City of Dickinson Municipal Code 2015

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Chapter 1 GENERAL PROVISIONS

Last updated February 2012

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Section 1.010 Adoption of Code

There is hereby adopted by the board of city commissioners that certain code entitled "The Code of the City of Dickinson, North Dakota," as compiled, edited and published by Book Publishing Company, Seattle, Washington, containing certain ordinances of a general and permanent nature as compiled, consolidated and indexed in Chapters 1 to 39, both inclusive. (Ord. No. 1098, § 1.)

Section 1.015 Title--Citation--Reference

This code shall be known as "The Code of the City of Dickinson, North Dakota" and it shall be sufficient to refer to said Code as the "Dickinson City Code" in any prosecution for the violation of any provision thereof or in any proceeding at law or equity. It shall be sufficient to designate any ordinance adding to, amending, correcting or repealing all or any part or portion thereof as an addition to, amendment to, correction or repeal of "The Code of the City of Dickinson, North Dakota." Further reference may be had to the titles, chapters, sections and subsections of "The Code of the City of Dickinson, North Dakota" and such references shall apply to that numbered title, chapter, section or subsection as it appears in the Code. (Ord. No. 1098, § 2.)

Section 1.020 Definitions and rules of interpretation

In the construction of this Code and of all ordinances, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the board of city commissioners:

Board of City Commissioners. The words "board of city commissioners" shall be construed as if followed by the words "of Dickinson."

Boulevard. That strip of land abutting on either side of the streets of the city lying between the outside edge of the sidewalks and the curb along such streets or that area between the inside edge of sidewalks and the lot lines in areas having curb sidewalks.

City. The words "the city" or "this city" shall be construed as if followed by the words "of Dickinson."

Code. "The Code of the City of Dickinson, North Dakota."

Computation of Time. The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded.

For state law as to computation of time, see NDCC, § 1-02-15.

County. Stark County, North Dakota.

Day. The period of time between any midnight and the midnight following.

Daytime, Nighttime. Daytime is the period between sunrise and sunset. Nighttime is the period of time between sunset and sunrise.

Gender. Words used importing masculine gender include the feminine and neuter.

For state law as to gender, see NDCC, § 101-34.

In the City. All territory over which the city now has or shall hereafter acquire jurisdiction for the exercise of its police powers or other regulatory powers.

Joint Authority. All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons.

Month. A calendar month.

For similar state law, see NDCC, § 1-01-33.

Number. The singular number includes the plural, and the plural the singular.

For similar state law, see NDCC, § 1-01-35.

Oath. The word "oath" shall include affirmation.

For similar state law, see NDCC, § 1-01-49.

Officers, departments, etc. Officers, departments, boards, commissions and employees referred to shall mean officers, departments, boards, commissions and employees of the city, unless the context clearly indicates otherwise.

Or, And. "Or" may be read "and" and "and" may be read "or" if the sense requires it.

Owner. Applied to a building or land, includes any part owner, joint owner, tenant in common, tenant in partnership or joint tenant of the whole or a part of such building or land.

Person. A corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual.

For state law definition of person, see NDCC, § 1-01-28.

Personal Property. Money, goods, chattels, things in action and evidences of debt.

For similar state law, see NDCC, § 1-01-49.

Preceding, Following. The words "preceding" and "following" mean next before and next after respectively.

For similar state law, see NDCC, § 1-01-49.

Property. Property, real and personal.

For similar state law, see NDCC, § 1-01-49.

Real Property. Real property shall be coextensive with lands, tenements and hereditaments.

For similar state law, see NDCC, § 1-01-49.

Several. In relation to number, two or more.

For similar state law, see NDCC, § 1-01-29.

Shall, May. Shall is mandatory, and may is permissive.

Sidewalk. That portion of a street between the curb lines or the lateral lines of a roadway and the adjacent property lines intended for the use of pedestrians.

Signature or Subscription. The words "signature" or "subscription" include a mark when the name of a person who cannot write is written near it by a person who writes his own name as a witness.

For similar state law, see NDCC, § 1-01-49.

State. The State of North Dakota.

Street. The entire width between property lines of every way or place of whatsoever nature when any part thereof is open to the use of the public as a matter of right of way for purposes of vehicular traffic.

Tense. Words in the present tense include the future.

For similar state law, see NDCC, § 1-01-35.1.

Usual and customary. "According to usage."

For similar state law, see NDCC, § 1-01-32.

Written and printed. The words "writing" and "written" shall include typewriting and typewritten and printing and printed, except in the case of signatures and when the words are used by way of contrast to typewriting and printing. Writing may be made in any manner; except, that when a person entitled to require the execution of a writing demands that it be made with ink, it must be so made.

For similar state law, see NDCC, § 1-01-37.

Year. A calendar year, except where otherwise provided. (Code 1958, § 1-2.)

For state law as to definition of year, see NDCC, § 1-01-33.

For state law definitions, see NDCC, § 1-01-01 et seq. As to rules of interpretation, see NDCC, § 1-02-01 et seq. 1-2.)

Section 1.025 Reference applies to all amendments

Whenever a reference is made to this code as the "Dickinson City Code" or to any portion thereof, or to any ordinance of the City of Dickinson, North Dakota, codified herein, the reference shall apply to all amendments, corrections and additions heretofore, now or hereafter made. (Ord. No. 1098, § 3.)

Section 1.030 Title, chapter and section headings

Title, chapter and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any title, chapter or section hereof. (Ord. No. 1098, § 4.)

Section 1.035 Reference to specific ordinances

The provisions of this Code shall not in any manner affect matters of record which refer to, or are otherwise connected with ordinances which are therein specifically designated by number or otherwise and which are included within the Code, but such reference shall be construed to apply to the corresponding provisions contained within this Code. (Ord. No. 1098, § 5.)

Section 1.040 Provisions considered as continuations of existing ordinances

The provisions appearing in this Code, so far as they are substantially the same as those of the Code of the City of Dickinson, North Dakota, 1958 and other ordinances existing at the time of the adoption of this Code, shall be construed as a continuation thereof and not as new enactments. (Code 1958, § 1-4.)

Section 1.043 Ordinances passed prior to adoption of the Code

The last ordinance included in this Code was Ordinance 1086, passed December 7, 1992. The following Ordinances, passed subsequent to Ordinance 1086, but prior to adoption of this Code, are hereby adopted and made a part of this Code: Ordinances 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, and 1097. (Ord. No. 1098, § 6.)

Section 1.047 Effect of Code on past actions and obligations

The adoption of this Code does not affect prosecutions for ordinance violations committed prior to the effective date of this Code, does not waive any fee or penalty due and unpaid on the effective date of this Code, and does not affect the validity of any bond or cash deposit posted, filed or deposited pursuant to the requirements of any ordinance. (Ord. No. 1098 § 7.)

Section 1.050 Constitutionality

If any section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Code. (Ord. No. 1098 § 8.)

Section 1.055 References to prior code

References in city forms, documents and regulations to the chapters and sections of the former City Code shall be construed to apply to the corresponding provisions contained within this Code. (Ord. No. 1098 § 9.)

Section 1.060 Repeal--Generally

The repeal of any provision of this Code or other ordinance of the city by the board of city commissioners shall not have the effect of releasing or extinguishing any penalty, fine, liability or forfeiture incurred under such provision, but as to cases tried before or subsequent to the repeal of such provision, it shall have the effect of extinguishing any jail or prison sentence that may be or has been imposed by reason of such law, unless the repealing ordinance shall provide expressly that the penalties of imprisonment shall remain in

force as to crimes committed in violation of such law prior to its repeal. In other respects, such provision shall remain in force only for the purpose of the enforcement of such fine, penalty or forfeiture. (Code 1958, § 1-7.)

For similar state law as to statutes, etc., see NDCC, § 1-02-17.

Section 1.070 Same--Revival of provision previously repealed

Whenever any ordinance of the board of city commissioners which repealed a former provision of this Code or other ordinance of the city is repealed, such former provision shall not be revived by such repeal, unless there is express intent to the contrary. (Code 1958, § 1-6.)

For similar state law as to statutes, etc., see NDCC, § 1-02-19.

Section 1.080 Precinct boundaries and polling places.

There shall be two precincts within the city, to be known and designated as Precinct No. 1 and Precinct No. 2. Each precincts shall consist of all that part of the city which lies within boundaries hereinafter set forth for each of such precincts. Polling places shall be located at-such location as is determined by resolution of the Board of City Commissioners.

Precinct No. 1. All that area within the city limits of the City of Dickinson which lies within the State of North Dakota 37th Legislative District, as may be amended from time to time.

Precinct No. 2. All that area within the city limits of the City of Dickinson which lies within the State of North Dakota 36th Legislative District, as may be amended from time to time.

All property within the Corporate limits which is not contained in Precincts 1, 2, 3, 4, 5, 6, or 7 shall be a part of Range 96.

(Code 1958, § 1-10; Ord. No. 581; Ord. No. 587; Ord. No. 595; Ord. No. 639, § 1; Ord. No. 787, § 1; Ord. No. 848, § 1; Ord. No. 904, § 1; Ord. No. 906, § 1; Ord. No. 953, § 1; Ord. No. 985, § 1; Ord. No. 1037, § 1.; Ord. No. 1066, § 1; Ord. No. 1128 § 1; Ord. No. 1167 § 1; Ord. No. 1216, § 1; Ord. 1241 § 1; Ord. No. 1275 §1; Ord. No. 1310 §1; Ord. No. 1435 §1.)

