the fire signal is given to shut off all water cocks on their premises and keep the same closed until the fire is extinguished, and water may be turned off by the City when made necessary or desirable in constructing, or repairing the water system, or any part thereof.

7.0320 Waste of Water Prohibited

No person shall permit the City water to run continuously from a fixture, nor unnecessarily waste any City water. When the City Engineer shall discover any leakage or waste of water, he shall immediately notify the consumer to such fact, and it shall be the duty of such consumer to at once make the necessary repairs to prevent such waste and upon his failure to do so for 48 hours after receiving such notice, it is hereby made the duty of the authorities to forthwith shut off the water on such premises and not to turn the same on again until such repairs have been made to his satisfaction, nor until the consumer has paid all costs in connection therewith, together with any fine that may be adjudged against him in any prosecution therefor.

7.0321 Non-liability of City for Excessive or Deficient Pressure

Under no circumstances shall the City be liable for a deficiency or failure in the supply of water whether caused by shutting off the water to make repairs or connections or for any other cause whatsoever. Nor shall the City under any circumstances be liable for excessive pressure on the water mains, pipes, or connections, the City reserving at all times the right to increase the water pressure for the purpose of cleaning out its mains, for fire protection, or for any other purpose.

ARTICLE 4 – Plumbing Code

7.0401 Plumbing Code

There is hereby adopted the rules for water and sewer construction as defined by the State Plumbing Code and any future updates, and amendments to those rules, a copy of which is on file in the office of the City Auditor of the City, and the same is hereby adopted as fully as if it were set out at length herein.

ARTICLE 5 - Penalty

7.0501 Penalty for Violation of Chapter

Any person, firm, or corporation violating any of the provisions of this chapter shall, upon conviction, be punished by a fine not to exceed \$1000 or by imprisonment not to exceed 30 days, or by both such fine and imprisonment in the discretion of the court, the court to have power to suspend said sentence and to revoke the suspension thereof.

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CHAPTER EIGHT

BUSINESS REGULATIONS AND LICENSES

ARTICLE 1 – General Provisions

8.0101 Licenses

All licenses granted shall be subject to the ordinances concerning licenses, which may be in force at the time of the issuing thereof, or which may be subsequently passed by the City Council, and if any person shall violate any provision of any ordinance relating to his license, he may be proceeded against for any fine or penalty imposed thereby, and his license may be revoked for forfeited in the discretion of the City Council or the court before which any action may be brought for the recovery of any fine or penalty.

8.0102 Licenses – Application

Any person desiring a license or permit under any ordinance of the City shall make a written application therefore to the City Auditor and shall file the same with the City Auditor, stating the purpose for which the license or permit is desired, for what length of time and specifying the place where the business is to be carried on and if required to file a bond before being licensed he shall also name his proposed sureties on his bond in his application.

8.0103 Licenses – Granting

If a majority of the City Council shall be in favor of granting such application they shall endorse their names thereon, together with the amount taxed for the license, and upon application being endorsed by the majority of the said City Council and the payment of the sum named to the City treasurer, receiving his receipt therefor, and upon presentation of the receipt to the City Auditor, the said Auditor shall issue to the said applicant or applicants a license for the purpose and time specified. This section shall not apply to beer and liquor licenses.

8.0104 License – Date of Issuance

Each license shall be dated the day of the issuance thereof, but if the applicant or applicants shall have been acting without a license, the license shall commence with the date the business was commenced, and if the business calls for a yearly license, then and in that event the license shall commence on the first day of January in the year for which the license shall be issued, and the date of issuance of the license, together with the time of commencing and expiration shall be given in the license record.

8.0105 Licensed – To Be Signed and Sealed

All licenses shall be signed by the City Auditor under the corporate seal of the City. No license shall be valid until signed and sealed, nor shall any person to be deemed licensed until a license shall be duly issued to him.

8.0106 No License Shall Be Granted For More Than One Year

No license shall be granted for a longer term than one year, and all yearly licenses other than those for the sale of beer and liquor shall commence on the first day of January in each year and expire on the last day of December of each year.

8.0107 Licenses - Not Transferable

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

authorize any person to act under it at more than one 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.

8.0108 Licenses – Committee May Grant, When

The License Committee may receive applications for license and grant the same in all cases when it is not otherwise expressly provided, upon the terms and conditions specified by the ordinances of the City, but if they shall not feel authorized to grant any particular application for a license for any purpose not named by any ordinance, they may report such application to the next meeting of the City Council for their action thereon.

8.0109 Licenses – Not To Issue Unless Personal Property Taxes Are Paid

Whenever, pursuant to any ordinance of the City now existing or which may be hereafter enacted, a license is required to be obtained from the City for the conduct of any business, trade, or occupation, or for any other purpose except dog licenses, no license shall be issued to any person, firm, or corporation until all personal property taxes owing by such person firm, or corporation to the County of Pembina have been paid.

8.0110 Proof That Personal Property Taxes Paid Necessary

Such applicant for license shall at the time of making his application for a license furnish to the City Auditor of the City a receipt showing that all such taxes have been paid, executed by the County Treasurer, the Sheriff or the County Auditor of Pembina County, or a statement from such official or one of them to the effect that all personal property taxes are paid.

8.0111 Renewal of License, Requirements to be Met

When any person, firm, or corporation has theretofore been issued a license pursuant to the ordinances of the City, and such person, firm, or corporation desires to renew such license as provided by the ordinance requiring the same, and such person, firm, or corporation shall furnish and file like information as required by 8.0108 hereof, and no license shall be renewed unless the applicant for such license has paid all delinquent and current personal property taxes assessed against such applicant in Pembina County.

8.0112 Licensee to Conduct Business in Orderly Manner

Every person holding a license as herein provided, shall conduct his business in a quiet and orderly manner and shall observe, conform to and obey the laws of the State of North Dakota and the laws and regulations of the City. Any executive or police officer of the City may enter the licensed premises at any time to ascertain whether the applicable laws and ordinances are being complied with.

8.0113 Enforcement of Article

The police shall enforce all ordinances in relation to licenses, and shall from time to time examine the license record on file in the office of the City Auditor, and shall prosecute all persons who shall be acting without license, and refusing to comply with the provisions of the ordinance in relation to license, and said police shall collect from them the sum which may be taxes for their license; and his receipt shall be good to the extent and purpose thereof.

ARTICLE 2 – Transient Merchants

8.0201 Transient Merchant, Defined

A transient merchant within the meaning of this article is defined as being a person who engages in the vending or sale of merchandise at any place in this City temporarily, and who is not, and who does not intend to become, a permanent merchant of this City, provided, however, that any person who is not a resident merchant of this City may dispose of any agricultural products which have been raised or grown by him.

8.0202 Vending on Streets, Permission Required

It shall be unlawful for any person upon any street or public grounds within the City to set up any stand or leave any wagon for the purpose of selling or exposing for sale any meat, provisions, refreshments, or any goods or merchandise, or to cry out and expose for sale and property whatever without the written permission of the Mayor.

8.0203 License Required

No person shall engage in, or follow the business of a transient merchant as hereinbefore described and defined, at any place in this City without first obtaining a license from the City Auditor authorizing him to do so.

8.0204 Application and Fee for License

The license for transient merchants shall be issued by the City Auditor, upon application made in writing, and the payment to the said Auditor of the sum of \$10 dollars for each day in which the applicant desires to continue said business in the City.

8.0205 Prohibiting Blinds and Curtains in Front Windows

No license for the retail sale of beer or liquor shall maintain or suffer to be constructed or maintained or placed on or near the front windows of the premises so licensed, any screen, blind, curtain, or any other thing which obstructs vision through any part of the said front window above the height of 54 inches as measured from the level of the front sidewalk. Nor shall the interval above the said level of 54 inches and up to seven feet as measured at any point across the whole width of the said window be constructed or painted with any material which would interfere with or obstruct free vision from the said front sidewalk into the said licensed place at any time.

ARTICLE 3 – Hawkers and Peddlers

8.0301 Definitions

The term “hawker” or “peddler” for the purpose of this article shall be construed to include all persons, co-partnerships, and corporations, either principals or agents, who go from place to place, house to house, or store to store, carrying for sale either to consumers or at wholesale or retail, goods, wares, and merchandise.

8.0302 License Required to Peddle

No person shall hawk or peddle any merchandise or any article of value in the City without a license.

8.0303 Fee for Pedder’s License

The license for hawkers or peddlers shall be issued by the City Auditor, upon application made in writing, and the payment to the said Auditor the sum of \$10 dollars for each day in which the applicant desires to continue such business.

ARTICLE 4 – Shows

8.0401 License Required for Shows, Exception

No person shall conduct or maintain any show, entertainment, carnival, circus, gallery, stand, device, or any description within the City of Walhalla without first obtaining a license to do so.

Provided, that the City Council is hereby authorized, where the same is given under the auspices of a church, school, charitable institution, fraternal or patriotic organization, to waive the license fee hereinafter provided for.

8.0402 License Required for Shows, Fees for

The license fee for such activities as are above described shall be fixed in such amount as the City Council shall deem reasonable, and the said City Council is hereby empowered and authorized to fix the amount therefore in each case.

8.0403 Activities License Required, Fee for

No person, business, corporation, or organization shall conduct or maintain any merry-go-round, ferris wheel, inflatable play center, or similar or related activities for profit within the City limits without first procuring a license therefore. The license fee for conducting such activities shall be fixed in each case by the City Council.

8.0404 Good Order to be Preserved

Any person giving or conducting any exhibition, show, circus, menagerie, theatre, opera, or variety, for pay, shall preserve good order in and about his place of exhibition or amusement, and if necessary for that purpose shall supply at his own expense a sufficient police force.

ARTICLE 5 – Dances

8.0501 Dances Unlawful Without License

No person, firm, or corporation within the City shall give, conduct, aid, or assist in giving or conducting any public dance where an admission fee is charged, unless such person, firm, or corporation shall first procure a license as hereinafter stated.

8.0502 License, How Granted

Any person desiring to obtain a license above referred to shall make an application in writing to the City Auditor, and upon the said application being approved by a majority of the City Council, the City Auditor shall, upon the payment of one dollar issue a license to give or conduct such dance, which license shall expire at the end of 30 days after its issuance, and may be revoked by the City Council at any time, in its discretion, and any act in violation of the laws of the State of North Dakota or the ordinances of the City done or permitted to be done in or about the place where the said dance is held or conducted, or any act contrary to good morals shall in any case be considered sufficient cause for the revoking and cancellation of such license.

ARTICLE 6 – Sale of Alcoholic Beverages

8.0601 Definitions

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

1. “Alcoholic beverages” means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.
2. “Beer” shall mean any malt beverage containing more than one-half of one percent of alcohol by volume.
3. “Liquor” means any alcoholic beverage except beer.
4. “Lodge” or “club” shall mean and include any corporation or association organized for civic, fraternal, social, or business purposes, or for the promotion of sports.
5. “Minors” are persons under 21 years of age.
6. “Off-sale” shall mean the sale of alcoholic beverages in the original package for consumption off or away from the premises where sold, including permitted deliveries, and upon which premises the consumption of alcoholic beverages is unlawful.
7. “On-sale” shall mean and include the sale of alcoholic beverages for consumption on the premises where sold.
8. “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.
9. “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.
10. “Premises” shall mean that distinct portion of the building in which alcoholic beverages are sold or consumed.
11. “Retail sale of beer” shall mean and include all sales of beer except made for the purpose of resale.
12. “Sale” shall mean and include any transfer, exchange, or barter in any manner or by any means whatsoever for a consideration and includes all sales made by any person, whether principal, propriety, agent, servant, employee, or corporation.
13. “Sell” at retail or sale at retail shall mean a sale to a consumer for use or consumption and not for the purpose of resale in any form.
14. “Sparkling wine” shall mean wine made effervescent with carbon dioxide.
15. “Wine” shall mean the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar of such beverage fortified with brandy and containing not more than 24 percent alcohol by volume.
16. “Wholesaler” shall mean and include any person engaged in the sale and distribution of liquor at wholesale to persons holding a retail license for the sale and distribution of alcohol and alcoholic beverages within the state or in interstate commerce.

8.0602 License Required

It shall be unlawful for any person to engage in the sale of beer, liquor, or alcoholic beverages within the City without first obtaining a license to do so.

8.0603 License to be Issued Only to True Owners

No license required by this article shall be issued to any person engaged in business as the representative or agent of another. The license may issue only to the owner or owners of the business being conducted at the location sought to be licensed.

8.0604 Licenses – Classes of – Fees

1. Off sale beer and liquor license: \$750.
2. On and off sale beer and liquor license: \$1500.
3. On sale beer and wine license: \$425.
4. Club license (restricted): \$50.
5. Eating establishment (additional fee for Sunday sales of beer, wine, or liquor) license: \$25.
6. Sunday alcohol beverage permit: \$50.
7. Special event alcoholic beverage permit: \$50.

8.0605 Retail Liquor License Does Not Authorize Beer Sale

A retail liquor license holder shall not be entitled to sell beer without the purchase of a separate license for the sale of beer.

8.0606 Licenses – Terms of

All licenses provided for herein shall terminate one year after date of issuance unless previously terminated or revoked.

8.0607 License – Qualifications for

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

1. Applicant, if an individual, must be a legal resident of the United States, a resident of the State of North Dakota and a person of good moral character.
2. If applicant is a corporation or limited liability company, the manager of the licensed premises and the officers, directors, shareholder, or members must be legal residents of the United States and persons of good moral character. Corporate and limited liability applicants must first be properly registered with the North Dakota Secretary of State
3. If applicant is a partnership, the manager of the licensed premises and all of the members must be legal residents of the United States and of good moral character. Partnership applicant must first be properly registered with the North Dakota Secretary of State.

4. Applicant or manager must not have been convicted of an offense determined by the North Dakota Attorney General to have a direct bearing upon an applicant's or manager's ability to serve the public as an alcoholic beverage retailer.
5. Building in which business is to be conducted must meet local and state requirements regarding the sanitation and safety.
6. Taxes on property for which application for license is made must not be delinquent.
7. If applicant's business at the licensed location is to be conducted by a manager or agent, the manager or agent must possess the same qualifications required of the licensee.

8.0608 Application

Any person eligible therefore under this section, may obtain a license to sell any alcoholic beverages within the City by executing under oath the filing with the City Auditor a written application on the forms to be provided by the City Auditor together with the fee prescribed by this article. The application shall contain the following:

1. The name, citizenship, and date of birth of the applicant. Applicant shall also itemize his place or residence for five years preceding the date of application.
2. The legal description and the address of the premises where the sale of any alcoholic beverage is proposed.
3. The type of license being applied for.
4. A satisfactory showing that the application possesses the following qualifications:
 - a. That the applicant is a citizen of the United States and of the state and resident of the City of Walhalla and has a legal and bona fide residence in the state and City and that he is a person of good moral character.
 - b. That the applicant has not been convicted of a felony, or been convicted within five years of the date of his application of any violation of the laws of any state or the laws of the United States relating to beer, liquor, or alcoholic beverages.
 - c. That the applicant has not had revoked, within five years next preceding his application, any license issued to him pursuant to the ordinances or resolutions of a City, village, or board of county commissioners, under the laws of this state, or any state, to sell beer, liquor, or alcoholic beverages.
 - d. That if the applicant is a co-partnership, all members of the co-partnership are personally qualified to obtain a license.
 - e. That if the applicant is an unincorporated association, all officers and directors thereof, and the person who will conduct and manage the licensed premises for the association, possess all the qualifications, required herein for an individual licensee; however the requirements as to being a resident and citizens of the state shall not apply to nonresident officers and directors of the association, both their requirements shall apply to any officer or director who is also the manager or who is engaged or employed in any capacity in the conduct of operation of the licensed premises.
 - f. That if the applicant is a corporation, the following additional data must be provided: The amount of authorized capital stock; the state of incorporation; the amount of paid in capital; whether such corporation is a subsidiary of any other corporation, and, if so, the name of the parent corporation; the purpose for which such corporation was incorporated; the names and

addresses of all officers, directors, and managing agents of such corporation; and a listing of those directors, officers, and managing agents who shall have been bona fide citizens and residents of the City. Corporation and applicants must be first properly registered with the Secretary of the State of North Dakota.

5. The following waiver of illegal search and seizure clause:

“The applicant does hereby consent that the Mayor and the police officers of the City of Walhalla, or any person or persons duly authorized by the City Council, may enter upon the premises described in this application, at any hour of the day or night and that they shall have free access for the purpose of inspecting said premises and the roads of this applicant relating to the purchase and sale of beer, or liquor, whichever is applicable.”

“Applicant further understands and agrees that failure of applicant, or applicant’s agents or employees to admit to the licensed premises during hours that the licensed establishment is closed, properly identified members of the Walhalla Police Department for the purpose of inspection and examination of the licensed premises is grounds for suspension or revocation of the license issued. To effect such suspension or revocation of the City Council shall issue a notice of hearing set forth therein a time and place of hearing, and serve such notice on the applicant at least seven days before the hearing.”

6. Such other information as the City Auditor may reasonably require.

8.0609 Real Estate Tax Receipt

Each year the application must be accompanied by a paid real estate tax receipt on the property where the license is located.

8.0610 Corporations Eligible for License

A license may be issued to a corporation if the corporation complies with and is registered under State law.

8.0611 License – Application Fitness

The Chief of Police or such other person or officer as may be designated by the City Council 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 City Council.

8.0612 License – Location of

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

1. The convenience of police regulations.
2. Public health and sanitation.
3. Proximity of other licensed businesses.
4. Proximity of schools, churches, funeral homes, public buildings or buildings used for or by minors.
5. Any protests of neighboring property owners or occupants.
6. Zoning regulations.

7. Proposed on or off-sale or both licensee.
8. Interference with or proximity to residential property.
9. Interference with neighboring property.
10. Suitability of premises for sale of beer, liquor or alcoholic beverages.
11. Public convenience and necessity.

8.0613 License – Issuance When Approved

If the application for a license by this article is approved by the City Council, The City Auditor shall issue to the applicant a receipt showing the date and amount paid and by whom and for what location, which shall constitute the license has been granted him, which shall constitute a license.

8.0614 License – Identification Number

Each license issued pursuant to this article must be given an identification number and a permanent record thereof must be kept by the City Auditor, showing the name and address of the license and the legal description of the place licensed.

8.0615 License Not to Constitute A Property Right

No license issued pursuant to this article shall be deemed a property or vested right and such license may be revoked at any time prior to the expiration date.

8.0616 Special Permits Authorizing On-Sale or Off-Sale Alcoholic Beverage Licensee to Engage In the Sale of Alcoholic Beverages at Special Events

Any person, firm, or corporation, partnership, or association holding a valid and current on-sale, off-sale, or on-sale or off-sale alcoholic beverage license issued by the City may request the City Council to issue a special permit authorizing the sale of alcoholic beverages either by on-sale or off-sale, at a special event.

1. The application made for the special permit shall designate the special event where alcoholic beverages will be sold and the location of the place of sale.
2. No special permit issued hereunder shall be for a period greater than three consecutive days.
3. The City Council upon issuing a special permit pursuant to this section may set forth restrictions as to the regulation and restriction of the operation of the special permit which regulations shall be made known to the licensee and recorded in the minutes of the meeting at which the special permit granted.
4. Any person, firm, corporation, partnership, or association violation any of these terms or provisions of a special permit or who dispenses, sells, or permits the consumption of alcoholic beverages in violation of a special permit shall upon conviction be punished by a fine of not to exceed \$1000 dollars, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment in the discretion of the court, the court to have the power to suspend said sentence and to revoke the suspension thereof.

8.0617 License – Limited as to Location

No license shall be issued for the sale of beer where the location to be licensed is not on the main or ground floor of a building; no license shall be issued for the sale of beer in any basement or in the second floor or story of any building.

8.0618 License – To Be Displayed, Record To Be Kept

The license must be displayed at all times in a prominent place on the premises described therein. Each license must be given an identification number, and a permanent record thereof must be kept by the City Auditor showing the name and address of the licensee and the legal description of the place licensed.

8.0619 Off Sale License, How Obtained

In the event of an application for an off sale license for beer, such application shall be duly considered by the City Council, and, in the event of the granting thereof the City Council shall determine the license fee therefor.

8.0620 Licenses for Less Than One Year

1. No license required by this article, except as provided in subsection 2, shall be issued for a fractional part of the year. Where a license is issued for a period of time covering less than a full fiscal year, the days of the license, regardless of when issued, shall be the preceding first day of July. When any license fee may be lawfully prorated, the proration fee so received shall be shown on any license issued for a term less than one full year.
2. A retail liquor or beer license may be issued for less than a full year period on the basis that the proposed licensee shall pay the ratable proportion for the fiscal year remaining for the license, and in addition shall be in advance one-half of the fee for subsequent year.

8.0621 License – Transfer of, Prohibited

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 ordinance.

8.0622 License – One License to a Person

Not more than one retailer's license shall be issued, directly or indirectly, to any person, and no person shall hold a wholesaler's and a retailer's license at the same time.

8.0623 License Fees – Disposition of

All license fees collected shall be delivered to the City Auditor and credited to the general fund of the City.

8.0624 Refund of Fee Upon Denial

If the application for license provided for in this article be denied, the City Auditor shall return to the applicant on demand the amount deposited by the applicant.

8.0625 Bond Required, Condition of

Every person desiring a retail license for the sale of intoxicating liquor under the provisions of this article shall file with his application to the City Council a bond executed to the City in the final sum of \$2000, signed by an approved surety.

No license shall be issued for the retail sale of liquor until the applicant shall first file with the City Auditor a bond issued by some surety company authorized to transact business in the State of North Dakota, in the penal sum of \$2000 dollars, which bond shall be approved as the legality and form by the City Attorney, and as to sufficiency by the City Council; or, in lieu of such penal bond, United States of American legal tender or government bonds of a par value of the amount of \$2000. All such bonds shall be conditioned as follows:

1. That the licensee will obey the laws and ordinances relating to such licensed business.

2. That the licensee will pay to the municipality, when due, all taxes, license fees, penalties, and other charges provided by law.
3. That in the event of the violation of the provisions of any law or ordinance relating to the business for which the license has been granted for the sale of intoxicating liquor, such bond shall be forfeited to the municipality in which such license was issued.
4. That the license will pay, to the extent for the principal amount of such bond, any damages for death or injury caused by or resulting from the violation of any provision of law relating to the business for which such licensee has been granted a license, and further conditioned that such recovery may be had, also, against the surety bond.

The amount specified in any bond required is hereby declared to be a penalty and the amount recovered shall be measured by the actual damages suffered; provided, however, that the surety thereon shall not be liable for any amount in excess of the penal amount of the bond.

All such bonds shall be for the benefit of the obligee and of all persons suffering damages by reason of any breach of the conditions thereof.

In case of the deposit of government bonds in lieu of a surety bond, the licensee shall be permitted to take and clip all interest bearing coupons from such bonds, at such times as they are payable.

8.0626 Termination and Revocation of Licenses

1. The death of the licensee;
2. When the licensee ceases business at the location licensed and a permit for change of location has been denied;
3. When the licensee be adjudged bankrupt;
4. When the licensee be convicted of violating any of the provisions of this article or of a felony under the laws of the United States, or under the laws of the State of North Dakota or any of the several states;
5. When the license or permit of the licensee from the United States or the State of North Dakota to sell intoxicating liquor has been terminated or revoked;
6. When the business of the licensee at the location licensed shall be conducted in violation of the health or sanitary regulations or other ordinances of the City;
7. Where an application has been filed containing statements or information known to the applicant to be false;
8. Any license issued under this article may be revoked at any time by the City Council of the City, for cause, subject only to review by the courts of this state;

When any license is terminated or revoked for cause, or the licensee voluntarily ceases business, no part or portion of the license fee previously paid to the City shall be returned to the licensee or those claiming under him.

8.0627 Hours and Time of Sale – Penalty

It shall be unlawful for any person or persons licensed to sell alcoholic beverages in the City, or his agent or employee, to dispense alcoholic beverages on a licensed premises or to permit the consumption of alcoholic beverages on a licensed premises after 2:00 o'clock a.m. on Sundays, before 12:00 o'clock noon on Sundays, or between the hours of 2:00 o'clock a.m. and 8:00 o'clock a.m. on all other days of the week, or who dispenses

alcoholic beverages on a licensed premises or permits consumption of alcoholic beverages on a licensed premises on Christmas Day, after 2:00 o'clock a.m., on Thanksgiving Day or after 6:00 o'clock p.m. on Christmas Eve. All patrons must be off the premises of a licensed premises by 2:00 o'clock a.m.

8.0628 Wine Tasting Permitted

A licensed off-sale retailer may permit the sampling of wine upon the licensed premises.

8.0629 Clubs and Lodges Prohibited from Making Off-Sales, and from Making Deliveries of Alcoholic Beverages

It shall be unlawful for any nationally organized or recognized fraternal order or club, or any nationally organized and recognized servicemen's or veterans' organization presently or hereafter holding a retail license from the City to sell any alcoholic beverages for off-sale purposes and to make, or aid in, the delivery of any alcoholic beverages outside its premises.

8.0630 Licensee's Responsibility

Every licensee is hereby made responsible for the conduct of the licensee's place of business and is required to maintain order and sobriety in such place of business, permitting no disorderly conduct on the premises. Alcoholic beverages shall not be served to any intoxicated person.

8.0631 Gambling Prohibited – Exceptions

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

8.0632 Cashing Certain Checks Prohibited

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

8.0633 Sale of Liquor to Certain Persons Unlawful; Exception

No person shall deliver alcoholic beverages to a person under 21 years of age, an habitual drunkard, an incompetent or an intoxicated person; and no person under 21 years of age shall purchase, attempt to purchase, or be in possession of alcoholic beverages, or furnish money to any person for such purpose, or enter any licensed premises where such beverages are being sold or displayed. Any person under 21 years of age may remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the room in which alcoholic beverages are opened or mixed if gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area, and if:

1. Employed by the restaurant as a food waiter, food waitress, busboy, busgirl under the direct supervision of a person 21 years old or older, and not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages, or;
2. If the person is a law enforcement officer entering the premises in the performance of official duty.

Any person who is 19 years old or older but under 21 years of age may be employed by the restaurant to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person 21 years

old or order, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages. Any establishment where alcoholic beverages are sold may employ persons from 18 to 21 years of age to work in the capacity of musicians under the direct supervision of a person over 21 years of age.

8.0634 Presence of Certain Persons in Establishments Selling Alcoholic Beverages Prohibited; Exceptions, Posting Sign

It shall be unlawful, except as provided in 8.0622, for any person under 21 years of age to enter, or be within any premises licensed for the sale of alcoholic beverages or beer.

It shall be unlawful for any licensee under this article to dispense alcoholic beverages to a person under 21 years of age or to permit such a person to remain on the licensed premises while alcoholic beverages are being sold or displayed.

Any person under 21 years may remain in a restaurant where alcoholic beverages are being sold as provided by 8.0619

8.0635 Age Identification

Before selling alcoholic beverages to any person, or before determining whether any person shall remain upon the licensed premises a licensee, his agent or employee may require a statement in writing and signed by said person of such person's age. Any person who makes a false statement as to his or her age, or signs a name other than his own or her own to any such statement, shall be guilty of a violation of this article.

8.0636 Street Sales Prohibited

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

8.0637 When Consumption of Beer Prohibited

The sale or serving or consumption of beer as defined by this ordinance upon or across any street, alley, or public way is prohibited.

8.0638 Sale of Other Items Restricted

Any person licensed to sell alcoholic beverages selling any item on the licensed premises other than alcoholic beverages, soft drinks, tobacco products, drink mixing supplies, peanuts, pretzels, potato chips, pizzas, related sundries, snack foods, and sandwiches, is guilty of an offense, except a licensee may sell alcoholic beverages in a restaurant separated from the room in which alcoholic beverages are opened or mixed if gross sales of food are at least equal to sales of alcoholic beverages in the dining area.

8.0639 Sale of Alcoholic Beverages in Exchange For Goods Prohibited

Any licensee engaged in the retail sale of alcoholic beverages who accepts goods, chattels, or other tangible personal property, other than money, checks, legal tender, negotiable instruments, or other evidence of debt, in exchange for any alcoholic beverages is guilty of an offense.

8.0640 Unlawful to Have Opened Receptacle Containing Alcoholic Beverages in Automobile, Truck and Bus; Exception

No person shall drink or consume alcoholic beverages, as defined in this article, in any motor vehicle when such vehicle is upon a public road or in an area used principally for public parking. No person shall have in his possession on his person while in or on a private vehicle upon a public road or in an area used principally for public parking, any bottle or receptacle containing such alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed. It shall be unlawful for the owner of any private motor vehicle or

the driver, if the owner be not then present in or on the motor vehicle, to keep or allow to be kept in a motor vehicle when such vehicle is upon the public road or in an area used principally for public parking any bottle or receptacle containing such alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle shall be kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers.

8.0641 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 reasonably accommodate the patrons.

8.0642 Partitions, Screens, Etc., Prohibited

No licensee for the retail sale of beer or liquor shall maintain or suffer to be construed or maintained or placed in the premises licensed, any side room, closed booths, or other enclosure. All booths located in such premises shall open into the main part of said premises and shall be accessible from the aisles therein and shall not have therein any screen, curtain, partition, door, or blind, or any obstruction of any kind preventing a view into said booths from the main room or aisles of said premises. Such booths shall have sides of a height not greater than four inches from the floor.

8.0643 Purchase from Licensed Wholesaler

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

8.0644 Compliance with Sanitary Requirements

No retailer's license shall be issued unless the premises to be licensed conforms to the sanitary, safety, and health requirements of the City and has been approved by the responsible health officials, including toilet facilities which must be equipped with adequate and sufficient lavatories and toilets, separate maintained for men and women, and kept in a clean and sanitary condition. Any on-sale license may be revoked where the foregoing requirements, or any other health ordinance or regulation is not at all times strictly observed.

8.0645 Deliveries – Off Licensed Premises

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.

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.

8.0646 Revocation, Suspension, or Termination, Grounds

The City Council shall have power to revoke, suspend, or terminate any license issued under the provision of this article for any of the following reasons:

1. Violation of the laws of the state, or of any of the provisions of this article;

2. The willful making of any false statement as to a material fact in the application for the license;
3. Permitting any disorderly or immoral practices upon the premises where a person is licensed to sell beer or alcoholic beverages;
4. The death of a licensee;
5. When the licensee ceases business at the location licensed;
6. When the licensee ceases to be a legal and bona fide citizens of the state and of the City of Walhalla;
7. Refusal upon the part of the licensee, his agents or employees, or the officers or management of a corporation to admit properly identified members of the Walhalla Police Department to the licensed premises for inspection thereof at any time of the day or night, whether the licensed premises are then open to the public or closed during the time when sale of alcoholic beverages is prohibited;

The causes enumerated above shall not be deemed to be exclusive and the City Council reserves the right to revoke, suspend, or terminate the license for any cause which it may deem sufficient.

8.0647 Penalties

Any person, firm, corporation or association violating any of the provisions of this article shall upon conviction thereof, be subject to a fine of not to exceed \$500. In addition, all powers, right and privileges given by any license granted under the terms of this article may be terminated or revoked in accordance with Section 8.0628.

8.0648 Conduct of Business

Any licensee under this article shall at all times conduct and maintain their place of business in a clean, orderly, and respectable manner.

8.0649 Application of Article

This article is declared to be an exercise of the police power directly affecting and designed to promote the peace, safety, good order, health, and well being of the people of the City. This article shall apply to all territory within the corporate City limits within which the City may exercise police jurisdiction as defined by law.

8.0650 On Sale of Beer

Any private club, within the City, may be granted a beer license permitting said club to operate 16 days or nights per year with a maximum of seven hours per day or night, said license to be issued for "On Sales" only. Said club shall be governed by all rules and regulations as prescribed in this Chapter.

ARTICLE 7 – Validity

8.0701 Validity

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

ARTICLE 8 – Penalty

8.0801 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 \$1000 and/or 30 days in jail. The court may, in addition thereto, revoke the permit or license of such violator, or terminate or revoke all powers, rights and privileges given by any license granted under the terms of this chapter. Each day or part thereof that a person shall be in violation of the provisions of this chapter shall be considered a separate violation.

CHAPTER NINE

TRAFFIC

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CHAPTER NINE

TRAFFIC

ARTICLE 1 – Definitions

9.0101 Definitions

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

ARTICLE 2 – Traffic Administration

9.0201 Traffic Administration

There is hereby established in the Police Department of this City a traffic division to be under the control of an officer of police appointed by and directly responsible to the Chief of Police.

9.0202 Duty of Traffic Division

It shall be the duty of the traffic division with such aid as may be rendered by other members 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 Engineer and other officers of the City in the administration of the traffic laws and in developing ways to improve traffic conditions, and carry out those duties specially imposed upon said division by this ordinances and the traffic ordinances of the City.

9.0203 Records of Traffic Violations

1. The Police Department or the traffic division thereof shall keep a record of all violations of the traffic ordinances of the City or of the state vehicle laws of which any person has been charged, together with a record of the final disposition of all such alleged offenses. Such record shall be so maintained as to show all types of violations and the total of each. 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.

9.0204 Traffic Division to Investigate Accidents

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

9.0205 Traffic Accident Studies

Whenever the accidents at any particular location become numerous, the traffic division shall cooperate with the City Traffic Engineer in conducting studies of such accidents and determining remedial measures.

9.0206 Traffic Accident Reports

The traffic division shall maintain a suitable system of filing traffic accident reports. Accident reports or cards referring to them shall be filed alphabetically by location. Such reports shall be available for the use of information to the City Traffic Engineer.

9.0207 Drivers' Files to be Maintained

The Police Department or the traffic division thereof shall maintain a suitable record of all traffic accidents, warnings, arrests, convictions, and complaints reported for each driver, which shall be filed alphabetically under the name of the driver concerned.

Said division shall study the cases of all such drivers charged with frequent or serious violations of the traffic laws or involved in frequent traffic accidents or any serious accident, and report such information to the Highway Department or other appropriate state agencies.

Such records shall accumulate during at least a five year period and from that time on such records shall be maintained complete for at least the most recent five year period.

9.0208 Traffic Division to Submit Annual Traffic Safety Report

The traffic division shall annually prepare a traffic report which shall be filed with the Mayor. Such report shall contain information on traffic matters in this City as follows:

1. The number of traffic accidents, the number of persons killed, the number of persons injured, and other pertinent traffic accident data;
2. The number of traffic accidents investigated and other pertinent data on the safety activities of the police;
3. The plans and recommendations of the division for future traffic safety activities.

9.0209 Traffic Division to Designate Method of Identifying Funeral Processions

The traffic division shall designate a type of pennant or other identifying insignia to be displayed upon, or other method to be employed to identify, the vehicles in funeral procession.

ARTICLE 3 – Enforcement and Obedience to Traffic Regulations

9.0301 Authority of Police and Fire Department Officials

1. It shall be the duty of the officers of the Police Department or such officers as are assigned by the Chief of Police to enforce all street traffic laws of this City and all of the state vehicle laws.
2. Officers of the Police Department or such officers as are assigned by the Chief of Police are hereby authorized to direct all traffic by voice, hand or signal in conformance with traffic laws, provided that, in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the Police Department may direct traffic as conditions may require notwithstanding the provisions of the traffic laws.
3. Officers of the fire department, when at the scene of a fire, may direct or assist the police in directing traffic thereat or in the immediate vicinity.

9.0302 Obedience to Traffic Ordinances

It shall be unlawful for any person to do any act forbidden or fail to perform any act required by the provisions of this Chapter, and upon conviction of a violation of any of the provisions of this Chapter every person, firm, or corporation shall be punished as provided in 9.2211.