For authority of the city to redistrict the city into precincts and to prescribe the boundaries thereof, see NDCC, § 40-05-02(12).

Chapter 2 ADMINISTRATION

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Article 2.ED Editor's note to Chapter 2

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2.ED.010 Editor's note to Chapter 2

Section 2.ED.010 Editor's note to Chapter 2

For state law as to commission cities, see NDCC, §§ 40-04-01 et seq., 40-09-01 et seq., 40-15-01. As to general provisions governing officers in municipalities, see NDCC, § 40-13-01. As to officers in commission cities generally, see NDCC, § 40-15-01 et seq.

As to ward boundaries and polling places, see § 1.080 of this Code. As to municipal judge, see §§ 11.08.010 to 11.08.090. As to fire department, see §§ 13.12.02.010 to 13.12.06.030. As to bureau of fire prevention, see §§ 13.12.06.010 to 13.12.06.030. As to department of health generally, see §§ 20.04.010, 20.04.020. As to public health officer, see §§ 20.04.030 to 20.04.070. As to traffic administration and enforcement, see §§ 23.08.070 to 23.36.140. As to park districts, see §§ 26.010 to 26.030. As to personnel, see Ch. 29. As to police, see Ch. 31. As to retirement, see Ch. 32. As to composition of street department, see § 33.04.020. As to powers and duties of superintendent of streets, see § 33.04.030. As to duties of city engineer, see § 33.04.040. As to administration and enforcement of subdivision regulations, see §§ 34.08.010 to 34.08.070. As to waterworks superintendent, see §§ 38.08.020, 38.08.030. As to duties of city engineer as to water, see § 38.08.040. As to powers and duties of city engineer and street commissioner as to sewers, see § 38.12.020. As to administration and enforcement of Zoning Ordinance, see §§ 39.04.120 to 39.16.060. As to zoning board of adjustment, see §§ 39.12.060 to 39.16.060.

Article 2.04 In General

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2.04.00E Editor's note to Article 2.04
2.04.010 Ordinances--Method of passage
2.04.020 Same--Books
2.04.030 Same--Use as evidence in courts

Section 2.04.00E Editor's note to Article 2.04

As to repeal, see §§ 1-6, 1-7 of this Code.

Section 2.04.010 Ordinances--Method of passage

All ordinances shall be read twice, and the second reading shall not be had in less than one week after the first reading. After a first reading, before its final passage, an ordinance may be amended and shall then be put upon its second reading and final passage; and, if passed by the board of city commissioners, shall be signed by the president of the board and attested by the city auditor. (Code, 1958, § 2-1.)

For provisions of state law as to ordinances generally, see NDCC, § 40-11-01 et seq. As to initiative and referendum, see NDCC, § 40-12-01 et seq.

Section 2.04.020 Same--Books

The city auditor shall record in a book kept for that purpose, together with the affidavit of the publisher, all ordinances passed by the board of city commissioners. (Code 1958, § 2-2.)

For similar state law, see NDCC, § 40-11-08. As to affidavits of publisher, see NDCC, § 40-11-08.

Section 2.04.030 Same--Use as evidence in courts

The ordinance book or a certified copy of the ordinances as so recorded shall be received as evidence in all courts and places without further proof; or, if printed in book or pamphlet form by the authority of the board of city commissioners, they shall be so received. (Code 1958, § 2-4.)

Article 2.08 Board of City Commissioners

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2.08.010 Composition; election and terms of members
2.08.015 Portfolios Eliminated
2.08.020 Bond required of president and commissioners
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2.08.070 Regular meetings
2.08.080 Special meetings--Calling
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2.08.100 Rules of procedure generally
2.08.110 Voting--Taking of yeas and nays
2.08.120 Same--Passage of ordinances, etc.
2.08.130 Same--Sales of city property

Section 2.08.00E Editor's note to Article 2.08

For provisions of state law as to board of city commissioners, see NDCC, § 40-09-01 et seq.

Section 2.08.010 Composition; election and terms of members

The board of city commissioners shall consist of the president of the board of city commissioners and four commissioners. All members shall be elected at large and not by wards and shall hold office for four years from and after the date of election and until their successors shall have been duly elected and qualified. (Code 1958, § 2-6.)

For state law as to municipal elections, see NDCC, § 40-21-01 et seq. As to composition of board of commissioners, see NDCC, § 40-09-01. As to requirement that commissioners be elected at large, see NDCC, § 40-09-03. As to term of office, see NDCC, § 40-09-04.

Section 2.08.015 Portfolios Eliminated

The designation of portfolios for police and fire commissioners, commissioner of streets and improvements, waterworks and sewerage commissioner, and commissioner of finance and revenue are hereby eliminated, and such duties and functions shall hereafter be performed by the City Administrator, as set forth in Section 2.12.055 of this Code. (Ord. No. 1151 § 2.)

Section 2.08.020 Bond required of president and commissioners

The president of the board of city commissioners and each commissioner, before entering upon the duties of his office, shall furnish a bond in the penal sum of three thousand dollars, conforming to the provisions of sections 2-26 to 2-31 of this Code. (Code 1958, § 2-7.)

For state law requiring commissioners to furnish bond, see NDCC, § 40-09-07.

Section 2.08.030 Salary of president and commissioners

The monthly salary for the president and each commissioner on the board of city commission shall be in such amounts as are approved annually in the Annual Appropriation & Tax Levy Ordinance. (Code 1958, § 2-8; Ord. No. 326, § 1; Ord. No. 551; Ord. No. 561; Ord. No. 1134 § 1.)

Section 2.08.040 Powers and duties of president generally

The president of the board of city commissioners shall be the executive officer of the city and shall see that all the laws thereof are enforced. He shall have the right to vote as a member of the board on all questions which may arise, but shall have no right of veto. (Code 1958, § 2-9.)

For similar state law, see NDCC, § 40-09-08.

Section 2.08.050 Vice-president

At the first meeting of the board of city commissioners after each biennial election they shall elect one of their number as vice-president, and such vice-president shall, in case of the absence or inability of the president to act, perform all the duties of the office of president. (Code 1958, § 2-10.)

For state law as to the vice-president of the board of commissioners, see NDCC, § 40-09-09.

Section 2.08.060 Acting president

In case of the absence or inability to act of both the president and vice-president, the board of city commissioners shall elect one of their number who shall be known as acting president, who shall, during such absence or disability, have all the powers and perform all the duties of the president. (Code 1958, § 2-11.)

For state law as to acting president of board of commissioners, see NDCC, § 40-09-09.

Section 2.08.070 Regular meetings

The board of city commissioners shall meet regularly at City Hall every first and third Monday, in accordance with section 40-09-11 of the North Dakota Century Code, at the hour of 5:15 P.M., unless some other time or place shall be specifically fixed by the board of city commissioners. If the date of a regular meeting falls on a holiday, the meeting shall be held on the next business day. (Code 1958, § 2-12; Ord. No. 538, § 1; Ord. 1238 § 1.)

Section 2.08.080 Special meetings--Calling

Special meetings may be called at any time by the president or any two members of the board to consider matters mentioned in the call of such meeting. Written notice of any special meeting shall be given to each member of the board. (Code 1958, §§ 2-13, 2-14.)

For state law as to special meetings of board of commissioners, see NDCC, § 40-09-11.

Section 2.08.090 Same--Reconsideration or rescission of past vote

No vote of the board of city commissioners shall be reconsidered or rescinded at a special meeting, unless at such special meeting there is present as large a number of members as was present when such vote was taken. (Code 1958, § 2-15.)

Section 2.08.100 Rules of procedure generally

(a) At the hour of meeting, the president shall call the board of city commissioners to order. He shall preserve order and decorum and decide all questions of order, subject to an appeal to the board.

(b) As soon as the board shall be called to order, the auditor shall proceed to call the names of the members in alphabetical order marking who is present and who is absent, and record the marking in the proceedings of the board.

(c) In case of the absence of the president and vice-president at the time of meeting, the auditor shall call the board to order. Thereupon, the board shall select one of their own members as president pro tempore.

(d) At each regular meeting of the board the order of business shall be substantially as follows:

(1) Reading and correcting the minutes of the last preceding meeting.
(2) Receiving petitions, memorials, remonstrances and communications.
(3) Report of committees and special boards may be made and considered, first from standing committees and next from select boards and committees.
(4) Ordinances may be introduced, and ordinances introduced at a previous meeting may be put on final passage.
(5) Accounts and claims may be presented and acted upon.
(6) Miscellaneous business.
(7) Adjournment.

(e) All accounts presented to the board of commissioners for allowances shall be in detail, stating: If for labor performed, the locality, when such work was done, by whose order, number of days employed and the price to be paid per day; if for material furnished, by whose order, and the place where such material was used and delivered.

(f) When a motion is made, it shall be stated by the presiding officer or read by the auditor previous to debate. All resolutions shall be reduced to writing, and any resolution may be withdrawn by consent of the board before discussion or amendment.

(g) All questions, except passage of ordinances, shall be put in this form:
Those that are in favor of the motion (state the question), say "Aye," those opposed say "No."