9.0303 Obedience to Police Officers or Firefighters

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

9.0304 Certain Non-motorized Traffic to Obey Traffic Regulations

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

9.0305 Use of Coasters, Roller Skates and Similar Devices Restricted

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

9.0306 Public Employees to Obey Traffic Regulations

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

9.0307 Emergency Vehicles

The provisions of North Dakota Century Code 39-10-03, 39-10-03.1, and 39-10-03.2 and all subsequent amendments are hereby incorporated by reference in this ordinance.

1. 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.
2. The exceptions herein granted to a Class A authorized emergency vehicle shall apply only:
 - a. When the authorized emergency vehicle is in pursuit of or apprehension of a violator or a suspected violator requiring the use of these exemptions;
 - b. When the class A authorized emergency vehicle is being operated in response to a reported emergency involving a possible personal injury, death, or damage to property, and when giving adequate warning by use of a flashing red or combination red and white lights that are visible under normal atmospheric conditions for at least five hundred feet and if appropriate, giving audible signal by siren or air horn. A law enforcement vehicle that is otherwise a class A authorized emergency vehicle may display a flashing blue light in addition to and under the same conditions as the other colors allowed in this subdivision.
 - c. In any instance when the head of the law enforcement agency deems advisable within the area of 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 light which is visible under normal atmospheric conditions for at least 500 feet. A law enforcement vehicle that is otherwise a class A authorized emergency vehicle may display a flashing blue light in addition to and under the same conditions as the other colors allowed in this subdivision.
3. No emergency vehicle may display or permit to be displayed any red lamp except when operated on official business.
4. Any law enforcement officer as provided in paragraph 2 of subdivision a of subsection 2 of North Dakota Century Code 39-01-01 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 500 feet, for the purpose of maintaining traffic flow.
5. 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.
6. 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 500 feet 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 him; or
 - c. When traveling at a speed slower than the normal flow of traffic.
7. 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 North Dakota Century Code 39-10-03.1.

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

The provisions of North Dakota Century Code 39-10-26 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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

9.0309 Immediate Notice and Written Report of Accident

The provisions of North Dakota Century Code 39-08-09 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The driver of a vehicle involved in an accident resulting in injury to or death of any person or at least \$1000 or more shall immediately give notice of the accident to the Walhalla Police Department. 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 days of the accident the driver shall supply that information to the Driver's License Division in the form the division requires.

9.0310 Officer to Report

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

Every law enforcement officer, who in the regular course of duty investigates a motor vehicle accident required to be reported as provided in subsection 1 either at the time and at the scene of the accident or thereafter by

interviewing the participants, or witnesses, shall make and promptly forward to the Director of the Department of Transportation a report of the accident in a format prescribed by the Director.

9.0311 Investigating Agency Responsible to Notify Immediate Family

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

1. In the event of serious injury to or death of any person, under circumstances leading to the notification of a law enforcement agency, the investigating law enforcement agency shall, upon positive identification of the person or persons involved, be responsible for immediately notifying the immediate family of the person or persons seriously injured or deceased, or making arrangements to have the immediate family notified by clergy or other suitable person.
2. The investigating law enforcement agency may not release to the public the identity of the person or persons seriously injured or deceased until the first of the following events occurs:
 - a. A member of the immediate family has been notified and given an opportunity to notify other immediate family members; or
 - b. Twenty-four hours have elapsed from the time positive identification was made.
3. For purposes of this section, "immediate family" means spouse, parent, child, sibling, or any person who regularly resides in the household of the seriously injured or deceased person.

9.0312 When Driver Unable to Report

The provisions of North Dakota Century Code 39-08-11 and all subsequent amendments are hereby incorporated by reference in this ordinance.

1. An accident notice is not required from any person who is physically incapable of making the report during the period of such incapacity
2. 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.
3. 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 days after learning of the accident make such report not made by the driver.

9.0313 Garages to report

The provisions of North Dakota Century Code 39-07-12 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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 9.0309 or of being struck by any bullet, shall report or cause a report to be made to a police officer within 24 hours after such motor vehicle is received, and before any repairs are made to such vehicle, giving the registration number and the name and address of the owner, operator, or person in control of such vehicle with a description of the location and type of damage to the vehicle, or any missing parts, if the vehicle does not have a sticker on a window thereof issued by a police officer, sheriff or highway patrolman bearing information to show that the accident in which the vehicle was involved had been investigated. The police officer investigating any reportable accident shall attach a sticker to the window of any damaged vehicle showing that the accident in which such vehicle was involved has been investigated. If the vehicle does bear such a sticker the garage or repair shop need not make the report this section requires and may begin

repairs immediately. After repairs have been made and before the vehicle is released, the sticker provided herein must be removed.

9.0314 Wrecker and Towing Services to Report

The provisions of North Dakota Century Code 39-07-13 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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 North Dakota Century Code 39-08-09 or of being struck by any bullet shall report or cause a report to be made to a police officer within 24 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.

ARTICLE 4 – Traffic Control Devices

9.0401 Authority to Install

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

9.0402 Specifications for Traffic-Control Devices

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

9.0403 Obedience to Traffic-Control Devices

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

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

9.0404 Traffic-Control Signal Legend

The provisions of North Dakota Century Code 39-10-05 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Whenever traffic is controlled by traffic-control signals exhibiting the words “Go”, “Caution”, or “Stop”, or exhibiting different colored lights successively one at a time or with arrows, the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

1. Green indications:
 - a. Vehicular traffic facing circular green indication may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including

vehicle turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time signal is exhibited; and

- b. Vehicular traffic facing a green arrow indication, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.
- c. Unless otherwise directed by a pedestrian control signal as provided for in 9.0405, pedestrians facing any green indication, except when the sole green indication is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

2. Steady yellow indication:

- a. Vehicular traffic facing a steady circular yellow or yellow arrow indication is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic may not enter the intersection.
- b. Pedestrians facing a steady circular yellow or yellow arrow indication, unless otherwise directed by a pedestrian-control signal as provided for in 9.0405 are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian may then start to cross the roadway.

3. Steady red indication:

- a. Vehicular traffic facing a steady circular red indication alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until an indication to proceed is shown except as provided in subdivision c;
- b. Vehicular traffic facing a steady red arrow indication may not enter the intersection to make the movement indicated by the arrow and, unless entering the intersection to make a movement permitted by another indication, must stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and must remain standing until an indication permitting the movement indicated by the red arrow is shown except as provided for in subdivision c.
- c. Except when a sign is in place prohibiting a turn, vehicular traffic facing any steady red indication may cautiously enter the intersection to turn right, or to turn left from a one-way street into a one-way street, after stopping as required by subdivisions a and b. Such vehicular traffic shall yield the right of way to pedestrians lawfully within adjacent crosswalk and to other traffic lawfully using the intersection.
- d. Unless otherwise directed by a pedestrian-control sign as provided in 9.0405, pedestrians facing a steady circular red or red arrow indication signal alone may not enter the roadway.

- 4. In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

9.0405 Pedestrian Control Signals

The provisions of North Dakota Century Code 30-10-06 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. "Walk": Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles; and
2. "Don't Walk": No pedestrians shall start to cross the roadway in the direction of such signal, but any pedestrians who has partially completed his crossing on the walk signal shall proceed to the sidewalk or safety island while the "Don't Walk" signal is showing.

9.0406 Flashing Signals

The provisions of North Dakota Century Code 39-10-07 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Whenever an illuminated flashing red or yellow light is used in a traffic signal or with a traffic sign, it shall require obedience by vehicular traffic as follows:
 - a. Flashing red (stop indication). When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line, or, if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.
 - b. Flashing yellow (caution indication). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.
 - c. Flashing red arrow and flashing yellow arrow indications have the same meaning as the corresponding flashing circular indications, except that they apply only to drivers of vehicles intending to make the movement indicated by the arrow.
2. This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in 9.0707.

9.0407 Lane Direction Control Signals

The provisions of North Dakota Century Code 39-10-07.1 and all subsequent amendments are hereby incorporated by reference in this ordinance.

When lane-direction-control signals are placed over the individual lanes of a street or highway, vehicular traffic may travel in any lane over which a green signal is shown, but may not enter or travel in any lane over which a red signal is shown.

9.0408 Unauthorized Signs

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

1. No person may place, maintain, or display upon or in view of any highway, any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of an official traffic-control device or any railroad sign or signal.

2. No person may place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.
3. This section may not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.
4. Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice when located on highway right of way.
5. No person may place, maintain, or display upon or within the right of way of any highway any sign, post, pole, mailbox, or signal which has a red lamp or red reflector visible to traffic. The provisions of this subsection shall not apply to official traffic devices, lamps, or reflectors on motor vehicles or bicycles, or railroad signals or signs.
6. This section does not prohibit the use of portable battery-powered warning devices emitting a flashing red light placed upon a highway to alert oncoming traffic to a disabled or stopped motor vehicle.

9.0409 Interference with Official Traffic Control Device or Sign

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

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

9.0410 Designation of Walks, Lanes, etc.

The City Engineer or any person authorized by the City Council shall:

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

ARTICLE 5 – Speed Regulations and Care Required

9.0501 Basic Rule – Penalty for Violation

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

No person may drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions. Any person who shall drive a vehicle upon a highway or private or public property open to the public for the operation of motor vehicles without heed to the requirements or restrictions of this section has committed careless driving, and must be assessed a fee of \$30.

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

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

9.0502 Care Required in Operating Vehicle

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

Any person driving a vehicle upon a highway, street or public or private property open to the public for operation of motor vehicles shall drive the vehicle in a careful and prudent manner, having due regard to the traffic, surface, and width of the highway or street 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.

9.0503 Speed Limitations

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

1. Subject to the provisions of 9.0501 and except in those instances where a lower speed is specified in this chapter, it presumably shall be lawful for the driver of a vehicle to drive the same at a speed not exceeding:
 - a. 20 miles an hour when approaching within 50 feet of a grade crossing of any steam, electric, or street railway when the driver’s view is obstructed. A driver’s view is deemed to be obstructed when at any time during the last 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 400 feet in each direction from such crossing;
 - b. 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. 20 miles an hour when approaching within 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 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 200 feet from such intersection;

- d. 20 miles an hour when the driver's view of the highway ahead is obstructed within a distance of 100 feet;
 - e. 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. 55 miles an hour under other circumstances, unless otherwise permitted, restricted, or required by conditions.
 - g. 65 miles an hour on paved two-lane highways of posted for that speed, unless otherwise permitted, restricted, or required by conditions.
 - h. 70 miles an hour on paved and divided multilane highways, unless otherwise permitted, restricted, or required by conditions.
 - i. 75 miles an hour on access-controlled, paved and divided, multilane interstate highways, unless otherwise permitted, restricted, or required by conditions.
- 2. The Director may designate and post special areas of state highways where lower speed limits apply. Differing limits may be established for different times of the day within highway construction zones which are effective when posted upon appropriate fixed or variable speed limit signs.
 - 3. Except as provided by law, it is unlawful for any person to drive a vehicle upon a highway at a speed that is unsafe or at a speed exceeding the speed limit prescribed by law or established pursuant to law.
 - 4. In charging a violation of the provisions of this section, the complaint must specify the speed at which the defendant is alleged to have driven and the speed which this section prescribes is prima facie lawful at the time and place of the alleged offense.

9.0504 Radar Evidence in Speed Violations

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

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

9.0505 When Local Authorities May or Shall Alter Maximum Speed – Limits – Signs Posted

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

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

- a. Decreases the limit at intersections;
 - b. Increases the limit within an urban district but not to more than 55 miles per hour; or
 - c. Decreases the limit outside an urban district, but not to less than 35 miles per hour.
- 2. The City shall determine by an engineering and traffic investigation the proper maximum speed for arterial streets and shall declare a reasonable and safe maximum limit thereon which may be greater or less than the minimum speed permitted under this chapter for an urban district.
- 3. Any altered limit established as hereinabove authorized shall be effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice thereof are erected upon such street or highway.
- 4. Any alteration of maximum limits on state highways or extensions thereof in the City may not be effective until such alteration has been approved by the Director of the North Dakota Department of Transportation.
- 5. Not more than six such alterations as hereinabove authorized shall be made per mile along a street or highway except in the case of reduced limits at intersections, and the difference between adjacent limits shall not be more than 10 miles per hour.
 - a. Special Speed Regulations; Subject to the subsection above, the following speed limits within the City limits are established, and it shall be prima facie unlawful for anyone to exceed them.
 - i. 25 miles per hour on North Dakota State Highway 32 within the corporate limits of the City, except when passing a school during school recess or while children are going to or leaving school during opening or closing hours, at which time and at which place the speed limit shall be 20 miles per hour;
 - ii. 20 miles per hour on all other streets and highways within the City, unless a lesser speed is fixed by authorities and duly posted.
 - iii. 15 miles per hour on Emmerling Avenue from North Dakota State Highway 32 and Front Street through the Dubourt addition.

9.0506 Speed Limitations Inapplicable to Whom – Liability of Exempt Driver for Reckless Driving

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

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

9.0507 Minimum Speed Limits

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

- 1. An individual may not drive a motor vehicle at a reduced speed so as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

2. If the Director of the North Dakota Department of Transportation and the Superintendent of the North Dakota Highway Patrol, acting jointly, or the City, determines on the basis of an engineering and traffic investigation that slow speeds on any highway or part of a highway impede the safe, normal, and reasonable movement of traffic, the Director and Superintendent or the City may determine and declare a minimum speed limit below which an individual may not drive a vehicle except when necessary for safe operation or in compliance with law, and that limit is effective when posted upon appropriate fixed or variable signs.

9.0508 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.

9.0509 Exhibition Driving and Drag Racing – Definitions – Penalty

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

1. No person may engage in exhibition driving of any vehicle on a highway, street, alley, sidewalk, or any public or private parking lot or area, nor may any person engage in a race, a speed competition, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration. Any person who violates this section by engaging in an act defined by subdivision b of subsection 2 must be assessed a fee of \$50 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 \$100.
2. As used in this section:
 - a. “Drag race” means the operation of two or more vehicles from a point side-by-side by accelerating rapidly in a competitive attempt to cause one vehicle to out distance the other; or the operation of one or more vehicles over a common selected course from the same point to the same point for the purpose of comparing the relative speed or powers of acceleration of such vehicle or vehicles within a certain distance or time limit.
 - b. “Exhibition driving” means driving a vehicle in a manner which disturbs the peace by creating or causing unnecessary engine noise, tire squeal, skid, or slide upon acceleration or braking; or driving and executing or attempting one or a series of unnecessarily abrupt turns.
 - c. “Race” means the use of one or more vehicles in an attempt to outgain, outdistance, or to arrive at a given distance ahead of another vehicle or vehicles; or the use of one or more vehicles to willfully prevent another vehicle from passing the facing vehicle or vehicles, or to test the physical stamina or endurance of the persons driving the vehicles over a long distance driving route.
3. Nothing in this section shall be construed as prohibiting drag racing, exhibition driving, or similar events when carried out in an organized manner on a track or other privately owned area specifically set aside and used solely for such purposes by drivers of motor vehicles, including snowmobiles.

ARTICLE 6 – Turning Movements

9.0601 Required Position and Method of Turning at Intersections

The provisions of North Dakota Century Code 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 or other location in the extreme left-hand lane lawfully available to traffic moving in the same direction as such vehicle on the roadway being entered.
3. The City may cause official traffic control devices to be placed and thereby require and direct that a different course from that specified in this section be traveled by turning vehicles, and when devices are so placed, no driver of a vehicle may turn other than as directed and required by such devices.

9.0602 Vehicle Turning Left

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

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

9.0603 Limitations On Turning Around

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

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

9.0604 Turning Movements and Required Signals

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

1. No person may turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety without giving an appropriate signal in the manner hereinafter provided.
2. A signal of intention to turn right or left when required must be given continuously during not less than the last 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 9.0605(2) may not be flashed on one side only on a disabled vehicle, flashed as a courtesy or “do pass” signal to operators of other vehicles approaching from the rear, nor be flashed on one side only of a parked vehicle except as may be necessary for compliance with this section.

9.0605 Signals by Hand and Arm or Signal Lamps

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

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

9.0606 Methods of Giving Hand and Arm Signals

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

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

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

9.0607 Authority to Place Devices Altering Normal Course for Turns

The City Engineer or other authorized person may place official traffic-control devices within or adjacent to intersections indicating the course to be traveled by vehicles turning at such intersections, and such course to be traveling as so indicated may conform to or be other than as prescribed by law.

9.0608 Authority to Place Restricted Turn Signs

The City Traffic Engineer or other authorized person may determine those intersections at which drivers of vehicles shall not make a right, left, or U-turn, and shall place proper signs at such intersections. The making of such turns may be prohibited between certain hours of any day and permitted at other hours, in which event the same shall be plainly indicated on the signs or they may be removed when such turns are permitted.

9.0609 Obedience to Turn Signals

Whenever authorized signs are erected indicating that no right or left or U-turn is permitted, no driver of a vehicle shall disobey the directions of any such sign.

ARTICLE 7 – Special Stops

9.0701 Authority to Designate Through Streets

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

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

9.0702 Through Streets Designated

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

9.0703 Stop Signs and Yield Signs

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

1. Preferential right-of-way may be indicated by stop signs or yield signs as authorized in 9.0701.
2. Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, or if none, then at the point nearest the intersection roadway where the driver has a view of approaching traffic on the intersection roadway before entering it. After having stopped, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.
3. The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop sign, or, if none, before entering the crosswalk on the near side of the intersection or, if none, then at the point nearest the intersection roadway where the driver has a view of approaching traffic on the intersection roadway before entering it. After slowing or stopping, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways. Provided, however, that if the driver is involved in a collision with a vehicle in the intersection or junction of roadways after driving past a yield sign without stopping, such collision shall be deemed prima facie evidence of his failure to yield the right-of-way.
4. Every stop sign and every yield sign must be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is not crosswalk, then as near as practicable to the nearest line of the intersecting roadway.
5. Except when directed to proceed by a police officer or traffic control sign, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersection roadway where the driver has a view of approaching traffic on the intersecting roadway.

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

9.0704 Emerging from Alley, Driveway, Private Road, or Building

The provisions of North Dakota Century Code 39-10-45 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The driver of a vehicle emerging from an alley, driveway, private road or building within a business or residential district shall stop such vehicle immediately prior to driving on to the sidewalk or on to the sidewalk area extending across such alley, building entrance, road or driveway, or in the event there is no sidewalk area, shall stop at the point nearest the street to be entered when the driver has a view of approaching traffic thereon.

The driver shall yield the right-of-way to any pedestrian as may be necessary to avoid collision and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

9.0705 Stop When Traffic Obstructed

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

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

9.0706 Obedience to Signal Indicating Approach of Train

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

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

9.0707 All Vehicles Must Stop At Certain Railroad Grade Crossings

The provisions of North Dakota Century Code 39-10-42 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The North Dakota Department of Transportation and the City, with respect to highways under their respective jurisdiction, are hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs thereat. When such stop signs are erected, the driver of any vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such railroad and shall proceed only upon exercising due care.

9.0708 Certain Vehicles Must Stop At All Railroad Grade Crossings

The provisions of North Dakota Century Code 39-10-43 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. The driver of a bus carrying passengers, or of any school bus, or of any vehicle carrying any chlorine, empty or loaded cargo tank vehicles used to transport dangerous articles or any liquid having a flashpoint below 200 degrees Fahrenheit, cargo tank vehicles transporting a commodity having a temperature above its flashpoint at the time of loading, certain cargo tank vehicles transporting commodities under special permits issued by the hazardous materials regulations board, and every motor vehicle which must have the following placards: "explosives", "poison", "flammable oxidizers", "compressed gas", "corrosives", "flammable gas", "radioactive", or "dangerous", before crossing at grade any track or tracks of a railroad, shall stop such vehicle within 50 feet but not less than 15 feet from the nearest rail of 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 may not proceed until the driver can do so safely. After stopping as required herein and upon proceeding when it is safe to do so, the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for manually changing gears while traversing such crossing and the driver may not manually shift gears while crossing the track or tracks.
2. No stop need be made at any such crossing at which traffic is controlled by a police officer. For the purposes of this section, a United States Marshal must be considered a police officer.
3. No stop need be made at a crossing that the Director has designated as an out-of-service crossing and which is clearly marked by signs bearing the words "Tracks out of service" or "Exempt" in conspicuous places on each side of the crossing.
4. The designation must be limited to use at crossings where track has been abandoned or its use discontinued.
5. The Director shall notify the road authority and any railway company of a crossing under the jurisdiction of that railway company which the Director has designated as an out-of-service crossing under this section and the road authority shall erect signs bearing the words "Tracks out of service" or "Exempt" in conspicuous places on each side of the crossing.
6. All signs must conform to the manual on uniform traffic-control devices as provided under North Dakota Century Code 39-13-06.

ARTICLE 8 – One-Way Streets and Alleys

9.0801 Authority to Sign One-Way Streets and Alleys

The City Traffic Engineer or authorized person may determine and designate one-way streets or alleys and shall place and maintain official traffic control devices giving notice thereof. No such designation shall be effective unless such devices are in place.

9.0802 Authority to Restrict Direction of Movement On Streets During Certain Periods

The City Traffic Engineer or authorized person may determine and designate streets, parts of streets, or specific lanes thereon upon which vehicular traffic shall proceed in one direction during one period and the opposite direction during another period of the day and shall place and maintain appropriate markings, signs, barriers, or other devices to give notice thereof. The City Traffic Engineer or authorized person may erect signs temporarily designating lanes to be used by traffic moving in a particular direction, regardless of the center line of the roadway.

9.0803 Streets and Alleys Declared to be One-Way

In accordance with 9.0801 and 9.0802 of this article, and when properly posted traffic shall move in the following streets and alleys only in the direction herein stated:

ARTICLE 9 – Miscellaneous Driving Rules

9.0901 When Traffic Obstructed

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

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

9.0902 Funeral Processions – Traffic Regulations

The provisions of North Dakota Century Code 39-10-72 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Notwithstanding any traffic-control device, a law enforcement officer leading a funeral procession may proceed through any intersection or make any turns or other movements necessary while leading the procession. The officer, without regard to any traffic-control device, may direct other drivers not in the funeral procession to stop, turn, proceed, or make other movements. When leading the funeral procession, the officer must be in a marked patrol vehicle and the vehicle's lighted headlamps, tail lamps, and top-mounted and grill-mounted signal lamps must be displayed at all times during the procession.
2. Notwithstanding any traffic-control device or provision governing the right of way, whenever a law enforcement officer leading a funeral procession enters an intersection, the remainder of the vehicles in the funeral procession may follow through the intersection. Each vehicle in the procession, however, must exercise reasonable care toward any other vehicle or pedestrian on the roadway.
3. Notwithstanding any traffic-control device or provision governing rights of way and subject to the following conditions, vehicles in a funeral procession have the right of way.
 - a. All vehicles in a funeral procession must display lighted headlamps, tail lamps, and flashing emergency lamps.
 - b. All vehicles in a funeral procession must follow the preceding vehicle in the procession as closely as is safe and practicable.
 - c. The driver of a vehicle in a funeral procession shall yield the right of way to an approaching emergency vehicle when directed to do so by a law enforcement officer or when the vehicle is giving an audible or visual signal.
 - d. A vehicle that becomes separated from the funeral procession and the law enforcement escort, so that the procession is no longer continuous, must proceed to its destination in a safe and prudent manner obeying all traffic signals and general rules of the road.
4. Other vehicles shall conform to the following rules:
 - a. The driver of a vehicle may not drive between the vehicles comprising a funeral procession while those vehicles are in motion, 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.
 - b. The driver of a vehicle not part of a funeral procession may not join a funeral procession for the purpose of securing the right of way granted under subsection 3.

- c. The driver of a vehicle not in a funeral procession may not pass vehicles in such a procession on a two-lane highway or roadway.
- d. The driver of a vehicle may pass a funeral procession on its left side on any multiple-lane highway whenever such passing can be done safely, unless the procession is in the farthest left lane, in which case passing is permissible on the right
- e. When a funeral procession is proceeding through a red signal as permitted by subsection 3, a vehicle that is not in the procession may not enter the intersection unless it can do so without crossing the path of the funeral procession. If the red signal changes to green while the funeral procession is still within the intersection, a vehicle facing a green signal may proceed, but the funeral procession has the right of way.

9.0905 When Permits Required for Parades and Processions

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

9.0906 Drive on Right Side of Roadway – Exceptions

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

1. Upon all roadways of sufficient width a vehicle must be driven upon the right half of the roadway, except as follows:
 - a. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
 - b. When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;
 - c. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon;
 - d. Upon a roadway restricted to one-way traffic; or
2. Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing must be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn in an intersection or into a private road or driveway.
3. Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle may be driven to the left of the center line of the roadway, except when authorized by official traffic-control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under subdivision b of subsection 1 hereof. However, this subsection shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road, or driveway.

9.0907 Passing Vehicles Proceeding in Opposite Direction

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

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

9.0908 Overtaking a Vehicle on the Left

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

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

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

9.0909 When Overtaking on the Right is Permitted

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

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

9.0910 Limitations on Overtaking on the Left

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

No vehicle may be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable, and in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within 200 feet of any approaching vehicle.

9.0911 Further Limitations on Driving on Left of Center of Roadway

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

1. No vehicle shall be driven to the left side of the roadway under the following conditions:
 - a. When approaching or upon the crest of a grade or a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;
 - b. When approaching within 100 feet of or traversing any intersection or railroad grade crossing, or;
 - c. When the view is obstructed upon approaching within 100 feet of any bridge, viaduct or tunnel.
2. The foregoing limitations shall not apply upon a one-way roadway, nor under the conditions described in 9.0906 nor to the driver of a vehicle turning left into or from an alley, private road or driveway.

9.0912 No-Passing Zones

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

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

9.0913 Driving on Roadways Laned for Traffic

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

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

1. A vehicle must be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.
2. Upon a roadway which is divided into three lanes and provides for two-way traffic, a vehicle may not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center line is clear of traffic within a safe distance, or in preparation for making a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices.

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

9.0914 Following Too Closely

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

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

9.0915 Driving on Divided Highways

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

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

9.0916 Restricted Access

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

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

9.0917 Restrictions on Use of Controlled-Access Roadway

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

The Director of the North Dakota Department of Transportation may by order, and the City Council may by ordinance, with respect to any controlled-access roadway under their respective jurisdictions, prohibit the use of any such roadway by any class 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 Council, as the case may be, shall erect and maintain official traffic control devices on the controlled-access roadway on which such prohibitions are applicable and when so erected no person may disobey the restrictions stated on such devices.

9.0918 Vehicle Entering Roadway

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

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

9.0919 Vehicle Approaching or Entering Intersection

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

1. If a vehicle approaches or enters an intersection that does not have an official traffic-control device and another vehicle approaches or enters from a different highway 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 does not have an official traffic-control device, the driver of the vehicle on the terminating street or highway shall yield to the vehicle on the continuing street or highway.
2. If a vehicle approaches an intersection that has traffic-control signals that usually exhibit different colored lights and the signals are not lit, the driver of the vehicle shall stop and yield as required under 9.0703.
3. The right-of-way rule declared in this section is modified at through highways and otherwise as stated in this chapter.

9.0920 Overtaking and Passing School Bus

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

1. The driver of a vehicle meeting or overtaking from either direction any school bus stopped on the highway shall stop the vehicle before reaching the school bus when there is in operation on the school bus the flashing red lights or the stop sign on the control arm specified in North Dakota Century Code 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 inches in height. When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or for a school sanctioned activity, all markings thereon indicating "SCHOOL BUS" must be covered or concealed.

3. The operator of a school bus equipped with amber caution lights may activate those lights at a distance of not less than 300 feet nor more than 500 feet from the point where school children are to be received or discharged from the bus.
4. Every school bus must be equipped with a stop sign on a control arm and red visual signals meeting the requirements of North Dakota Century Code 39-21-18, which may only be actuated by the driver of the school bus whenever the vehicle is stopped on the highway to receive or discharge school children.
5. The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.
6. Every school bus must bear on the rear of the bus a plainly visible sign containing the words "THIS SCHOOLBUS STOPS AT ALL RAILROAD CROSSINGS".

9.0921 Unattended Motor Vehicle

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

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

9.0922 Limitations on Backing

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

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

9.0923 Obstruction to Driver's View or Driving Mechanism

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

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

9.0924 Opening and Closing Vehicle Doors

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

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

9.0925 Coasting Prohibited

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

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

9.0926 Following Fire Apparatus Prohibited

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

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

9.0927 Crossing Fire Hose

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

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

9.0928 Garbage, Glass, Etc. on Highways Prohibited

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

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

9.0929 Driving Through Safety Zone Prohibited

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

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

9.0930 Moving Heavy Equipment at Railroad Grade Crossings

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

1. No person may operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of 10 or less miles per hour or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than nine 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 15 feet nor more than 50 feet from the nearest rail or such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.
3. No such crossing may be made when warning is given by automatic signal or crossing gates or flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing must be under the flagman's direction.

9.0931 Open Container Law - Penalty

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

1. A person may not drink or consume alcoholic beverages, as defined in North Dakota Century Code 5-01-01, in or on any motor vehicle when the vehicle is upon a public highway or in an area used principally for public parking. A person may not have in that person's possession on that person's person while in or on a private motor vehicle upon a public highway or in an area used principally for public parking, any bottle or receptacle containing alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed. It is unlawful for the owner of any private motor vehicle or the driver, if the owner be not then present in or on the motor vehicle, to keep or allow to be kept in a motor vehicle when such vehicle is upon the public highway or in an area used principally for public parking any bottle or receptacle containing such alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle is kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment must be deemed to be within the area occupied by the driver and passengers. This subsection does not prohibit the consumption or possession of alcoholic beverages in a house car 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 this subsection must be assessed a fee of \$50; however, the licensing authority may not record the violation against the person's driving record unless the person was the driver of the motor vehicle at the time that the violation occurred.
2. Section 1 does not apply to a public conveyance that has been commercially chartered for group use, any passenger for compensation in a for-hire motor vehicle, or a privately owned motor vehicle operated by a person in the course of that person's usual employment transporting passengers at the employer's direction. This subsection does not authorize possession or consumption of an alcoholic

beverage by the operator of any motor vehicle described in this subsection while upon a public highway or in an area used principally for public parking.

9.0932 Permitting Unauthorized Minor to Drive

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

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

9.0933 Permitting Unauthorized Person to Drive

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

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

ARTICLE 10 - Pedestrians' Rights and Duties

9.1001 Pedestrian Obedience to Traffic Control Devices and Traffic Regulations

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

1. A pedestrian shall obey the instructions of any official traffic control device specially applicable to the pedestrian, unless otherwise directed by a police officer.
2. Pedestrians are subject to traffic and pedestrian-control signals as provided for in 9.0404 and 9.0405.

9.1002 Pedestrians' Right-of-Way In Crosswalks

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

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

9.1003 Crossing At Other Than Crosswalks

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

1. Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.
2. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.
3. Between adjacent intersections at which traffic-control devices are in operation pedestrians may not cross at any place except in a marked crosswalk.
4. No pedestrian may cross a roadway intersection diagonally unless authorized by official traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements.

9.1004 Drivers to Exercise Due Care

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

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

9.1005 Pedestrians to Use Right Half of Crosswalks

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

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

9.1006 Pedestrians on Roadways

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

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

9.1007 Pedestrians' Right-of-Way on Sidewalks

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

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

9.1008 Pedestrians Yield to Authorized Emergency Vehicles

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

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

9.1009 Blind Pedestrians' Right-of-way

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

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

9.1010 Pedestrians Under Influence of Alcohol or Drugs

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

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

9.1011 Bridge and Railroad Signals

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

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

9.1012 Pedestrians Soliciting Rides or Business

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

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

ARTICLE 11 – Regulations for Motorcycles

9.1101 Traffic Laws Apply to Persons Operating Motorcycles

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

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

9.1102 Riding on Motorcycles

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

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.

A person shall ride upon a motorcycle only while sitting astride the seat, facing forward, with one leg on each side of the motorcycle.

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.

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 39-10.2-03 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

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

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

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

Subsections 2 and 3 do not apply to police officers in the performance of their official duties.

9.1104 Clinging to Other Vehicles

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

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

9.1105 Footrests

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

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

9.1106 Equipment for Motorcycle Riders

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

1. No person under the age of eighteen years may operate or ride upon a motorcycle unless protective headgear, which complies with standards established by the North Dakota Department of Transportation, is being worn on the head of the operator and rider, except when participating in a lawful parade. If the operator of a motorcycle is required to wear protective headgear, any passenger must also wear protective headgear regardless of the age of the passenger.
2. This section does not apply to persons riding within an enclosed cab or on a golf cart.
3. No person may operate a motorcycle if a person under the age of 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 39-10.2-07 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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

ARTICLE 12 – Regulations for Bicycles

9.1201 Effect of Regulations

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

1. It is unlawful for any person to do any act forbidden or fail to perform any act required in this article. Any person who violates any of the provisions of this article may be assessed a fee not to exceed \$5.
2. The parent of any child and the guardian of any ward may not authorize or knowingly permit any such child or ward to violate any of the provisions of this article.
3. These regulations applicable to bicycles apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.

9.1202 Traffic Ordinances Apply to Persons Riding Bicycles

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

Every person riding a bicycle upon a roadway is granted all of the rights and is subject to all of the duties applicable to the driver of a vehicle by this chapter, except as to special regulations in this chapter and except as to those provisions of this chapter which by their nature can have no application.

9.1203 Obedience to Traffic Control Devices

1. Any person operating a bicycle shall obey the instructions of official traffic-control devices applicable to vehicles, unless otherwise directed by a police officer.
2. Whenever authorized signs are erected indicating that no right or left or U turn is permitted, no person operating a bicycle may disobey the direction of any such sign, except where such person dismounts from the bicycle to make any such turn, in which event such person shall then obey the regulations applicable to pedestrians.

9.1204 Riding on Sidewalks

1. The Chief of Police or authorized person may erect signs on any sidewalk or roadway prohibiting the riding of bicycles thereon by any person and when such signs are in place no person may disobey the same.
2. Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing such pedestrian.

9.1205 Riding on Roadways and Bicycle Paths

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

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

2. A group of individuals riding bicycles upon a roadway may not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.
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 39-10.1-04 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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

9.1207 Carrying Articles

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

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

9.1208 Lamps and other Equipment on Bicycles

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

1. Every bicycle when in use at nighttime must be equipped with a lamp on the front which emits a white light visible from a distance of at least 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 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 39-10.1-03 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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

9.1210 Bicycle Parking

No person may park a bicycle upon a street other than upon the roadway against the curb or upon the sidewalk in a rack to support the bicycle or against a building or at the curb, in such manner as to afford the least obstruction to pedestrian traffic.

9.1211 Cycle Racing Prohibited

It shall be unlawful for any persons to run or engage in or cause to be run or be engaged in any bicycle or motorcycle race on any street, alley, highway or public place within the City, except when officially sanctioned to do so by the Chief of Police.

ARTICLE 13 – Angle Parking

9.1301 Angle Parking

The City Engineer or other authorized City official may mark or sign streets upon which angle parking will be permitted (other than federal aid or state highways). Upon those streets which have been signed or marked for angle parking, no person may park or stand a vehicle other than at the angle to the curb or edge of the roadway indicated by such signs or markings.

9.1302 Angle Parking – Where

Angle parking shall also be permitted on the following streets:

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 18 inches of the curb or edge of the roadway except as otherwise provided in this article.

9.1304 Method of Parking - Penalty

A violation of the provisions of this article in respect to the method of parking is punishable by a fine of not to exceed \$25.