(h) When a question has once been decided it shall be in order for any member of the majority or, in case of a tie, for any member voting the affirmative to move a reconsideration thereof at the same or next regular meeting.

(i) In all cases when a resolution or motion shall be entered on the minutes, the names of the members moving such resolution or motion shall be entered on the minutes.

(j) The reports of committees shall be made in writing.

(k) The city auditor shall see that all ordinances and resolutions are correctly engrossed and enrolled before they are published.

(l) The rules of parliamentary practice in "Robert's Rules of Order" shall govern the board in all cases in which they are applicable and in which they are not inconsistent with these rules. (Code 1958, § 2-16; Ord. No. 416, § 1.)

Section 2.08.110 Voting--Taking of yeas and nays

The yeas and nays shall be taken upon the passage of all ordinances and on all propositions to create any liability against the city or for the expenditure or appropriation of money; and, in all other cases, at the request of any member, which shall be entered on the minutes of its proceedings. (Code 1958, § 2-17.)

For similar state law, see NDCC, § 40-11-03.

Section 2.08.120 Same--Passage of ordinances, etc.

The concurrence of a majority of all the members elected shall be necessary to the passage of any ordinance or other matter which shall come before the board of city commissioners for decision, except as otherwise provided by law or ordinance. (Code 1958, § 2-18.)

For state law requiring majority vote of quorum, see NDCC, § 40-09-11.

Section 2.08.130 Same--Sales of city property

It shall require a three-fifths vote of all the members elected to the board of city commissioners to sell any city property. (Code 1958, § 2-19.)

Article 2.12 Appointive Officers

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2.12.020 Salary
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2.12.040 Bonds
2.12.050 Duties--Generally
2.12.055 City Administrator
2.12.060 Same--Assessor
2.12.070 Same--Attorney
2.12.080 Same--Auditor
2.12.090 Same—Treasurer

Section 2.12.00E Editor's note to Article 2.12

For state law as to appointive officers in commission cities generally, see NDCC, §§ 40-15-05 to 40-15-07. For state law as to general provisions governing officers in municipalities, see NDCC, § 40-13-01 et seq.

Section 2.12.010 Enumerated

The board of city commissioners at their first meeting after their qualification, or as soon thereafter as possible, shall appoint the following officers: Treasurer; auditor; attorney; one or more assessors; a public health officer; a street commissioner; chief of the fire department; a board of public works; chief of police; one or more policemen, city engineer and such other officers or boards as the board of city commissioners may deem necessary; provided, that the board of city commissioners, by a majority vote, may dispense with the offices which in its judgment are unnecessary and provide that the duties thereof shall be performed by other officers or boards, by the board of city commissioners or by a committee thereof. (Code 1958, § 2-20.)

For similar state law, see NDCC, § 40-15-05.

Section 2.12.020 Salary

The salary of the appointive officers of the city shall be such sum as the board of city commissioners shall from time to time fix and determine. (Code 1958, § 2-21.)

For state law as to salaries of municipal officers, see NDCC, § 40-13-04.

Section 2.12.030 Terms

The appointive officers of the city shall take office on the first day of May following their appointment, and shall serve in such capacity for a term of two years or until their successors are appointed and qualified. (Code 1958, § 2-22.)

For state law as to terms of office of appointees, see NDCC, § 40-15-06.

Section 2.12.040 Bonds

The treasurer, auditor, assessor and such other appointive officers as the board of city commissioners may direct, before entering upon the duties of their respective offices, shall furnish bonds in a penal sum to be fixed by the board of city commissioners, conforming to the provisions of sections 2.16.010 to 2.16.060 of this Code; provided, that the bond of the treasurer shall be at all times in an amount set by resolution of the board of city commissioners at its regular meeting in April of each year, but the amount so set shall be equal at least to twenty-five per cent of the average amount of money that has been subject to the treasurer's control during the

preceding fiscal year. Such average amount of money shall be determined by taking the total of the daily balances of the treasurer for the preceding year and dividing it by the figure three hundred or the sum of two hundred fifty thousand dollars, whichever is least. (Code 1958, § 2-23.)

For state law as to bonds of appointive municipal officers, see NDCC, § 40-13-02.

Section 2.12.050 Duties--Generally

The duties of the appointive officers of the city shall be the same as those certain duties set forth in the statutes of this state, this Code and other ordinances of the city. (Code 1958, § 2-24.)

Section 2.12.055 City Administrator

It shall be the duty of the City Administrator to administer policies established by the Board of City Commissioners for the operation of the municipality, to represent the City in the absence of specific members of the Board of City Commissioners, to chair various City committees, to prepare and administer the municipal budget, to exercise significant influence in the appointment of key administrative personnel, to oversee the operation of all departments, to perform the duties of the various portfolios as specified in NDCC §40-09-12 together with such other duties as are assigned from time to time by the Board of City Commissioners.

The City Administrator shall be responsible for all the duties of the city auditor, as set forth in the Dickinson City Code and applicable statutes of this state. The City Administrator shall have the authority to perform all duties and function of a city auditor, under all city ordinances and state law, and shall have the authority to designate the responsibility for any of said functions to other city employees with the finance department.

The City Administrator shall have the authority to perform all duties and functions under state law and city ordinances of the police and fire commissioner, commissioner of streets and improvements, waterworks and sewerage commissioner, and commissioner of finance and revenue as set forth in NDCC §40-09-12, subject to direction and control of the Board of City Commissioners. All policy making authority shall remain with the Board of City Commissioners. (Ord. No. 1127, § 1; Ord. No. 1151 §1.)

Section 2.12.060 Same--Assessor

The city assessor shall perform all duties necessary for the assessing of property within the city limits for the purpose of levying city, county, school and state taxes. (Code 1958, § 2-25.)

For state law as to duties of city assessor, see NDCC, § 40-19-01 et seq.

Section 2.12.070 Same--Attorney

The city attorney shall conduct all the law business of the city and of the departments thereof and all law business in which the city shall be interested. He shall, when requested, furnish written opinions upon the subjects submitted to him by the board of city commissioners or any other department. He shall keep a docket of all the cases to which the city may be party in any court of record, in which docket shall be briefly entered all steps taken in such cases. Such docket shall, at all reasonable hours, be open to public inspection. It shall also be his duty to draft all ordinances, bonds, contracts, leases, conveyances and such other instruments as may be required by the officers of the city; to examine and inspect tax and assessment rolls and all other proceedings in reference to the levying and collection of taxes; and to perform such other duties as may be prescribed by the board of city commissioners. (Code 1958, § 2-26.)

For specific provision of state law as to duties of city attorney, see NDCC, § 40-20-01.

Section 2.12.080 Same--Auditor

It shall be the duty of the city auditor to attend all meetings of the board of city commissioners and keep a full record of their proceedings; to record all ordinances and bonds in a book kept for that purpose; to keep a

record of all licenses granted, which record shall at all reasonable times be open to inspection by the public; to carefully preserve all receipts filed with him and draw and sign all orders upon the treasury, except as otherwise provided by law, in pursuance of an order or resolution of the board of city commissioners and keep a full and correct account thereof in books provided for that purpose. He shall keep an accurate account with the treasurer and charge him with all tax lists presented to him for collection and all sums of money paid into the treasury. Within thirty days after the close of each fiscal year he shall make and cause to be published in the city official newspaper a financial statement showing the receipts and disbursements on account of each fund during the last preceding year. (Code 1958, § 2-27.)

For state law as to duties of city auditor, see NDCC, § 40-16-03 to 40-16-10.

Section 2.12.090 Same--Treasurer

The office of city treasurer is hereby abolished. The city auditor shall assume all functions and duties of the city treasurer where indicated in any other provisions of this Code. (Code 1958, § 2-28; Ord. No. 631, § 5.)

For state law as to duties of city treasurer, see DCC, § 40-17-01 et seq.

Article 2.16 Bonds

Sections:

2.16.00E Editor's note to Article 2.16
2.16.010 Compliance with article required
2.16.020 Faithful discharge of duties
2.16.030 Approval of president of board of city commissioners; filing
2.16.040 Sureties
2.16.050 Payment of premiums
2.16.060 Additional bonds required by board

Section 2.16.00E Editor's note to Article 2.16

For state law as to bonds of municipal officials, see NDCC, § 40-13-02. As to bonds of city commissioners, see NDCC, § 40-09-07.

Section 2.16.010 Compliance with article required

Whenever a bond is required of any city official or employee by this Code or other ordinances of the city or by any provision of state law, such bond shall conform with the provisions of this article. (Code 1958, § 2-29.)

Section 2.16.020 Faithful discharge of duties

All bonds of city officials and employees required by law shall be conditioned for the faithful discharge of the duties of their respective offices. (Code 1958, § 2-30.)

Section 2.16.030 Approval of president of board of city commissioners; filing

All bonds of city officials and employees required by law must be approved by the president of the board of city commissioners; and, when so approved, shall be filed in the office of the city auditor. (Code 1958, § 2-31.)

Section 2.16.040 Sureties

No personal surety shall be accepted on any bond, but all such bonds must be with the state bonding fund or with a corporate surety company authorized to do business within this state. (Code 1958, § 2-32.)

For provisions of state law as to state bonding fund, see NDCC, § 26-23-01 et seq.