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

9.1401 Parking Prohibited - Times

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

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

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

1. Upon any highway outside of a business or residence district no person may stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practicable to stop, park or so leave such vehicle off such part of said highway, but in every event an unobstructed width of the highway of not less than 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 200 feet in each direction upon such highway.
2. Sections 9.1402, 9.1404 and 9.1405 do not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

9.1403 Officers Authorized to Remove Illegally Stopped Vehicles

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

1. Whenever any police officer finds a vehicle standing upon a highway in violation of any of the provisions of 9.1402, such officer is hereby authorized to move such vehicle, or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or main-traveled part of such highway.
2. Whenever any police officer finds a vehicle unattended upon any highway, bridge or causeway, or in any tunnel where such vehicle constitute an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety.
3. Any police officer is hereby authorized to remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon a highway when:
 - a. A report has been made that such vehicle has been stolen or taken without consent of its owner;
 - b. The person or persons in charge of such vehicle are unable to provide for its custody or removal; or
 - c. When the person driving or in control of such vehicle is arrested for an alleged offense for which the officer is required by law to take the person arrested before a proper magistrate without unnecessary delay.

9.1404 Stopping, Standing or Parking Prohibited in Specified Places

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

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

1. On a sidewalk;
2. In front of a public or private driveway;
3. Within an intersection;
4. Within 10 feet of a fire hydrant;
5. On a crosswalk;
6. Within 10 feet of a crosswalk at an intersection;
7. Within 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 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 15 feet of the nearest rail of a railroad crossing;
10. Within 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 75 feet of said entrance when properly signposted;
11. Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;
12. On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
13. Upon any bridge or other elevated structure upon a highway or within a highway tunnel; or
14. At any place where official signs prohibit stopping.

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

9.1405 Additional Parking Regulations

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

1. Except as otherwise provided in this ordinance, every vehicle stopped or parked upon a two-way roadway must be so stopped or parked with the right-hand wheels of such vehicle parallel to and within 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 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 12 inches of the left-hand curb or as close as practicable to the left edge of the left-hand shoulder.

3. The City Council may permit angle parking on any roadway, except that angle parking is not permitted on any federal-aid or state highway without first obtaining the written authorization of the Director of the North Dakota Department of Transportation.
4. The North Dakota Department of Transportation with respect to highways under its jurisdiction may place official traffic-control devices prohibiting or restricting the stopping, standing or parking of vehicles on any highway where in its opinion such stopping, standing or parking is dangerous to those using the highway or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic thereon. No person may stop, stand or park any vehicle in violation of the restrictions indicated by such devices.

9.1406 Stopping - Parking - Certain Purposes Prohibited

No person may park a vehicle upon any roadway for the principal purpose of:

1. Displaying such vehicle for sale;
2. Washing, greasing or repairing such vehicle except when repairing such vehicle is necessitated by an emergency.

9.1407 Stopping – Parking – Congested – Hazardous Places

The City Engineer or other person designated by the City Council 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 12 feet of the width thereof for free movement of vehicular traffic, nor shall any person stop in such a position as to block the driveway entrance to any abutting property.

9.1409 Parking Adjacent to Schools

1. The City Traffic Engineer or authorized person may erect signs indicating no parking upon either or both sides of any street adjacent to any school property when such parking would, in the Traffic Engineer's or other authorized person's opinion, interfere with traffic or create a hazardous situation.
2. When official signs are erected indicating no parking upon either side of a street adjacent to any school property as authorized herein, no person may park a vehicle in any such designated place.

9.1410 Stopping – Parking – Over 48 Hours

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

9.1411 Parking Privileges for Mobility-Impaired – Certificate – Revocation

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

1. Any mobility-impaired person who displays prominently upon an automobile parked by that person or under that person's direction and for that person's use, a distinguishing certificate or insignia for mobility-impaired persons issued by the North Dakota Department of Transportation is entitled to courtesy in the parking of the automobile. Provided, however, that the City Council may, by ordinance, prohibit parking on any street or highway for the purpose of creating a fire lane, or to provide for the accommodation of heavy traffic during morning and afternoon rush hours, and the privileges extended to such impaired persons do not apply on streets or highways where and during such times as parking is prohibited.
2. A mobility-impaired person as used in this ordinance includes any person who uses portable oxygen; requires personal assistance or the use of crutches, a wheelchair, or a walker to walk 200 feet without rest; is restricted by cardiac, pulmonary or vascular disease from walking 200 feet without rest; has a forced expiratory volume of less than one liter for one second or an arterial oxygen tension of less than 60 millimeters of mercury on room air while at rest and is classified III or IV by standards for cardiac disease set by the American Heart Association; or has an orthopedic, neurological or other medical condition that makes it impossible for the person to walk 200 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 for which a fine of \$100 shall be imposed.
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 \$100.

ARTICLE 15 - Reserved Parking Areas

9.1501 Reserved Parking Areas

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

The Chief of Police may establish from time to time areas for loading and unloading, bus parking, guest parking, taxi parking, emergency parking, no parking or police and fire use on such public streets in such places and in such number as the chief shall determine or as the City Council 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 City Council 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

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

1. Every motor vehicle must be equipped with a windshield. An individual may not drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows which obstructs the driver's clear view of the highway or any intersection highway.
2. The windshield on every motor vehicle must be equipped with a device for cleaning rain, snow or other moisture from the windshield, which must be so constructed as to be controlled or operated by the driver of the vehicle.
3. Every windshield wiper upon a motor vehicle must be maintained in good working order.
4. An individual may not operate a motor vehicle with any object, material, or tinting displayed, affixed, or applied on the front windshield or any window unless the object, material, or tinting in conjunction with the windshield upon which it is displayed, affixed, or applied has a light transmittance of at least seventy percent or the object, material, or tinting in conjunction with a window other than the windshield upon which it is displayed, affixed, or applied has a light transmittance of at least 50%. This subsection does not apply to windows behind the operator if the motor vehicle is equipped with outside mirrors on both sides that meet the requirements of North Dakota Century Code 39-21-38.

9.1702 Horn or Warning Device

The provisions of North Dakota Century Code 39-21-36 and all subsequent amendments are hereby incorporated by reference in this ordinance.

1. While being operated upon a highway, every motor vehicle must be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 200 feet, but no horn or other warning device may emit an unreasonably loud or harsh sound or a whistle. Whenever reasonably necessary for safe operation, the driver of a motor vehicle upon a highway shall give audible warning with the vehicle's horn, but may not otherwise use the vehicle's horn while upon a highway.
2. No vehicle may be equipped with nor may any person use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section.
3. Any vehicle may be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.
4. Any authorized emergency vehicle may be equipped with a siren, whistle, or bell, capable of emitting sound audible under normal conditions from a distance of not less than 500 feet and of a type approved by the department, but the siren may not be used except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which events the driver of the vehicle shall sound the siren when reasonably necessary to warn pedestrians and other drivers of approaching vehicles.

9.1703 When Lighted Lamps Are Required

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

Subject to the exceptions for parked vehicles, every vehicle upon a highway within this state must display lighted headlamps, taillamps, and illuminating devices as required in this 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 1000 feet ahead; or
3. At any other time when visibility is impaired by weather, smoke, fog, or other conditions, or when there is insufficient light to render a person or vehicle on the highway clearly discernible at a distance of 1000 feet ahead.

Stoplights, turn signals, and other signaling devices must be lighted as prescribed for the use of these devices.

9.1704 Visibility Distance and Mounted Height of Lamps

The provisions of North Dakota Century Code 39-21-02 and all subsequent amendments are hereby incorporated by reference in this ordinance.

1. Whenever requirement is hereinafter declared as to distance from which certain lamps and devices must render objects visible or within which such lamps or devices must be visible, said provisions apply during the times stated in 9.1703 in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.
2. Whenever requirement is hereinafter declared as to the mounted height of lamps or devices it means from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without a load.

9.1705 Headlamps on Motor Vehicles

The provisions of North Dakota Century Code 39-21-03 and all subsequent amendments are hereby incorporated by reference in this ordinance.

1. Every motor vehicle must be equipped with at least two headlamps with at least one on each side of the front of the motor vehicle, which headlamps must comply with the requirements and limitations set forth in this chapter.
2. Every headlamp upon every motor vehicle must be located at a height measured from the center of the headlamp of not more than 54 inches nor less than 24 inches to be measured as set forth in 9.1704(2).

9.1706 Tail Lamps

The provisions of North Dakota Century Code 39-21-04 and all subsequent amendments are hereby incorporated by reference in this ordinance.

1. Every motor vehicle, trailer, semitrailer and pole trailer, and any other vehicle which is being drawn at the end of a train of vehicles, must be equipped with at least one tail lamp mounted on the rear, which, when lighted as hereinbefore required, must emit a red light plainly visible from a distance of 1000 feet to the rear, provided that in the case of a train of vehicles only the tail lamp on the rearmost vehicle need actually be seen from the distance specified. Every such above-mentioned vehicle, other than a

truck tractor, registered in this state and manufactured or assembled after January 1, 1964, must be equipped with at least two tail lamps mounted on the rear, on the same level and as widely spaced laterally as practicable, which, when lighted as herein required, comply with the provisions of this section.

2. Every tail lamp upon every vehicle must be located at a height of not more than 72 inches nor less than 15 inches.
3. Either a tail lamp or a separate lamp must be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any tail lamp or tail lamps, together with any separate lamp for illuminating the rear registration plate, must be so wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted.

9.1707 Mufflers Required, Cutouts Prohibited

The provisions of North Dakota Century Code 39-21-37 and all subsequent amendments are hereby incorporated by reference in this ordinance.

1. Every motor vehicle must at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke, and no person may use a muffler cutout, bypass, or similar device upon a motor vehicle on a highway.
2. The engine and power mechanism of every motor vehicle must be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

9.1708 Child Restraint Devices - Evidence

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

1. If a child, under seven years of age, is present in any motor vehicle, that motor vehicle must be equipped with at least one child restraint system for each such child. However, a child under the age of seven who is at least 57 inches tall and who weighs at least 80 pounds is not required to use a child restraint system. The child restraint system must meet the standards adopted by the United States Department of Transportation for those systems (49 CFR 571.213). While the motor vehicle is in motion, each such child must be properly secured in the child restraint system in accordance with the manufacturer's instructions. A child weighing more than 40 pounds may be restrained by a lap belt if the vehicle is not equipped with lap and shoulder belts or if all lap and shoulder belts are in use by other occupants. While the motor vehicle is moving, each child of seven through 17 years of age who is in the motor vehicle must be in an approved child restraint system or buckled in a seat belt. Use of child restraint systems and seatbelts is not required in motor vehicles that were not equipped with seatbelts when manufactured. If all the seat belts are used by other family members in the vehicle or if a child is being transported in an emergency situation, this section does not apply.
2. Violation of this section is not, in itself, evidence of negligence. The fact of a violation of this section is not admissible in any proceeding other than one charging the violation.

9.1709 Use of Safety Belts – Enforcement

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

Subject to the limitations of this section and 9.1710, a driver may not operate upon a highway a motor vehicle designed for carrying fewer than 11 passengers, which was originally manufactured with safety belts unless each front seat occupant is wearing a properly adjusted and fastened safety belt. This section does not apply to a child in a child restraint or seatbelt; to drivers of implements of husbandry; to operators of farm vehicles; to rural

mail carriers while on duty delivering mail; to an occupant with a medical or physically disabling condition that prevents appropriate restraint in a safety belt, if a qualified physician states in a signed writing the nature of the condition and the reason restraint is inappropriate; or when all front seat safety belts are in use by other occupants. A physician who, in good faith, provides a statement that restraint would be inappropriate is not subject to civil liability. A violation for not wearing a safety belt under this section is not, in itself, evidence of negligence. The fact of a violation of this ordinance is not admissible in any proceeding other than one charging the violation.

9.1710 Secondary Enforcement

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

A peace officer may not issue a citation for a violation of 9.1703 unless the officer lawfully stopped or detained the driver of the motor vehicle for another violation.

9.1710 Drawbar or Connection Between Vehicles – Precautions Required

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

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

1. A fifth-wheel coupling device; or
2. A vehicle towing an implement of husbandry or an implement of husbandry towing a vehicle, when operated at a speed not exceeding twenty-five miles per hour.

9.1711 Modification of Motor Vehicle

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

Except as otherwise provided in this section, 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 7,000 pounds or less with alterations or changes from the manufacturer's original design of the suspension, steering or braking system of the motor vehicle. The weight must be computed on the basis of the unmodified and unloaded weight of the motor vehicle, and without regard to any ballast that may be placed in the vehicle. As to bumpers, motor vehicle height and permitted modifications, the following requirements also apply:

1. The motor vehicle must be equipped with front and rear bumpers.
2. The maximum body height permitted for a motor vehicle is 42 inches. Measurement of body height is made from a level ground surface to the floor of the cargo area.
3. The maximum bumper height permitted is 27 inches. Measurement of bumper height is made from a level ground surface to the highest point on the bottom of the bumper.
4. The vehicle may be modified in accordance with the following:
 - a. Any modifying equipment must meet specialty equipment marketing association standards.

- b. If tires placed on a motor vehicle have a diameter greater than that of the tires on the motor vehicle as manufactured, those tires must comply with Department of Transportation requirements.
 - c. The maximum outside diameter permitted for tires is 44 inches.
 - d. A horizontal drop bumper may be used to comply with the bumper height requirement of subsection 3. The horizontal bumper must:
 - i. Be at least three inches in vertical width;
 - ii. Extend the entire horizontal body width; and
 - iii. Be horizontal, load bearing and attached to the vehicle frame to effectively transfer impact when engaged.
 - e. The maximum lift permitted in the suspension system is four inches.
5. A person charged with violating this ordinance has the burden of proceeding to show that the modifications are permitted under this section.
 6. Vehicles owned by law enforcement agencies, the military, firefighting agencies and ambulances may be modified without regard to this ordinance.

9.1712 Scope and Effect of Equipment Requirements – Penalty

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

1. It is unlawful for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which the actor knows to be in such unsafe condition as to endanger any person, or which the actor knows does not contain those parts or is not at all times equipped with lamps and other equipment in proper condition and adjustment as required in this chapter, or which the actor knows is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this ordinance.
2. 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.
3. 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.
4. 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.
5. 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.
6. The provisions of this ordinance do not apply to vehicles moved solely by human power, except as specifically made applicable.

ARTICLE 18 - Motorcycle Equipment

9.1801 Purpose

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

It is the purpose of this article to establish performance and equipment requirements for the manufacture, sale and safe operation of a motorcycle upon public highways, and to furnish administrators with a guide for registration eligibility and continued conformity as related to motorcycles.

9.1802 Manufacturer's or Distributor's Certification

1. The manufacturer or distributor shall provide a certification of the fact that a motorcycle or class of motorcycles is designed and manufactured for use upon public highways and complies with the performance and equipment requirements of this chapter, and the rules and regulations promulgated hereunder.
2. The certificate must be incorporated on the manufacturer's statement of origin (MSO) upon transfer of vehicle ownership. (Source: North Dakota Century Code 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 40 inches. (Source: North Dakota Century Code 39-27-03)

9.1804 Brakes

1. Every motorcycle must have either a split service brake system or two independently actuated service brake systems in accordance with rules adopted by the Director of the North Dakota Department of Transportation. Brakes must act on the front and rear wheels.
2. Every motorcycle must meet the requirements for brake system effectiveness, fade and partial systems as specified in rules adopted by the Director of the North Dakota Department of Transportation.
3. All linkage, cables, pivots and bearings must be free of excess (high) friction, with the front wheel brake cable so located and secured as not to become pinched between fork and frame members when wheel is turned completely to the right or left.
4. Brake actuating devices must be in an accessible location, unencumbered by vehicle components, and so positioned that adequate leverage and safe operation is ensured. Service brake system controls and operation requirements must be in accordance with rules adopted by the Director of the North Dakota Department of Transportation. A suitable mechanism shall be provided for the purpose of automatically returning the actuating devices to normal position upon release.
5. Motorcycle brakes must be capable of being adjusted automatically or manually with means provided to prevent unintentional adjustment.
6. Each three-wheel motorcycle must be equipped with a parking brake of a friction type with a solely mechanical means to retain engagement. (Source: North Dakota Century Code 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 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 inches designed for highway use.
2. Tires on two-wheel motorcycles and the front tire on a three-wheel motorcycle must have a load capacity rating at least equal to their respective gross axle weight ratings (GAWR). Each tire on the rear axle of a three-wheel motorcycle must have a load capacity rating at least equal to one-half the rear axle gross axle weight rating (GAWR).
3. Wheel rim diameters may not be less than 10 inches 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 20 inches or greater. (Source: North Dakota Century Code 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 inch with both wheels in a vertical plane when the vehicle is operating on a straight course. On a three-wheel motorcycle, the two wheels mounted on the rear axle must have a wheel track distance no less than 30 inches and the mid-point of the rear wheel track distance shall be within one inch of the front wheel track when the vehicle is proceeding on a straight course. The vehicle must be equipped with an adjustment feature that will provide proper wheel tracking.
3. The steering head must be provided with a bearing or similar device that will allow the steering shaft to turn freely in rotational motion only.
4. All motorcycles, except three-wheel motorcycles, must meet the following specifications in relationship to front wheel geometry:
 - a. Maximum Rake: 45 degrees - Trail: 14 inches positive
 - b. Minimum Rake: 20 degrees - Trail: Two inches positive
 - c. 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 100 pounds applied to each handgrip in any direction. Handlebar grips may not be located above the shoulder height of the seated operator and must be capable of vertical adjustment. The handlebars must provide a minimum of 18 inches between grip after final assembly.
6. Handlebars must be equipped with handgrips consisting of a material and surface pattern 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 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 39-27-07)

9.1809 Exhaust Systems - Prevention of Noise

Motorcycles must be equipped with an exhaust system incorporating a muffler or other mechanical device for the purpose of effectively reducing engine noise. Cutouts and bypasses in the exhaust system are prohibited. The system must be leak proof and all components must be securely attached to the vehicle and located so as not to interfere with the operation of the motorcycle. Shielding must be provided to prevent inadvertent contact with the exhaust system by the operator or passenger during normal operation. In addition, all motorcycles operating on streets and highways must meet the noise decibel limitations as established by the Environmental Protection Agency. No person may sell, offer for sale or install any noise suppressing system or device which will produce noise in excess of the maximum allowable decibel limitations of this section. (Source: North Dakota Century Code 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 10 square inches. All mirrors shall not contain sharp edges or projections capable of producing injury. (Source: North Dakota Century Code 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 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 25 inches 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 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 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 so equipped. (Source: North Dakota Century Code 39-27-13)

9.1815 Glazing

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

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

9.1816 Horn

Every motorcycle must be equipped with an operative horn in good working order as described by Subsection 1 of 39-21-36 of the North Dakota Century Code. The horn shall operate from a control device located on the left handlebar. (Source: North Dakota Century Code 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 39-27-16)

9.1818 Lighting Equipment

1. A motorcycle must be equipped with lamps, reflective devices and associated equipment as required by and in compliance with standards adopted by the Director of the North Dakota Department of Transportation.
2. A gearbox indicator light, if provided, must be located within the operator's field of vision.
3. A headlamp beam indicator light must be located within the operator's field of vision and illuminated automatically when the high beam of the headlamp is actuated.
4. A motorcycle must be equipped with at least one tail lamp in accordance with North Dakota Century Code 39-21-04.
5. A motorcycle must be equipped with a stop lamp in accordance with subsection 1 of North Dakota Century Code 39-21-19. (Source: North Dakota Century Code 39-27-17)

9.1819 Lighting Equipment on Motor-Driven Cycles

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

1. Every headlamp or headlamps on a motor-driven cycle must be of sufficient intensity to reveal a person or a vehicle at a distance of not less than 100 feet when the motor-driven cycle is operated at any speed less than 25 miles per hour and at a distance of not less than 200 feet when the motor-driven cycle is operated at a speed of 25 or more miles per hour and at a distance of not less than 300 feet when the motor-driven cycle is operated at a speed of 35 miles per hour.
2. In the event the motor-driven cycle is equipped with a multiple-beam headlamp or headlamps the upper beam may not exceed the limitations set forth in subsection 1 of North Dakota Century Code 39-21-20, and the lowermost beam shall meet the requirements applicable to the lowermost distribution of light as set forth in subsection 2 of North Dakota Century Code 39-21-20.
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 25 feet ahead, projects higher than the level of the center of the lamp from which it comes. (Source: North Dakota Century Code 39-27-17.1)

9.1820 Passenger Seat

Motorcycles designed to carry more than one person must be equipped with a securely mounted seat for each passenger located to the side or rear of the driver such that the passenger seat does not interfere with the driver's control or operation of the vehicle. In the case of a two-wheel vehicle, the passenger seat must be located on the longitudinal centerline of the motorcycle. (Source: North Dakota Century Code 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 250 pounds applied at the center of the foot pedal. Footrests must be so located to provide reasonable accessibility for the passenger's feet. Footrests must fold rearward or upward when not in use if the footrest protrudes beyond the width of the handlebars. (Source: North Dakota Century Code 39-27-20)

9.1822 Highway Bars

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

9.1823 Equipment Approval

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

ARTICLE 19 - Lighted Lamps Required

9.1901 When Lighted Lamps are Required

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

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

Stoplights, turn signals and other signaling devices must be lighted as prescribed for the use of such devices.

ARTICLE 20 – Truck Traffic

9.2001 Administration

1. Definitions

For the purposes of this article the following terms, phrases words and their derivations shall have the following meaning given herein:

- a. The “Destination Point” shall be a point of stoppage to load or unload property being transported and to be delivered or picked up at the point.
- b. A “Deviating Truck” is a truck which leaves and departs from a truck route while traveling inside the City.
- c. “Farm Truck” is any truck which is used for the transportation of agricultural products from the farm to a point of destination within the City, or the transportation of any commodity from the City to the farm.
- d. “Truck” is any vehicle designed or operated for the transportation of property, and whose body weight or whose combined body and load weight exceeds 25,000 pounds registered gross weight.
- e. “Truck Route” is a way over certain streets, as designated in this article over and along which trucks coming into and going out of the City must operate.

2. Application Generally

All trucks within the City shall be operated and parked only over and along the truck routes and truck park routes established in this article and on the other designated streets over which truck travel and parking is permitted.

3. Enforcement

The City Auditor shall keep and maintain any truck maps setting out truck routes and streets upon which truck traffic is permitted; the map shall be kept in the office of the City Auditor and shall be available to the public.

4. Chief of Police Maintains Signs

Chief of Police shall cause all truck routes and those streets upon which truck traffic is prohibited to be clearly posted to give notice that this article is in effect.

5. Chief of Police – Authority to Weigh Trucks

The Chief of Police shall have the authority to require any persons driving or in control of any commercial vehicle not proceeding over a truck route or street over which the truck traffic is permitted to proceed to any public or private scale for the purpose of weighing and determining whether this article has been complied with.

6. Exceptions

This article shall not prohibit:

- a. Operation on street of destination, Operation of trucks on any street or alley that is necessary to conduct a business at a destination point, provided streets upon which said traffic is permitted are used until reaching the intersection nearest the destination point.

- b. Emergency vehicles. The operation of emergency vehicles upon any street in the City.
- c. Public utilities, etc. The operation of trucks owned or operated by the City, public utilities, any contractor or material man engaged in repair, maintenance or construction of the streets, street improvements or street utilities within the City.
- d. Detoured trucks. The operation of trucks upon an officially established detour in any case where such truck can lawfully be operated upon the street for which such detour is established.
- e. Loading or unloading. The operation of trucks in the City for the purpose of loading or unloading any cargo or part of cargo.
- f. Service or repair. The operation of a truck for the purpose of having such truck serviced or repaired.
- g. Farm trucks. The operation of farm trucks within the City.

9.2002 Truck Routes

When signs are erected giving notice thereof, the following streets in the City shall be designated as truck routes and vehicles and/or trailers with a load carrying capacity of two tons or larger (by way of example this includes vehicles such as single axle farm trucks or larger) shall be allowed to drive on these streets:

1. North Dakota Highway 32 located within the City limits of the City of Walhalla.
2. Delano Avenue from the intersection of North Dakota Highway 32 west to Holly Street.
3. Sunset Avenue from the intersection of Delano Avenue west to Pembina County Road 55 and Pembina County Road 55 located within the City.
4. Eleventh Street from North Dakota Highway 32 to Pembina County Road 9 and Pembina County Road 9 located within the City.
5. Division Street from Pembina County Road 55 north to the north limits of the City.
6. Hornung Avenue along its entire length in the City of Walhalla and Mager Avenue between Eighth Street and Ninth Street.
7. Twelfth Street from North Dakota Highway 32 to Central Avenue and Central Avenue between Twelfth Street and Thirteenth Street.
8. Riverside Avenue from North Dakota Highway 32 to Sixth Street, Sixth Street between Riverside Avenue and Emmerling Avenue, and Emmerling Avenue from North Dakota Highway 32 to Sixth Street.
9. Burlington Northern Santa Fe Frontage Road from North Dakota Highway 32 adjoining Block 11 and between Blocks S and T, all located in Emmerling's Addition to the City.
10. All of the City streets located in the North Addition to the City and located between North Dakota Highway 32 and the right of way of the Burlington Northern Santa Fe Railroad.
11. All of the City streets located in the Walhalla Industrial Park located south of North Dakota Highway 32 and east of the railroad right of way of the Burlington Northern Santa Fe Railroad.

9.2003 Truck Parking

When signs are erected giving notice thereof, the following streets in the City shall be designated as truck parking routes and vehicles and/or trailers with a load carrying capacity of two tons or larger (by way of example this includes vehicles such as single axle farm trucks or larger) shall be allowed to park on these streets:

1. All of the City streets located in the North Addition to the City and located between North Dakota Highway 32 and the right of way of the Burlington Northern Santa Fe Railroad.
2. All of the City streets located in the Walhalla Industrial Park located south of North Dakota Highway 32 and east of the railroad right of way of the Burlington Northern Santa Fe Railroad.

9.2004 Penalty – Non-Criminal Statutory Fees

Any person violating any provisions of this ordinance for which another criminal penalty is not provided specifically shall be guilty of an infraction. Violations of 9.2001(2) shall be subject to a fine of \$50 upon the first violation, and \$100 upon the second or subsequent violations.

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 39-08-01 and all subsequent amendments are hereby incorporated by reference in this ordinance.

1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:
 - a. That person has an alcohol concentration of at least eight one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle.
 - b. That person is under the influence of intoxicating liquor.
 - c. That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.
 - d. That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.

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

2. A person violating this 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 of the North Dakota Department of Transportation or may make a subsequent offense finding based on other evidence.
3. Upon conviction of a second or subsequent offense with five years under this ordinance or equivalent law, the court must order the motor vehicle number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the Director of the North Dakota Department of Transportation who must retain them for the period of suspension or revocation, subject to their disposition by the court. The court may make an exception to this subsection, on an individual basis, to avoid undue hardship to an individual who is completely dependent on the motor vehicle for the necessities of life, including a family member of the convicted individual and a co-owner of the motor vehicle, but not including the offender.
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 \$250 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 48 hours must be served

consecutively, or 30 days community service; a fine of at least \$500 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 60 days imprisonment or placement in a minimum security facility, of which 48 hours must be served consecutively; a fine of \$1000 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 180 days imprisonment or placement in a minimum security facility, of which 48 hours must be served consecutively, and a fine of \$1000 dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of 13.0502 .
 - f. For purposes of this ordinance, conviction of an offense under a law or ordinance of another state which is equivalent to this section must be considered a prior offense if such offense was committed within the time limitations specified in this subsection.
 - g. If the penalty mandated by this ordinance includes imprisonment or placement upon conviction of a violation of this ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment or placement under this section.
5. As used in subdivision b of subsection 4, the term "imprisonment" includes house arrest. As a condition of house arrest, a defendant may not consume alcoholic beverages. The house arrest must include a program of electronic home detention in which the defendant is tested at least twice daily for the consumption of alcohol. The defendant shall defray all costs associated with the electronic home detention. This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation.

9.2102 Prior Offenses

For purposes of this article and Article 22, a previous conviction does not include any prior violation of 9.2101 if the offense occurred prior to July 1, 1981.

9.2103 Reckless Driving - Penalty

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

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

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

Except as otherwise herein provided, any person violating the provisions of this section is guilty of an offense. Any person who, by reason of reckless driving as herein defined, causes and inflicts injury upon the person of another, is guilty of aggravated reckless driving, and is guilty of a class A misdemeanor.

9.2104 Accidents Involving Damage to Vehicle - Penalty

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

The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until the driver has fulfilled the requirements of 9.2105. 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 To Give Information and Render Aid

The provisions of North Dakota Century Code 39-08-06 and all subsequent amendments are hereby incorporated by reference in this ordinance.

The driver of any vehicle involved in an accident resulting in injury to or the death of any person or damage to any vehicle which is driven or attended by any person shall give the driver's name and address, and the name of the motor vehicle insurance policy carrier of the driver and owner, as well as the registration number, of the vehicle. Upon request, and if available, the driver of any vehicle involved in the accident shall exhibit the driver's operator's or chauffeur's license to the person struck or the driver or occupant of or person attending any other vehicle involved in the accident and shall render to any person injured in the accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of the person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if the carrying is requested by the injured person.

9.2106 Duty Upon Striking Fixtures Upon a Highway

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

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

9.2107 Penalty for Driving While License Suspended or Revoked – Impoundment of Vehicle Number Plates – Authority of City

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

1. Except as provided in North Dakota Century Code 39-06.1-11, any person who drives a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state while that person's license or privilege so to do is suspended or revoked is guilty of a class B misdemeanor 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 9.2101 or was governed by North Dakota Century Code 39-06-31 or 39-20, the sentence must be at least four 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 North Dakota Century Code 12.1-32-02. Forfeiture of bail is not permitted in lieu of the defendant's personal appearance in open court for arraignment on a charge under this subsection.

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

9.2108 Operation of Snowmobiles and Off-Highway Vehicles

1. For the purposes of this article, the following definitions are hereby adopted:
 - a. Snowmobile means a vehicle as defined in North Dakota Century Code 39-24-01.
 - b. Off Highway Vehicle means a vehicle as defined in North Dakota Century Code 39-29-01(2).
 - c. Roadway means that portion of a road, street, alley-way or highway improved, designed or ordinarily used for vehicular travel.
 - d. Operate means to ride in or on and control the operation of a snowmobile or off-highway vehicle.
2. Snowmobile and off-highway vehicle registration; title certificate; general requirements
 - a. Except as hereinafter provided, no person may operate any snowmobile or off-highway vehicle unless the snowmobile or off-highway vehicle has been registered in accordance with the provisions of the laws of the state of North Dakota.
3. Rules for Operation of Snowmobiles and Off-Highway Vehicles
 - a. The provisions of North Dakota Century Code 39-24, 39-24.1 and 39-29 regarding operation of snowmobiles and off-highway vehicles and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.
4. Where Prohibited
 - a. No person may operate a snowmobile or off-highway vehicle upon the road-way, shoulder, or inside bank or slope or any road, street, alley-way, or highway within the City, except as hereinafter provided:
 - i. A resident of the City may operate a snowmobile or off-highway vehicle on street rights-of-way, by the most direct route from his or her residence to the city limits or to a route designated in sub two below, and for the purposes so designated.
 - ii. A person may operate a snowmobile or off-highway vehicle on the right shoulder of the route or routes designated by the City Council, which route designations are available at the City Auditor as established and/or amended from time to time by the City Council.

9.2109 Helmet Required

1. No person under the age of 18 may operate, ride, or otherwise be propelled on a snowmobile or off-highway vehicle unless the person wears a safety helmet meeting the Federal Department of Transportation Standards.

9.2110 Operation of Motor Vehicle, Tractor or Other Vehicle Prohibited on Flood Protective Works – Exception – Penalty

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

1. Unless authorized by the authority in charge thereof, no person shall operate a motor vehicle, tractor or other vehicle upon or across any flood protective works, including but not limited to, any dike or flood protective works constructed by a state or federal agency or by any municipality or local subdivision of the state.
2. Any person violating the provisions of this section shall be liable to any person suffering injury as a result of the violation; and in addition, shall be guilty of an offense.

9.2111 Operators Must Be Licensed – Additional Licensing – Penalty

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

9.2112 License to be Carried and Exhibited on Demand

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

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

9.2113 Alteration of Odometers or Other Mileage Recorders, Hour Meters on Tachometers, or Other Hour Recorders, Penalty

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

A person may not willfully alter a motor vehicle odometer or other mileage recorder, hour meter on tachometer, or other hour recorder, or offer for sale or sell a motor vehicle knowing the odometer or other mileage recorder has been altered, for the purpose of deceiving another. A person who violates this section is guilty of an offense.

9.2114 Harassment of Domestic Animals

The provisions of North Dakota Century Code 39-08-19 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Any person operating a motorcycle, snowmobile, or other motor vehicle who willfully harasses or frightens any domestic animal, shall, upon conviction, be guilty of an offense. If injury or death results to the animal due to such action, such person shall be liable for the value of the animal and exemplary damages as provided in North Dakota Century Code 36-21-13.

9.2115 Driving Without Liability Insurance Prohibited

The provisions of North Dakota Century Code 39-08-20 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. A person may not drive, or the owner may not cause or knowingly permit to be driven, a motor vehicle in this state without a valid policy of liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance, or use of that motor vehicle in the amount required by North Dakota Century Code 39-16.1.
2. Upon being stopped by a law enforcement officer for the purpose of enforcing or investigating the possible violation of an ordinance or state law, the person driving the motor vehicle shall provide to the officer upon request satisfactory evidence of the policy required under this section. If unable to comply with the request, that person may be charged with a violation of this section if that person fails to submit satisfactory evidence of the policy to the officer or the officer's agency within twenty days from the date of the request; however, during the investigation of an accident, the person may be charged with a violation of this section if that person fails to provide the satisfactory evidence within three business days from the date of the request. If that person produces satisfactory evidence of a valid policy of liability insurance in effect at the time of the alleged violation of this section to the officer, the officer's agency, or a court, that person may not be convicted or assessed any administration fee for violation of Section 1.
3. Notwithstanding North Dakota Century Code 26.1-30-18, a person may be convicted for failure to have a valid policy of liability insurance in effect under this section if the time of acquisition of the policy was after the time of the alleged incidence of driving without liability insurance. If the time of acquisition of the policy comes into question, the driver or owner has the burden of establishing the time of acquisition. If the driver is not an owner of the motor vehicle, the driver does not violate this section if the driver provides the court with evidence identifying the owner of the motor vehicle and describing circumstances under which the owner caused or permitted the driver to drive the motor vehicle.
4. Violation of Section 1 is an offense and the sentence imposed must include a fine of at least one hundred fifty dollars which may not be suspended. A person convicted for a second or subsequent violation of driving without liability insurance within a three year period must be fined at least three hundred dollars which may not be suspended. For a second or subsequent conviction for a violation of Section 1 or equivalent ordinance, the court shall impound the motor vehicle number plates of the motor vehicle owned and operated by the person at the time of the violation until that person provides proof of insurance and a twenty dollar fee to the North Dakota Department of Transportation. The person shall deliver the number plates to the court without delay at a time certain as ordered by the court following the conviction. The court shall deliver the number plates to the North Dakota Department of Transportation. A person who does not provide the number plates to the court at the appropriate time is guilty of a class B misdemeanor.
5. Upon conviction for a violation of Section 1, the person who has been convicted shall provide proof of motor vehicle liability insurance to the North Dakota Department of Transportation in the form of a written or electronically transmitted certificate from an insurance carrier authorized to do business in this state. This proof must be provided for a period of three years and kept on file with the North Dakota Department of Transportation. If the person fails to provide this information, the North Dakota Department of Transportation shall suspend that person's driving privileges and may not issue or renew that person's operator's license unless that person provides proof of insurance.
6. A person who has been convicted for violation of Section 1 shall surrender that person's operator's license and purchase a duplicate operator's license with a notation requiring that person to keep proof

of liability insurance on file with the North Dakota Department of Transportation. The fee for this license is fifty dollars and the fee to remove this notation is fifty dollars.