Section 2.16.050 Payment of premiums

Premiums for bonds of the state bonding fund shall be paid by the city in the manner provided by law, but no premium shall be paid by the city upon any other bonds than those upon which the state bonding fund shall be surety, unless it is to procure a bond to replace a bond canceled by the state bonding fund. (Code 1958, § 2-33.)

For similar state law, see NDCC, § 40-13-02.

Section 2.16.060 Additional bonds required by board

The board of city commissioners may by resolution at any time require new and additional bonds of any officer or employee, unless such additional bonds are prohibited or not otherwise allowed by any provision of law. (Code 1958, § 2-34.)

For similar state law, see NDCC, § 40-13-02.

Article 2.20 Planning Commission

Sections:

2.20.00E Editor's note to Article 2.20
2.20.010 Members--Appointment
2.20.020 Same--Ex officio members
2.20.030 Same--Compensation; attendance at planning institutes, conferences, etc.
2.20.040 Same--Terms; vacancies
2.20.050 Officers and employees
2.20.060 Meetings; rules and records
2.20.070 Territorial jurisdiction
2.20.080 Master plan--Creation and adoption; amendment
2.20.090 Same--Purpose; preparation
2.20.100 Same--Contents
2.20.110 Same--Adoption of parts
2.20.120 Same--Public hearing prior to adoption or amendment
2.20.130 Same--Resolution of adoption; certification to city commissioners
2.20.140 Same--Approval of subdivision plats after filing
2.20.150 Compliance with state law

Section 2.20.00E Editor's note to Article 2.20

For state law as to planning commissioners, see NDCC, § 40-48-01 et seq. As to regulation of subdivisions of land, see §§ 34.08.020, 34.08.030 of this Code. As to zoning, see Ch. 39.

Section 2.20.010 Members--Appointment

The City Administrator shall appoint, with the approval of the board of city commissioners, six or seven persons to serve on the planning commission so that an odd number is always maintained. One of those positions shall be a sitting member of the board of city commissioners. One of those positions shall also include a member of the board of parks and recreation. In addition to the members appointed by the city, the planning commission shall include two persons appointed by the county board of commissioners the reside outside of the corporate limits of the city, including one from the extraterritorial zoning area of the city pursuant to North Dakota Century Code, Chapter 40-48-03.(Code 1958, § 2-35; Ord. No. 529; Ord. No. 566.)

For state law as to appointment of members and number to be appointed, see NDCC, § 40-48-03.

Section 2.20.020 Same--Ex officio members

The president of the board of city commissioners, the city engineer and the city attorney shall be ex officio members of the planning commission, in addition to the five appointed members. (Code 1958, § 2-36.)

For state law as to ex officio members, see NDCC, § 40-48-03.

Section 2.20.030 Same--Compensation; attendance at planning institutes, conferences, etc.

All members of the planning commission shall serve without compensation. When duly authorized by the planning commission, members may attend conferences and meetings of planning institutes or hearings upon pending planning legislation; and, in such instances, the commission may pay reasonable traveling expenses pursuant to a resolution spread upon its minutes. (Code 1958, § 2-37.)

For state law as to compensation and traveling expenses, see NDCC, § 40-48-05.

Section 2.20.040 Same--Terms; vacancies

When the members of the planning commission shall be first appointed, one member shall hold office for the term of one year, one for the term of two years, one for the term of three years, one for the term of four years and one for the term of five years. When the respective term of office for a member shall have expired, the vacancy shall be filled by an appointment for a term of five years. If a vacancy occurs otherwise than by expiration of a term, it shall be filed by appointment for the unexpired portion of the term. Tenure for ex officio members of the commission shall correspond to their respective official tenures. (Code 1958, § 2-38.)

For state law as to terms of office and filling of vacancies, see NDCC, § 40-48-04.

Section 2.20.050 Officers and employees

The planning commission shall elect its president from among the appointed members and he shall serve for a term of one year. The commission may appoint such officers and employees as it may deem necessary for its work and the appointment, promotion, demotion and removal of such officers and employees shall be subject to the same provisions of law as govern other corresponding civil employees. (Code 1958, § 2-39.)

For state law as to officers and employees of planning commission, see NDCC, § 40-48-06.

Section 2.20.060 Meetings; rules and records

The planning commission shall hold at least one regular meeting each month. It shall adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings and determinations. The record kept shall be a public record. (Code 1958, § 2-40.)

For state law as to meetings of the planning commission and adoption of rules and records, see NDCC, § 40-48-06.

Section 2.20.070 Territorial jurisdiction

The territorial jurisdiction of the planning commission shall include all land located in the city and all land lying within six miles of the corporate limits of the city. (Code 1958, § 2-41.)

For state law on jurisdiction of planning commission, see NDCC, § 40-48-18.

Section 2.20.080 Master plan--Creation and adoption; amendment

The planning commission shall make and adopt a master plan for the physical development of the city and of any land outside its boundaries which, in the commission's judgment, bears a relation to the planning of the city. The planning commission may amend, extend or add to the master plan. (Code 1958, § 2-42.)

For state law as to adoption and amendment of master plan, see NDCC, § 40-48-08.

Section 2.20.090 Same--Purpose; preparation

The master plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the city. In the preparation of the master plan, the planning commission shall make careful and comprehensive surveys and studies of present conditions and future growth of the city with due regard to its relation to neighboring territory. (Code 1958, § 2-43.)

For state law as to purpose of master plan, see NDCC, § 40-48-09.

Section 2.20.100 Same--Contents

The master plan with the accompanying maps, plats, charts and descriptive matter shall show the planning commission's recommendations for the development of the territory, including:

(a) The general location, character and extent of streets, waterways, waterfronts, playgrounds, plazas, squares and open spaces, parks, aviation fields and other public ways and grounds;

(b) The general location of public buildings and other public property;

(c) The general location and extent of public utilities and terminals, whether publicly or privately owned or operated;

(d) The removal, relocation, widening, narrowing, vacation, abandonment, change of use or extension of any of the foregoing ways, grounds, open spaces, buildings, property, terminals or utilities;

(e) Other matters authorized by law. (Code 1958, § 2-44.)

For state law as to contents of master plan, see NDCC, § 40-48-08.

Section 2.20.110 Same--Adoption of parts

The planning commission may adopt and publish a part of the master plan covering one or more major sections or divisions of the territory under its jurisdiction or one or more of the subjects set out in section 2.20.100 of this Code, when it deems such advisable. (Code 1958, § 2-45.)

For state law as to adoption of part of master plan for certain areas, see NDCC, § 40-48-08.

Section 2.20.120 Same--Public hearing prior to adoption or amendment

Before adopting a master plan or part of it or any substantial amendment thereof, the planning commission shall hold at least one public hearing thereon. Notice of the time of such hearing shall be given by one publication in the official city newspaper. (Code 1958, § 2-46.)

For state law requiring hearing prior to adoption of master plan by planning commission, see NDCC, § 40-48-10.

Section 2.20.130 Same--Resolution of adoption; certification to city commissioners

The adoption of the master plan or of any part thereof or amendment thereto, shall be by a resolution of the planning commission carried by the affirmative votes of not less than four members. The resolution shall refer expressly to the maps and descriptive matter intended by the commission to form the whole or part of the plan or amendment. The action taken by the commission shall be recorded on the map, plan and descriptive matter by the identifying signature of the secretary of the commission. An attested copy of the master plan shall be certified to the board of city commissioners. (Code 1958, § 2-47.)

For state law as to resolution of adoption and certification to the city commissioners, see NDCC, § 40-48-10.

Section 2.20.140 Same--Approval of subdivision plats after filing

When the planning commission has adopted a major street plan and shall have filed a certified copy of such plan in the office of the register of deeds of the county, no plat of a subdivision of land within the territorial jurisdiction of the commission or part thereof shall be filed or recorded until it shall have been approved by the commission and such approval shall have been entered in writing on the plat by the president or secretary of the commission. (Code 1958, § 2-48.)

For similar state law, see NDCC, § 40-48-19.

Section 2.20.150 Compliance with state law

The planning commission, in addition to the provisions of this article, shall be further authorized or restricted in its authority as is provided by the laws of this state. (Code 1958, § 2-49.)

Article 2.24 Comprehensive Plan

Sections:

2.24.00E Editor's note to Article 2.24
2.24.010 Adoption
2.24.020 Purpose
2.24.030 Acceptance, opening, improving, etc. streets
2.24.040 Erection of buildings
2.24.050 Recordation
2.24.060 Approval of plats generally
2.24.070 Amendment

Section 2.24.00E Editor's note to Article 2.24

For state law as to municipal master plans generally, see NDCC, § 40-48-01 et. seq.

Section 2.24.010 Adoption

There is hereby adopted a basic housing study (goals and guideline plan), central business district plan, community facilities plan, land use plan, thoroughfare plan, guide for the preparation of a capital improvements program, basic research report, city base map and overlays, central business district base map and overlays, and concept illustratives; all shall be parts of the comprehensive plan (master plan) of the city. All of such parts of the comprehensive plan, master plan, together with maps, all notations, information and data contained thereon are hereby made a part of this article. (Ord. No. 560.)

For state law as to adoption of master plan, see NDCC, § 40-48-08.

Section 2.24.020 Purpose

All parts of and the entire comprehensive plan, master plan, are adopted to protect and promote public health, safety, comfort, convenience and general welfare and for the accomplishment thereof are adopted for the purposes more particularly set forth as follows:

(a) To assist in providing definite plans of development for the city and adjacent territory and to guide, control and regulate the future growth of such area in accordance with such plans.

(b) To provide a guide for the intelligent outlay of the capital expenditures of the city for street and thoroughfare improvements.

(c) To provide an authentic source of information as to the development of the city for prospective residents and investors therein.

(d) To provide a pattern for such future subdivision as may take place in the city and adjacent territory.

(e) To obviate the menace to the public safety resulting from inadequate provision of traffic thoroughfares in connection with and as a result of the development of the city.

(f) To prevent deterioration of property values and impairment of conditions making for desirable agricultural, residential, commercial or industrial development as the case may be which would result from a lack of plans designed to assure the orderly, harmonious and beneficial development of the city and territory adjacent thereto.

(g) To provide for the general locations, character and extent of streets, waterways, waterfronts, playgrounds, plazas, squares and open spaces, parks, aviation fields and other public ways and grounds.

(h) To provide for the general location of public buildings and other public property.

(i) To provide for the general location and extent of public utilities and terminals whether publicly or privately owned or operated.

(j) To provide for the removal, relocation, widening, narrowing, vacation, abandonment, change of use or extension of any of the foregoing ways, grounds, open spaces, buildings, property, terminals or utilities. (Ord. No. 560.)

For state law as to purpose of the master plan, see NDCC, § 40-48-02.

Section 2.24.030 Acceptance, opening, improving, etc. streets

After March 23, 1971, the city shall not accept, lay out, open, improve, grade, pave or curb any street or lay or authorize to be laid sewers or connections thereto or water mains or connections thereto in any street or right-of-way within the territory of the subdivision jurisdiction of the city, unless such street:

(a) Shall have been accepted or open as or shall otherwise have received the legal status of a public street prior to the adoption of the thoroughfare plan or any amendment thereto made a part of this article; or

(b) Corresponds with a street shown on the thoroughfare plan or any amendments thereto which is a part of this article. (Ord. No. 560.)

Section 2.24.040 Erection of buildings

After March 23, 1971, no building shall be erected on any lot within the territory of subdivision jurisdiction of the city nor shall a building permit be issued for such building unless the street giving access to the lot upon which such building is proposed to be placed:

(a) Shall have been accepted prior to that time; or unless such street

(b) Corresponds with a street shown on the thoroughfare plan or any amendments thereto which has been made a part of this article. Any building erected in violation of this section shall be deemed an unlawful structure and the general inspector or other appropriate official may cause it to be vacated and have it removed. (Ord. No. 560.)

Section 2.24.050 Recordation

The auditor of the city is hereby instructed to cause to be recorded in the office of the register of deeds of the county a certificate showing that the city has established this comprehensive plan (master plan) and is further instructed to file a certified copy of the major street and thoroughfare plan in the office of the register of deeds of the county. (Ord. No. 560.)

Section 2.24.060 Approval of plats generally

No plat pertaining to any of the property herein described shall be filed with the register of deeds of the county, unless such plat will have first been approved in writing by the city commission pursuant to the statutes in such cases made and provided. (Ord. No. 560.)

Section 2.24.070 Amendment

This article may be amended from time to time in accordance with the laws of the state providing for the adoption and amendment of the comprehensive plan, master plan, of a city. (Ord. No. 560.)

Article 2.28 City Property

Sections:

2.28.00E Editor's note to Article 2.28
2.28.010 Statement of Policy
2.28.020 Definitions
2.28.030 Competitive Bidding Required
2.28.040 Exceptions to Competitive Bidding
2.28.050 Sale or Disposal of City Property
2.28.060 Acquisition of Public Improvements
2.28.070 Gifts or Donations to City Projects Without Bidding Allowed

Section 2.28.00E Editor's note to Article 2.28

For state law requiring city to pass ordinance providing for sale, etc., of property, see NDCC, § 40-11-04. As to authority of city to transfer property, etc. , see NDCC, § 40-05-01 (56).

Section 2.28.010 Statement of Policy

It is the intent of this Article to provide for a uniform method for procuring supplies, materials, equipment, and contractual services necessary to carry on activities of the City and to sell or otherwise transfer needed supplies, equipment and other property.

It is the policy of the City to procure supplies, materials, equipment and contractual services in an efficient manner and to assure that the highest quality is obtained at the best price available. When practicable and in the best interests of the City, competitive bids shall be solicited in order to reduce prices.

It is the policy of the City to comply with all laws, rules, regulations and orders with respect to local preference, non-discrimination, wages and hours and all other applicable laws, rules, regulations and orders.

All suppliers, contractors and service providers doing business with the City shall certify that they are in compliance with all federal, state and local laws, regulations and orders including but not limited to those regarding non-discrimination, wages and hours, workers compensation and immigration. Failure of compliance may result in the cancellation of any City contract and exclusion from consideration for future contracts.

Any purchase of a good or service, or contractual relationship which might directly or indirectly benefit a municipal officer must be obtained through a formal public bid process regardless the estimated or actual purchase price.

Regardless the value, all contractual agreements obligating the City must be approved by the Board of City Commissioners.

Section 2.28.020 Definitions

For the purposes of this Article, unless the context or subject matter otherwise requires:

1. "Contractual services" means services provided by entities other than the City of Dickinson, other governmental bodies, or public utilities.
2. "Emergency" means a situation in which, due to unforeseen circumstances, immediate action or action which cannot or should not be delayed, pending solicitation of bids and purchase of needed supplies or services by competitive bids, is called for.
3. "Non-competitive type or kind" means supplies or services which are by their nature unique and not subject to competition, including professional services, consultant services, management services, contracts with the manufacturer or seller or service agent for repair of equipment, services or supplies of a specialized nature that are available from only one supplier or a limited number of suppliers who are not in competition with each other, other supplies or services for which the local market is not

competitive, or supplies or services for which, in order to obtain the best quality at the lowest price, purchase in the open market is called for.

Section 2.28.030 Competitive Bidding Required

1. All purchases of supplies, materials, equipment and contractual services and all contracts for supplies, materials, equipment and contractual services shall be made by competitive bid, except as otherwise provided in Section 2.28.040. Bids shall be advertised in the official newspaper of the City once each week for two consecutive weeks with the bid opening at least 10 days after the last advertisement.

2. The City shall accept only sealed bids. If all of the bids are not rejected, the purchase shall be made from the lowest responsible bidder meeting or exceeding specifications. Pursuant to NDCC 44-08-01, the City shall give preference to bidders, sellers, or contractors resident in North Dakota. The City reserves the right to reject any and all bids, and to waive irregularities.

3. The requirement for competitive bidding shall be deemed satisfied where the supplies, materials, equipment, or contractual services have previously competitively bid by the State of North Dakota or one of its agencies, for which the State or agency has made provision for participation by political subdivisions, and the supplies, materials, equipment and contractual services may be purchased through the State's or agency's bid.

Section 2.28.040 Exceptions to Competitive Bidding

Notwithstanding Section 2.28.030, competitive bidding shall not be required for the following purchases:

1. Purchases of supplies, materials, equipment and contractual services having a total cost of less than One Hundred Thousand Dollars and No Cents ($100,000.00) may be made in the open market, without competitive bidding; provided:

   (a) The purchasing department head or designee solicits prices or quotes for the supplies, materials, equipment and contractual services from a minimum of three vendors; or if fewer than three vendors are available, then from all available vendors.

   (b) A report is filed with the City Administrator by the purchasing department head stating:

      (1) the particular supplies, materials, equipment or contractual services that are sought to be purchased without competitive bidding;

      (2) the purchasing department head's opinion as to why the purchase should not be made using competitive bidding;

      (3) the vendors from who the purchasing department head solicited prices or quotes for the supplies, materials, equipment and contractual services;

      (4) the prices or quotes supplied by such vendors;

      (5) the department head's recommendation that the purchase be made from the vendor submitting the lowest price or quote that meets or exceeds the specifications of the purchase and the needs of the City;

      (6) the department head's opinion that the purchase price for the supplies, materials, equipment or contractual services is a reasonable and fair price in the local market.

   (c) The purchase without competitive bidding is approved by the City Administrator or his designee

   (d) The purchase without competitive bidding is reported to the Board of City Commissioners.

2. Purchases of supplies, materials, equipment and contractual services of a non-competitive type or kind may be made in the open market without competitive bidding.

3. Purchases of supplies, materials, equipment and contractual services from other governmental bodies or agencies may be made in the open market without competitive bidding.

4. When, in the opinion of the Board of City Commissioners or the City Administrator, an emergency requires the purchase of supplies, materials, equipment and contractual services, such purchases may be made in the open market without competitive bidding.

5. When, due to the nature of the purchase sought, it is difficult, if not impossible, to strictly define or delineate bid specifications, the City may identify interested vendors and issue a Request for Proposals ("RFP")

or Request for Qualifications ("RFQ") in order for such vendors to demonstrate their goods and services. Following such demonstration and review of the merits and costs of the goods and services, the City may purchase such goods or services in the open market without competitive bidding, upon a recommendation made to the Board of City Commissioners, who may then approve or disapprove the purchase.