ARTICLE 22 - Disposition of Traffic Offenses

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

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

Whenever any person is halted for the violation of any of the provisions of North Dakota Century Code Chapters 39-01 through 39-13, 39-18, 39-21 and 39-24, or of equivalent City ordinances, the officer halting that person, except as otherwise provided in sections 9.2203, may:

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

A halting officer may not take a person into custody or require that person to proceed with the officer to any other location for the purpose of posting bond, where the traffic violation was a non-criminal offense under North Dakota Century Code 39-06.1-02. The officer shall provide the person with an envelope for use in mailing the bond.

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

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

The time to be specified in the summons or notice provided for in 9.2201 must be within 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 24 hours. The hearing must be before the municipal court. Upon the receipt from the person halted of a written promise to appear at the time and place mentioned in the summons or notice, the officer shall release the person from custody. Any person refusing to give a written promise to appear must be taken immediately by the halting officer before the nearest or most accessible magistrate, or to such other place or before such other person as may be provided by a statute or ordinance authorizing the giving of bail. Any person willfully violating the person's written promise to appear is guilty of an offense, regardless of the disposition of the charge upon which the person originally was halted. The time limitations for a hearing as provided by this section do not preclude a recharging of the alleged violation if the person being charged receives a new summons or notice subject to the provisions of this section.

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

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

The provisions of 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 9.2207, except reckless driving; 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 9.2107.
- d. Operating a modified vehicle.
- e. Driving without liability insurance in violation of 9.2115.
- f. Failing to display a placard or flag, in violation of any rule implementing North Dakota Century Code 39-21-44, while transporting explosive or hazardous materials.
- g. Operating an unsafe vehicle in violation of subsection 2 of North Dakota Century Code 39-21-46.

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

9.2204 Traffic Violations Noncriminal – Exceptions – Procedures

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

Any person cited, in accordance with the provisions of 9.2201 and 9.2202 of these ordinances, other than an offense listed in 9.2207, is deemed to be charged with a non-criminal offense. The person may appear before the designated official and pay the statutory fee for the violation charged at or before the time scheduled for a hearing. If the person has posted bond in person or by mail, the person may forfeit bond by not appearing at the designated time. If the person appears at the time scheduled in the citation, the person may make a statement in explanation of the person's action, and the official may at that time waive, reduce or suspend the statutory fee or bond, or both. If the person cited follows the foregoing procedures, the person is deemed to have admitted the violation and to have waived his right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the official designated in the citation must be identical to the statutory fee established by 9.2208. Within 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 miles per hour and the miles per hour by which the speed limit was exceeded.

This section shall not be construed as allowing a halting officer to receive the statutory fee or bond, unless he is otherwise authorized by law to do so.

9.2205 Administrative Hearing – Procedures – Appeals – Stay Orders

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

1. A person cited for a traffic violation, other than an offense listed in 9.2207, who does not follow one of the procedures set forth in 9.2204, may request a hearing on the issue of commission of the violation charged. The hearing must be held at the time scheduled in the citation, or at the time scheduled in response to the person's request or at some future time, not to exceed 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 9.2207, has requested a hearing on the issue of the commission of the violation charged and appears at the time scheduled for the hearing, and the City 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 miles per hour in excess of the lawful limit, stating specifically the miles per hour in excess of the lawful limit, if charged with a speeding violation, within 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 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.
6. The appellate court, upon application by the appellant, may:
 - a. Order a stay of any action by the licensing authority during pendency of the appeal, but not to exceed a period of 120 days;
 - b. Order a stay and that the appellant be issued a temporary restricted driving certificate by the licensing authority to be effective for no more than 120 days; or
 - c. Deny the application.
 - d. 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 \$3. 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 \$20.
7. If the person charged is found not to have committed the violation by the appellate court, the clerk of court shall report that fact to the licensing authority immediately. If an appeal under this subsection is from a violation of a City ordinance, the City attorney shall prosecute the appeal. In all other cases, the appropriate state's attorney shall prosecute the appeal.
8. The City 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 4, the court and parties shall follow, to the extent applicable, the North Dakota rules of Civil Procedure.

9. As used in 9.2204 through 9.2206, the word “official” means a Municipal Judge.

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

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

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

9.2207 Offenses Excepted

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

The procedures authorized under 9.2204 and 9.2205 may not be utilized by a person charged with one of the following offenses:

1. Driving or being in actual physical control of a vehicle in violation of 9.2101.
2. Reckless driving or aggravated reckless driving in violation of 9.2103.
3. A violation of Chapter 12.1-16 of the North Dakota Century Code resulting from the operation of a motor vehicle.
4. Leaving the scene of an accident in violation of 9.2104 through 9.2106.
5. Driving while license or driving privilege is suspended or revoked in violation of 9.2107.
6. Violating 9.2109.
7. Operating a modified motor vehicle in violation of North Dakota Century Code 39-21-45.1.
8. Driving without liability insurance in violation of 9.2115.
9. Operating an unsafe vehicle in violation of subsection 1 of North Dakota Century Code 39-21-46.
10. Causing an accident with an authorized emergency vehicle in violation of subsection 2 of North Dakota Century Code 39-21-46.

9.2208 Amount of Statutory Fees

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

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

1. For a nonmoving violation as defined in 9.2209, a fee of any amount not to exceed \$20.
2. For a moving violation as defined in 9.2210, a fee of \$20, except no fee may be imposed for a violation of 9.1702.

3. For a violation of 9.0503 a fee established as follows:

Miles Per Hour Over Lawful Speed Limit	Fee
1 – 5	\$5
6 – 10	\$5 plus \$1/each mph over 5 mph over limit
11 – 15	\$10 plus \$1/each mph over 10 mph over limit
16 – 20	\$15 plus \$2/each mph over 15 mph over limit
21 – 25	\$25 plus \$3/each mph over 20 mph over limit
26 – 35	\$40 plus \$3/each mph over 25 mph over limit
36 – 45	\$70 plus \$3/each mph over 35 mph over limit
46 +	\$100 plus \$5/each mph over 45 mph over limit

4. For a violation of 9.0501 or 9.0502, a fee of \$30.

5. For a violation of 9.1703, a fee of \$20.

9.2209 “Nonmoving Violation” Defined

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

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

9.2210 “Moving Violation” Defined

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

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

9.2211 General Penalty for Violation of Chapter

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

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

9.2212 Notification of Parents or Guardians of Juvenile Traffic Offenders

The provisions of North Dakota Century Code 39-06.1-02.1 and all subsequent amendments are hereby incorporated by reference in this ordinance.

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.

9.2213 Procedure On Arrest

1. Forms and records of traffic citation and arrest.

- a. The City Auditor shall provide books to include traffic citation forms for notifying alleged violators to appear and answer to charges of violating traffic laws and ordinances in the Police Magistrate Court of this City. Said books shall include serially numbered sets of citations in quadruplicate in the form prescribed and approved jointly by the Police Magistrate and the Chief of Police.
- b. The City Auditor shall issue such books to the Chief of Police or his duly authorized agent and shall maintain a record of every book so issued and shall require a written receipt for every such book.
- c. The Chief of Police shall be responsible for the issuance of such books to individual members of the Police Department. The Chief of Police shall require a written receipt for every book and each set of citations contained therein.

2. Disposition and records of traffic citations, warrants, and complaints

- a. Every police officer upon issuing a traffic citation to an alleged violator of any provision of the motor vehicle laws of this state or of any traffic ordinance of this City shall deposit the original and a duplicate copy of the citation with his immediate superior officer and a duplicate copy to the central records section of the Police Department. A duplicate copy of the citation shall be retained in the traffic citation book and shall be delivered by such superior officer to the City Auditor, together with such book when all traffic citations therein have been issued.
- b. Upon the filing of such original citation in the Police Magistrate Court of this City as aforesaid, said citation may be disposed of only by trial in said court or by other official action by a judge of said court, including forfeiture of bail or by payment of a fine.
- c. The Chief of Police shall require the return to him of each traffic citation and copies thereof, except that copy required to be retained in the book as provided herein, which has been spoiled or upon which any entry has been made and has not been issued to an alleged violator.
- d. The Chief of Police shall also maintain or cause to be maintained in connection with every traffic citation issued by a member of the Police Department a record of the disposition of the charge by the Police Magistrate Court of this City.
- e. The Chief of Police shall also maintain or cause to be maintained a record of all warrants issued by the Police Magistrate Court of this City or by any other court on said traffic violation charges and which are delivered to the Police Department for service, and of the final disposition of all such warrants.
- f. It shall be unlawful and official misconduct for any member of the Police Department or other officer or public employee to dispose of, alter, or deface a traffic citation or any copy thereof, or the record of the issuance or disposition of any traffic citation, complaint, or warrant, in a manner other than as required in this article.

3. Illegal cancellation of traffic citations

- a. It shall be unlawful for any person to cancel or solicit the cancellation of any traffic citation in any manner other than as provided by this article.

4. Audit of records and report

- a. Every record of traffic citations, complaints thereon warrants issued therefore required in this article shall be audited by the City Auditor who shall submit a report of such audit together with a summary thereof to the City Council. Such reports shall be public records.
- b. For the purpose of this article, the City Auditor or his duly authorized representatives shall have access at all times to all necessary records, files, and papers of the Police Magistrate Court of this City and the Police Department.

5. Citation on illegally parked vehicle

Whenever any motor vehicle without a driver is found parked or stopped in violation of any of the restrictions imposed by ordinance of this City or by state law, the officer finding such vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to such vehicle a traffic citation, on a form provided by the City Auditor for the driver to answer to the charge against him within five days during the hours and at a place specified in the citation.

6. Failure to comply with traffic citation attached to parked vehicle

If a violator of the restrictions on stopping, standing, or parking under the traffic laws or ordinances does not appear in response to a traffic citation affixed to such motor vehicle within a period of five days, the traffic violations bureau shall send the owner of the motor vehicle to which the traffic citation was affixed a letter informing him of the violation and warning him that in the event such letter is disregarded for a period of five days a warrant of arrest will be issued.

7. Presumption in reference to illegal parking

In any prosecution charging a violation of any provision of this chapter on governing the standing, parking, or operating of a vehicle, proof that the particular vehicle described in the complaint was parked or operated in violation of the provisions of this chapter, together with proof that the defendant named in the complaint was at the time of such parking or operating, the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked, placed, or operated such vehicle at the point where, and for the time during which, such violation occurred.

8. When warrant to be issued

In the event any person fails to comply with a traffic citation given to such person or attached to a vehicle or fails to make appearance pursuant to a summons directing an appearance in the Police Magistrate Court, or if any person fails or refuses to deposit bail as required and within the time permitted by ordinance, the Police Department shall secure and issue a warrant for his arrest.

9. Record of traffic cases: Report to state

- a. Every magistrate or judge of a court shall keep or cause to be kept a record of every traffic complaint, traffic citation, or other legal form of traffic charge deposited with or presented to said court and shall keep a record of every official action by said court in reference thereto, including but not limited to a record of every conviction, forfeiture of bail, judgment or acquittal and the amount of forfeiture resulting from every said traffic complaint or citation deposited with or presented to said court.
- b. Within ten days after the conviction or forfeiture of bail of a person upon a charge of violating any provision of this chapter or other law relating to the operation of vehicles on highways the magistrate shall prepare and immediately forward to the proper state official an abstract of the record of said court covering the case in which said person was so convicted for forfeited bail, which abstracts must be certified by the person so required to prepare the same to be true and correct.

- c. Said abstract must be made upon a form furnished by said State department of official and shall include the name and address of the party charged, the number, if any, of his operator's or chauffeur's license, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment, or whether bail was forfeited.
- d. The failure, refusal, or neglect, or any such judicial officer to comply with any of the requirements of this section shall constitute misconduct of office and shall be grounds for removal there from.

10. Authority to impound vehicles

- a. Members of the Police Department are hereby authorized to remove a vehicle from a street or highway to the nearest garage or other place of safety, or to a garage designated or maintained by the Police Department, or otherwise maintained by this City under the circumstances hereinafter enumerated.
 - i. When any vehicle is left unattended upon any bridge, viaduct, or causeway, or in any tube or tunnel where such vehicle constitutes an obstruction to traffic.
 - ii. When a vehicle upon a highway is so disabled as to constitute an obstruction to traffic and person or persons in charge of the vehicle to traffic and person or persons in charge of the vehicle are by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody or removal
 - iii. When any vehicle is left unattended upon a street and is so parked illegally as to constitute a definite hazard or obstruction to the normal movement of traffic.
 - iv. When any vehicle is parked upon a lawn, boulevard, or sidewalk.
- b. Whenever an officer removes a vehicle from a street as authorized in this section and the officer knows or is able to ascertain from the registration records in the vehicle the name and address of the owner thereof, such officer shall immediately give or cause to be given notice in writing to such owner of the fact of such removal and the reasons therefore and of the place to which such vehicle has been removed. In the event any such vehicle is stored in a public garage, a copy of such notice shall be given to the proprietor of such garage.
- c. Whenever an officer removes a vehicle from a street under this section and does not know and is not able to ascertain the name of the owner, or for any other reason is unable to give the notice to the owner as hereinbefore provided, and in the event the vehicle is not returned to the owner within a period of three days, then and in that event the officer shall immediately send or cause to be sent written report of such removal by mail to the state department whose duty it is to register motor vehicles, and shall file a copy of such notice with the proprietor of any public garage in which the vehicle may be stored. Such notice shall include a complete description of the vehicle, the date, time, and place from which removed, the reasons for such removal and name of the garage or place where the vehicle is stored.

ARTICLE 23 – Sections not Adopted

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

ARTICLE 24 – Filing of Ordinance

Incident to the adoption of certain portions of Title 39 of the North Dakota Century Code by reference, a copy of the text of the adopted code shall be filed in the office of the City Auditor as required by North Dakota Century Code 40-05-01(1) for use and examination by the public.

ARTICLE 25 – Adoption of Amendments by Reference

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

ARTICLE 26 – Severability Clause

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

ARTICLE 27 – Penalties

Any person who is convicted of violating or of failing to comply with any of the provisions of this ordinance may be punished by a fine of not more than \$1,000 or by imprisonment not to exceed 30 days, or both.

CHAPTER TEN

HEALTH

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CHAPTER TEN

HEALTH

ARTICLE 1 – Board of Health

10.0101 Members

The Board of Health shall consist of four members of the City Council, as appointed by the Mayor, who shall have and exercise all powers under the law.

10.0102 Regulations, Notice of

Notice shall be given by the Board of Health, pursuant to the laws of the State of North Dakota, of all general orders and regulations made by such Board, by publishing the same in the official newspaper within the jurisdiction of the Board, which publication shall be deemed a legal notice to all persons.

ARTICLE 2 – Local Health Officer

10.0201 Duties of Local Health Officer – Term

The provisions of North Dakota Century Code 33-35-12 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. A local Health Officer shall serve a term of five years, subject to removal for cause by the City Council 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 City Council. At the next meeting of the City Council or district board of health, the City Council or district board of health shall declare the office vacant and may appoint another physician to fill the unexpired term, or shall report the matter to the board of health, and the board shall declare the office vacant and promptly shall appoint another physician to fill the unexpired term.
2. Within the jurisdiction of the board of health, a local Health Officer:
 - a. Shall keep a record of the official acts of the local Health Officer.
 - b. Shall enforce every law and rule relating to preservation of life and health of individuals.
 - c. May exercise the powers and duties of the board of health under the supervision of the board of health.
 - d. May make sanitary inspections of any place within the jurisdiction in which the local Health Officer finds a probability a health-threatening condition 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.
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 North Dakota Century Code 23-35-09.

10.0202 Penalty

The provisions of North Dakota Century Code 33-35-13 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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 \$1,000 or by imprisonment not to exceed 30 days or both such fine and imprisonment.

ARTICLE 3 – Garbage, Refuse, Rubbish

10.0301 Definitions

For the purpose of this article the following words shall have the meanings given herein:

1. “Ashes” is the residue from burning wood, coal, coke or other combustible materials.
2. “City” means the City of Walhalla or its officers or employees authorized to perform the functions to which there is reference.
3. “Garbage” is putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.
4. “Municipal Solid Waste Disposal System” means the entire solid waste disposal system of the City including, without limitation, land, trucks, and equipment used by the City for the collection, transportation, and disposition of refuse, garbage, an solid waste and the same as it refers to any business to which the City may contract with for the disposing of refuse, garbage, and solid waste within the City.
5. “Notice” means a notice in writing directed to the owner, or other person affected for the time specified by this ordinance, stating briefly the condition which is the reason for the Notice and the consequences which would result upon failure to comply with terms of the Notice. A notice shall be deemed given when either it is personally served on the person to whom it is directed, or it is mailed to him or her at this or her last known address. If the owner cannot be reached by mail so addressed, service may be made upon the occupant of the premises.
6. “Person” means an individual, corporation (public or private), partnership, or association.
7. “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.
8. “Rubbish” is non-putrescible solid wastes (excluding ashes) consisting of both combustible and non-combustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.
9. “Solid Waste” means refuse, garbage, and solid waste from residences, institutions, business buildings, and other establishments or premises.

10.0302 Solid Waste Disposal System

All residences, commercial buildings, other structures, or entities, in existence within the corporate limits of the City shall be considered a part of the Municipal Solid Waste Disposal System and shall pay the charges assessed to said residences, commercial buildings, other structures, or entities as established by the City Council. No residences, commercial buildings, other structure or entities shall be allowed not to participate and be a part of the Municipal Solid Waste Disposal System.

10.0303 Use of Municipal Solid Waste Disposal System

1. It shall be unlawful for any person to place or deposit or permit to be placed or deposited in an unsanitary manner upon public or private property within the City or in any area under its jurisdiction, any solid wastes.

2. The owner or occupant of any premises shall provide and keep on such premises sufficient containers of dumpster type or otherwise for the storage of all refuse, garbage or other solid waste accumulating on the premises between collections. Containers shall be constructed of non-combustible materials and shall have non-combustible covers and musters shall be constructed of metal. The owner or manger of any premises used for any office, warehouse, or industrial building shall provide waste containers inside the structure in sufficient size and number to store accumulations of rubbish and waste matter for one working day. All such containers shall be of non-combustible materials only.
3. All refuse on any premises shall be stored in the containers required by subsection 2 hereof, except as the same may be consumed or disposed of on such premises.
4. No person on his or her own behalf or as an employee or agent of any corporation or other entity shall deposit solid waste in the container for the collection of solid waste within the Municipal Solid Waste Disposal System nor shall any individual on his or her own behalf or as an employee or agent of any corporation or other entity deposit any solid waste in the City to be collected by and as a part of the Municipal Solid Waste Disposal System unless said individual or entity is a member of the participates in the Municipal Solid Waste Disposal System and is paying all charges as assessed by the City.
5. Any individual or entity violating subsection 4 of this section shall be guilty of an offense, for which a maximum penalty of 30 days imprisonment, a fine of \$1000, or both may be imposed.

10.0304 Places of Collection

Each single family residence and each business entity within the City shall be considered as a separate collection and each single family residence and business entity within the City shall be responsible for paying the charges of solid waste, refuse, and garbage pickup, as determined by the City Council. Multi-family dwelling units may be billed as separate individual accounts for as the building as a whole as such is determined necessary by the City Council. No person, single family household, multi-family dwelling or business entity shall be exempt from paying for solid waste, garbage, and refuse collection whether or not solid waste, garbage, or refuse collection is made form said single family residence, multi-family dwelling, or business entity.

10.0305 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.

10.0306 Disposal of Oil

No person or persons, association or corporation, shall dump or dispose of used motor oil on any City alley, street, or other public property within the City.

10.0307 Containers

All garbage and rubbish shall be placed by the person upon whose premises the same shall have been produced or accumulated, in watertight containers, which shall be protected against the access of flies and rodents.

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

10.0308 Burning

No garbage, refuse or rubbish shall be burned within the City or in disposal grounds maintained by the City, except in accordance with a permit from the State Health Department.

10.0309 Nuisance

Failure to comply with the provisions of 10.0305, 10.0306, 10.0307 and 10.0308 shall constitute a public nuisance and said person in control of the premises or owner of the premises shall be guilty of an offense.

10.0310 City Collection

1. The City shall make available services for the collection and disposal of solid waste, to be performed by City employees using City equipment or to be performed by independent contractors contracting with the City.
2. The City Council shall by resolution establish reasonable charges to users for the collection and disposal of solid waste, and may also establish separate charges for the disposal of solid wastes at the disposal facility owned by the City. Bills will be rendered either monthly or quarterly, as determined by the City Council and will be due within ten days of the billing date. Overdue charges shall be collected in accordance with North Dakota Century Code 40-34-05.
3. The City Auditor shall keep accounts and render bills for collection services. He will receive payment of bills and give receipts therefore.
4. No person, other than the City or an independent contractor contracting with the City, shall provide solid waste collection services, and receive directly or indirectly any consideration therefore, without obtaining a permit from the City. Prior to granting any such permit, the City Council shall by resolution, establish reasonable terms and conditions for the granting of any such permit, including a requirement that all solid waste so collected be disposed of at the City disposal facility upon payment of reasonable charges for the use of such facility.
5. The City shall establish and maintain all charges for use of solid waste collection system and disposal facility at a level sufficient to pay all expenses of operation and maintenance of the solid waste disposal system, and service all indebtedness incurred in the acquisition and construction thereof from time to time outstanding or, sufficient to pay all expenses of operation and maintenance of any contracts with the independent contractors who have contracted with the City for the collection of solid waste within the City.

10.0311 Fees

Fees for the collection of garbage rubbish by the City or franchised contractor and the disposal thereof shall be fixed and established by the City Council.

10.0312 Fees – Payment – Collection

In all places where water service is provided, fees for garbage and rubbish collection shall be added to and collected as a part of the water bill and collected by the water department, but shall be separately stated on the bill. Garbage and rubbish collection bills shall be due and payable at the same time as the water bill, either monthly or quarterly as the case may be. If such charge is not paid when due the water service to such premises shall be shut off by the water department in the same manner as is now provided for in the case of delinquency in payment of water bills and such service shall not be restored without the payment of the penalties now provided for.

In all places where water service is not provided, the fees for garbage and rubbish collection shall be paid to the Water Department of the City upon monthly or quarterly bills from the Water Department. If the garbage and rubbish charge so established is not paid when due, the amount thereof may be assessed against the premises to which the service is rendered. This amount may be collected and returned in the same manner as other municipal taxes are assessed, certified, collected and returned. (Source: North Dakota Century Code 40-05-01.1)

The proceeds from the collection of the fees and charges shall be placed in the solid waste management fund, and all of the expense of the City, in the purchase and maintenance of equipment and in the collection and disposal of garbage and rubbish, shall be paid out of the solid waste management fund.

10.0313 Fees – Payment – Collection by Franchised Contractor

In the event the City elects to franchise a contractor to perform the collection services contemplated by this Article, collection of fees, limited as set out in this section, are to be made by the contractor. Failure to pay fees billed by the contractor within 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 10.0312

10.0314 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 Board; or, such person may arrange with some person not in their employ to collect or haul such waste to such points as are designated by the City Health Board. Hauling done by or for an individual may only be done in a covered container or covered truck.

10.0315 Supervision

The collection, removal and disposal of garbage and rubbish under the provisions of this Article shall be under the supervision, direction and control of the public works Superintendent with the assistance of the City Health Board. The Mayor shall, unless there is a franchised contractor, appoint such employees as shall be necessary to carry out the purposes of this article, which appointments shall be subject to the approval of the City Council.

10.0316 Rules and Regulations

The Board of Health 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 City Health Board may direct that the City garbage and rubbish collection crews shall not collect garbage and rubbish from any premises where such rules and regulations are not complied with and the failure to collect the same shall not relieve the owner or occupant of the premises from the payment of fees nor from the enforcement of the penalties of this code. In the absence of City collection crews the Health Officer may give instructions to a franchised contractor.

10.0317 Penalty

Service charges may be recovered by the City in an action at law or the same may be assessed against the premises served and collected and returned in the same manner as other County and Municipal taxes are assessed, certified, collected, and returned.

1. No person on his or her own behalf or as an employee or agent of any corporation or other entity shall deposit solid waste in any container for the collection of solid waste within the Solid Waste Disposal System nor shall any individual on his or her own behalf or as an employee or agent of any corporation or other entity deposit any solid waste in the City to be collected by and as a part of this Solid Waste Disposal system unless said individual or entity is a member of and participates in the Solid Waste Disposal System and is paying all charges as assessed by the City.
2. Any individual or entity violating this section shall be guilty of an offense, for which a maximum penalty of \$1000 and/or 30 days in jail may be imposed.

ARTICLE 4 – Dangerous Buildings

10.0401 Dangerous Buildings Defined

For the purpose of this chapter, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered.

1. Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
2. Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.
3. Whenever the stress in any materials, member or portion thereof. Due to all dead and live loads, are more than one and one half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location.
4. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location.
5. Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.
6. Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one half of that specified in the Building Code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the Building Code for such buildings.
7. Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
8. Whenever the building or structure, or any portion thereof, because of:
 - a. Dilapidation, deterioration or decay;
 - b. Faulty construction;
 - c. The removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building;
 - d. The deterioration, decay or inadequacy of its foundation; or
 - e. Any other cause, is likely to partially or completely collapse.
9. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

10. Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one third of the base.
11. Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or members or 50 percent damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.
12. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become:
 - a. An attractive nuisance to children;
 - b. A harbor for vagrants, criminals or immoral persons; or
 - c. Enable persons to resort thereto for the purpose of committing unlawful or immoral acts.
13. Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction, as specified in the Building Code, or of any law or ordinance of this state or jurisdiction relating to the condition, location or structure of buildings.
14. Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member or portion less than 50 percent, or in any non-supporting part, member or portion less than 66 percent of the:
 - a. Strength,
 - b. Fire-resisting qualities or characteristics, or
 - c. Weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.
15. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the Health Officer to be unsanitary, unfit for human habitation or is such a condition that is likely to cause sickness or disease.
16. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the fire marshal to be a fire hazard.
17. Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.
18. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

10.0402 Standards for Repair, Vacation or Demolition

The following standards shall be followed in substance by the building inspector and the City Council in ordering repair, vacation or demolition:

1. If the “dangerous building” can be reasonably repaired so that it will no longer exist in violation of the terms of this article it shall be ordered repaired.
2. If the “dangerous building” is in such condition as to make it dangerous to the health, safety or general welfare of its occupant it shall be ordered to be vacated.
3. In all cases where a building cannot be repaired so that it will no longer exist in violation to the terms of this article it shall be demolished. In all cases where a “dangerous building” is a fire hazard existing or erected in violation of the terms of this article or any ordinance of the City or statute of the State of North Dakota, it shall be demolished.

10.0403 Dangerous Buildings – Nuisances

All “dangerous buildings” within the terms of 10.0401 of this article are hereby declared to be public nuisances and shall be repaired, vacated or demolished as provided in this ordinance or under state law.

10.0404 Duties of Building Inspector

The building inspector, as designated by the City Council, shall:

1. Inspect or cause to be inspected periodically, all public buildings, schools, halls, churches, theaters, hotels, tenements, commercial, manufacturing or loft buildings for the purpose of determining whether any conditions exist which render such places a “dangerous building” within the terms of 10.0401 of this Article.
2. Inspect any building, wall or structure about which any person to the effect files complaints that a building, wall, or structure is or may be existing in violation of this Article.
3. Inspect any building, wall or structure reported by the fire or Police Departments of this City as probably existing in violation of the terms of this Article.
4. Notify in writing the owner, occupant, lessee, mortgagee and all other persons having an interest in said building, as shown by the records in the office of the County Recorder, of any building found by the building inspector to be a “dangerous building” within the standards set forth in 10.0401 of this Article that:
 - a. The owner must vacate, or repair, or demolish said building in accordance with the terms of the notice and this article;
 - b. The owner or occupant must vacate said building or may have it repaired in accordance with the notice and remain in possession. Provided, that any person notified under this subsection to repair, vacate, or demolish any building shall be given such reasonable time, not exceeding 30 days as may be necessary to do, or have done, the work or act required by the notice provided for herein. (see Appendix 10-2)
5. Set forth in the notice provided for in subsection 4 hereof a description of the building or structure deemed unsafe, a statement of the particulars which make the building or structure a “dangerous building”, and an order requiring the same to be put in such condition as to comply with the terms of this ordinance within such length of time, not exceeding 30 days, as is reasonable.
6. Report to the City Council any noncompliance with the “notice” provided for in subsection 4 and 5 hereof.
7. Appear at all hearings conducted by the City Council and testify as to the conditions of “dangerous buildings”.

8. Place a notice on all “dangerous buildings” reading as follows: “This building has been found to be a dangerous building by the building inspector. This notice is to remain on this building until it is repaired, vacated, or demolished in accordance with the notice which has been given the owner, occupant, lessee or mortgagee of this building and all other persons having an interest in said building as shown by the records of the County Recorder. It is unlawful to remove this notice until such notice is complied with.” (See Appendix 10-1)

10.0405 Duties of the City Council

The City Council shall:

1. Upon receipt of a report of the building inspector as provided for in 10.0404(6), give written notice to the owner, occupant, mortgagee, lessee and all other persons having an interest in said building as shown by the records of the County Recorder, to appear before it on the date specified in the notice to show cause why the building or structure reported to be a “dangerous building” should not be repaired, vacated or demolished in accordance with the statement of particulars set forth in the building inspector’s notice provided for herein in 10.0404(5). (see Appendix 10-3)
2. Hold a hearing and hear such testimony as the building inspector or the owner, occupant, mortgagee, lessee or any other person having an interest in said building as shown by the records of the County Recorder shall offer relative to the “dangerous building”.
3. Make written findings of fact from the testimony offered pursuant to subsection 2 as to whether or not the building in question is a “dangerous building” within the terms of 10.0401 hereof.
4. Issue an order based upon findings of fact made pursuant to subsection 3 commanding the owner, occupant, mortgagee, lessee, and all other persons having an interest in said building as shown by the records of the County Recorder to repair, vacate or demolish any building found to be a “dangerous building” within the terms of this article and provided that any person so notified, except the owners, shall have the privilege of either vacating or repairing said “dangerous building”.

10.0406 Failure to Comply with Decision of the City Council

If the owner, occupant, mortgagee or lessee fails to comply with the order of the City Council or fails to appeal to the District Court within 30 days as provided herein, the City through its officers and employees shall cause such building or structure to be repaired, vacated or demolished as ordered by the City Council and shall cause the costs of such repair, vacation or demolition to be charged against the land on which said building existed by special assessment, or as a municipal lien, or shall cause said cost of removal to be levied as a special tax against the land upon which said building stands or did stand or to be recovered in a suit at law against the owner.

10.0407 Violations – Penalty for Disregarding Notices or Orders

The owner of any “dangerous building” who shall fail to comply with any notice or order to repair, vacate or demolish said building given by any person authorized by this Article to give such notice or order shall be guilty of an infraction and upon conviction thereof shall be fined not exceeding \$500 for each offense and every day subsequent to such notice in which the said owner shall fail to comply with any notice or order as stated shall be deemed a separate offense.

The occupant or lessee in possession who fails to comply with any notice to vacate or who fails to repair said building in accordance with any notice given as provided for in this Article shall be guilty of an infraction and upon conviction thereof shall be fined not exceeding \$500 for each offense and every day subsequent to such notice in which the said occupant or lessee shall fail to comply with any notice or order as above stated, shall be deemed a separate offense.

Any person removing the notice provided for in 10.0404(8) shall be guilty of an infraction and upon conviction shall be fined not exceeding \$500 for each offense.

10.0408 Duties of the City Attorney

The City attorney shall:

1. Prosecute all persons failing to comply with the terms of the notices provided for in 10.0404(4) and 10.0404(5), and the order provided for in 10.0405(4).
2. Appear at all hearings before the City Council in regard to “dangerous buildings”.
3. Take such other legal action as is necessary to carry out the terms and provisions of this article.

10.0409 Where Owner Absent from the City

In cases, except emergency cases, where the owner, occupant, lessee or mortgagee is absent from the City, all notice or orders provided for herein shall be sent by registered or certified mail to the owner, occupant, mortgagee, lessee and all other persons having an interest in said building as shown by the land records of the County Recorder to the last known address of each, and a copy of such notice shall be posted in a conspicuous place on the "dangerous building" to which it relates. Such mailing and posting shall be deemed adequate service.

10.0410 Duties of Fire, Police and Health Departments

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

10.0411 Appeal

The City Council shall serve upon the owner, occupant, mortgagee, lessee and all other persons having an interest in any building ordered to be repaired, vacated or demolished, a copy of its order. The owner, occupant, mortgagee or lessee shall thereafter have 30 days from the date of the service of such order in which to appeal from such order to the District Court or to take such other legal steps to enjoin the enforcement of such order.

ARTICLE 5 – Contagious Diseases

10.0501 Contagious Diseases to be Quarantined

All cases of smallpox, diphtheria, scarlet fever, or any other contagious disease shall be rigidly quarantined and no person shall be allowed to enter or depart from the house in which a person afflicted with any of the said diseases is confined until such person has a written permit from the Health Officer.

10.0502 Persons Exposed to be Quarantined

Any person who has been exposed to any of the diseases mentioned in 10.0501 shall be confined in quarantine until the Health Officer is satisfied that there is no danger of such person spreading any of the said diseases.

10.0503 Sign to be Posted

The occupant of any premises in which there is any person afflicted with the diseases of measles, whooping cough, or typhoid fever, shall cause a sign or card bearing the name of the disease which such person is afflicted with to be posted in a conspicuous place on such premises, and the letters forming the name of the diseases shall be at least three inches in height.

10.0504 Persons Exposed Prohibited in Public

No person from any house where smallpox, diphtheria, scarlet fever, or any other contagious diseases exists shall expose himself or herself in any cab or public conveyance, or in any public place where he or she will come in contact with other persons without a certificate from the Health Officer that there is no danger of infection to others from such exposure.

10.0505 Children Affected Not to Attend School

No pupil shall be allowed to attend any public school in the City while such pupil is afflicted with the disease of measles or whooping cough; and if any pupil while in attendance at any public school becomes afflicted with either of such diseases, such pupil shall not be allowed to re-enter such school without a certificate from the Health Officer that there is no danger of infection to others from such exposure.

10.0506 Health Officer to be Notified

Notification of every case of any one of the diseases known as smallpox, diphtheria, scarlet fever, measles, and whooping cough shall be made in writing to the Health Officer within 24 hours after the discovery of the existence of such diseases by the attending physician, if any, and if there is no attending physician, then by the parent or guardian or some other member of the family of the diseased person, or by any person who has knowledge of the existence of such disease.

Notification of every case of tuberculosis or Typhoid fever shall be made in writing to the Health Officer by the attending physician as soon as a diagnosis is made, giving the name of the disease, name, age, and address of the person afflicted.

10.0507 Disinfection of Premises

No person shall let or hire any room in any house or building where any person afflicted with smallpox, diphtheria, or scarlet fever has been, until the same has been thoroughly disinfected and a certificate to that effect received from the Health Officer; and this provision shall apply to houses, hotels, and lodging houses.

10.0508 Tuberculosis, Teachers Having Not to be Hired

School boards are forbidden from employing as teachers any person afflicted with pulmonary tuberculosis.

10.0509 Tuberculosis, Children Having Not to Attend School

All parents, guardians, or persons having the custody and care of any child or minor who is afflicted with pulmonary tuberculosis are forbidden to send such child or minor to any public place within the City.

10.0510 Smallpox, Measures to Prevent Spreading

The Board of Health may take such measures as it may from time to time deem necessary to prevent the spreading of smallpox, by issuing an order requiring all persons in the City of any part thereof requiring a vaccination to be vaccinated within such time as the Board shall prescribe; and all persons refusing or neglecting to obey such order shall be liable to the penalty hereinafter specified; provided that it shall be the duty of the Board of Health to provide for the vaccinations of person who are unable to pay for the same, at the expense of the City.