Section 2.28.050 Sale or Disposal of City Property

1. Sale or Disposal of City Property Less than $2,500; Obsolete Property.

Upon the approval of the Board of City Commissioners, the City may sell or dispose of real property or personal property with an estimated value of less than $2,500 by any means deemed prudent by the City Administrator or his designee, including by private sale. Prior to the sale of such property, a list of all items to be sold will be presented and approved by the City Commission through a surplus property declaration.

2. Sale or Disposal of City Property Greater than $2,500.

Upon the approval of the Board of City Commissioners, the City may provide for the sale or disposal of real property or personal property with an estimated value of more than $2,500 by any one or more of the following methods:

(a) Sale or Disposal by Public Auction.

Real property or personal property owned by the City may be sold or disposed of by public advertisement and auction. For such public auction of property, a notice containing a description of the property to be sold and designating the place where and the day and hour when the sale will be held shall be published in the official county newspaper once each week for two consecutive weeks, with the last publication being at least ten days in advance of the date set for the sale. Such notice shall specify whether the bids are to be received at auction, or as sealed bids, or as a combination thereof. The property advertised shall be sold to the highest bidder if the bid is deemed sufficient by the City Administrator.

In the event the City has a considerable number of parcels of real property and/or items of personal property, the notice shall refer generally to the location of the properties, acknowledging a complete list and description which is on file at city offices for inspection.

Regarding the sale of real property acquired through delinquent taxes, upon a resolution passed by the Board of City Commissioners, the City may release and cancel delinquent special assessments levied on the properties for the county auditor to give tax deeds to the City.

The City Administrator shall have the authority to set any minimum bid amounts to be accepted at public auction, and shall further have the right to reject any and all bids deemed insufficient or otherwise defective.

(b) Sale by Listing Agreements.

Real property or personal property may be sold or disposed of through listing agreements, whether exclusive or non-exclusive. The Board of City Commissioners may by resolution describe the real property or personal property that is to be sold or disposed of and provide a maximum rate of fee, compensation or commission for the sale. The City is authorized to engage sales professionals, including any licensed real estate brokers or others, to attempt to sell the described property. The City reserves the right to reject any and all offers determined to be insufficient.

(c) Sale or Disposal in the Best Interests of the City.

The Board of City Commissioners may, upon a finding that it is in the best interests of the City, enter into such purchase, sale, exchange or other agreements for the purchase, acquisition, sale, lease or conveyance of any personal property or real property, or combination thereof, as the Board of City Commissioners deems appropriate, waiving any purchase or sale requirements under state law or local ordinances.

3. When specific statutory provisions contained in the North Dakota Century Code provide for a procedure governing the conveyance, sale, lease or disposal of real property, those procedures shall apply unless modified by this section. Said statutory procedures include, but are not limited to:

(a) Lease of airports or landing fields, or portions thereof under authority granted in Chapter 2-02, NDCC. Leases must be in compliance with regulations and directives of appropriate federal agencies.

(b) Conveyance of right-of-way for any state highway as provided in section 24-01-46, NDCC.

(c) Leasing of oil and gas lands as provided in Chapter 38-09, NDCC,

(d) Conveyance of property to a municipal parking authority as provided in section 40-61-05, NDCC.

(e) Lease of public buildings or portions thereof as provided in Chapter 48-08, NDCC, except that the City shall have the authority to enter into such leases for a period or term as set by the City Commission.

(f) Granting of concessions for cafes, restaurants, and confectionaries on public buildings and grounds as provided in Chapter 48-09, NDCC, except that the concession may be for a term as set by the City Commission.

(g) Granting of rights-of-way for a railway, telephone line, electric light system, or a gas or oil pipeline system as provided in section 49-09-16, NDCC.

(h) Transfer of property pursuant to a joint powers agreement in accordance with chapter 54-40, NDCC.

Section 2.28.060 Acquisition of Public Improvements

Except as otherwise provided by North Dakota law, if construction of a public improvement, as that term is defined in NDCC §48-01.2, is estimated to cost in excess of one hundred thousand dollars, the City shall abide by all requirements and obligations of NDCC §48-01.2 as may apply, to include public advertisement for bids and competitive award of bids.

Construction of public improvements estimated to cost less than one hundred thousand dollars may be acquired in the open market without competitive bidding, unless otherwise provided by North Dakota law.

Section 2.28.070 Gifts or Donations to City Projects Without Bidding Allowed

The City may accept gifts or donations of land, services, materials, money or other items or property to be used or incorporated within a public building, without including the items or property to be donated in the public bidding process, regardless of the size of the project or of the value of the donated items or property. (Ord. No. 1567 § 1.)

Article 2.30 Appointive Boards

Sections:

2.30.100 Library Board - Terms
2.30.200 Airport Authority – Terms

Section 2.30.100 Library Board – Terms

Pursuant to NDCC §40-38-03, the City of Dickinson has appointed the Board of Directors of the Library. In said statute, the terms are for a period of three years, and commence on the first day of July following the appointment. Commencing on January 1, 2000, the terms for all subsequent appointees shall expire on December 31 of the third year following the appointment. (Ord. No. 1200, § 6.)

Section 2.30.200 Airport Authority - Terms

Pursuant to NDCC §2-06-02, the City of Dickinson has appointed five commissioners to the Dickinson Municipal Airport Authority, each for a term of five years. Commencing on January 1, 2000, the terms for all subsequent appointees shall be for three years, and shall expire on December 31 of the third year following the appointment. (Ord. No. 1200, § 7.)

Article 2.35 Human Relations Commission

Sections:

2.35.010 Creation of Human Relations Commission
2.35.020 Number of members - Term of members - Appointment of members - Filling vacancies.
2.35.030 President of commission - Meetings - Record to be kept
2.35.040 Goals of the Human Relations Commission
2.35.050 Powers and duties of commission
2.35.060 Commission advisory in nature

Section 2.35.010 Creation of Human Relations Commission

There is hereby created and established a body to be known as the Human Relations Commission, whose purpose is to promote the acceptance and respect for diversity through educational programs and activities and to discourage all forms of discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, age, the presence of any mental or physical disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer' s premise during non-working hours which is not in direct conflict with the essential business-related interests of the employer. (Ord. No. 1248 § 1)

Section 2.35.020 Number of members - Term of members - Appointment of members - Filling vacancies.

The Human Relations Commission shall consist of not less than five nor more than nine members, who shall be appointed by the President of the Board of City Commissioners, subject to confirmation by the Board of City Commissioners. The terms of office of the initial commissioners shall be for staggered terms, with member(s) who shall serve until December 1, 2003; member(s) who shall serve until December 1, 2004; and member(s) who shall serve until December 1, 2005. At the expiration of the terms of the members as aforesaid, members shall be appointed for three-year terms. If a vacancy occurs otherwise than by expiration of a term, it shall be filled by appointment for the unexpired portion of the term. Notwithstanding the expiration of a member's term, such member may serve until his or her successor has been appointed and qualified. (Ord. No. 1248 § 1)

Section 2.35.030 President of commission - Meetings - Record to be kept

The Human Relations Commission shall elect its president for a term of one year from among the appointed members and shall hold regular monthly meetings. The commission shall keep a record of its resolutions, findings and the determinations and such record shall be a public record. The commission may appoint such subcommittees from among the appointed members as it may be necessary for its work. (Ord. No. 1248 § 1)

Section 2.35.040 Goals of the Human Relations Commission

The goals of the Human Relations Commission are:

To provide leadership in the areas of civil rights.

To encourage and educate the public in the promotion of civil rights.

To identify issues of principal concern to members of the community in the area of civil rights and to recommend priorities and objectives to the Board of City Commissioners.

To encourage adherence to federal and state laws regarding civil rights, including Chapter 14-02.4 of the North Dakota Century Code, through education, conciliation and mediation. (Ord. No. 1248 § 1)

Section 2.35.050 Powers and duties of commission

The Human Relations Commission shall:

Recommend to the Board of City Commissioners, from time to time, action and programs in furtherance of the purpose of the Human Relations Commission as described in this article.

Consult and advise with public officials and agencies and with private individuals and organizations to provide education regarding civil rights. The commission may, in its discretion, assist aggrieved individuals, but such assistance shall consist of information, guidance and, in its discretion, conciliation and mediation services. (Ord. No. 1248 § 1)

Section 2.35.060 Commission advisory in nature

The Human Relations Commission shall be advisory in nature and shall submit all reports and determinations to the Board of City Commissioners of the City of Dickinson. Final authority shall be in the Board of City Commissioners. (Ord. No. 1248 § 1)

Article 2.40 Special Assessments.

Sections:

2.40.010 Power to defray expenses of improvement by special assessments.
2.40.011 Improvement district to be created.
2.40.012 Size and form of improvement districts - regulations governing.
2.40.013 Engineer's report required - Contents.
2.40.014 Resolution declaring improvements necessary - Exception for sewer and water improvements - Contents of resolution - Publication of resolution.
2.40.015 Protest against resolution of necessity - Meeting to hear protest.
2.40.016 Protest bar to proceeding - Invalid or insufficient protests - Payment of costs - Tax levy.
2.40.050 Contracts for improvements.
2.40.051 Approval of plans, specifications, and estimates - Approval establishes grade of street.
2.40.052 Plans, specifications, and estimates filed in office of city administrator.
2.40.053 Contract proposals.
2.40.054 Engineer's statement of estimated cost required - City Commission to enter into contracts.
2.40.055 Execution and filing of contract.
2.40.056 Contracts.
2.40.057 Defects and irregularities in improvement proceedings are not fatal.
2.40.100 Assessment of Benefits.
2.40.105 Alternate Method
2.40.110 Special Assessment Commission - Terms.
2.40.200 Financing Improvements of Undeveloped Property by Special Assessment.

Section 2.40.010 Power to defray expenses of improvement by special assessments.

The City of Dickinson, upon complying with the provisions of this Chapter, may defray the expenses of any or all of the following type of improvements by special assessment:

The improvement of the municipal street system and any part thereof, including any one or more of the processes of acquisition, opening, widening, grading, graveling, paving, repaving, surfacing with tar, asphalt, bituminous, or other appropriate material, resurfacing, resealing, and repairing of any street, highway, avenue, alley or public place within the City of Dickinson, and the construction and reconstruction of overhead pedestrian bridges, pedestrian tunnels, storm sewers, curbs and gutters, sidewalks, and service connections for water and other utilities, and the installation, operation, and maintenance of street lights and all types of decorative street lighting, including but not restricted to Christmas street lighting decorations.

The construction of a water supply system, or a sewerage system, or both, or any part thereof, or any improvement thereto or extension or replacement thereof, including the construction and erection of wells, intakes, pumping stations, settling basins, filtration plants, standpipes, water towers, reservoirs, water mains, sanitary and storm sewer mains and outlets, facilities for the treatment and disposal of sewage and other municipal, industrial, and domestic wastes, and all other appurtenances, contrivances, and structures used or useful for a complete water supply and sewerage system.

The improvement of boulevards and other public places by the planting of trees, the construction of grass plots and the sowing of grass seed therein, and the maintenance and preservation of such improvements by the watering of such trees and grass, the cutting of such grass, and the trimming of such trees, or otherwise in any manner which may appear necessary and proper to the governing body of the City of Dickinson.

The acquiring of the necessary land and easements and the construction of the necessary works, within and without the City of Dickinson, for flood protection of properties within the City of Dickinson.

The acquiring or leasing of the necessary property and easements and the construction of parking lots, ramps, garages, and other facilities for motor vehicles.

In planning an improvement project of a type specified in any one of the foregoing subsections, the City Commission may include in such plans any and all items of work and materials which in its judgment are necessary or reasonably incidental to the completion of an improvement project of such type. (Ord. No. 1183 § 1.)

Section 2.40.011 Improvement district to be created.

For the purpose of making an improvement project of one of the types specified in section 2.40.010 and defraying the cost thereof by special assessments, the City of Dickinson may create water districts, sewer districts, water and sewer districts, street improvement districts, boulevard improvement districts, flood protection districts, and parking districts, and may extend any such district when necessary. The appropriate special improvement district may be created by resolution. The district shall be designated by a name appropriate to the type of improvement for the making of which it is created, and by a number distinguishing it from other improvement districts. Nothing herein, however, shall prevent the City of Dickinson from making and financing any improvement and levying special assessments therefor under any alternate procedure set forth under Title 40, NDCC. (Ord. No. 1183 § 2.)

Section 2.40.012 Size and form of improvement districts - regulations governing.

Any improvement district created by the City of Dickinson may embrace two or more separate property areas, and may embrace the entire city. Each improvement district shall be of such size and form as to include all properties which in the judgment of the city commission, after consultation with the engineer planning the improvement, will be benefited by the construction of the improvement project which is proposed to be made in or for such district, or by any portion or portions of such project. A single district may be created for an improvement of the type specified in any one of the subsections of section 2.40.010, notwithstanding any lack of uniformity among the types, items, or quantities of work and materials to be used at particular locations throughout the district. The jurisdiction of the City of Dickinson to make, finance, and assess the cost of any improvement project shall not be impaired by any lack of commonness, unity, or singleness of the location, purpose, or character of the improvement, or by the fact that any one or more of the properties included in the district is subsequently determined not to be benefited by the improvement, or by a particular portion thereof, and is not assessed therefor. There may be omitted from a water or sewer district, in the discretion of the City Commission, properties within the corporate limits which are benefited by the improvement therein but do not abut upon a water or sewer main, without prejudice to the right and power of the municipality subsequently, to assess such properties to the extent and in the manner permitted by law. The City Commission may, by resolution, enlarge an improvement district in which an improvement is proposed or under construction upon receipt of a petition therefor signed by the owners of three-fourths of the area to be added to the district. (Ord. No. 1183 § 3.)

Section 2.40.013 Engineer' s report required - Contents.

After a special improvement district has been created, the City Commission, if it deems it necessary to make any of the improvements set out in section 2.40.010 in the manner provided in this chapter, shall direct the city engineer to prepare a report as to the general nature, purpose, and feasibility of the proposed improvement and an estimate of the probable cost of the work.. The engineer' s report shall include estimates of the portion

of the improvement contemplated each year, the period of years which the improvement will be completed, and the estimated cost of the improvement each year. (Ord. No. 1183 § 4.)

Section 2.40.014 Resolution declaring improvements necessary - Exception for sewer and water improvements - Contents of resolution - Publication of resolution.

After the engineer' s report required by section 2.40.013 has been filed and approved, the City Commission, by resolution, shall declare that it is necessary to make the improvements described therein. A resolution shall not be required, however, if the improvement constitutes a water or sewer improvement as described in subsection 2 of section 2.40.010, nor if the governing body determines by resolution that a written petition for the improvement, signed by the owners of a majority of the area of the property included within the district, has been received. The resolution shall refer intelligibly to the engineer's report, and shall include a map of the City of Dickinson showing the proposed improvement districts. The resolution shall then be published once each week for two consecutive weeks in the official newspaper of the City of Dickinson. (Ord. No. 1183 § 5.)

Section 2.40.015 Protest against resolution of necessity - Meeting to hear protest.

If, within thirty days after the first publication of the resolution declaring the necessity of an improvement project of the type specified in any one of the subsections of section 2.40.010, the owners of any property within the improvement district file written protests describing the property which is the subject of the protest with the city administrator protesting against the adoption of said resolution, the City Commission, at its next meeting after the expiration of the time for filing such protests, shall hear and determine the sufficiency thereof. (Ord. No. 1183 § 6.)

Section 2.40.016 Protest bar to proceeding - Invalid or insufficient protests - Payment of costs - Tax levy.

If the City Commission finds the protests to contain the names of the owners of a majority of the area of the property included within the improvement district, the protests shall be a bar against proceeding further with the improvement project described in the engineer' s report. The termination of proceedings, by reason of protest or otherwise, shall not relieve the City of Dickinson of responsibility for payment of costs theretofore incurred; and for payment of such costs the City of Dickinson may, if funds on hand and available for the purpose are insufficient, issue its certificates of indebtedness or warrants, or levy a tax which shall be considered a tax for a portion of the cost of a special improvement project by general taxation within the meaning of section 57-15-10. If the protests are found to be insufficient or invalid, the City Commission may cause the improvements to be made and may contract or otherwise provide in accordance with this title for the construction thereof and the acquisition of the property required in connection therewith and may levy and collect assessments therefor. (Ord. No. 1183 § 7.)

Section 2.40.050 Contracts for improvements.

If the City Commission determines that the improvement should be made, it shall proceed on an annual basis, and consistent with the engineer's report, to make the improvements. The City Commission shall also direct the city engineer to prepare, on an annual basis, a report as to the portion of the project to be constructed, together with the estimated cost of the same. (Ord. No. 1183 § 8.)

Section 2.40.051 Approval of plans, specifications, and estimates - Approval establishes grade of street.

At any time after receiving the engineer' s report required by section 2.40.013, and the annual report required by section 2.40.050, the City Commission may direct the city engineer to prepare detailed plans and specifications for construction of the improvement, or the portion of the improvement to be constructed at that time. The plans and specifications shall be approved by a resolution of the City Commission, which resolution may authorize advertising for proposals for the improvements. If the plans and specifications include the establishment of the grade of a street and such grade has not been established previously by ordinance, the resolution approving the plans, specifications, and estimates shall constitute an establishment of the grade. (Ord. No. 1183 § 9.)

Section 2.40.052 Plans, specifications, and estimates filed in office of city administrator.

The plans, specifications, and estimates shall be the property of the City of Dickinson and shall be filed in the office of the city administrator and shall remain on file in his office subject to inspection by anyone interested therein. The City Administrator shall furnish to any person applying therefor copies of the same, and may charge the costs of such copies, as established by the City. (Ord. No. 1183 § 10.)

Section 2.40.053 Contract proposals.

Proposals for the work of making improvements provided for in this chapter must be advertised for by the City Commission in the official newspaper of the city once each week for three consecutive weeks. All proposals under this chapter are governed by the provisions of chapters 48-01.1 and 48-02, NDCC. (Ord. No. 1183 § 11.)

Section 2.40.054 Engineer's statement of estimated cost required - City Commission to enter into contracts.