ARTICLE 6 – Miscellaneous

10.0601 Sale of Unwholesome Food

No person shall, within the City, sell or offer for sale any tainted, spoiled or unwholesome meat, fish, oysters, birds, fowls, vegetables, fruit, or provisions of any kind not healthy, sound wholesome, and safe for human food, nor any part of any animal, fish, bird, or fowl that died by accident or from disease.

10.0602 Sale of Milk, When Prohibited

No person, either by himself or an agent, shall sell or expose to sale, any milk from any cow kept upon any premises where smallpox, diphtheria, or scarlet fever exists, nor milk which has been handled by, or been in contact with persons who have, or who have been exposed to any of the said diseases, until such person has received a certificate from the Health Officer stating that there is no danger of infection to others.

10.0603 Sale of Poison, When Prohibited

It shall be unlawful for any person within the City to vent, sell, give away, or deliver any deadly poison without marking the same in plain, legible, printed characters "POISON".

10.0604 Butcher, Grocers, Milk, Dealers, Etc., To Allow Officers to Inspect

Every owner, manager, or other persons in charge of slaughter houses, and every butcher, grocer, milk dealer, and their agents, shall allow the parties authorized by the Health Officer to freely and fully inspect their cattle for sale, and will be required to answer all reasonable questions asked by such persons relative thereto and of the places where such articles may be.

10.0605 Disposal of Rubbish and Filth

It shall be unlawful for any person to throw or cause to be thrown in or upon any street, alley, park, or public or private grounds within the City any fish, hay sweepings, fruits, fruit skins, vegetables, meats, swill, slops, offal, or other rubbish detrimental to health.

10.0606 Control of Stagnant Water and Noxious Weeds

No stagnant water shall be allowed to stand or remain, or noxious weeds allowed to grow upon or along the line of any railroad, street, highway, alley, public place, or upon or along any public or vacant lot or place in the City.

10.0607 Failure to Remove Stagnant Water and Noxious Weeds, Expense of Removal

In case of any person owning or occupying any premises within the City violate any of the provisions of 10.0606 or fail or neglect to drain or remove such stagnant water or fill the premises with earth, where draining cannot be done, or to cut and destroy such weeds after receiving notice from the Health Officer, or any member of the Board of Health or the Police Department, to do so within the time specified in such notice; then, and in that event, the police, with assistance as may be deemed necessary, shall proceed to either drain off or fill such premises with earth or cut down and remove such weeds and shall render the City Council a verified statement of the actual cost thereof, which sum shall be allowed and paid by the City Council if found reasonable and correct, and the person so failing or neglecting shall in addition to the penalty hereinafter described be liable to the City in a suit brought for that purpose, together with all costs of such suit, or the same may be assessed against the premises and collected as a special assessment against such premises.

10.0608 Spitting or Throwing Litter on Streets or Sidewalk Prohibited

No person shall spit or expectorate nor throw fruit paring or skins, nuts or nut shells, or any other litter upon the sidewalks or crossing of any street, avenues, alleys or driveways within the limits of the City, nor in or upon the floors, stairs, hallways within, or sidewalks leading to or from any public building, theatres, public hall, or officer or store, or any railway depot or platform connected therewith or connected thereto, whether such public buildings, theaters, halls or depots, or offices or stores belong to the City or not.

10.0609 Slaughtering Prohibited, Exception

It shall be unlawful for any person or persons to erect, maintain, occupy, or use any slaughter house, or to slaughter any animals within the City, except with the permission of the City Council.

10.0610 Cows and Pigs

1. The keeping of any animal or fowl which causes annoyance, disturbance or offense to persons residing in, or passing through the neighborhood, either by reason of:
 - a. Barking, howling, braying, crowing, or other sound common to its species; or
 - b. Biting, threatening, chasing or molesting persons upon the public sidewalks or streets, or the property of persons other than the owner; or
 - c. By reason of the failure of the owner to maintain all structures, pens, coops or yards wherein any animal or fowl is kept, in a clean and sanitary condition devoid of rodents and vermin, and free from all objectionable odors; or
 - d. Keeping any animal or fowl in violation of any provision of this section is hereby declared to be a nuisance and the keeping or maintaining of such nuisance is hereby prohibited. Each day's continuance of such nuisance shall be a separate offense.
2. No swine, cattle, horses, mules, sheep, goats, or other hard-hoofed animals or chickens, ducks, geese, turkeys, doves, pigeons, or other fowl shall be kept by any person within the City, except:
 - a. For industrial uses in industrial districts;
 - b. Fowl may be allowed within the City limits for nonindustrial, noncommercial or non-agricultural purposes, with an issuance of a non-fee based permit approved by the City Council, after considering the impact of noise, odors, sanitation and other public health, safety and welfare considerations upon neighboring properties, the neighborhood and the City.
3. Except as otherwise provided in this article, it shall be unlawful for any owner, keeper, or custodian of chickens; ducks, geese, turkeys, doves, pigeons, or other fowl to permit or allow the same to be maintained, kept, housed or at large within the limits of the City.
4. No such fowl shall under any circumstances be kept within an enclosure within the City at a distance less than 75 feet from any dwelling house without the written consent of the owner or tenants of said dwelling.
5. Except as otherwise provided in this article, any person who owns or keeps at any time within the limits of the City any unauthorized fowl of any kind shall be deemed guilty of maintaining a public nuisance if such fowl is not removed from the City within 10 days after notice. Each day's continuance of such nuisance shall be a separate offense.

10.0611 Privy, How Kept

It shall be unlawful for any person to keep or maintain any privy vault or outhouse without having the same boxed in a closed manner and properly cleaned and disinfected.

10.0612 No Privy Vaults Where Sewer Connections Can be Had

No person shall construct or maintain any privy vault or outhouse in any location which is sufficiently close to a public sewer to make connections, or a water closet with such sewer practicable; and the Health Officer shall in all cases where it is practicable order any person to construct a water closet connected with a public sewer instead of constructing or maintaining a privy vault; and such officer shall have authority to enforce this provision; and it shall be the duty of the police to see that this section is not violated, and in all cases of breach thereof by any person to forthwith report such breach to the Health Officer. Any privy constructed in violation of this section shall be at once abated as a public nuisance.

10.0613 Dumping of Rubbish

No person shall dump or cause to be dumped rubbish, garbage, or refuse at the City Landfill except trees, tires, appliances, building debris, and cement.

No person shall dump or cause to be dumped garbage, rubbish, or refuse of any kind upon the City Landfill is open to the general public for such purpose. Any person dumping or causing to be dumped rubbish, garbage or refuse at the City Landfill shall do so in such manner and at such place within the City Landfill as the City employee on duty shall direct.

10.0614 Rules of Fumigation

No person shall use any form of hydrocyanic gas in the fumigation of any building with first obtaining the necessary permit from the Health Officer, and to keep on said building warning signs conspicuously posted, and to take such other precautions as may be necessary to protect the public health.

10.0615 Penalty for Violation of Article

Any person, firm, or corporation violating any of the provisions of this article shall, upon conviction, be punished by a fine not to exceed \$1000, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof.

APPENDIX 10-1:Warning

This is a suggestion as to the warning sign that should be printed in red.

WARNING

This building has been found to be a dangerous building by the building inspector. This notice is to remain on this building until it is repaired, vacated, or demolished in accordance with the notice which has been given the owner, occupant, lessee or mortgagee of this building and all other persons having an interest in said building as shown by the records of the County Recorder. It is unlawful to remove this notice until such notice is complied with.

Building Inspector

City of Walhalla, North Dakota

APPENDIX 10-2:Notice and Order

**IN THE MATTER OF A “DANGEROUS BUILDING” LOCATED IN
THE CITY OF WALHALLA, NORTH DAKOTA,
WITH AN ADDRESS OF**

NOTICE AND ORDER

You are hereby notified that the undersigned, building inspector of the City of Walhalla, North Dakota, acting pursuant to Article 4, Chapter 10 of the Ordinances of the City of Walhalla, has made an inspection of the following described building in which you are, or appear to be, interested: _____

You are further notified that the undersigned building inspector deems the foregoing described building to be dangerous within the meaning of 10.0401 of the City ordinances in the following particulars: _____

YOU ARE THEREFORE ORDERED TO _____

the said building on or before this _____ day of _____, 20____.

Building Inspector

Dated this _____ day of _____, 20____.

APPENDIX 10-3:Notice of Hearing

**IN THE MATTER OF “DANGEROUS BUILDINGS’ LOCATED
IN THE CITY OF WALHALLA, NORTH DAKOTA**

UNDER ARTICLE 4, CHAPTER TEN

NOTICE OF HEARING

You are hereby notified that the Building Inspector of the City of Walhalla, North Dakota, has filed with the City Council a report that you have not complied with a Notice and Order that buildings located at _____ were dangerous buildings and were to be demolished by you prior to _____, 20____.

You are further notified to appear before the City Council at _____ on the _____ day of _____, 20____, at the hour of _____ o’clock ____m., to show cause as to why the building reported to be “dangerous building”, should not be demolished in accordance with the statement of particulars set forth in the Building Inspector’s Notice.

Dated _____, 20____.

THE CITY OF WALHALLA, NORTH DAKOTA

By _____
Mayor, City of Walhalla

ATTEST:

City Auditor

CHAPTER ELEVEN

ANIMALS AND FOWL

ARTICLE 1 – General Regulations

- 11.0101 Definitions
- 11.0102 License Required, Fees
- 11.0103 Tag and Collar
- 11.0104 Restriction on Owners of Dogs and Cats
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- 11.0113 Keeping a Rabid Animal: Failure to Report
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CHAPTER ELEVEN

ANIMALS AND FOWL

ARTICLE 1 – General Regulations

11.0101 Definitions

As used in this ordinance, the words listed below shall have the following meanings:

1. The term “dog” and “cat” shall include both male and female.
2. The term “owner” shall include any person, persons, firm, association, or corporation owning, keeping, or harboring a dog or cat.
3. The term “at large” or “running at large” shall mean off the premises of the owner and not under the effective control of the owner or member of his immediate family. Such control may be maintained by any such dog or cat being restrained by a leash, cord, or chain, or by any other effective method of control.
4. The term “stray dog” and “stray cat” shall mean any dog or cat running at large as defined in subsection 3.

11.0102 License Required, Fees

All dogs and cats, kept, harbored, or maintained by their owners in the City shall be licensed if over one month of age. Dog and cat license shall be issued by the City Auditor upon payment of the license fee of \$5 for a female dog or cat and a license fee of \$3 for a spayed female or male dog or cat. The owner shall state at the time application is made for such license, and upon printed forms provided for such purpose, his name and address, and breed, color, sex, and name of the animal, and the date of rabies inoculation. No license or renewal of a license shall be issued for any dog or cat over six months of age unless a certificate signed by a licensed veterinarian is filed with the application, showing that the animal described in the application has been inoculated against rabies within one year of the application if the vaccine used was Phenolized vaccine, and within three years if the vaccine used was Avianized vaccine. Any dog or cat licensed under six months of age shall be inoculated against rabies upon reaching the age of six months. The provisions of this section shall not apply to dogs and cats whose owners are nonresidents temporarily within the City, nor to dogs and cats brought into the City to participate in shows. The license herein provided for shall be in force, regardless of the date of its issuance, only during the fiscal year for which such license is issued. Licenses shall be renewable in the month of May each year for the following year, with the same procedure and requirements being applicable as for original issuance of license.

11.0103 Tag and Collar

Upon payment of the license fee in compliance with the provisions of this ordinance, the City Auditor or his or her duly appointed agent, shall issue to the owner a copy of the printed application for license form which shall be marked “paid” and dated (which shall be evidence of such license) and a tag for each dog or cat so licensed. The shape of the tag shall be changed each year and shall have stamped thereon the year for which it is issued and the number corresponding with the number on the application. Every owner shall be required to provide each dog or cat licensed with a collar to which the license tag must be affixed, and shall see that the collar and tag are worn constantly.

In case a tag is lost or destroyed, a duplicate will be issued by the City Auditor or his or her duly appointed agent upon presentation of a receipt showing payment of the license fee for the current year and payment of \$1 for such duplicate. Dog and cat tags shall not be transferrable from one dog or cat to another and no refund shall be

made on a dog or cat license fee because of the death of a dog or cat or, because of the owner of the dog or cat leaving the City before expiration of the license period.

11.0104 Restriction on Owners of Dogs and Cats

No owner of a dog or cat shall:

1. Permit such dog or cat to run at large at any time within the City.
2. Permit such dog or cat at any time to go upon the nursing home or medical grounds or school grounds in the City unless such dog or cat is restrained by a leash.
3. Permit such dog or cat to bite (or otherwise harm), frighten, chase any person or vehicle within the City.
4. Permit such dog or cat to go without being inoculated for rabies if over six months of age.
5. Permit such dog or cat to go without a collar or license tag when required by 11.0102 and 11.0103.

11.0105 Dogs and Cats Declared to be a Nuisance

When any dog or cat is found to do the following within the City limits is hereby declared to be a nuisance:

1. Shall at any time be found running at large; or,
2. Shall at any time be found upon the nursing home or medical grounds or the school grounds in the City unless restrained by a leash; or,
3. Shall bite (or otherwise harm), frighten, or chase any person or vehicle; or,
4. Shall not be inoculated against rabies if over six months of age; or,
5. Shall destroy any property not the property of the owner; or,
6. Shall not have a collar and license tag required under 11.0102 and 11.0103

11.0106 Impoundment

The police shall have authority to pick up and impound any animal in violation of 11.0104 and 11.0105. Any animal impounded by the police shall be kept for a period of three days not including weekends and holidays. The owner may during the period of impoundment, claim the animal by providing proof of ownership, paying any fees for boarding the animal and; paying any other fees established by the City Council. Any animal not claimed at the end of the three day period shall be destroyed, in accordance with procedures as established by the City Council.

11.0107 Dog Register to be Kept

Upon the receipt of said fees, the City Auditor shall register the animal for which the same is paid in a book kept for that purpose, which record shall state the name and description of said dog or cat.

11.0108 Animals and Fowl; Nuisance, Defined and Prohibited

1. The keeping of any animal or fowl which causes annoyance, disturbance or offense to persons residing in, or passing through the neighborhood, either by reason of:
 - a. Barking, howling, braying, crowing, or other sound common to its species; or

- b. Biting, threatening, chasing or molesting persons upon the public sidewalks or streets, or the property of persons other than the owner; or
 - c. By reason of the failure of the owner to maintain all structures, pens, coops or yards wherein any animal or fowl is kept, in a clean and sanitary condition devoid of rodents and vermin, and free from all objectionable odors; or
 - d. Keeping any animal or fowl in violation of any provision of this section is hereby declared to be a nuisance and the keeping or maintaining of such nuisance is hereby prohibited. Each day's continuance of such nuisance shall be a separate offense.
- 2. No swine, cattle, horses, mules, sheep, goats, or other hard-hoofed animals or chickens, ducks, geese, turkeys, doves, pigeons, or other fowl shall be kept by any person within the city, except:
 - a. For industrial uses in industrial districts;
 - b. Fowl may be allowed within the city limits for nonindustrial, noncommercial or nonagricultural purposes, with an issuance of a non-fee based permit approved by the city council, after considering the impact of noise, odors, sanitation and other public health, safety and welfare considerations upon neighboring properties, the neighborhood and the city.
- 3. Except as otherwise provided in this article, it shall be unlawful for any owner, keeper, or custodian of chickens, ducks, geese, turkeys, doves, pigeons, or other fowl to permit or allow the same to be maintained, kept, housed or at large within the limits of the city.
- 4. No such fowl shall under any circumstances be kept within an enclosure within the city at a distance less than 75 feet from any dwelling house without the written consent of the owner or tenants of said dwelling.
- 5. Except as otherwise provided in this article, any person who owns or keeps at any time within the limits of the city any unauthorized fowl of any kind shall be deemed guilty of maintaining a public nuisance if such fowl is not removed from the city within 10 days after notice. Each day's continuance of such nuisance shall be a separate offense.

11.0109 Vicious Dogs and Cats Not to be Kept

It is unlawful for any person to own, keep, or harbor any dog or cat, male or female, which is known to be vicious or dangerous. Any dog or cat having the appearance of being mad shall be impounded forthwith. Further it shall be unlawful for any person to own, keep, or harbor any pit bull terrier, male or female, whether known to be vicious or dangerous within the City.

11.0110 Killing Dangerous Animals

The members of the Police Department or any other person in the City are authorized to kill any dangerous animals of any kind when it is necessary for the protection of any person or property.

11.0111 Complaint

Whenever a complaint under oath has been made before the Magistrate of the City that any dog or cat has bitten or attempted to bite any person in the City, and that person so bitten or attempted to be bitten was not at the time trespassing upon or injuring the person or property of the owner or possessor of said dog or cat, the Magistrate shall issue an order directing the owner or possessor of said dog or cat to turn said dog or cat over to the police of the City for impoundment so that said dog or cat may be quarantined for observation for a period determined by the Health Officer to insure that said dog or cat does not have rabies. If the owner or possessor of said dog or cat fails to comply with said order of impoundment within 24 hours after receiving such order, it shall be a violation of

this subdivision and the police shall immediately impound said dog or cat. If upon examination any animal shall prove to be infected with rabies, such animal shall be disposed of as directed by the Health Officer.

11.0112 Rabies

The owner of any animal which has contacted rabies, or which has been subject to the same, or which is suspected of having rabies, or which shall have bitten any person shall, upon demand of the police, or Health Department of the City produce and surrender up such animal to the police or Health Department to be held in quarantine for observation for a period determined by the City Health Officer. If upon examination any animal shall prove to be infected with rabies, such animal shall be disposed of as directed by such officer.

11.0113 Keeping a Rabid Animal: Failure to Report

It shall be unlawful for any person to knowingly keep or harbor any dog or cat or any other animal infected with rabies, or any dog or cat or other animal known to have been bitten by a rabid animal, or who fails to report to the police of Health Department the existence of the dog or cat or other animal which he knows to be so infected.

11.0114 Noises

It is unlawful to harbor or keep any animal which habitually disturbs the peace by loud noises at any time of the day or night.

11.0115 Kennels and Breeding of Dogs or Cats for Resale Not Allowed

No person shall maintain, within the City limits, any kennel or facility for the boarding of dogs or cats or for the breeding of dogs or cats for sale.

11.0116 Cruelty to Animals

1. It is an offense for any person to:

- a. Overdrive, overload, torture, cruelly beat, neglect or unjustifiably injure, maim, mutilate or kill any animal, or cruelly work any animal when unfit for labor;
- b. Deprive any animal over which he has charge or control of necessary food, water or shelter;
- c. Keep any animal in any enclosure without exercise and wholesome change of air;
- d. Abandon any animal;
- e. Allow any maimed, sick, injured, or disabled animal of which he is the owner, or of which he has custody, to lie in any street, road or other public place for more than three hours after notice;
- f. No person shall willfully instigate, or in any way further, any act of cruelty to any animal or animals, or any act tending to produce such cruelty;
- g. Cage any animal for public display except as allowed by subsection 7 of North Dakota Century Code 36-21.1-02;
- h. Administer or expose any known poisonous substance or noxious drug, whether mixed with meat or other food or not, which may be eaten or is eaten by any domestic animal.

2. The word "animal" includes every living animal except the human race; the word "torture" or "cruelty" includes every act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering, or death is caused or permitted.

11.0117 Penalty

Any person found guilty of violating any provision of 11.0102 through 11.0105 shall be subject to punishment as follows:

1. For the first violation; a fine of \$100 plus payment of costs or fees for the impounding of said dog or cat.
2. For a second violation; a fine of \$200 plus payment of costs or fees for the impounding of said dog or cat.
3. Upon a third or subsequent violation; the dog or cat shall be destroyed.

The penalties set forth in subsections 1-3 shall be mandatory minimum and the Municipal Court shall not have authority or discretion to suspend or defer imposition of these penalties.

Unless otherwise stated in this article, any person, firm, or corporation violating any of the terms or provisions of this article shall, upon conviction, be punished by a fine not to exceed \$1000, or imprisonment not to exceed 30 days, or both such fine and imprisonment in the discretion of the Court, the Court to have the power to suspend said sentence, and to revoke the suspension thereof.

CHAPTER TWELVE

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CHAPTER TWELVE

PUBLIC NUISANCES

ARTICLE 1 – Sanitary Nuisances

12.0101 Residence – When Sewer and Water Required

It shall be unlawful for any person to use or occupy or permit to be used or occupied for residence purposes, any premises or building within the corporate limits of this City without first making or causing to be made proper connections with the City's sewer and water facilities and mains.

The term "proper connections" when used in this section shall be construed to mean connections with the water mains and sanitary sewers which are equipped and furnished with proper valves and fittings so as to enable such water connections to be used at all times. Sanitary toilets and drains and such equipment shall at all times be kept in repair so as to make them available for household use and in condition to be used at all seasons of the year.

12.0102 Outhouses – Cesspools – A Nuisance

The use, construction, maintenance, building or erection of any outhouse, privy, vault or cesspool within this City is hereby declared to be a nuisance and a menace to public health, when in violation of 12.0101.

12.0103 Outhouses – Cesspools – Exceptions

1. Private sewage system and private water supplies may be constructed to serve new buildings to be built in areas not included in 12.0101, providing such lot area complies with the requirements of any zoning requirements.
2. Private sewage systems and private water systems may be installed in existing buildings in areas not included in 12.0101.
3. Each private sewage system or private water supply hereafter altered or constructed shall conform to the State Health Department Standards.

12.0104 Outhouses – Cesspools – Offensive Odors

It shall be unlawful for the owner or occupant of any lot or piece of ground within the corporate limits of this City to permit any private sewer system to emit any offensive odors or to become dangerous or injurious to public health or offensive to sense of smell of the people of the City. Any private sewer system emitting such odor is hereby declared to be a nuisance and a menace to the public health of the City.

12.0105 Outhouses – Cesspools – Cleaning of

In the cleaning of private septic tanks and sewage systems the contents thereof shall be removed in containers fitted so as to prevent the escape of odors or materials therefrom and disposed of in a manner approved by the City Health Officer.

The pumping of a private sewage system on the surface of the ground or hauling contents thereof in such a manner as to allow the material to spill on the ground, street or public ways is hereby declared to be a public nuisance.

12.0106 Dead Animals

Any person who owned or had possession or control of a dead animal prior to its death shall remove or cause the same to be removed within five 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 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 hours after its death shall be guilty of a violation of this Article.

12.0107 Water Pools – Putrid Substances

It shall be unlawful for the owner or occupant of any parcel of ground in this City to suffer or permit water or putrid substance whether animal or vegetable to accumulate or stand so as to cause an offensive odor to be emitted therefrom or to become injurious or dangerous to the health of the neighborhood. Any pool of water and any putrid substance permitted to become offensive or injurious to the public health are hereby declared to be a public nuisance.

ARTICLE 2 – Smoke and Gases

12.0201 Smoke, Dust, Ashes, Cinders, Gases – A Nuisance

The emission of dense smoke, ash, dust, cinders or noxious gases from any machine, contrivance or from the smoke stack or chimney of any building or premises in such quantities as to cause injury or detriment to any person or persons or to the public, or to endanger the comfort, health or safety of any person or persons, or in such manner as to cause or tend to cause damage or injury to property, is hereby declared to be a public nuisance.

12.0202 Smoke, Dust, Ashes, Cinders, Gases – Prohibited

No person, persons, association or corporation shall cause, permit or allow the escape from any smoke stack or chimney into the open air, of such quantities of dense smoke, ash, dust, soot, cinders, acid or other fumes, dirt, or other material, or noxious gases, in such place or manner as to cause injury, detriment or nuisance to any person or persons, or to the public, or to endanger the comfort, health or safety to any such person or persons, or the public, or in such manner as to cause or have a natural tendency to cause injury or damage to business or property.

12.0203 Penalty

Failure to comply with the provisions of 12.0201 and 12.0202 shall constitute a public nuisance and said person in control of the premises or the owner of the premises shall be guilty of an offense for which the maximum penalty is a fine of \$1000 and/or 30 days in jail.

ARTICLE 3 – Noise Control

12.0301 Noises Prohibited

1. General Prohibitions

In addition to the specific prohibitions outlined in subsection 2 of this section, it shall be unlawful for any person to make any noise disturbance within the limits of the City. Noncommercial public speaking and public assembly activities conducted on any public space or public right of way shall be exempt from the operation of this section.

2. Specific Prohibitions

The following acts, and the causing thereof, are declared to be in violation of this ordinance.

a. Radios, television sets, musical instruments, and similar devices.

- i. Operating, playing, or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces, or amplifies sound:
 1. Between the hours of 10:00 o'clock and 8:00 o'clock A.M. the following day in such a manner as to create a noise disturbance across a real property boundary (except for activities open to the public and for which a permit has been issued by the City Council according to the criteria set forth within 12.0304);
 2. In such a manner as to create a noise disturbance at 50 feet when operated in or on a motor vehicle on a public right of way or public space;
 3. In such a manner as to create a noise disturbance to any person other than the operator of the device, when operated by any passenger on a common carrier;
 4. This section shall not apply to noncommercial spoken language covered under subdivision b of subsection 2.

b. Loud speakers and public address systems

- i. Using or operating for any noncommercial purpose any loudspeaker, public address system, or similar device between the hours of 10:00 o'clock P.M. and 8:00 o'clock A.M. the following day, such that the sound there from creates a noise disturbance across a residential real property boundary.
- ii. Using or operating for any commercial purpose any loudspeaker, public address system, or similar device
 1. Such that the sound there from creates a noise disturbance across a real property boundary; or,
 2. Between the hours of 10:00 o'clock P.M. and 8:00 o'clock A.M. the following day on a public right of way or public space.

c. Construction

- i. Operating or permitting the operation of any tools or equipment used in construction, drilling, or demolition work between the hours of 10:00 o'clock P.M. and 6:30 o'clock A.M. the following day on weekdays or at any time on Sundays or holidays such that the sound therefrom creates a noise disturbance across a residential real property boundary except for emergency work of public service utilities or by special variance issued pursuant to 12.0304.
- d. Vehicle or motor boat repairs and testing
 - i. Repairing, rebuilding, modifying or testing any motor vehicle, motorcycle, or motor boat between the hours of 10:00 o'clock P.M. and 8:00 o'clock A.M. the following day in such a manner as to cause a noise disturbance across a residential real property boundary.
- e. Domestic power tools
 - i. Operating or permitting the operation of any mechanically powered saw, sander, drill, grinder, lawn or garden tool, or similar device used outdoors in residential areas between the 10:00 o'clock P.M. and 8:00 o'clock A.M. the following day so as to cause a noise disturbance across a residential real property boundary. This section shall not apply to the operation of snow blowers.

12.0302 Motor Vehicle Maximum Sound Levels

1. Motor vehicles and motorcycles on public right of ways.

- a. No person shall operate or cause to be operated a public or private motor vehicle or motorcycle on a public right of way at any time in such a manner as to exceed the following noise limits for the category of motor vehicle shown. Noise shall be measured at a distance of at least 25 feet from the nearest side of the nearest lane being monitored and at a height of at least four feet above the immediate surrounding surface.

Table 1	Sound Pressure Level, dB(A)	
	Speed limit 40 mph or less	Speed limit over 40 mph
Motor vehicles with a manufactures gross vehicle weight rating or gross combination weight rating of 10,000 pounds or more, or any combination of vehicles towed by such motor vehicle	90	94
Any other motor vehicle or any combination of vehicles towed by any motor vehicle	80	84

2. Adequate mufflers or sound dissipative devices

- a. No person shall operate or cause to be operated any motor vehicle or motorcycle not equipped with a muffler or other sound dissipative device in good working order and in constant operation;
- b. No person shall remove or render inoperative, or cause to be removed or rendered inoperative, other than for purposes of maintenance, repair, replacement, any muffler or sound dissipative device on a motor vehicle or motorcycle.

3. Recreation of motorized vehicles operating off public rights of way

- a. No person shall operate or cause to be operated any recreational motorized vehicle off a public right of way in such a manner that the level emitted there from exceeds the limit set forth hereinabove at a distance of 50 feet or more from the path of the vehicle when operated on a public space or at or across the boundary of private property when operated on private property. This section shall apply to all recreational motorized vehicles, whether or not duly licensed and registered, including, but not limited to, commercial or noncommercial racing vehicles, motorcycles, go-carts, snowmobiles, amphibious craft, campers, and dune buggies.

12.0303 Motor Sports Facilities

1. No motor sports facility owner and no person owning or controlling a sports car racing vehicle, a drag racing vehicle, an oval course racing vehicle, a motorcycle racing vehicle, a snowmobile racing vehicle or a modified competitive farm tractor shall cause or permit its operation at any motor sports facility unless the vehicle is equipped with a properly installed and well maintained muffler or noise dissipative device and noise emissions from its operation do not exceed 105 dBA at trackside or 105 dBA at 20 inches from the exhaust outlet during the stationary measurement procedure.
2. Practice sessions
 - a. All racing vehicles in order to operate in practice sessions shall comply with the noise limitations set forth in subsection 1.
3. Operations
 - a. No motor facility owner and no person owning or controlling a racing vehicle shall permit its use or operation at any time other than the following:
 - i. Sunday through Thursday during the hours of 8:00 o'clock A.M. through 10:00 o'clock P.M., and
 - ii. Friday through Saturday, state and national holidays and the day preceding, not to exceed three consecutive days, during the hours of 8:00 o'clock A.M. through 11:00 o'clock P.M.

12.0304 Conditions

1. Conditions

The City Council may grant specific variances from the particular requirements of this ordinance to such specific persons or class of persons or such specific noise source up on such conditions as it may deem necessary to protect the public health and welfare, if it finds that strict compliance with the ordinance is inappropriate because of conditions beyond the control of the persons seeking such variance or because of special circumstances which would render strict compliance unreasonable or impracticable due to special physical conditions or cause, or because strict compliance would result in substantial curtailment or closing down of a business, plant, or operation, or because no other alternative facility or method of handling is yet available. Such variances may be limited in time.

2. Application

Any person requesting a variance shall make his request in writing to the City Council and shall state in a concise manner the facts to show cause why such variance should be granted.

3. Revocation or Modification

A variance granted may be revoked or modified by the City Council after a public hearing held upon not less than 20 days notice. Such notice shall be served upon the holder of the variance by certified mail and all persons who have filed a written request for such notification.

12.0305 Penalty

Any person violating any provision of this Article may be punished by a fine of not more than \$1000 or by imprisonment not to exceed 30 days, or by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

Exceptions: This ordinance shall not apply to emergency vehicles as defined by State law or to railroad trains.

12.0306 Severability

If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person or circumstances shall be held to be invalid, such invalidity shall not affect the other provisions or applications of this ordinance which can be given effect independent from the invalid provision or application, and to this end the provisions of this ordinance are hereby declared to be severable.

12.0307 Definitions

1. "Drag Racing Vehicle" means any racing vehicle used to compete in any acceleration competition initiated from a standing start and continued over a straight line course.
2. "Motorcycle" means any motor vehicle designed to travel on not more than three wheels which are in contact with the ground.
3. "Motor Sports Facility" means any facility, track, or course upon which racing events are conducted.
4. "Motor Sports Facility Owner" means the owner or operator of a motor sports facility or agent or designee of the owner or operator. When a racing event is held on public land, the event organizer (i.e. promoter) shall be considered the motor sports facility owner for the purposes of this ordinance.
5. "Motor Vehicle" means any vehicle which is, or is designed to be self propelled or is designed or used for transporting persons or property. The definition excludes airplanes.
6. "Muffler or Noise Dissipative Device" means a device for abating the sound of escaping gases or an internal combustion engine.
7. "Noise Disturbance" means a sound or noise projecting from one property into another, within the boundary of a use district which exceeds the limiting noise criteria as set forth in Table 2 below.
 - a. Sound or noise projecting from one use district, into another use district with a different noise level limit shall not exceed the limits of the district into which the noise is projected.
 - b. The permissible levels in decibels set forth in Table 1 shall be modified so that any noise occurring on property deemed to be nonconforming use property shall be determined upon the conforming zoning designation of the property.

For the purposes of this ordinance, a "property" shall be considered to be real estate, platted or unplatted, or, in the case of apartment buildings and condominium units, the property shall be considered as each individual apartment or condominium.

Table 2	Limiting Noise Levels for Zoning Districts		
	Residential	Commercial	Industrial
Maximum number of decibels permitted from 8:00 A.M. until 11:00 P.M. daily.	55	65	80

Maximum number of decibels permitted from 11:00 P.M. until 8:00 A.M. of the following day	50	60	75
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Planned unit development shall be considered, for purposes of this ordinance residential zones unless specifically designated otherwise by the City.

8. "Oval Course Racing Vehicle" means any racing vehicle, not a motorcycle, and not a sports car, which is operated on a closed, oval-type motor sports facility.
9. "Practice Sessions" means any period of time during which racing vehicles are operated at a motor sports facility, other than during racing events.
10. "Racing Vehicle" means any motor vehicle that is designed to be used exclusively in the racing events or any vehicle participating in or practicing for a racing event.
11. "Real Property Boundary" means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person and also includes an imaginary line between residential apartments or units in an apartment building or condominium structure.
12. "Sports Car Racing Vehicle" means any racing vehicle which meets the requirements and specifications of the competition rules of any sports car organization.
13. "Trackside" means a sound measuring point of 50 feet from the racing vehicle.
14. "Well Maintained Muffler" means a device or combination of devices which effectively decreases the sound energy of internal combustion engine exhaust without a muffler by a minimum of six dBA trackside. A well maintained muffler shall be free of defects or modifications that reduce its sound reduction capabilities. Each outlet of a multiple exhaust system shall comply with the requirements of this subsection, notwithstanding the total engine displacement versus muffler length requirements. Such muffler than be a:
 - a. Reverse gas flow device incorporating a multitube and baffle design; or a
 - b. Perforated straight core device, fully surrounded from beginning to end with a sound absorbing medium, not installed on a rotary engine, and;
 - i. At least 20 inches in inner core length when installed on any engine exceeding 1600 cc displacement; or
 - ii. At least 12 inches in inner core length when installed on any non-motorcycle engine equal to or less than 1600 cc displacement; or
 - iii. At least six inches in inner core length and installed at the outlet end of any four-cycle motorcycle engine; or
 - iv. At least eight inches in inner core length when installed on a two-cycle motorcycle engine; or an
 - c. Annual swirl flow (auger-type) device of;
 - i. At least 16 inches in swirl chamber length when installed on any engine exceeding 1600 cc displacement; or

- ii. At least 10 inches in swirl chamber length when installed on any engine equal to or less than 1600 cc displacement; or a
- d. Stacked 360 degree diffuser disc device; or a
- e. Turbocharger; or a
- f. Go-kart muffler as defined by the International Karting Federation as specified in Motor Race Vehicle and Facility Sound Measurement and Procedure Manual, NPCS-35; or an
- g. Original equipment manufacturer motorcycle muffler when installed on a motorcycle model such muffler was designed for by the manufacturer.

ARTICLE 4 – Automobiles – Personal Property

12.0401 Automobiles, Personal Property – When a Nuisance

Unsheltered storage of old, used, stripped, junked and other automobiles not in good, safe operating condition, and of any other vehicles, machinery implements and/or equipment and personal property of any kind which is no longer safe for the purposes for which it was manufactured, for a period of 30 days or more (except in a licensed junk yard) within the City, and any motor vehicle, animal and article of personal property which constitutes an obstruction to, hazard or detriment to public traffic, snow removal operations, public safety and public health, or which may be abandoned or unclaimed within the City, is hereby declared to be a nuisance and shall be abated in the manner prescribed in this article.

12.0402 Abatement Required by Owners

The owner, owners, tenants, lessees and/or occupants of any lot within the corporate limits of this City upon which such storage is made, and also the owner/owners and/or lessees of the property involved in such storage (all of whom are hereinafter referred to collectively as “owners”), shall jointly and severally abate the nuisance by the prompt removal of the personal property into completely enclosed buildings authorized to be used for storage purposes, if within the corporate limits of the City, or otherwise to remove it to a location outside of corporate limits.

12.0403 Abatement Required – Penalty for Failure

If the owners allow a nuisance to exist or fail to abate a nuisance they, and each of them upon conviction thereof, shall be fined not more than \$500 for each infraction and a separate infraction may be deemed committed on each day during or on which the nuisance is permitted to exist.

12.0404 Removal and Impoundment by City

The City Board of Health may remove or cause to be removed to the City Hall, or any other place within the City selected for storage purposes, any personal property described in 12.0401, and may impound and retain the same until the expense of removal, storage and impounding is paid, together with the amount of any fine, costs, bail or other claims of the City against the owner, or any other person lawfully entitled to the possession thereof.

12.0405 Removal and Impoundment – When Sold

If not reclaimed and redeemed by the true owner or the person lawfully entitled to the possession thereof within a period of 30 days after impounding, any article of personal property described in 12.0404 may be sold and disposed of by the City Board of Health in the manner hereinafter provided. Notice that such property will be sold shall be published once, at least six 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. Such sale shall be held between the hours of 9:00 o'clock A.M. and 5:00 o'clock P.M. of the day specified in the notice. Such sale shall be held at the front door of the City Hall, or at the location of the property to be sold. Any sale may be postponed or discontinued by public announcement at the time of the sale where there are not bidders or when the amount offered is grossly inadequate, or for other reasonable cause. The City may become a purchaser of any or all property at the sale. The chief of person making the sale shall give the purchaser at the sale a receipt for the purchase of such property.

12.0406 Removal and Impoundment Proceeds

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

ARTICLE 5 – Noxious Weeds

12.0501 Definition

Whenever used in this ordinance, the term “noxious weeds” shall mean and include all weeds of the kind known as Canada Thistle, sow thistle, quack grass, leafy spurge (*Euphorbia esula* or *Euphorbia virgata*), field bindweed, Russian knapweed, (*Centaurea picris*), hoary cress (*Lepidium draba*, *Lepidium repens*, and *Hymenophyllum pubescens*), dodder, or any similar unwanted vegetation over six inches in height.

12.0502 Weeds Prohibited

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

12.0503 Notice to Destroy

The City Board of Health is hereby authorized and empowered to notify in writing the owner of any lot, place, or area within the City or the agent of such owner, to cut, destroy, and /or remove any noxious weeds found growing, lying, or located on such owner’s property or upon the one-half of any road or street lying next to the lands or boulevards abutting thereon. The notice shall be by registered or certified mail addressed to said owner or agent of said owner at their last known address and shall give such owner or agent a minimum of five days to cut or destroy the noxious weeds.

12.0504 Action Upon Non-Compliance

Upon the failure, neglect, or refusal of any owner or agent to cut, destroy and/or remove noxious weeds growing, lying or located upon the owner’s property or upon the one-half of any road or street lying next to the lands or boulevards abutting thereon, after receipt of the written notice provided for in 12.0503 or within five days after the date of such notice in the event the same is returned to the City because of inability to make delivery thereof, the City Board of Health is hereby authorized and empowered to pay for the cutting, destroying, and/or removal of such noxious weeds or to order their removal by the City.

12.0505 Cost Assessed to Property

When the City has effected the removal of such noxious weeds or has paid for their removal, the actual cost thereof, if not paid by the owner prior thereto, shall be charged and assessed against the property upon which the noxious weeds were cut or destroyed. An assessment list showing the lots or tracts to be assessed with the cost against each lot or tract shall be prepared as are other special assessment lists and shall be approved by the City Council. Such assessments shall be subject to the same procedure for certification to the County Auditor, payment and collection as are other special assessments under state law.

ARTICLE 6 – Vegetation Nuisances

12.0601 Vegetation Nuisances

All weeds and grasses growing upon any lot or parcel of land in the City to a height greater than six inches, or which have gone or are about to go to seed, shall be deemed noxious, dangerous, and unhealthful vegetation, and are hereby declared to be a nuisance.

12.0602 Duty to Correct

The occupant, person in charge, or owner of any parcel of land in the City shall have the duty to keep such lot, including any abutting City right-of-way, free of such vegetation nuisance by cutting, mowing, spraying, or removal, as may be appropriate.

12.0603 Notice to Correct

1. The City Board of Health has the authority to require compliance and is responsible for requiring compliance with this article and all property within the City. The City Board of Health may cause public notice to be given requiring all lots or parcels of land in the City to be kept free from all vegetation declared by 12.0605 to be a nuisance.
2. The notice shall provide that all vegetation determined to be a nuisance and left uncorrected may be cut, mowed, sprayed, or removed by the City and the cost thereof assessed against that property, to include the cost of levying such special assessment.
3. The notice may be by personal communication or by general public notice, published in the official newspaper once a week for two consecutive weeks, and shall be deemed sufficient to allow those actions authorized by 12.0604 and 12.0605.
4. The occupant, person in charge, or owner of any lot or parcel of land shall, within three days of the receipt of personal communication or the last public notice, cut, mow, spray, or remove, as appropriate, any vegetation which would constitute a nuisance.

12.0604 May Be Corrected by City

If the occupant, person in charge, or owner of any lot or parcel of land fails to correct any such vegetation nuisance as required, the City Board of Health, or its designate, may cause such vegetation to be cut, moved, sprayed, or removed, as appropriate, and for such purpose the person or persons, to do the same, may enter upon any lot or parcel of land.

It is a public offense for any person to intentionally interfere with the cutting, mowing, spraying, or removal of such vegetation nuisance, by physical force or violence.

12.0605 Penalty Clause; Charges and Special Assessments of Correction

Whenever the City corrects a vegetation nuisance by cutting, mowing, spraying, or removing, as appropriate, the owner, occupant, or person in charge of the property shall be billed for such correction. The charges for each such correction shall amount to \$0.75 per square foot of the lot or parcel exclusive to the building, with a minimum charge of \$250.

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CHAPTER THIRTEEN

OFFENSES

ARTICLE 1 – In General

13.0101 Criminal Contempt

1. The Municipal Court has power to punish for contempt of its authority for the following offenses:
 - a. Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
 - b. Misbehavior of any of its officers in their official transactions; or
 - c. Disobedience or resistance to its lawful writ, process, order, rule, decree or command.
2. Except as otherwise provided, a criminal contempt proceeding under this section shall be deemed a prosecution for an offense for the purpose of North Dakota Century Code 12.1-01 through 12.1-05, 12.1-32, and Article 5 of this chapter.
3. A criminal contempt proceeding under this section is not a bar to subsequent prosecution for a specific offense if the court certifies in the judgment of conviction of criminal contempt, or the order terminating the proceeding without acquittal or dismissal, that a summary criminal contempt proceeding was necessary to prevent repetition of misbehavior disruptive of an ongoing proceeding and that subsequent prosecution as a specific offense is warranted. In a subsequent prosecution, the defendant shall receive credit for all time spent in custody and any fine paid by him pursuant to the criminal contempt proceeding.
4. This section shall not be construed to deprive a court of its power, by civil contempt proceedings, to compel compliance with its lawful writ, process, order, rule, decree or command or to compensate a complainant for losses sustained by reason of disobedience or resistance thereto, in accordance with the prevailing usage's of law and equity, including the power of detention.

13.0102 Hindering Proceedings by Disorderly Conduct

A person is guilty of an offense if the person recklessly or intentionally hinders an official City proceeding by noise or violent or tumultuous behavior or disturbance.

13.0103 Fleeing Arrest Prohibited

No person shall flee or attempt to flee arrest from any Chief of Police, police officer, or peace officer.

13.0104 Obstructing Officers

No person in the City shall resist any police or fire officer, any member of the police or fire departments, or any person duly empowered with police or fire authority, while in the discharge or apparent discharge of duty, or in any way interfere with or hinder in the discharge of duty.

13.0105 False Alarms Prohibited

It shall be unlawful for any person or persons to give knowingly or create intentionally any false alarm by crying "Fire", "Police", or "Watch", or by knowingly creating any false alarm in any other manner whatsoever within the City.

13.0106 Impersonating Officials

A person is guilty of an offense if he falsely pretends to be a public servant of this City and acts as if to exercise the authority of such public servant.

13.0107 Discrimination in Public Places

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

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

13.0108 Preventing Exercise of Civil Rights

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

1. Injures, intimidates, or interferes with another because he is or is about to exercise his civil rights, or because he has exercised his civil rights
2. Intimidates or prevents another from aiding a third person to exercise his civil rights.

13.0109 Criminal Attempt

1. A person is guilty of criminal attempt if, acting with the kind of culpability otherwise required for commission of an offense, he intentionally engages in conduct which, in fact, constitutes a substantial step toward commission of the offense. A "substantial step" is any conduct which is strongly corroborative of the firmness of the actor's intent to complete the commission of the offense. Factual or legal impossibility of committing the offense is not a defense, if it could have been committed had the attendant circumstances been as the actor believed them to be.
2. A person who engages in conduct intending to aid another to commit an offense is guilty of criminal attempt if the conduct would establish his complicity as an accomplice under North Dakota Century Code 12.1-03-01 where the offense committed by the other person, even if the other is not guilty of committing or attempting the offense, for example, because he has a defense of justification or entrapment.
3. Criminal attempt is an offense if the crime attempted is an offense, except that whenever it is established by a preponderance of the evidence at sentencing that the conduct constituting the attempt did not come dangerously close to commission of the offense, an attempt to commit an offense shall be punished as an infraction. Criminal attempt to commit an infraction is an infraction.

13.0110 Criminal Conspiracy

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

2. If a person knows or could expect that one with whom he agrees has agreed or will agree with another to effect the same objective, he shall be deemed to have agreed with the other, whether or not he knows the other's identity.
3. A conspiracy shall be deemed to continue until its objectives are accomplished, frustrated, or abandoned. "Objectives" includes escape from the scene of the crime, distribution of booty, and measures, other than silence, for concealing the crime or obstructing justice in relation to it. A conspiracy shall be deemed abandoned if no overt act to effect its objectives has been committed by any conspirator during the applicable period of limitations.
4. It is no defense to a prosecution under this section that the person with whom such person is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.
5. Accomplice liability for offenses committed in furtherance of the conspiracy is to be determined as provided in North Dakota Century Code 12.1-03-01.
6. Conspiracy shall be subject to the same penalty as that provided for the offense or offenses constituting the objective of the conspiracy.

13.0111 Aiding Consummation of a Crime

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

13.0112 Public Servants Permitting Escape

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

ARTICLE 2 – Offenses Against Persons

13.0201 Simple Assault

1. A person is guilty of an offense if that person:
 - a. Willfully causes substantial bodily injury to another human being; or
 - b. Negligently causes substantial bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. Consent to the conduct causing bodily injury by all persons injured by the conduct is a defense if:
 - a. Neither the injury inflicted nor the injury threatened is such as to jeopardize life or seriously impair health;
 - b. The conduct and the injury are reasonable foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or
 - c. The conduct and the injury are reasonable foreseeable hazards of an occupation or profession or of medical or scientific experimentation conducted by recognized methods and the persons subjected to such conduct or injury, having been made aware of the risks involved, consent to the performance of the conduct or the infliction of the injury.
3. Assent does not constitute consent, within the meaning of this ordinance, if:
 - a. It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense and such incompetence is manifest or known to the actor;
 - b. It is given by a person who by reason of youth, mental disease or defect, or intoxication, is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature of harmfulness of the conduct charged to constitute the offense; or
 - c. It is induced by force, duress or deception.

13.0202 Harassment

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

- a. Makes a telephone call anonymously or in offensively coarse language;
- b. Makes repeated telephone calls, whether or not a conversation ensues, with no purpose of legitimate communication; or
- c. Communicates a falsehood by telephone and causes mental anguish.

ARTICLE 3 – Offense Against Property

Division 1 – Property Destruction and Criminal Intrusion

13.0301 Criminal Mischief – Penalty

A person is guilty of an offense if that person:

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 \$500; if recklessly caused, is not in excess of \$2,000; and if the damages to tangible property of another are not by means of an explosive or a destructive device.

The penalty for the offense of criminal mischief may not exceed a fine of \$1,000, imprisonment for 30 days, or both such fine and imprisonment.

13.0302 Tampering with or Damaging a Public Service

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

1. Tampering with or damaging the tangible property of another;
2. Incapacitating an operator of such service; or
3. Negligently damaging the tangible property of another by fire, explosive or other dangerous means.

13.0303 Consent as a Defense

For prosecution of criminal mischief under 13.0301 or tampering with or damaging a public service under 13.0302.

1. Whenever it is an element of the offense that the property is of another, it is a defense to a prosecution under those sections that the other has consented to the actor's conduct with respect to the property.
2. Property is that "of another" if anyone other than the actor has a possessory or proprietary interest therein.

13.0304 Criminal Trespass

A person is guilty of an offense if, knowing that 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.

Division 2 – Theft and Related Offenses

13.0305 Consolidated Theft Offenses

1. Conduct denominated theft in 13.0306 to 13.0308 constitutes a single offense designed to include the separate offenses heretofore known as larceny, stealing, purloining, embezzlement, obtaining money or property by false pretenses, extortion, blackmail, fraudulent conversion, receiving stolen property, misappropriation of public funds, swindling and the like.
2. A charge of theft under 13.0306 to 13.0308, which fairly apprises the defendant of the nature of the charges against the defendant, shall not be deemed insufficient because it fails to specify a particular category of theft. The defendant may be found guilty of theft under such charge if the defendant's conduct falls under 13.0306 to 13.0308, so long as the conduct proved is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case that must be met.

13.0306 Theft of Property

A person is guilty of theft if that person:

1. Knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof;
2. Knowingly obtains the property of another by deception or by threat with intent to deprive the owner thereof, or intentionally deprives another of his property by deception or by threat; or
3. Knowingly receives, retains or disposes of property of another which has been stolen, with intent to deprive the owner thereof.

13.0307 Theft of Services

A person is guilty of theft if:

1. The person intentionally obtains services, known by the person to be available only for compensation, by deception, threat, false token or other means to avoid payment for the services; or
2. Having control over the disposition of services of another to which the person is not entitled, the person knowingly diverts those services to his own benefit or to the benefit of another not entitled thereto.

Where compensation for services is ordinarily paid immediately upon their rendition, as in the case of hotels, restaurants, and comparable establishments, absconding without payment or making provision to pay is prima facie evidence that the services were obtained by deception.

13.0308 Theft of Property Lost, Misplaced or Delivered by Mistake

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 misplaced; 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.

13.0309 Thefts Punishable Under City Ordinances

Theft under 13.0306 to 13.0308 may be punished as an offense against the City ordinances if the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that he was stealing, or which the actor could reasonably have anticipated to have been the property or services involved, does not exceed \$250 and if:

1. The theft was not committed by threat;
2. The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft;
3. The defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of official duties;
4. The property stolen is not a firearm, ammunition, explosive or destructive device, or an automobile, aircraft or other motor-propelled vehicle;
5. The property does not consist of any government file, record, document or other government paper stolen from any government office or from any public servant;
6. The defendant is not in the business of buying or selling stolen property and he does not receive, retain or dispose of the property in the course of that business;
7. The property stolen does not consist of any implement, paper or other thing uniquely associated with the preparation of any money, stamp, bond or other document, instrument or obligation of the State of North Dakota;
8. The property stolen does not consist of livestock taken from the premises of the owner;
9. The property stolen does not consist of a key or other implement uniquely suited to provide access to property the theft of which would be a class A misdemeanor or felony or was not stolen to gain such access.
10. The property stolen is not a card, plate, or other credit device existing for the purpose of obtaining money property, labor, or services on credit, or is a debit card, electronic fund transfer card, code or other means of access to an account for the purpose of initiating electronic fund transfers.

13.0310 Defrauding Secured Creditors – Penalty

A person is guilty of an offense if he destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with intent to prevent collection of the debt represented by the security interest if the property does not have a value exceeding \$500 determined as in the preamble of 13.0309.

13.0311 Retail Theft – Shoplifting

1. **Presumption.** Any person concealing upon that person's person or among that person's belongings, or causing to be concealed upon the person or among the belongings of another, un-purchased merchandise displayed, held, offered or stored for sale in a retail mercantile establishment and removing it to a point beyond the last station for receiving payments in that retail mercantile establishment shall be prima facie presumed to have so concealed such merchandise with the intention of permanently depriving the merchant of possession or of the full retail value of such merchandise.
2. **Detention of Suspect – Procedure.** Any peace officer or merchant who reasonably believes that a person has committed, or is in the process of committing theft may detain such person, on or off the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:
 - a. To require the person to identify himself;
 - b. To verify such identification;

- c. To determine whether such person has in the person's possession unpurchased merchandise and, if so, to recover such merchandise;
 - d. To inform a peace officer of the detention of the person and surrender custody of that person to a peace officer;
 - e. In the case of a minor, to inform a peace officer, the parents, guardian or other private person interested in the welfare of that minor of this detention and to surrender custody of said minor to the person informed.
3. Definitions. As used in this section, unless the context requires otherwise:
- a. An item is "concealed" within the meaning of this section if, even though there is some notice of its presence, the item itself is not visible through ordinary observation.
 - b. "Full retail value" means the merchant's stated or advertised price of the merchandise.
 - c. "Merchandise" means any item of tangible personal property and specifically includes shopping carts.
 - d. "Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, franchise or independent contractor or such owner or operator.
 - e. "Person" means any natural person or individual.
 - f. "Premises of a retail mercantile establishment" includes, but is not limited to, the retail mercantile establishment, any common use areas in shopping centers, and all parking areas set aside by a merchant, or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of said retail mercantile establishment.
 - g. "Retail mercantile establishment" means any place where merchandise is displayed, held, offered or stored for sale to the public.
 - h. "Shopping cart" means those push carts of the type or types which are commonly provided by grocery stores, drugstores or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store.
4. Theft of unpurchased merchandise, displayed, held, offered or stored for sale in a mercantile establishment from that establishment when open for business is "shoplifting" for which the offender may be assessed a penalty upon conviction not exceeding \$1000, imprisonment of 30 days, or both such fine and imprisonment.

13.0312 Defenses and Proof as to Theft and Related Offenses

- 1. It is a defense to a prosecution under this Article that:
 - a. The actor honestly believed that he had a claim to the property or services involved which he was entitled to assert in the manner which forms the basis for the charge against him; or
 - b. The victim is the actor's spouse, but only when the property involved constitutes household or personal effects or other property normally accessible to both spouses and the parties involved are living together. The term 'spouse', as used in this section includes persons living together as husband and wife.

2. It does not constitute a defense to a prosecution for conducts constituting an offense in violation of this article that:
 - a. Stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed;
 - b. A facility or an opportunity to engage in such conduct, including offering for sale property not stolen as if it were stolen, was provided; or
 - c. Mere solicitation that would not induce an ordinary law-abiding person to engage in such conduct was made by a law enforcement officer to gain evidence against a person predisposed to engage in such conduct.
3. 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.
4. It shall be prima facie evidence that the actor knows that the property has been stolen if it is shown that, being a dealer, he acquired it for a consideration which he knew to be far below its reasonable value. "Dealer" means a person, whether licensed or not, who has repeatedly engaged in transactions in the type of property involved.

13.0313 Definitions

In this Article:

1. "Dealer in property" means a person who buys or sells property as a business.
2. "Deception" means:
 - a. Creating or reinforcing a false impression, including false impressions as to fact, law, status, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not substantially perform the promise unless it is part of a continuing scheme to defraud; or
 - b. Preventing another from acquiring information which would affect his judgment of a transaction; or
 - c. Failing to correct a false impression which the actor previously created or reinforced, or which he knows to be influencing another to whom he stands in fiduciary or confidential relationship; or
 - d. Failing to correct an impression which the actor previously created or reinforced and which the actor knows to have become false due to subsequent events; or
 - e. Failing to disclose a lien, adverse claim, or other impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained or in order to continue to deprive another of his property, whether such impediment is or is not valid, or is or is not a matter of official record; or
 - f. Using a credit card, charge plate or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer:

- a. Where such instrument has been stolen, forged, revoked or canceled, or where for any other reason its use by the actor is unauthorized, and
 - b. Where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument; or
 - g. Any other scheme to defraud. The term “deception” does not, however, include falsifications as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. “Puffing” means an exaggerated commendation of wares in communications addressed to the public or to a class or group.
- 3. “Deprive” means:
 - a. To withhold property or to cause it to be withheld either permanently or under such circumstances that a major portion of its economic value, or its use and benefit, has, in fact, been appropriated; or
 - b. To withhold property or to cause it to be withheld with the intent to restore it only upon the payment of a reward or other compensation; or
 - c. To dispose of property or use it or transfer any interest in it under circumstances that make its restoration, in fact, unlikely.
- 4. “Fiduciary” means a trustee, guardian, executor, administrator, receiver or any other person acting in a fiduciary capacity, or any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.
- 5. “Financial institution” means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.
- 6. “Obtain” means:
 - a. In relation to property, to bring about a transfer or purported transfer of an interest in the property, whether to the actor or another; or
 - b. In relation to services, to secure performance thereof.
- 7. “Property” means any money, tangible or intangible personal property, property (whether real or personal) the location of which can be changed (including things growing on, affixed to, or found in land and documents although the rights represented thereby have no physical location), contract right, chose-in-action, interest in or claim to wealth, credit or any other article or thing of value of any kind. “Property” also means real property, the location of which cannot be moved if the offense involves transfer or attempted transfer of an interest in the property.
- 8. “Property of another” means property in which a person other than the actor or in which a government has an interest without consent, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person or government might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another that has a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement. “Owner” means any person or a government with an interest in property such that it is “property of another” as far as the actor is concerned.
- 9. “Receiving,” means acquiring possession, control or title, or lending on the security of the property.

10. "Services" means labor, professional service, transportation, telephone, mail or other public service, gas, electricity and other public utility services, accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or other property.
11. "Stolen" means property which has been the subject of theft or robbery or a vehicle which is received from a person who is then in violation of North Dakota Century Code 12.1-23-06.
12. "Threat" means an expressed purpose, however communicated, to:
 - a. Cause bodily injury in the future to the person threatened or to any other person; or
 - b. Cause damage to property; or
 - c. Subject the person threatened or any other person to physical confinement or restraint; or
 - d. Engage in other conduct constituting a crime; or
 - e. Accuse anyone of a crime; or
 - f. Expose a secret or publicize an asserted fact, whether true or false, tending to subject a person living or deceased, to hatred, contempt or ridicule or to impair another's credit or business repute; or
 - g. Reveal any information sought to be concealed by the person threatened; or
 - h. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
 - i. Take or withhold official action as a public servant, or cause a public servant to take or withhold official action; or
 - j. Bring about or continue to strike, boycott or other similar collective action to obtain property or deprive another of his property which is not demanded or received for the benefit of the group which the actor purports to represent; or
 - k. Cause anyone to be dismissed from his employment, unless the property is demanded or obtained for lawful union purposes; or
 - l. Do any other act which would not in itself substantially benefit the actor or a group he represents but which is calculated to harm another person in a substantial manner with respect to his health, safety, business, employment, calling, career, financial condition, reputation or personal relationship.

Upon a charge of theft, the receipt of property in consideration for taking or withholding official action shall be deemed to be theft by threat regardless of whether the owner voluntarily parted with his property or he initiated the scheme.

13. "Traffic" means:
 - a. To sell, transfer, distribute, dispense or otherwise dispose of to another person; or
 - b. To buy, receive, possess or obtain control of, with intent to sell, transfer, distribute, dispense or otherwise dispose of to another person. (Source: North Dakota Century Code section 12.1-23-10)

13.0314 Making or Uttering Slugs

1. A person is guilty of an offense if that person makes or utters a slug or slugs which do not exceed \$50 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 to:
 - i. Receive a coin or bill of a certain denomination or a token make for the purpose; and
 - ii. In return for the insertion or deposit thereof, automatically to offer, provide, assist in providing, or permit the acquisition of property or a public or private service.
 - c. "Value" of the slugs means the value of the coins, bills or tokens for which they are capable of being substituted.

ARTICLE 4 – Offenses Against Public Order, Health, Safety and Sensibilities

Division 1 – Riot

13.0401 Engaging in a Riot

1. A person is guilty of an offense if that person engages in a riot.
2. “Riot” means a public disturbance involving an assemblage of five or more persons, which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government function.
3. A person shall be convicted under 13.0109 or 13.0110 of attempt or conspiracy to commit an offense under this section only if he engages in the prohibited conduct under circumstances in which there is a substantial likelihood that his conduct will imminently product a violation of this section. Mere presence at a riot is not an offense under this section.

13.0402 Disobedience of Public Safety Orders Under Riot Conditions

A person is guilty of an offense if, during a riot 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.

Division 2 – Disorderly Conduct

13.0403 Disorderly Conduct

1. An individual is guilty of violating the ordinances of this City, if with intent to harass, annoy or alarm another person or in reckless disregard of the fact that another is harassed, annoyed or alarmed by the individual’s behavior, the individual:
 - a. Engages in fighting or in violent, tumultuous or threatening behavior;
 - b. Makes unreasonable noise;
 - c. In a public place, uses abusive or obscene language, knowingly exposes that individual’s penis, vulva, or anus, or makes an obscene gesture;
 - d. Obstructs vehicular or pedestrian traffic, or the use of a public facility;
 - e. Persistently follows a person in or about a public place or places;
 - f. While loitering in a public place for the purpose of soliciting sexual contact, the individual solicits such contact;
 - g. Creates a hazardous, or seriously alarming condition by any act which is not licensed or privileged to do;
 - h. Enters on the property of another and for a lewd or unlawful purpose looks into a dwelling on the property through any window or other opening in the dwelling.

- i. Engages in harassing conduct by means of intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person; or
 - j. Not being a peace officer, discharges a firearm or displays a deadly weapon in a public place;
 - k. Uses a fixed optical device that enhances or records a visual occurrence to view through any window of another person's property; or uses a surveillance camera to capture an image from the dwelling or accessory structure of another person; however, an individual using a surveillance camera has seven days from notice by a law enforcement officer to direct or shield the camera so as to not capture an image from another person's dwelling or accessory structure before there is an offense.
2. This section 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.

13.0404 Defense when Conduct Consist of Constitutionally Protected Activity

- 1. If conduct that would otherwise violate 13.0403(1)(c) or 13.0403(1)(d) consists of speech or other communication, of gathering with others to hear or observe such speech or communication, or of gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political, or religious questions, the actor must be ordered to move, disperse, or otherwise remedy the violation prior to his arrest if he has not yet intentionally harmed the interests of others which those sections seek to protect.
- 2. The order required by this section may be given by a peace officer, a fireman, a person with authority to control the use of the premises, or any person directly affected by the violation.
- 3. It is a defense to prosecution under 13.0403(1)(c) or 13.0403(1)(d):
 - a. That in circumstances in which this section requires an order no order was given;
 - b. That an order, if given, was manifestly unreasonable in scope;
 - c. That an order, if given, was promptly obeyed.

Division 3 – Gambling

13.0405 Gambling

- 1. It is an offense to engage in gambling as defined in subdivision a of subsection 2. Participating in or soliciting information about lottery, or engaging or participating in the business of gambling are punishable in state court as more serious crimes.
- 2. As used in this section:
 - a. “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:
 - i. Lawful contests for skill, speed strength or endurance in which awards are made only to entrants or to the owners of entries; or

- ii. Lawful business transactions or other acts or transactions now or hereafter expressly authorized by law.
- 3. "Lottery" means any plan for the distribution of a thing of value, whether tangible or intangible, or a person or persons selected by chance from among participants, some or all of whom have given a consideration for the chance of being selected.
- 4. "Gambling apparatus" means any device, machine, paraphernalia or equipment that is used or usable in playing phases of any gambling activity, whether that activity consists of gambling between persons, or gambling by a person involving the playing of a machine. Gambling apparatus does not include an amusement game or device as defined in North Dakota Century Code Section 53-03-01.
- 5. "Gambling house" means any location or structure, stationary or movable, wherein gambling is permitted or promoted, or where a lottery is conducted or managed. In the application of this definition, any place where gambling apparatus is found is presumed to be a gambling house, provided that this presumption shall not apply where cards, deice, or other games are found in a private residence.
- 6. Without limitation, a person shall be deemed to be engaged in the business of gambling if he;
 - a. Conducts a wagering pool or lottery;
 - b. Receives wagers for or on behalf of another person;
 - c. Alone or with others, owns, controls, manages, or fiancés a gambling business;
 - d. Maintains for use on any place or premises occupied by him a coin operated gaming device; or,
 - e. Is a public servant who shares in the proceeds of a gambling business whether by way of a bribe or otherwise.
- 7. The term "coin operated gaming device" means any machine which is:
 - a. A so-called "slot" machine which operates by means of the insertion of a coin, token or similar object and which, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive cash, premiums, merchandise, or tokens; or
 - b. A machine which is similar to machines described above and is operated without the insertion of a coin, token, or similar object.
 - c. The term "coin operated gaming device" does not include a bona fide vending or amusement machine in which gambling features are not incorporated as defined in North Dakota Century Code 53-04-01.
- 8. Officers to seize apparatus.
 - a. Every police officer of the City who arrests any person for violation of the provisions of this section shall also seize any table, cards, deice, or other article, device, or apparatus, suitable to be used for gambling purposes, found in the possession or under the control of the person so arrested, and shall deliver the same to the Police Magistrate of the City.

9. Police Magistrate to dispose of confiscated equipment.

- a. The Police Magistrate to whom anything suitable to be used for gambling purposes is delivered, pursuant to the foregoing section, shall determine the character of the thing so delivered to him and whether it was actually employed by the accused in the violation of this section, and if he finds that it is suitable for gambling purposes and that it has been used by the accused in violation of this section, he shall cause it to be destroyed or delivered to the State's Attorney of Pembina County as the interests of justice in his judgment require.

10. Police not to be interfered with.

- a. No owner, keeper of, or any person within any gambling house or gambling room within the City shall refuse to permit the Chief of Police or any police officer to enter the same for purpose of seeing that the ordinances of the City are enforced, nor shall in any way hinder or interfere with such officer in the discharge of his duties.

Division 4 – Sexual Offenses

13.0406 Prostitution

1. A person is guilty of the offense of prostitution if that person:
 - a. Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business;
 - b. Solicits another person with the intention of being hired to engage in sexual activity; or
 - c. Agrees to engage in sexual activity with another for money or other items of pecuniary value.
2. Testimony of a person against his or her spouse shall be admissible to prove offenses under this section involving the spouse's prostitution.
3. In this section:
 - a. A "house of prostitution" is any place where prostitution is regularly carried on by a person under the control, management or supervision of another.
 - b. An "inmate" is a prostitute who acts as such in or through the agency of a house of prostitution.
 - c. "Sexual activity" means sexual act or sexual contact as those terms are defined in North Dakota Century Code section 12.1-20-02.

13.0407 Fornication

It is an offense for a minor to engage in a sexual act, unless such act was committed against the minor in violation of North Dakota Century code 12.1-20-01 through 12.1-20-07

Division 5 – Sunday Business or Labor

13.0408 Business or Labor on Sunday

1. Except as otherwise provided in this section, it is a class B misdemeanor for any person between the hours of 12 midnight and 12 noon on Sunday to engage in or conduct business or labor for profit in the usual manner and location, operate a place of business open to the public, or authorize or direct that person's employees or agents to take action prohibited under this section. This subsection does not apply to any person who in good faith observes a day other than Sunday as the Sabbath, if that person refrains from engaging in or conducting business or labor for profit and closes the place of business to the public between the hours of twelve midnight and twelve noon on the day observed as the Sabbath.
2. Except for items sold at hobby shows, craft show, fairs, exhibits, occasional rummage sales including garage sales or other sales for which a sales tax permit is not required, and tourist attractions that derive at least 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 12 midnight and 12 noon on Sunday is prohibited:
 - a. Clothing other than work gloves and infant supplies;
 - b. Clothing accessories;
 - c. Wearing apparel other than that sold to a transient traveler under emergency conditions;
 - d. Footwear;
 - e. Headwear;
 - f. Home, business, office or outdoor furniture;
 - g. Kitchenware;
 - h. Kitchen utensils;
 - i. China;
 - j. Home appliances;
 - k. Stoves;
 - l. Refrigerators;
 - m. Air conditioners;
 - n. Electric fans;
 - o. Radios;
 - p. Television sets;
 - q. Washing machines
 - r. Dryers;
 - s. Cameras;
 - t. Hardware other than emergency plumbing, heating, cooling or electrical repair or replacement parts and equipment;
 - u. Tools other than manually driven hand tools;
 - v. Jewelry;
 - w. Precious or semiprecious stones;
 - x. Silverware;
 - y. Watches;
 - z. Clocks;
 - aa. Luggage;
 - bb. Motor vehicles other than the daily rental of vehicles by business whose sole activity is automobile rental;
 - cc. Musical instrument
 - dd. The sale of audio or video recordings, records or tapes. Rental of these items is permitted;
 - ee. Toys other than those customarily sold as novelties or souvenirs;
 - ff. Mattresses;
 - gg. Bed coverings;
 - hh. Household linens;
 - ii. Floor coverings;
 - jj. Lamps;
 - kk. Draperies;
 - ll. Blinds;
 - mm. Curtains;
 - nn. Mirrors;
 - oo. Cloth piece goods;

- pp. Lawnmowers;
 - qq. Sporting or recreational goods other than those sold or rented on the premises where sports or recreational activities are conducted;
 - rr. Paint and building and lumber supplies.
3. Subject to the limitations of this subsection and subsection 2, a business specified in this section may operate in the business' usual manner, location, and for its usual purposes. The businesses authorized under this subsection to operate on Sunday include:
- a. Restaurants, cafeterias or other prepared food service organizations;
 - b. Hotels, motels and other lodging facilities;
 - c. Hospitals and nursing homes, including the sale of giftware on the premises;
 - d. Dispensaries of drugs and medicines;
 - e. Ambulance and burial services;
 - f. Generation and distribution of electric power, water, steam, natural gas, oil or other fuel used as a necessary utility;
 - g. Distribution of gas, oil and other fuels;
 - h. Telephone, telegraph and messenger services;
 - i. Heating, refrigeration and cooling services;
 - j. Railroad, bus, trolleys, subway, taxi and limousine services;
 - k. Water, air and land transportation services and attendant facilities;
 - l. Cold store warehouse;
 - m. Ice manufacturing and distribution facilities and services;
 - n. Minimal maintenance of equipment and machinery;
 - o. Plant and industrial protection services;
 - p. Industries where continuous processing or manufacturing is required by the very nature of the process involved.
 - q. Newspaper publication and distribution;
 - r. Newsstands;
 - s. Radio and television broadcasting;
 - t. Motion picture, theatrical and musical performances;
 - u. Motor vehicle service stations that sell motor fuel and motor oil, and that customarily provide daily repair services or products for any of the following systems or parts of a motor vehicle:
 - a. Air conditioning system;
 - b. Batteries;
 - c. Electrical system;
 - d. Engine cooling system
 - e. Exhaust system;
 - f. Fuel system;
 - g. Tires and tubes;
 - h. 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 City Council may, by ordinance increase the number of employees)
 - ee. Bait shops for the sale of live bait and fishing tackle;
 - ff. Floral nurseries;
 - gg. Christmas tree stands;

- hh. Hobby shows, craft shows, fairs, exhibits;
- ii. Occasional rummage sales, including garage sales or other sales for which a sales tax permit is not required;
- jj. Community festivals licensed or authorized by the City Council;
- 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;
- mm. Notwithstanding subsection 2, telemarketing of goods and services.
- nn. Bingo halls and onsite food concessions between the hours of 12 midnight and one a.m. and within the hours permitted under 13.0408(1).

Division 6 – Alcohol Related Offenses

13.0409 Persons Less than 21 Years Prohibited – Exceptions

1. Any person under 21 years of age manufacturing or attempting to manufacture alcoholic beverages, purchasing or attempting to purchase alcoholic beverages, consuming or having recently consumed alcoholic beverages other than during a religious service, being under the influence of alcoholic beverages, or being in possession of alcoholic beverages, or furnishing money to any person for such purchase, or entering any licensed premises where alcoholic beverages are being sold or displayed, except as provided in subsection 2, is guilty of an offense.
2. Any person under 21 years of age may remain in a restaurant where alcoholic beverages are being sold if accompanied by a parent or legal guardian, or in accordance with 8.0619, or if the person is a law enforcement officer entering the premises in the performance of official duty. The court may, under this section, refer the person to an out-patient addiction facility licensed by the State Department of Health and Consolidated Laboratories for evaluation and appropriate counseling or treatment.

13.0410 Misrepresentation of Age – Obligations of Licenses

Any person who misrepresents or misstates that person's age or the age of any other person or who misrepresent that person's age through presentation of any document purporting to show that person to be of legal age to purchase alcoholic beverages is guilty of an offense. Every 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.

13.0411 Adults Liable for Violation

Any adult person who purchase intoxicating liquor or beer for the purpose of distributing the same to a minor or minors, or, who does distribute the same to a minor or minors shall be deemed guilty of a violation of this charger and subject to prosecution under the terms thereof.

13.0412 Bottle Clubs Prohibited

Any person operating an establishment whereby persons are allowed to bring their own alcoholic beverages on the premises where the proprietor sells soft drinks, mix, ice, or charges for bringing such beverages on the premises, are guilty of an offense.

13.0413 Possession of Open Bottle on Streets

No person shall have in his possession an open bottle containing intoxicating liquor or beer on any street, alley, or thoroughfare in the City.

13.0414 Public Intoxication – Assistance – Medical care

A peace officer has authority to take any apparently intoxicated person to the person's home, to a local hospital, to a detoxification center, or, whenever that person constitutes a danger to himself or others, to a jail for purposes of detoxification. A duly licensed physician of a local hospital or a licensed addiction counselor of a detoxification center has authority to hold that person for treatment up to 72 hours. That intoxicated person may not be held in jail because of intoxication more than 24 hours. An intoxicated person may not be placed in a jail unless a jailer is constantly present within hearing distance and medical services are provided when the need is indicated. Upon placing that person in a hospital, detoxification center, or jail, the peace officer shall make a reasonable effort to notify the intoxicated person's family as soon as possible. Any additional costs incurred by the City on account of an intoxicated person shall be recoverable from that person.

13.0415 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.

Division 7 – Regulation of Minors

13.0416 Curfew

It shall be unlawful for any person under 16 years of age to loiter or remain upon the streets, alleys, public places of the City at night as follows:

1. During the months of September through April of each year, between the hours of 9:30 o'clock P.M. and 5:00 o'clock A.M.
2. During the months of May through August of each year between the hours of 10:00 o'clock P.M. and 5:00 o'clock A.M.

This section shall not apply to any person accompanied by a parent or guardian or other proper legal custodian, or to any person engaged or employed in any lawful business or occupation requiring him or her to be in or upon said street, alley, or public places or thoroughfares of the City, or to any person going to or from such business or occupation, or to any person having written order or permit from parent or guardian, or other proper legal custodian dated as of the date when found in or upon such streets, alleys, or public places or thoroughfares of the City.

13.0417 Use of Streets Restricted As To Minors

It shall be unlawful for any boy or girl to loiter on the street and to make any undue noise by shouting or yelling or otherwise disturb the peace and quiet of the City.

13.0418 Arrest, Trial, and Punishment of Violators

Any boy or girl who shall violate the provisions of 13.0417 shall be subject to arrest by any police officer without a process.

Upon such arrest, such person shall be taken and delivered to his or her parents or guardian or employer, as the case may be.

Upon a subsequent offense such offender shall be taken by such officer or person before the Police Magistrate or City Justice, who shall inquire into the condition and circumstances of the person so brought before him, and if it appears that such person is in need of proper parental care, or the proper legal care, custody and control

by a guardian or other legal custodian, and is growing up in mendicancy or vagrancy or is becoming incorrigible, to cause the proper legal steps in such cases to be taken.

13.0419 Duty of Parents

It is hereby made unlawful for any parent, guardian, or other person having legal custody and care of any person under 16 years of age to allow such child, ward, or other person under such age, while in legal custody, to be abroad upon the streets, alleys, public grounds of the City, within the provisions of this article.

13.0420 Contributing to the Delinquency of Minors

Any person who by any act willfully encourages, causes, or contributes to the delinquency or dependency of any minor shall be deemed guilty of a violation of this chapter and subject to prosecution under the terms thereof.

Division 8 – Miscellaneous Offenses – Public Nuisances

13.0421 Sale or Exhibition of Obscene or Loud Books and Pictures Prohibited

No person shall exhibit, sell, or offer to sell any indecent, obscene, or loud book, picture, or other thing, or shall exhibit or perform any indecent, immoral, or loud play, moving picture show, or other representation.

13.0422 Loitering

1. A person commits an infraction if he;
 - a. Loiters in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is a warranted is the fact that the actor takes flight upon appearance of a peace officer, refuses to identify himself, or manifestly tries to conceal himself or any object.
 - b. Loiters in or about a school, college, or university building or grounds, not having any reason or relationship involving custody of, or responsibility for, a pupil or student, or any other specific, legitimate reason for being there, and not having written permission from a school administrator or other person authorized to grant such permission.
2. The word “loiter” means to delay or to stand idly around.
3. Unless flight by the actor or other circumstance makes it impracticable, a peace officer shall, prior to any arrest for an infraction under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct.
4. No person shall be convicted of an offense under this section if the peace officer did not comply with subsection 3, or if it appears at trial that the explanation given by the actor was true and, if believed by the peace officer at the time, would have dispelled the alarm.
5. It shall be an affirmative defense that the defendant’s acts were lawful and he was exercising his right of lawful assembly as part of a peaceful and orderly petition for the redress of grievances, either in the course of labor disputes or otherwise.

13.0423 Opening or Interfering with Fire Hydrants Prohibited

No person shall open or interfere with any fire hydrant of the City without the permission of the Street Commissioner or the Chief of the Fire Department.

13.0424 Possession of Marijuana

Any person, except a person operating a motor vehicle, in possession of not more than one-half ounce of marijuana, is guilty of an offense.

13.0425 Public Nuisances Defined

A public nuisance is a thing, act, failure to act, occupation, or use of property which:

1. Shall annoy, injure, or endanger the safety, health, comfort, or repose of any considerable number of persons.
2. Shall offend the public decency.
3. Shall unlawfully interfere with, obstruct, or tend to obstruct, or render dangerous for passage, a lake, navigable river, bay, stream, canal, or basin, or a public park, square, street, alley, or highway.
4. Shall in any way render any considerable number of persons insecure in life or in use of their property.

13.0426 Public Nuisances Affecting Health

The following are hereby declared to be public nuisances affecting health:

1. All decayed or unwholesome food offered for sale to the public.
2. All ponds, pools of water, or vessels holding stagnant water in which mosquitoes can breed.
3. Carcasses of animals not buried or otherwise disposed of in a sanitary manner within 24 hours of death.
4. Accumulations of manure, tin cans, boxes, decayed animal matter, decayed vegetable matter, or rubbish, which are breeding places for flies, mosquitoes, or vermin.
5. Privy vaults and garbage cans which are not tight from flies
6. The pollution of any public well or cistern, stream, lake, canal, or body of water by sewage, creamery or industrial wastes, or other substances.
7. All noxious weeds and other rank growths of vegetation upon public or private property.
8. Dust, smoke, noxious fumes, gas, soot, or cinders in such quantities as to render the occupancy of property uncomfortable to a person of ordinary sensibilities.

13.0427 Public Nuisances Affecting Morals and Decency

1. All gambling devices, slot machines, and punch boards and games of chance, gambling, or betting.
2. All house kept for the purpose of prostitution or promiscuous sexual intercourse, gambling houses, houses of ill-fame, and bawdy houses, and resorting to any such place and enticing others to resort thereto.
3. All domestic animals in the act of copulation exposed to public view.

4. All places where intoxicating liquors are manufactured, sold, bartered, or given away in violation of law, or where persons are permitted to resort to for the purpose of drinking intoxicating liquors kept for sale, barter, or distributed in violation of law, and all liquors, bottles, kegs, pumps, bars, and other property kept at and used for the maintaining of such a place.
5. Any vehicles used for immoral or illegal purposes.
6. All indecent and obscene pictures, books, pamphlets, magazines, and newspapers.
7. The public use of profane or obscene language.
8. Betting, bookmaking, and all apparatus used in such occupations.
9. Place used for the holding of public dances unless conducted as provided by law.

13.0428 Public Nuisances Affecting Peace and Safety

The following are declared to be a public nuisance affecting public peace and safety:

1. All snow and ice not removed from public sidewalks within a reasonable time.
2. All trees, hedges, billboards, or other obstructions which prevent persons driving vehicles approaching an intersection of public highways from having a clear view of traffic approaching such intersection from cross streets, measured from the property line when 100 feet from such intersection.
3. All limbs of trees which project over a public street or sidewalk which are less than eight feet above the surface of such public sidewalk and nine feet above the surface of such street.
4. All wires over streets, alleys, or public grounds which are strung less than 15 feet above the surface of the ground.
5. All buildings, walls, and other structures which have been damaged by fire, decay, or otherwise, and which so are situated as to endanger the safety of the public.
6. All explosives, inflammable liquids, and other dangerous substances stored in any manner or in amount other than that provided by ordinance.
7. All piles and stacks of hay, straw, forage, and other feed for animals, except as are stacked, situated, or located as permitted by ordinance.
8. All use or display of fireworks except as provided by ordinance.
9. All loud or unusual noises and annoying vibrations which offend the peace and quiet of people's ordinary sensibilities.
10. All buildings and all alterations to buildings made or erected within the fire limits as established by ordinance in violation of the ordinances concerning manner and materials of construction.
11. Obstructions and excavations affecting the ordinary use of the public streets, alleys, and sidewalks, or public ground, except under such conditions as are provided by ordinance.
12. Any use of the public streets or sidewalks which causes large crowds of people to gather, obstructing traffic and the free use of the streets and sidewalks.
13. All hanging signs, awnings, and other similar structures over the streets or sidewalks so situated or constructed as to endanger public safety.

14. The allowing of rain water, ice, or snow to fall from any buildings or structures upon the street or sidewalk or to flow across any sidewalk.
15. All generous, unguarded machinery in any public place or so situated or operated on private property so as to attract the public.
16. The distribution of handbills except as provided by ordinance.
17. All animals, pigeons, or domestic fowl running large.
18. Unsheltered storage of old, used, stripped, junked, and other vehicles machinery implements or equipment and personal property of any kind which is no longer safely usable for the purpose for which it was manufactured for a period of 30 days or more (except in a licensed junk yard) within the City, and any motor vehicle, animal, or articles of personal property which constitutes an obstruction, hazard, or detriment to public traffic, snow removal operations, public safety and public health and morals or which may be abandoned for unclaimed within the City is hereby declared to be a nuisance and dangerous to public safety and shall be abated in the manner prescribed in this article.
19. No person shall, within the City of Walhalla, place himself upon any sidewalks or public street for the purpose of begging or receiving alms, or go about the City of Walhalla from place to place begging alms, without the written permission of the Mayor.
20. No person shall throw or place upon the street or sidewalk in the City of Walhalla any tacks, crockery, scrap iron, glass, tin, wire, or other article or thing liable to cause punctures in the tires of automobiles, bicycles, tricycles, or other vehicles, or to wound, injure, or disable the drivers thereof.

ARTICLE 5 – Sentencing

13.0501 Classification of Offenses

Offenses against the ordinances of this City are divided into two classes, as follows:

1. Offense, for which a maximum penalty of 30 days imprisonment, a fine of \$1,000, or both, may be imposed.
2. Infraction, for which a maximum fine of \$500 may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which he was convicted, been previously convicted of an offense classified as an infraction in state statutes or the ordinances of this or any other North Dakota City may be sentenced as though convicted of an offense. If the prosecution contends that the infraction is punishable as an offense, the complaint shall so specify unless the prosecution is unable with reasonable effort to learn of the prior conviction prior to execution of the complaint.
3. All violations of the provisions of the ordinances of 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 North Dakota Century Code 12-1-32-02 and 13.0502, for the violation of a City ordinance, nor does this section limit the use of deferred or suspended sentences.

13.0502 Sentencing Alternatives

1. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense:
 - 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 any other facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs. This may include community service work for the City or any other public non-profit organization within the City. This may also include that an individual be sentenced to work for the City as payment of any fine levied. Any individual sentenced to work for the City for payment of a fine shall not be required to work more than eight hours a day, and shall be paid an amount as set by the City Council, but which amount shall not be less than the federal minimum wage.

Sentences imposed under this subsection may not exceed in duration the maximum sentences of imprisonment provided in Section 13.0501 or as provided specifically in an ordinance defining an offense.

This subsection shall not be construed as not permitting unconditional discharge of an offender following conviction. Sentences under subdivision e or f shall be imposed in the manner provided in 13.0509. This subsection shall not be construed to prohibit utilization of North Dakota Century Code 40-18-13 relating to suspension of sentence, nor shall this subsection limit the conditions which can be imposed on a probationer under 13.0507.

2. Credit against any sentence to a term of imprisonment must be given by the court to a defendant for all time spent in custody as a result for the criminal offense charged for which sentence was imposed, or as a result of the conduct on which such charged was based. "Time spent in custody" shall include time spent in custody in a jail or mental institution for which the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal.
3. A court may, at any time prior to the time custody of a convicted offender is transferred to a penal institution or institution for treatment, suspend all or a portion of the sentence imposed pursuant to this section.
4. A court may, at any time prior to imposition of sentence, refer a person convicted of driving while under the influence of an intoxicating liquor or a narcotic drug, prior to sentencing, to an approved treatment facility for diagnosis. Upon receipt of the results of this diagnosis, the court may impose a sentence as prescribed in 9.2101 or it may sentence the person to treatment in a facility approved by the State division of alcoholism and drug abuse.
5. 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.
6. 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.

13.0503 Procedure for Trial of Infraction – Incidence

1. Except as provided in this subsection, all procedural provisions relating to the trial of criminal cases as provided in the statutes or rules relating to criminal procedure shall apply to the trial of a person charged with an infraction. A person charged with an infraction is not entitled to be furnished counsel at public expense nor to have a trial by jury unless the person may be subject to a sentence of imprisonment under 13.0501(2).
2. Except as provided in North Dakota Century Code Title 12.1 or the ordinances of this City, all provisions of law and rules of criminal procedure relating to offenses shall apply to infractions, including, but not limited to, the powers of law enforcement officers, the periods for commencing action and bringing a case to trial, and the burden of proof.
3. Following conviction of an infraction, the offender may be sentenced in accordance with 13.0502(1), except that a term of imprisonment may not be imposed except in accordance with of 13.0506(3) or 13.0501(2).
4. If an ordinance provides that conduct is an infraction without specifically including a requirement of culpability, no culpability is required.
5. Except as provided in this section, 13.0501 or 13.0502, or as the context may otherwise indicate differentiation between the infraction classification and the offense classification, the term "offense" refers to all violations of the ordinances of this City including infractions.

13.0504 Special Sanction for Organizations

When an organization is convicted of an offense, the court may, in addition to any other sentence which may be imposed, require the organization to give notice of its conviction to the persons or class of persons ostensibly harmed by the offense, by mail or by advertising in designated areas or by designated media or otherwise.

13.0505 Factors to be Considered in Sentencing

The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations regarding the desirability of sentencing an offender to imprisonment.

1. The defendant's criminal conduct neither caused nor threatened serious harm to another person or his property.
2. The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property.
3. The defendant acted under strong provocation.
4. There were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant's conduct.
5. The victim of the defendant's conduct induced or facilitated its commission.
6. The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury, which was sustained.
7. The defendant has no history of prior delinquency or criminal activity, or has led a law-abiding life for a substantial period of time before the commission of the present offense.
8. The defendant's conduct was the result of circumstances unlikely to recur.
9. The character, history and attitudes of the defendant indicate that he is unlikely to commit another crime.
10. The defendant is particularly likely to respond affirmatively to probationary treatment.
11. The imprisonment of the defendant would entail undue hardship to himself or his dependents.
12. The defendant is elderly or in poor health.
13. The defendant did not abuse a public position of responsibility or trust.
14. The defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise cooperated.

Nothing herein shall be deemed to require explicit reference to these factors in a presentence report or by the court at sentencing.

13.0506 Imposition of Fine – Response to Non-Payment

1. The court, in making a determination of the propriety of imposing a sentence to pay a fine, shall consider the following factors:
 - a. The ability of the defendant to pay without undue hardship;

- b. Whether the defendant, other than a defendant organization, gained money or property as a result of commission;
 - c. Whether the sentence to pay a fine will interfere with the defendant's capacity to make restitution;
 - d. Whether a sentence to pay a fine will serve a valid rehabilitative purpose.
2. The court may allow the defendant to pay any fine or costs imposed in installments. When a defendant is sentenced to pay a fine or costs, the court shall not impose at the same time an alternative sentence to be served in the event that the fine or costs are not paid.
 3. If the defendant does not pay any fine or costs imposed, or make any required partial payment, the courts, upon motion of the prosecuting attorney or on its own motion, may issue an order to show cause why the defendant shows that his default is excusable, the court may, after hearing, commit him to imprisonment until the fine, or costs or both, are fully paid or discharged by labor as provided in North Dakota Century Code section 40-18-12.

The court may not commit a person under this section when the sole reason for his nonpayment is his indigence. An order of commitment under this subsection shall not be for a period in excess of 30 days. As used in this subsection, "fine" does not include a fee established pursuant to section 9.2208 of these ordinances.

13.0507 Incidents of Probation

1. Unless terminated as provided in subsection 2, the period during which a sentence to probation shall remain conditional and be subject to revocation is two 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.

13.0508 Conditions of Probation – Revocation

1. The conditions of probation must be such, as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commit another offense during the period for which the probation remains subject to revocation.
2. When imposing a sentence to probation, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:
 - a. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip the defendant for suitable employment;
 - b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose;
 - c. Attend or reside in a facility established for the instruction, recreation or residence of persons on probation;
 - d. Support the defendant's dependents and meet other family responsibilities;
 - e. Make restitution or reparation to the victim of the defendants for the damage or injury, which was sustained, or perform other reasonable assigned work. When restitution, reparation or

assigned work is a condition of probation the court shall proceed as provided in Section 13.0509;

- f. Pay a fine imposed after consideration of the provisions of 13.0506;
 - g. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abuseable drug without a prescription.
 - h. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.
 - i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
 - j. Promptly notify the probation officer of any change in address or employment.
 - k. Report to a probation officer at reasonable times as directed by the court or the probation officer.
 - l. Submit to a medical examination or other reasonable testing for the purpose of deterring the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
 - m. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
 - n. Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.
 - o. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted or one year, whichever is less.
 - p. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed for the defendant. When reimbursement of indigent defense costs and expenses is imposed as a condition of probation, the court shall proceed as provided in subsection 4 of North Dakota Century Code 12.1-32-08.
 - q. Provide community service for the number of hours designated by the court.
 - r. Refrain from any subscription to, access to, or use of the Internet.
3. When a defendant is sentenced to probation, the defendant must be given a certificate explicitly setting forth the conditions on which the defendant is being released.
4. The court may, upon notice to the probationer, 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, if such continuation, modification, or enlargement is not appropriate, may impose any other sentence that was available under 13.0502 at the time of initial sentencing.
5. Jurisdiction over a probationer may be transferred from the court that imposed the sentence to another court of this state, with the concurrence of both courts. Retransfer of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection may exercise all powers permissible under this chapter over the defendant.

13.0509 Restitution or Reparation – Procedures

1. Prior to imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount thereof. At or following the hearing, the court shall make determinations as to:
 - a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action;
 - b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property;
 - c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitation purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which may not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. Any payments made pursuant to court order must be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, unless the court directs otherwise, be filled, transcribed, and enforced by the person entitled to the restitution or reparation in the same manner as civil judgments rendered by the courts of this state may be enforced.

2. The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.

13.0510 Merger of Sentences – Sentencing for Multiple Offenses

1. Unless the court otherwise orders, when a person serving a term of commitment is committed for another offense or offenses, the shorter term or the shorter remaining term shall be merged in the other term. When a person on probation or parole for an offense committed in this City is sentenced for another offense or offenses, the period still to be served on probation or parole shall be merged in any new sentence of commitment or probation. When the court merges sentences under this subsection it shall forthwith furnish the penal facility in which the defendant is confined under sentence with authenticated copies of its sentence, which shall cite the sentences being merged. If the court has imposed a sentence, which is merged pursuant to this subsection, it shall modify such sentence in accordance with the effect of the merger.
2. A defendant may not be consecutively sentenced to more than one year.

ARTICLE 6 – Penalties

13.0601 Penalty for Violation of Chapter

Any person who is convicted of violating or of failing to comply with any of the provisions of the ordinances contained in this chapter for which a penalty is not specifically set forth, may be punished by a fine of not more than \$1,000 or by imprisonment not to exceed 30 days, or both.

CHAPTER FOURTEEN

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CHAPTER FOURTEEN

FRANCHISES

ARTICLE 1 – Grant of Franchises

14.0101 Power to Grant

The City Council may grant to any person, association, corporation, or limited liability company firm a franchise or special right or privilege to operate or do business in the City, but such franchise shall be subject to the provisions of this article.

14.0102 Compliance with Applicable Laws and Ordinances

The grantee of any franchise during the life of the franchise shall be subject to all lawful exercise of the police power of the City, and to such reasonable regulation, as the City shall by resolution or ordinance provide.

14.0103 Indemnification

The grantee of any franchise shall indemnify and save the City and its agents and employees harmless from all and any claims for personal injury or property damages and any other claims or costs, including attorney's fees, expenses of investigation and litigation of claims and suits thereon which may result from the activities of the grantee of the franchise in the City.

14.0104 Insurance

The provisions of North Dakota Century Code 32-21.1-03 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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 \$250,000 for any one person, property damage, personal injury, or death, and \$500,000 for any single occurrence resulting in property damage, personal injury, or death. The City may demand proof of such insurance coverage through an insurance company licensed to do business in the State of North Dakota.

ARTICLE 2 – United Telephone Mutual Aid Corporation

14.0201 Purpose

This ordinance shall establish a non-exclusive Franchise, which constitutes an agreement between the City of Walhalla (hereinafter the “City”) and United Telephone Mutual Aid Corporation (hereinafter the “Operator”). The Operator agrees to construct, maintain, and operate a communications services system for the distribution of telephone service, digital subscriber lines, broadband services, and DSL video pursuant to the terms of the Franchise. The City agrees to grant all necessary rights and privileges to use public rights of way necessary for the communications services system. This agreement shall, as of the effective date, supersede all existing franchise previously granted by the City to the Operator, or any of its predecessors, subsidiaries, or affiliated companies.

14.0202 Length of Franchise

The length of this Franchise shall be for a term of 20 years from December 5, 2004 through midnight of December 5, 2024.

14.0203 Service Area

The Operator’s service area shall be the entire incorporated area of the City in its present incorporated form or in any later reorganized, or enlarged, or re-incorporated form.

14.0204 Liability and Indemnification

Grantee shall, at all times, keep in effect the following types of insurance coverage:

1. Workforce Liability Insurance upon its employees engaged in any manner in the installation or servicing of its plant and equipment with the City.
2. Property damage liability insurance to the extent of \$250,000 as to each occurrence and \$250,000 aggregate, and person injury insurance to the extent of \$500,000 as to each occurrence and \$500,000 aggregate. Excess bodily injury and property damage of \$1,000,000 each occurrence and \$1,000,000 aggregate. Automobile, bodily injury, and property damage liability combined of \$1,000,000 each occurrence.

Operator shall indemnify, protect, and save harmless the City from and against losses and physical damage to property and bodily injury or death to persons, for property within the City, or by any act of Operator, its agents, or employees.

14.0205 Technical Standards

Grantee shall be governed by technical standards established by the Federal Communications Commission.

14.0206 Operation and Maintenance of System

The Operator shall render efficient service, make repairs promptly, and interrupt services only for good cause and for the shortest possible time. Such interruptions in so far as possible shall be preceded by notice and shall occur during periods of minimum use of the system, if possible.

All service requests and complaints should be responded to within 48 hours of receipt.

14.0207 Emergency Use of Facilities

In case of an emergency or disaster, the Operator shall, upon request of the City, make available its facilities to the City for emergency use during the emergency or disaster.

14.0208 Successors or Assigns

This Franchise shall be binding upon the Operator, its successors and assigns

14.0209 Severability

Each section, subsection, or portion of this ordinance shall be severable if any section, subsection, or portion shall be found to be invalid.

14.0210 Notice

Written notice shall be deemed to have been duly serviced if delivered in person to the individual or the entity for which it was intended, or if delivered by registered or certified US mail to the last business address known to the party who gives notice. All notices and requests shall be addressed to the City of Walhalla as follows:

City:

City Auditor
City of Walhalla
PO Box 318
Walhalla, ND 58282

Operator:

United Telephone Mutual Aid Corporation
411 7th Avenue
Langdon, ND 58249

14.0211 Rates

Operator 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 all communications services.

During the term hereof, the City may regulate rates only if authorized to do so by the Federal Communications Commission regulations and then such regulations shall only be in accordance with the provision of such regulations

In the event that the City has authority to regulate rates, the following procedure shall be used:

1. Before making any changes in the rates and charges to subscribers for the Operator's communications services, Operator shall file in writing with the City a new proposed rates change at least 30 days in advance of the proposed effective date for such rate change. If the City takes no action to set the proposed rate change for hearing, said proposed rate change shall become effective upon the expiration of the 30 day notice.
2. If the City wishes to hold a hearing on the proposed rate change, the hearing shall be held within 45 days of the filing of the proposed rate change by Operator. Following the hearing, the City shall take final action on the proposed rate change within 30 days.

14.0212 Franchise Fee

During the term of the rights granted herein, the Operator shall pay as compensation to the City a sum (franchise fee) equal to 3% of the total gross receipts for grantee's video services. "Gross receipts" shall consist of those revenues derived from the monthly service charges paid by subscribers living within the corporate limits of the City for video programming services. Gross receipts shall not include revenues received from any premium pay services or as installation charges, or fees for reconnections, inspections, repairs, or modifications, of any installation, equipment rental, or state and federal taxes relating thereto.

ARTICLE 3 – Otter Tail Power Company

14.0301

There is hereby granted to Otter Tail Corporation, a Minnesota Corporation, its successors and assigns, hereinafter called the Grantee, for a period of 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 of power system and transmission lines and to operate and maintain the same within and through the City and to transmit electricity to and from 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 the 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 the City, said permission and franchise to become operative and continue under the conditions hereinafter set forth.

14.0302

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 the City or to endanger persons or property or to hinder or to obstruct the use of said avenues, streets, and alleys for public places by the inhabitants of the 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, or public places.

14.0303

All conduits, poles, wires, and pipes installed by virtue of this ordinance shall be installed in such places and in such manner as not necessary 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. 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.

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 have been or may be placed by authority of said City. In the event that said Grantee shall make any unnecessary obstruction 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.

14.0304

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 the 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 of itself and its agents 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 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.

14.0305

Whenever the said Grantee in erecting, constructing and maintaining said lines or poles, shall take up any of the pavements, sidewalk crossings, or curbs on any of the avenues, streets, and alleys, or public places in the 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 City, cause 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 damage to persons or property in erecting, operating, or maintaining said electric system.

14.0306

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 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.

14.0307

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.

14.0308

The rates to be charged by said Grantee in the 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.

14.0309

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.

14.0310

The City reserves the right during the term hereof to enact and assess a franchise fee such as it deems necessary, upon reasonable advance notice to Grantee no less than 30 days

14.0311

In the event the City should sell or transfer real property which is subject to Grantee's franchise and should it become necessary to remove conduits, poles, wires, or pipes installed by virtue of this ordinance the removal shall be done at the expense of the Grantee upon the request of the City.

14.0312

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.

ARTICLE 4 – Midcontinent Communications

14.0401 Purpose

This ordinance shall establish a non-exclusive Franchise, which constitutes an agreement between the City of Walhalla (hereinafter the “City”) and Midcontinent Communications (hereinafter the “Operator”). The Operator agrees to construct, maintain, and operate a communications services system for the distribution of telephone service, digital subscriber lines, broadband services, and DSL video pursuant to the terms of the Franchise. The City agrees to grant all necessary rights and privileges to use public rights of way necessary for the communications services system. This agreement shall, as of the effective date, supersede all existing franchise previously granted by the City to the Operator, or any of its predecessors, subsidiaries, or affiliated companies.

14.0402 Length of Franchise

The length of this Franchise shall be for a term through midnight of December 5, 2024.

14.0403 Service Area

The Operator’s service area shall be the entire incorporated area of the City in its present incorporated form or in any later reorganized, or enlarged, or re-incorporated form.

14.0404 Liability and Indemnification

Grantee shall, at all times, keep in effect the following types of insurance coverage:

1. Workforce Liability Insurance upon its employees engaged in any manner in the installation or servicing of its plant and equipment with the City.
2. Property damage liability insurance to the extent of \$250,000 as to each occurrence and \$250,000 aggregate, and person injury insurance to the extent of \$500,000 as to each occurrence and \$500,000 aggregate. Excess bodily insurance and property damage of \$1,000,000 each occurrence and \$1,000,000 aggregate. Automobile, bodily injury, and property damage liability combined of \$1,000,000 each occurrence.

Operator shall indemnify, protect, and save harmless the City from and against losses and physical damage to property and bodily injury or death to persons, for property within the City, or by any act of Operator, its agents, or employees.

14.0405 Technical Standards

Grantee shall be governed by technical standards established by the Federal Communications Commission.

14.0406 Operation and Maintenance of System

The Operator shall render efficient service, make repairs promptly, and interrupt services only for good cause and for the shortest possible time. Such interruptions in so far as possible shall be preceded by notice and shall occur during periods of minimum use of the system, if possible.

All service requests and complaints should be responded to within 48 hours of receipt.

14.0407 Emergency Use of Facilities

In case of an emergency or disaster, the Operator shall, upon request of the City, make available its facilities to the City for emergency use during the emergency or disaster.

14.0408 Successors or Assigns

This Franchise shall be binding upon the Operator, its successors and assigns

14.0409 Severability

Each section, subsection, or portion of this Ordinance shall be severable if any section, subsection, or portion shall be found to be invalid.

14.0410 Notice

Written notice shall be deemed to have been duly serviced if delivered in person to the individual or the entity for which it was intended, or if delivered by registered or certified US mail to the last business address known to the party who gives notice. All notices and requests shall be addressed to the City of Walhalla as follows:

CITY:	Operator:
City Auditor	Midcontinent Communications
City of Walhalla	3901 N Louise Avenue
PO Box 318	Sioux Falls, SD 57107
Walhalla, ND 58282	

14.0411 Franchise Fee

During the term of the rights granted herein, the Operator shall pay as compensation to the City a sum (franchise fee) equal to 3% of the total gross receipts for grantee's video services. "Gross receipts" shall consist of those revenues derived from the monthly service charges paid by subscribers living within the corporate limits of the City for video programming services. Gross receipts shall not include revenues received from any premium pay services or as installation charges, or fees for reconnections, inspections, repairs, or modifications, of any installation, equipment rental, or state and federal taxes relating thereto.

14.0412 Rates

Operator 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 all communications services.

During the term hereof, the City may regulate rates only if authorized to do so by the Federal Communications Commission regulations and then such regulations shall only be in accordance with the provision of such regulations

In the event that the City has authority to regulate rates, the following procedure shall be used:

1. Before making any changes in the rates and charges to subscribers for the Operator's communications services, Operator shall file in writing with the City a new proposed rates change at least 30 days in advance of the proposed effective date for such rate change. If the City takes no action to set the proposed rate change for hearing, said proposed rate change shall become effective upon the expiration of the 30 day notice.
2. If the City wishes to hold a hearing on the proposed rate change, the hearing shall be held within 45 days of the filing of the proposed rate change by Operator. Following the hearing, the City shall take final action on the proposed rate change within 30 days.

ARTICLE 5 – Montana-Dakota Utilities Co.

14.0501

For convenience, herein, said municipal corporation is designated and referred to as “Municipality” and Montana-Dakota Utilities Co. is designated and referred to as “Grantee”. Any reference to either includes their respective successors and assigns.

14.0502

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, 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.

14.0503

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.

14.0504

This franchise shall not be exclusive and shall not be construed to prevent the Municipality from granting to any other party the right to use the streets, alleys, and public grounds of the Municipality for like purposes.

14.0505

The Municipality serves any right it may have, under its police power, or otherwise, to control or regulate the use of said streets, alleys, and public grounds by Grantee.

14.0506

Grantee shall indemnify and save and hold the Municipality harmless from any loss or damage due to the construction, installation, and maintenance of its distribution system, and its use of the streets, alleys, and public grounds of the Municipality.

14.0507

Grantee shall have the right to assign this franchise to any party, or corporation, but all obligations of Grantee hereunder shall be binding upon its successors and assigns.

14.0508

This franchise shall continue and remain in full force and effect until July 5, 2031.

CHAPTER FIFTEEN

MINIMUM HOUSING STANDARDS

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ARTICLE 5 – UNIFORM BUILDING CODE

- 15.0501 Uniform Building Code

APPENDIX 15-1: “Notice of Hearing

APPENDIX 15-2: “Dangerous Building”

CHAPTER FIFTEEN

MINIMUM HOUSING STANDARDS

ARTICLE 1 – Minimum Housing and Building Code

15.0101 Definitions

The following definitions shall apply to the interpretation and enforcement of this article:

1. “Basement” shall mean a story of a building located partly underground, but having less than two-thirds of its clear floor-to-ceiling height below outside grade.
2. “Ceiling” shall mean the interior overhead surface of a room.
3. “Cellar” shall mean a story of a building located partly or wholly underground and having more than two-thirds of its clear floor-to-ceiling height below outside grade.
4. “City Health Officer” shall mean the legally designated health authority of the City or authorized representative.
5. “Dwelling” shall mean any building, structure, or parts thereof used and occupied for human habitation, or tended to be so used, and includes appurtenances and utilities belonging thereto or usually enjoyed therewith.
6. “Dwelling Unit” shall mean any room or group of rooms located within a building or forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, and eating purposes.
7. “Extermination” shall mean the control and elimination of insects, rodents, or other pests by eliminating their harborage places; by depriving or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, trapping, or any other recognized and legal pest elimination methods approved by the City Health Officer.
8. “Family” shall mean one or more persons occupying a dwelling or dwelling unit and living as a single nonprofit unit.
9. “Garbage” shall mean the animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of food.
10. “Habitable Room” shall mean a room or enclosed floor space used or intended to be used for living, sleeping, cooking, or eating purposes.
11. “Infestation” shall mean the presence, within or around a dwelling, of any insects, rodents, or other pests.
12. Meaning of certain words. Whenever the words dwelling, dwelling unit, rooming house, rooming unit, or premises are used in this article they shall be construed as though they were followed by the words “or any part thereof”. Whenever the masculine pronoun is used it shall also mean the feminine pronoun.
13. “Multiple Dwelling Unit” shall mean any structure or building containing more than one dwelling unit.

14. "Occupant" shall mean any person, over one year of age, living, sleeping, cooking, eating in, or having actual possession of a dwelling or dwelling unit or rooming unit.
15. "Operator" shall mean any person who has charge, care, or control of a building or parts thereof, in which dwelling units or rooming units are let.
16. "Owner" shall mean any person who alone, jointly, or severally with others:
 - a. Shall have legal title to any dwelling or dwelling unit, without accompanying actual possession thereof; or,
 - b. Shall have charge, care, or control of any dwelling or dwelling unit, as owner or agent of owner, as an executor, administrator, trustee, or guardian of the estate of the owner.
17. "Person" shall mean and include any individual, firm, corporation, association, or partnership.
18. "Plumbing" shall mean and include all of the following supplied facilities and equipment: gas pipes, gas burning equipment, water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basins, drains, vents, and any other similar supplied fixtures, together with all connections to water, sewer, or gas lines.
19. "Repair" shall mean to restore to good condition.
20. "Rooming House" shall mean a dwelling in which more than two rooms are let for hire, or more than four persons are given lodging for compensation.
21. "Rubbish" shall mean combustible materials, except garbage, and the terms shall include the residue from the building of wood, coke, and other combustible material such as paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, glass, crockery, and dust.
22. "Substandard" shall mean any dwelling, dwelling unit, or premises violating any provisions of this article.
23. "Supplied" shall mean paid for, furnished, or provided by or under the control of the owner or operator.
24. "Temporary Housing" shall mean any tent, trailer, or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure, or to any utilities system and located on the same premises for more than 30 consecutive days.

15.0102 Inspection of Dwellings, Dwelling Units, Rooming Units, and Premises

The City Health Officer is hereby authorized and directed to make inspections to determine the conditions of all dwellings, dwelling units, rooming units, and premises located within the City in order that he may perform his duty of safeguarding the health and safety of the occupants of such dwellings and of the general public.

For the purpose of making such inspections, the City Health Officer is hereby authorized to enter, examine, and survey at reasonable times all dwellings, dwelling units, rooming units, and premises.

The owner or occupant of every dwelling, dwelling unit, or the person in charge thereof shall give the City Health Officer access to such dwelling, dwelling unit, rooming unit, and its premises, at reasonable times for the purpose of inspection.

15.0103 Dwelling Unit Unfit for Human Habitation or Building Substandard

The City Health Officer shall determine that a dwelling is unfit for human habitation or a building is substandard, if he finds that any of the following conditions exist:

1. Building supporting members which show 33% or more of damage or deterioration.
2. Buildings that have interior or outside walls or coverings which show 50% or more damage or deterioration.
3. Buildings which have floors or roofs with improperly distributed loads, which are overloaded, or which have insufficient strength to be reasonably safe for the purpose used or such framing members deflect over 1/360 of the span.
4. Buildings which have been damaged by fire, wind, or other causes that endanger the lives, safety, or welfare of the occupants or others.
5. Buildings which are dilapidated, decayed, unsanitary, or in disrepair which are likely to cause sickness or disease, or to cause injury to the health, safety, or welfare of the occupants or to other people of the City.
6. Buildings in which each living unit does not have safe or unobstructed means of egress leading to a safe and open space at ground level as required by the City Building Code.
7. Buildings which have defects therein increasing the hazards of fire, accidents, or other calamities such as lack of adequate ventilation, light, heating, or sanitary facilities as endangering the health, morals, safety, or general welfare of the occupants or other residents of the City.
8. Buildings which are in violation of any provisions of the building regulations, plumbing code, electrical code, fire prevention, or ordinances of the City.
9. Buildings in which the interior walls, ceilings, and floors of all habitable rooms are not of durable material, in good repair, and well painted.
10. Buildings in which the exterior walls, ceilings, and floors of all habitable rooms are not of durable material, in good repair, and well painted.
11. Buildings or premises that violate any ordinance of the City relative to sanitation and safety.
12. Dwelling units in which the bedrooms or bathrooms are not available through hallways or other means to assure the privacy of occupants.

13.0104 Basements and Cellars

No basement or cellar space shall be used for a dwelling unit or habitable room unless:

1. The floors and walls are damp-proofed and impervious to leakage of underground or surface moisture and insulated against dampness.

2. Total of the window area in each room is equivalent to 10 percent of the floor space of such room, or no less than that considered adequate and reasonable as compared to the floor space of such room.
3. The total openable window area for ventilating each room is equivalent to at least five percent of the floor space of such room, or where there is supplied some other device affording equivalent ventilation and approved by the City Health Officer.
4. Every window which is below the grade of the ground adjoining such window shall have light wells or areaways extending at least 20 inches out from said window throughout the entire width of the window.

13.0105 Responsibility of Owners and Occupants

1. Every owner of a dwelling or dwelling unit containing two or more dwelling units shall be responsible for maintain in a clean and sanitary condition the shared or public areas of the dwelling and premises.
2. Every occupant of a dwelling or building shall keep in a clean and sanitary condition that part of the dwelling, dwelling unit, and premises thereof which he occupies and controls.
3. Every occupant of a dwelling or dwelling unit shall dispose of all rubbish in a clean and sanitary manner by placing it in the rubbish containers as required by City ordinance.
4. No owner shall occupy or let to any other occupant any vacant dwelling unit unless it is clean, sanitary, fit for human habitation, and not in violation with this article.
5. Every occupant of dwelling or dwelling unit shall dispose of all garbage and any other organic waste which might be food for rodents, in a sanitary manner by placing it in the garbage disposal facilities or garbage storage containers as required by City ordinance. It shall be the responsibility of the owner to supply such facilities or containers for all dwelling units in a dwelling containing more than two dwelling units and for all dwelling units located on the premises where more than two dwelling units share the same premises. In all other cases, it shall be the responsibility of the occupants to furnish such facilities or containers.
6. Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents, or other pests therein or on his premises; and every owner of the dwelling or building containing more than one dwelling unit within such building shall be responsible in the same manner.

15.0106 Duties of Occupants

It shall be the duty of every occupant of a dwelling to:

1. Keep the dwelling unit and grounds pertaining to it in a clean and sanitary condition, free from fire hazards, free of rodents, household pests, and vermin harborage.
2. Keep all plumbing in reasonable good working order and free of obstruction.
3. Provide sound and tight garbage, rubbish, and ash containers when the same are not supplied by the owner, and keep all containers by whomever supplied in a clean and sanitary condition.
4. Comply with the requirements of this article when the duties mentioned therein fall on the occupant. Comply with the occupancy and overcrowding requirements and limitations of this article.

15.0107 Occupancy and Overcrowding

No owner or occupancy shall permit overcrowding in any dwelling unit or portion thereof as determined and measured by the following standards.

1. Every dwelling unit shall contain at least 160 square feet of space for the first occupant and at least 100 square feet for each additional occupancy.
2. No sleeping room shall have a floor area of less than 80 square feet.
3. The total of all habitable rooms in a dwelling unit shall be such as to provide at least 100 square feet of floor area per person of the family over 12 years of age and at least 50 square feet of floor area per person of the family under 12 years of age.
4. In computing the floor area under this section, only those portions of the floor having a ceiling height of at least seven feet, six inches in height shall be included.

15.0108 Applicability of the City Building Code

Whenever the provisions of this article require the construction, installation, alteration, repair of a dwelling or dwelling unit, or its facilities, utilities or equipment, the required work shall be done in full compliance with the applicable provisions of the Building Code, the Plumbing Code, and the Electrical Code as adopted.

ARTICLE 2 – Substandard Buildings or Dwelling Units, Nuisance

15.0201 Buildings Declared a Nuisance

Any buildings or dwelling units which violate the terms of 15.0103 through 15.0108 are hereby declared a public nuisance and dangerous to public health and shall be repaired, vacated, demolished, or said violations discontinued as hereinbefore and hereinafter provided.

ARTICLE 3 – Enforcement

15.0301 Duties of the City Health Officer

Whenever the City Health Officer determines there has been a violation of any provisions of this ordinance, he shall notify in writing the owner, occupant, lessee, mortgagee, and all other persons having an interest in said building or dwelling as shown by the records of the Register of Deeds of Pembina County, and any dwelling, dwelling unit, or building found by him to be substandard as set forth in this article, that:

1. The owner must vacate, repair, or demolish said building or may have it repaired in accordance with the terms of the Notice and Order.
2. The owner or occupant must vacate said building or may have it repaired in accordance with the Notice and Order and remain in possession.
3. Provided, that any person notified under this article to repair, vacate, or demolish any building shall be given such reasonable time as may be necessary to do, or have done, the work or acts required by the Notice and Order provided herein and in case such building must be vacated such vacation notice shall be complied with in 30 days and such repair or demolition order shall be complied with in 90 days.
4. Set forth in the Notice and Order, provided in subsection 1 herein, a description of the building or structure deemed substandard, a statement of particulars which makes the building or structure a “substandard building” and an order requiring the same to be put in such condition with the terms of the article and within such time as specified but not to exceed 90 days.
5. Report to the Board of Health any noncompliance with the “Notice and Order”, provided for in subsections 1, 2, 3, and 4 herein.
6. Appear at all hearings conducted by the City Council and testify as to the conditions of the “substandard building”.
7. Place a Notice and Order on all “substandard buildings” reading as follows: “This building has been found to be a ‘substandard building’ by the City Health Officer. This Notice and Order is to remain on this building until it is repaired, vacated, or demolished in accordance with the Notice and Order which has been given to the owner, occupant, lessee, or mortgagee of this building and all other persons having an interest in said building as shown by Pembina County. It is unlawful to remove this Notice and Order until such Notice and Order is complied with.”

15.0302 Duties of Governing Board

The Board of the City shall:

1. Upon receipt of a report of the City Health Officer as provided for in 15.0301(5) thereof, given written notice to the owner, occupant, lessee, mortgagee, and all other persons having an interest in said building or dwelling as shown by the records of the Register of Deeds of Pembina County, to appear before it on the date specified in the Notice and Order to Show Cause why the building or dwelling unit reported to be a “substandard building or substandard dwelling unit” should not be repaired, vacated, or demolished in accordance with the statement of particulars set forth in the City Health Officer’s Notice and Order, provided herein 15.0301(4).
2. Hold a hearing and hear such testimony as the City Health Officer or the owner, occupant, mortgagee, lessee, or any other person having an interest in said building as shown by the record of the Register of Deeds of Pembina County shall offer relative to the “substandard building or dwelling unit”.

3. Make written findings of fact from the testimony offered pursuant to subsection 2 herein as to whether or not the building in question is a “substandard building or dwelling unit” within the terms of 15.0103 through 15.0201 of this chapter.
4. Issue an order based upon the findings of actor pursuant to subsections 1, 2, or 3 of 15.0301 commanding the owner, occupant, lessee, mortgagee, and all other persons having an interest in said building as shown by the records of the Register of Deeds of Pembina County to repair, vacate, or demolish any building found to be a “substandard building” within the terms of this chapter.

15.0303 Failure to Comply with the Decision of the Board

If the owner, occupant, mortgagee, or lessee fails to comply with the order of the Board or fails to appeal to the District Court within 30 days as provided herein, the City through its officers and employees shall cause such building or structure to be repaired, vacated, or demolished as ordered by the Board and shall cause the cost of such repair, vacation, or demolition to be charged against the land on which the said building exists by special assessment, or as a municipal lien, or shall cause the said cost of removal to be levied as a special tax against the land upon which said building stands or did stand or to be recovered in a suit at law against the owner.

15.0304 Penalty for Disregarding the Notice and Order

The owner of any “substandard building or dwelling unit” who shall fail to comply with any Notice and Order to repair, vacate, or demolish the said building or structure given by any authorized person is guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding \$1000 for each offense and every day subsequent to such notice in which said owner shall fail to comply with said Notice and Order as above stated shall be deemed a separate offense.

The occupant or lessee in possession who fails to comply with a Notice and Order to vacate and who fails to repair said building in accordance with any Notice and Order given as provided for in this article shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding \$1000 for each offense and every day subsequent to such notice in which the said occupant or lessee shall fail to comply with said Notice and Order as above stated shall be deemed a separate offense.

Any person removing the Notice and Order provided for in 15.0301(7) thereof shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding \$1000 for each offense.

15.0305 Duties of City Attorney

The City Attorney shall:

1. Prosecute all persons failing to comply with the terms of the Notice and Order provided for 15.0301(7), and prepare findings of fact and order provided for in subsections 3 and 4 of 15.0302.
2. Appear at all hearings before the Board in regard to “substandard buildings”.
3. Take such other legal action as is necessary to carry out the terms and provisions of this article.

15.0306 Where Owner Absent from the City

In cases, except emergency cases, where the owner, occupant, lessee, or mortgagee is absent from the City, all Notices and Orders provided for herein shall be sent by registered or certified mail to the owner, occupant, mortgagee, and all other persons having an interest in said building as shown by the land records of the Register of Deeds of Pembina County to the last known address of each and a copy of such Notice and Order shall be posted in a conspicuous place on the “substandard buildings” to which it relates, such mailing and posting shall be deemed adequate service.

15.0307 Emergency Action by the City Health Officer

Whenever the City Health Officer finds that an emergency exists which requires immediate action to protect the public health he may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as he deems necessary to meet the emergency. Notwithstanding the other provisions of this chapter, such order shall be effectively immediately. Any person to whom an order is directed shall comply therewith immediately, but upon petition to the City shall be afforded a hearing as soon as possible in the manner provided in 15.0302. After such hearing, depending upon the findings as to whether the provisions of this article have been complied with, the Board shall continue such order in effect, or modify it, or revoke it.

15.0308 Appeal

The Board shall serve upon the owner, occupant, mortgagee, lessee, and all other persons having an interest in such building so ordered repaired, vacated, or demolished, a copy of its order, such order to be served upon such owner, occupant, mortgagee, or lessee within 10 days after the issuance of such order. Such owner, occupant, mortgagee, or lessee shall thereafter have 30 days from the date of service of such order served upon him in which to appeal from such order to the District Court of Pembina County or take such other legal steps to enjoin the enforcement of such order as he may deem proper.

Any person desiring to appeal from any order issued by the Board under and by virtue of this section shall file an undertaking in the sum of at least \$1000 to be approved by the City Auditor and conditioned that the appellant will prosecute the appeal without delay and will pay all costs that may be adjudged against him in District Court. Such undertaking shall be payable to the City.

15.0309 Enforcement of Interpretation

This article shall be enforced by the City Health Officer in accordance with the provisions of this article.

15.0310 Penalties

Unless otherwise set forth, any person who violates any provisions of this ordinance shall be fined not more than \$1000 or be imprisoned for a period not to exceed 30 days or be both fined and imprisoned, at the discretion of the Court having jurisdiction. Each and every violation of the provisions of this article shall constitute a separate offense.

15.0311 Unconstitutionality Clause

Should any section, paragraph, sentence, clause, or phrase of this article be declared unconstitutional or invalid for any reason, the remainder of this article shall not be affected thereby.

ARTICLE 4 – Dangerous Buildings

15.0401 Dangerous Buildings Defined

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

1. Those whose interior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center or gravity falls outside of the middle third of its base.
2. Those which exclusive of the foundation, show 33% or more, damage or deterioration of the supporting member or members, or 50% of damage or deterioration of the non-supporting enclosing or outside walls or covering.
3. Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used.
4. Those which have been damaged by fire, wind, or other causes so as to have become dangerous to life, safety, morals, or the general health and welfare of the occupants or the people of the City.
5. Those which have become or are so dilapidated, decayed, unsafe, unsanitary, or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation or are likely to cause sickness or disease so as to work injury to the health, morals, safety, or general welfare of those living within.
6. Those having inadequate facilities for egress in case of fire or panic or those having insufficient stairways, elevators, fire escapes, or other means of communication.
7. Those which have parts thereof which are so attached that they may fall and injure members of the public or property.
8. Those which because of their condition are unsafe, unsanitary, or dangerous to health, morals, safety, or general welfare of the people of this City.
9. Those buildings existing in violation of any provisions of the Building Code, of the Fire Prevention Code, Electrical or Plumbing Codes or of other ordinances of this City.

15.0402 Standards for Repair, Vacation, or Demolition

The following standards shall be followed in substance by the Building Inspector and the City Council in ordering repair, vacation, or demolition.

1. If the “dangerous building” can reasonably be repaired so that it will no longer exist in violation of the terms of this article it shall be ordered repaired.
2. If the “dangerous building” is in such condition as to make it dangerous to the health, morals, safety, or general welfare of its occupants it shall be ordered to be vacated.
3. In any case where a “dangerous building” is 50% damaged or decayed or deteriorated from its original value or structure, it shall be demolished, and in all cases where a building cannot be repaired so that it will no longer exist in violation to the terms of this article it shall be demolished. In all cases where a “dangerous building” is a fire hazard existing or erected in violation of the terms of this article or any ordinance of the City or statute of the State of North Dakota, it shall be demolished.

15.0403 Dangerous Buildings, Nuisances

All “dangerous buildings” within the terms of 15.0401 are hereby declared to be public nuisances and shall be repaired, vacated, or demolished as hereinbefore and hereinafter provided.

15.0404 Duties of Building Inspector

The Building Inspector shall:

1. Inspect or cause to be inspected semiannually, all public buildings, schools, halls, churches, theaters, hotels, tenements, commercial, manufacturing or loft buildings for the purpose of determining whether any conditions exist which render such places a “dangerous building” within the terms of 15.0401.
2. Inspect any building, wall or structure about which complaints are filed by any person to the effect that a building, wall, or structure is or may be existing in violation of this article.
3. Inspect any building, wall, or structure reported (as hereinafter provided for) by the Fire or Police Departments of this City as probably existing in violation of the terms of this article.
4. Notify in writing the owner, occupant, lessee, mortgagee, and all other persons having an interest in said building, as shown by the records in the office of the Register of Deeds of Pembina County, of any building found by him to be a “dangerous building” within the standards set forth in 15.0401 that
 - a. The owner must vacate, repair, demolish said building in accordance with the terms of the notice and this article;
 - b. The owner or occupant must vacate said building or may have it repaired in accordance with the notice and remain in possession. Provided, that any person notified under this subsection to repair, vacate, or demolish any building shall be given such reasonable time, not exceeding 30 days, as may be necessary to do, or have done, the work or act required by the notice provided for herein.
5. Set forth in the notice provided for in subsection 4 hereof, a description of the building, or structure deemed unsafe, a statement of the particulars which make the building or structure a “dangerous building” and an order requiring the same to be put in such condition as to comply with the terms of this ordinance within such length of time, not exceeding 30 days, as is reasonable.
6. Report to the Board of the City any noncompliance with the “notice” provided for in subsections 4 and 5 hereof.
7. Appear at all hearings conducted by the Board testify as to the condition of “dangerous buildings”.
8. Place a notice on all “dangerous buildings” reading as follows: “This building has been found to be a dangerous building by the Building Inspector. This notice is to remain on this building until it is repaired, vacated, or demolished in accordance with the notice which has been given the owner, occupant, lessee, or mortgagee of this building and all other persons having an interest in said building as shown by the records of the Register of Deeds of Pembina County. It is unlawful to remove this notice until such notice is complied with.”

15.0405 Duties of the Board

The Board shall:

1. Upon receipt of a report of the Building Inspector as provided for in 15.0404(6), given written notice to the owner, occupant, mortgagee, lessee and all other persons having an interest in said building as shown by the records of the Register of Deeds of Pembina County to appear before it on the date specified in the notice to show cause why the building or structure reported to be a “dangerous building” should not be repaired, vacated, or demolished in accordance with the statement of particulars set forth in the Building Inspector’s notice provided for in 15.0404(5).
2. Hold a hearing and hear such testimony as the Building Inspector or the owner, occupant, mortgagee, lessee, or any other person having an interest in said buildings as shown by the records of the Register of Deeds of Pembina County shall offer relative to the “dangerous building”.
3. Making written findings of fact from the testimony offered pursuant to subsection 2 as to whether or not the building in question is a “dangerous building” within the terms of 15.0401.
4. Issue an order based upon findings of fact made pursuant to subsection 3 commanding the owner, occupant, mortgagee, lessee, and all other persons having an interest in said building as shown by the records of the Register of Deeds of Pembina County to repair, vacate, or demolish any building found to be a “dangerous building” within the terms of this article and provided that any person so notified, except the owners, shall have the privilege of either vacating or repairing said “dangerous building”.

15.0406 Failure to Comply with Decision of the Board

If the owner, occupant, mortgagee, or lessee fails to comply with the order of the Board or fails to appeal to the District Court within 30 days as provided herein, the City through its officers and employees shall cause such building or structure to be repaired, vacated, or demolished as ordered by the Board and shall cause the costs of such repair, vacation, or demolition to be charged against the land on which said building existed by special assessment, or a municipal lien, or shall cause said cost of removal to be levied as a special tax against the land upon which said building stands or did stand or to be recovered in a suit at law against the owner.

15.0407 Violations; Penalty for Disregarding Notices of Orders

The owner or any “dangerous building” who shall fail to comply with any notice or order to repair, vacate, or demolish said building given by any person authorized by this article to give such notice or order shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding \$1000 for each offense and every day subsequent to such notice in which the said owner shall fail to comply with any notice or order as above stated, shall be deemed a separate offense.

The occupant or lessee in possession who fails to comply with any notice to vacate and who fails to repair said building in accordance with any notice given as provided for in this article shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding \$1000 for each offense, and every day subsequent to such notice in which the said owner shall fail to comply with any notice or order as above stated, shall be deemed a separate offense.

Any person removing the notice provided for in 15.0404(8) shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding \$1000 for each offense.

15.0408 Duties of the City Attorney

The City Attorney shall:

1. Prosecute all persons failing to comply with the terms of the notices provided for in subsections 4 and 5 of 15.0405.
2. Appear at all hearings before the Board in regard to “dangerous buildings”.

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

15.0409 Where Owner Absent from the City

In cases, except emergency cases, where the owner, occupant, lessee, or mortgagee is absent from the City all notices or orders provided for herein shall be sent by registered or certified mail to the owner, occupant, mortgagee, lessee, and all other persons having an interest in said building as shown by the land records of the Register of Deeds of Pembina County to the last known address of each, and a copy of such notice shall be posted in a conspicuous place on the “dangerous building” to which it relates. Such mailing and posting shall be deemed adequate service.

15.0410 Duties of Fire, Police, and Health Departments

All employees of the Fire, Police, and Health Department shall make written reports to the building inspector of all buildings or structures which are, may be, or are suspected to be “dangerous buildings” as herein defined.

15.0411 Appeal

The Governing Board shall serve upon the owner, occupant, mortgagee, lessee and all other persons having an interest in any such building so ordered repaired, vacated, or demolished, a copy of its order, such notice to be served upon such owner, occupant, mortgagee, or lessee within 10 days after the issuance of such order. Such owner, occupant, mortgagee, or lessee shall thereafter have 30 days from the date of the service of such order upon him in which to appeal from such order to the District Court of Pembina County or to take such other legal steps to enjoin the enforcement of such order as he may deem proper.

Any person desiring to appeal from any order issued by the Board under and by virtue of this article shall file an undertaking in the sum of at least \$1000 to be approved by the City Auditor and conditioned that the appellant will prosecute the appeal without delay and will pay all costs that may be adjudged against him in the District Court. Such undertaking shall be payable to the City.

ARTICLE 5 – Uniform Building Code

15.0501 Uniform Building Code

There is hereby adopted the rules for the construction of buildings as adopted by the Uniform Building Code and any future updates, and amendments to those rules, a copy of which is on file in the office of the City Auditor of the City, and the same is hereby adopted as fully as if it were set out at length herein.

APPENDIX 15-1 – NOTICE OF HEARING

IN THE MATTER OF DANGEROUS BUILDINGS LOCATED AT WALHALLA, NORTH DAKOTA,
UNDER ARTICLE 4.

NOTICE OF HEARING

You are hereby notified that the Building Inspector of Walhalla, has filed with the Board a report that you have not complied with a Notice and Order issued by him that dwellings located at _____ were dangerous buildings and were not to be demolished by you prior to _____, 20____.

You are further notified to appear before the Board of City _____ at _____ on the _____ day of _____, 20____, at the hour of _____ o'clock __.M., to show cause, if any you have, why said building reported to be a “dangerous building” should not be demolished in accordance with the statement of particulars set forth in the Building Inspector’s Notice.

Dated: _____, 20____.

BOARD OF _____
OF THE CITY OF WALHALLA, NORTH DAKOTA

BY: _____
Mayor of the City of Walhalla

ATTESTED TO

BY: _____
Auditor of the City of Walhalla

APPENDIX 15-2 – DANGEROUS BUILDING

IN THE MATTER OF A “DANGEROUS BUILDING” LOCATED ON

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

NOTICE AND ORDER

You are hereby notified that the undersigned, Building Inspector of the City of Walhalla, North Dakota, acting pursuant to Article 4 of Chapter 15, has made an inspection of the following described building in which you are, or appear to be, interested, to-wit:

YOU ARE THEREFOR ORDERD TO _____

The said building on or before the _____ day of _____, 20____.

BUILDING INSPECTOR

Dated this _____ day of _____, 20____.

This is a suggestion as to the warning sign that should be printed in red.

WARNING

WHEREAS, it has been determined by Appropriate Inspection that the Dwelling or Building to which the notice is attached, does not comply with Ordinances _____ of the City of Walhalla, North Dakota; all persons are hereby warned that it is unlawful to rent, lease, let occupy, or permit the use or occupancy of this dwelling or building, for dwelling purposes or as a place of employment for human beings, or to remove or molest this notice.

CITY HEALTH OFFICER

CHAPTER SIXTEEN

ELECTRICAL CODE

ARTICLE 1 – Electrical Code

16.0101 Electrical Code

CHAPTER SIXTEEN

ELECTRICAL CODE

ARTICLE 1 – Electrical Code

16.0101 Electrical Code

There is hereby adopted the rules for electrical wiring and equipment as adopted by the State Electrical Board and any future updates, and amendments to those rules, a copy of which is on file in the office of the City Auditor of the City, and the same is hereby adopted as fully as if it were set out at length herein.

CHAPTER SEVENTEEN

TAXES

ARTICLE 1 – Use Tax

- 17.0101 Use Tax Imposed
- 17.0102 Maximum Tax Imposed
- 17.0103 Officer Liability
- 17.0104 Penalties, Criminal and Civil

ARTICLE 2 – Lodging Tax

- 17.0201 Purpose; Definitions
- 17.0202 Motel-Hotel Tax Imposed
- 17.0203 Duty to Collect Taxes; Delegation of Duty, Effect Thereof
- 17.0204 Reports, Tax Payment; When Due
- 17.0205 Rules and Regulations
- 17.0206 Administration of Tax
- 17.0207 Penalties, Criminal and Civil
- 17.0208 Officer Liability

CHAPTER SEVENTEEN

TAXES

ARTICLE 1 – Use Tax

17.0101 Use Tax Imposed

Except as otherwise provided in this chapter, a use tax of 2% is imposed on the storage, use, or consumption in the City on:

1. The purchase price of tangible personal property purchased at retail for storage, use or consumption within the City.
2. The fair market value of tangible personal property which was not originally purchased for storage, use, or consumption in the City, at the time which it is brought into the City.
3. Alcoholic beverages and tobacco products which are stored, used, or consumed within this City, as provided in North Dakota Century Code 57-39.2-03.2.
4. The purchase price of tangible personal property used by a contractor or sub-contractor to fulfill a contract as set forth in North Dakota Century Code 57-40.2-03.3.

17.0102 Maximum Tax Imposed

No single transaction involving one or more items is subject to a tax in excess of \$50.

17.0103 Officer Liability

1. If a corporation, LLC, or other entity required to hold a permit issued under North Dakota Century Code 57-39.2-18.1 and/or 57-40.2-15.1 fails for any reason to file the required returns or to pay the tax due pursuant to this article, the president, vice president, secretary, or treasurer of the corporation or governor or manager of an LLC, or other comparable principal of another business association or entity, jointly, or severally, having control or supervision of or charged with the responsibility for making the returns and payments are personally liable for the failure. The dissolution of any corporation, LLC, or other business entity shall not discharge an officer's liability for a prior failure of the corporation, LLC, or other entity to make a return or remit the tax due. The sum due for the liability may be assessed and collected pursuant to the provisions of North Dakota Century Code 57-39.2 and/or 57-40.2 for the assessment and collection of other liabilities.
2. If the corporate officers or governor or manager elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation or other business entity must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual sales tax liability of the corporation or other business entity.

17.0104 Penalties, Criminal and Civil

1. Criminal penalties. Any person whether as principal, accomplice, or co-conspirator
 - a. Who fails

- i. To report as required herein, or;
 - ii. To pay to the administrator the tax imposed herein, when said report or payment is due or;
 - b. Who files a false report with the intent to evade in whole or in part the tax levied herein, shall be punished by a fine not to exceed \$500.
2. Civil penalties. Delinquent taxes, that is, any portion of the tax liability imposed herein which is not timely paid on the due date, whether by non-filing, or by under-reporting of tax liability, or otherwise, shall draw interest at the rate of 12% per annum from the due date, and in addition, the administrator shall assess a penalty equal to the greater of:
- a. \$500, or;
 - b. 50% of the amount of the tax found to be delinquent; which penalty shall immediately become due and payable as additional tax, provided that, however, no interest shall be payable with respect to such penalty.
 - c. The City Council, if satisfied that any delay in the filing of a return or payment of taxes was excusable, may waive, and if paid, refund all or any part of the penalty and interest imposed hereunder.

ARTICLE 2 – Lodging Tax

17.0201 Purpose; Definitions

1. The purpose of this article is to raise funds for the City, to be used for general City purposes.
2. The following words, terms, and phrases are, for the purpose of this article, except where the context indicates a different meaning, defined as follows:
 - a. Administrator – Either the state tax commissioner or the City Auditor, depending upon the context and upon which of the two officials may be designated from time to time to collect the tax imposed herein.
 - b. Consideration – The cost of the room in said hotel and shall not include the costs of any food served or personal services rendered to the occupant of such room, not related to the cleaning and readying of such room for occupancy, and shall not include any tax assessed for occupancy thereof by this article, or otherwise by the City, or by any other government entity.
 - c. Motel and Hotel – Any building or buildings, trailer, or other facility, in which the public may, for a consideration, obtain sleeping accommodations. The term shall include hotels and motels licensed by the State of North Dakota under Chapter 23-09 of the North Dakota Century Code, and bed and breakfast facilities licensed by the State of North Dakota under Chapter 23-09.1 of the North Dakota Century Code, but shall not include hospitals, sanitariums, or nursing homes when providing lodging and/or accommodations for patients and residents; the YMCA or YWCA.
 - d. Monthly period – The regular calendar months of the year.
 - e. Occupancy – The use or possession, or the right to the use or possession of any room or rooms in a hotel for sleeping accommodations for any period of time less than 30 consecutive days. A month-to-month tenancy is specifically excluded from the definition of “occupancy” set forth herein.
 - f. Occupant – Anyone who, for a consideration, uses, possesses, or has a right to use or possess any room or rooms used for contact or agreement.
 - g. Person – Any individual, company, corporation, or association owning, operating, managing, or controlling any motel or hotel.

17.0202 Motel-Hotel Tax Imposed

There is hereby levied a tax upon the occupancy of any room or space furnished by any hotel or motel where such cost of occupancy is at the rate of \$2 or more per day; such tax to be 2% of the consideration paid by the occupant for the occupancy of such room or space. This tax is in addition to any other tax levied by the City.

17.0203 Duty to Collect Taxes; Delegation of Duty, Effect Thereof

The owner (which shall include the plural “owners”) of a motel or hotel located within the City, or such person (which shall include the plural “persons”) as may be delegated by the owner, shall collect the tax imposed in 17.0202 with respect to the operation of such hotel from the patrons thereof. Provided that, however, the delegation of the duties imposed in this section or elsewhere in this article by the hotel owner to another person shall not constitute a defense to any civil proceedings brought against the owner pursuant to this section to collect the tax imposed by this article, including any delinquent portion thereof, plus penalty and interest, if any. The tax imposed

in this article and any penalty or interest shall constitute a debt of the owner of the motel-hotel to the City, whether collected from the motel-hotel patrons or not, and it may be collected by the City through an appropriate civil action.

17.0204 Reports, Tax Payment; When Due

No later than 30 days following the end of each month the person required or authorized in 17.0203 to collect the tax imposed herein shall pay the entire tax due with respect to the operation of the hotel-motel during the prior month to the administrator. In addition, such person shall file with the tax payment a report showing the consideration paid for all room occupancies in the preceding month, the amount of tax collected on such occupancies, and any other information as the administrator may reasonably require. The administrator shall then deposit, after deducting appropriate administrative expenses as the same are authorized pursuant to 17.0206, the tax proceeds from the 2% tax in a fund of the City to be known as the Lodging Tax Fund. The proceeds from the fund shall be expended only for such uses and purposes as may be determined by the City Council.

17.0205 Rules and Regulations

The administrator shall have the power to make such rules and regulations as are necessary to effectively collect the tax levied herein and shall, upon reasonable notice, have access to books and records necessary to enable the administrator to determine the correctness of any report filed as required by this article and the amount of taxes due under the provisions of this article.

17.0206 Administration of Tax

The City Auditor shall have the responsibility of administering the tax imposed thereby; provided that, however, the City Auditor is hereby authorized to enter into a contact with the state tax commissioner whereby the state tax commissioner will assume the duty and responsibility of administering this tax; provided further, that however, in the event that such contact provided for a consideration or administration fee to be paid to the state tax commissioner for the commissioner's services in administering the tax, said contact or any amendments thereto which affect the amount of such fee shall not become effective until ratified by the City Council by a resolution passed by a majority of the members. The City Auditor shall retain 1% of the total amount collected as reimbursement for expenses incurred in the administration and distribution of monies realized under the provisions of this article and any amounts expended in the enforcement of this article, including legal fees.

17.0207 Penalties, Criminal and Civil

1. Criminal penalties. Any person whether as principal, accomplice, or co-conspirator
 - a. Who fails
 - i. To report as required herein, or;
 - ii. To pay to the administrator the tax imposed herein, when said report or payment is due or;
 - b. Who files a false report with the intent to evade in whole or in part the tax levied herein, shall be punished by a fine not to exceed \$500.
2. Civil penalties. Delinquent taxes, that is, any portion of the tax liability imposed herein which is not timely paid on the due date, whether by non-filing, or by under-reporting of tax liability, or otherwise, shall draw interest at the rate of 12% per annum from the due date, and in addition, the administrator shall assess a penalty equal to the greater of:
 - a. \$500, or;

- b. 50% of the amount of the tax found to be delinquent; which penalty shall immediately become due and payable as additional tax, provided that, however, no interest shall be payable with respect to such penalty.
- c. The City Council, if satisfied that any delay in the filing of a return or payment of taxes was excusable, may waive, and if paid, refund all or any part of the penalty and interest imposed hereunder.

17.0208 Officer Liability

1. If a corporation, LLC, or other entity required to hold a permit issued under North Dakota Century Code 57-39.2-18.1 and/or 57-40.2-15.1 fails for any reason to file the required returns or to pay the tax due pursuant to this article, the president, vice president, secretary, or treasurer of the corporation or governor or manager of an LLC, or other comparable principal of another business association or entity, jointly, or severally, having control or supervision of or charged with the responsibility for making the returns and payments are personally liable for the failure. The dissolution of any corporation, LLC, or other business entity shall not discharge an officer's liability for a prior failure of the corporation, LLC, or other entity to make a return or remit the tax due. The sum due for the liability may be assessed and collected pursuant to the provisions of North Dakota Century Code 57-39.2 and/or 57-40.2 for the assessment and collection of other liabilities.
2. If the corporate officers or governor or manager elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation or other business entity must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual sales tax liability of the corporation or other business entity.