Before adopting or rejecting any bid filed under the provisions of this chapter, the City Commission shall require the city engineer to make a careful and detailed statement of the estimated cost of the work. The City Commission may not award the contract to any bidder if the engineer' s estimate prepared pursuant to this section exceeds the engineer' s estimate by forty percent or more. (Ord. No. 1183 § 12.)

Section 2.40.055 Execution and filing of contract.

All contracts entered into for any work provided for in this chapter shall be entered into in the name of the City of Dickinson and shall be executed on the part of the City of Dickinson by the President of the Board of City Commissioners and countersigned by the city administrator. After the contract is signed by the contractor, it shall be filed in the office of the city administrator. (Ord. No. 1183 § 13.)

Section 2.40.056 Contracts.

The provisions of Sections 40-22-36, 40-22-37, 40-22-39 and 40-22-40, NDCC, together with any amendments thereto, are hereby incorporated by reference. (Ord. No. 1183 § 14.)

Section 2.40.057 Defects and irregularities in improvement proceedings are not fatal.

Defects and irregularities in any proceedings had or to be had under this chapter relating to municipal improvements by the special assessment method, where the proceedings are for a lawful purpose and are

unaffected by fraud and do not violate any constitutional limitation or restriction, shall not invalidate such proceedings, and no action shall be commenced or maintained and no defense or counterclaim in any action shall be recognized in the courts of this state founded on any such defects or irregularities in such proceedings, unless commenced within thirty days of the adoption of the resolution of the City Commission awarding the sale of warrants to finance the improvement. (Ord. No. 1183 § 15.)

Section 2.40.100 Assessment of Benefits.

For any special assessment improvements made under the provisions of this Chapter the assessments shall be made as set forth in Chapter 40-23 or 40-23.1, NDCC. (Ord. No. 1183 § 16.)

Section 2.40.105 Alternate Method

Article 2.40.110, as adopted herein, is an alternate method of levying special assessments for the City of Dickinson, pursuant to its home rule authority. Nothing herein shall prohibit the city of Dickinson from proceeding under any other method of assessing benefits under Title 40 of the North Dakota Century Code. (Ord. No. 1183 § 17.)

Section 2.40.110 Special Assessment Commission - Terms.

Pursuant to NDCC §40-23-01, the City of Dickinson currently has a special assessment commission consisting of three commissioners, each serving a term of six years. Commencing on January 1, 2000, all subsequent terms shall be for three years, and expire on December 31 after the third year following the appointment, except that all members of the Special Assessment Commission as of January 1, 2000 shall continue to serve the terms which they were appointed.

Commencing January 1, 2001, the membership shall be increased to five members, by appointment by the Board of City Commissioners. The terms of the two additional commissioners shall be for two years and three years, respectively, thereafter all appointments shall be for three-year terms. (Ord. No. 1200, § 5; Ord. No. 1217, § 3.)

Section 2.40.200 Financing Improvements of Undeveloped Property by Special Assessment.

The owner of any undeveloped property may petition the City of Dickinson to make improvements to said property pursuant to the provisions of this Chapter. The city of Dickinson shall not authorize said improvements unless all of the provisions of this article are complied with, and the petitioner provides to the City of Dickinson an irrevocable letter of credit or other acceptable security to cover the cost of the improvements and all other associated costs. For purposes of this section, undeveloped property means property which does not have water, sewer, street, or curb and gutter.

Article 2.45 Historic Preservation Commission

Sections:

2.45.010 Purpose and Declaration of Public Policy
2.45.020 Creation of Historic Preservation Commission
2.45.030 Members - Qualifications - Appointment - Terms - Compensation - Conflicts
2.45.040 Chairman - Quorum
2.45.050 Meetings - Notice - Minutes
2.45.060 Powers of Commission
2.45.070 Employment of Staff
2.45.080 Appropriations - Funding
2.45.090 Definition of Terms

Section 2.45.010 Purpose and Declaration of Public Policy

(a) The purpose of this ordinance is to establish a program for the designation, preservation, protection, renovation and use of historic properties and/or historic districts within the City. The program shall:

(1) Promote cultural stability and safeguard the heritage of the City.

(2) Stimulate the tourist industry by preserving the City's economic base.

(3) Stabilize and improve property values.

(4) Foster economic development through increased pride of place.

(5) Provide a mechanism to review and comment on proposed alterations, demolitions, constructions, and relocations within historic districts and with regard to historic properties and/or historic districts.

(6) Promote knowledge and understanding of the City's historic properties and of the endeavors of the past.

(b) This ordinance will enable the City to:

(1) Retain and enhance historic properties and/or historic districts within the City while allowing adaptation for current use by assuring that future construction, relocation and alterations are compatible with historic character.

(2) Assure that zoning ordinances, building permits, subdivision of lots, construction, alteration, relocation and demolition adjacent to historic properties and/or historic districts are compatible with historic preservation principles.

(3) Cooperate with and assist local, state and federal agencies implement and enforce federal and state legislation to identify, evaluate, designate, record, protect and preserve historic properties and/or historic districts. (Ord. No. 1257 § 1)

Section 2.45.020 Creation of Historic Preservation Commission

The Dickinson Historic Preservation Commission is hereby created (hereafter "the commission"). (Ord. No. 1257 § 1)

Section 2.45.030 Members - Qualifications - Appointment - Terms - Compensation - Conflicts

(a) The commission shall consist of seven (7) members who shall be residents of the City and/or the area within its extraterritorial jurisdiction.

(b) The commission shall be comprised of persons with a demonstrated knowledge, special interest in or knowledge of history, architecture, archeology, historic preservation or related disciplines.

(1) The majority of the members must have professional qualification in the fields of history, architectural history, prehistoric or historic archeology, architecture, folklore, cultural anthropology, curation, conservation, planning, landscape architecture or related disciplines.

(2) The requirements of this section may be waived, with the agreement of the State Historical Society of North Dakota, if individuals having these professional qualifications are not available for appointment, and reasonable efforts, as defined by the section, have been made to fill the positions.

(c) Applicants shall be solicited by requests for resumes and written assurance of willingness and interest in serving made:

(1) To city high schools and Dickinson State University staff, utilizing ordinary means established by the institution for such requests;

(2) To city architectural and engineering firms;

(3) To the Stark County Historical Society; and

(4) By public advertisement in a newspaper of general circulation.

(d) After the deadline for submission thereof, and review of applicant resumes and their written assurance of willingness and interest in serving, commission members shall be appointed by the Chief Elected Official, subject to the approval of the State Historical Society of North Dakota.

(e) All terms shall commence on January 1, 2003. Initially three members shall serve for a term of one year; two members shall serve for a term of two years; and two members shall serve for a term of three years. Individual term assignments will be selected by lot at the beginning of the first meeting of the commission. At the expiration of the initial terms, members shall be appointed for three-year terms but the member may serve until a successor has been appointed and the successor's appointment approved. Members of the commission may serve no more than three consecutive terms.

(f) If a vacancy occurs other than by expiration of a term, it shall be filled by appointment for the un-expired portion of the term following the procedures set forth in this section. Notwithstanding the expiration of a member's term, such member may serve until a successor has been appointed and the successor's appointment approved.

(g) No commission member shall be entitled to any compensation, except that necessary reasonable expenses incurred in the performance of their duties may be reimbursed.

(h) It is recognized that conflicts of interest for commission members may occur due to the possibility of direct or indirect personal financial gain. Commission members in this position shall abstain from the discussion or voting on such matters. (Ord. 1257 § 1.)

Section 2.45.040 Chairman - Quorum

The commission shall, at its first meeting following January 1 in each year, elect a chairperson and vice chairperson to serve until their successors are elected.

A majority of the members of the commission shall constitute a quorum to conduct business. (Ord. No. 1257 § 1.)

Section 2.45.050 Meetings - Notice - Minutes

The commission shall solicit public participation in its decisions and activities. It shall conduct itself in ways which encourage public participation. In furtherance of this goal:

The commission shall hold at least four (4) meetings annually. The dates for the four (4) required meetings shall, except for the first year of the commission' s operation, be set at least a year in advance.

All meetings shall be open to the public; shall be held in a facility accessible to the disabled; and shall be upon such notice as required by law. Unless law shall provide greater notice, the notice of the meeting and its agenda must be published at least ten (10) calendar days prior to the meeting in a

newspaper of general circulation. The meeting notice and agenda shall be sent to the North Dakota State Historic Preservation Office at least ten (10) calendar days before the meeting.

The commission's rules governing its own operation and minutes of all commission meetings shall be maintained at City Hall or the offices of the commission; shall be accessible during business hours to the public; and shall be filed at the State Historic Preservation Office within fifteen (15) days following each commission meeting, or at such other times as may be directed. (Ord. No. 1257 § 1.)

Section 2.45.060 Powers of Commission

Subject to the restrictions and limitations of this ordinance, the commission is hereby empowered to represent the Dickinson City Commission and act in its interest. The following powers and duties are specifically conferred upon the commission:

(a) Consistent with this ordinance, to promulgate rules governing its own operation.

(b) To make recommendations to the Board of City Commissioners:

(1) Concerning the acquisition of fee simple and less than fee simple rights in property within the City for purposes of historic preservation;

(2) To identify and recommend, for historic preservation purposes, such persons or entities to which fee simple or less than fee simple rights should be granted;

(3) For any additional ordinances, resolutions and/or administrative procedures required to implement this ordinance or to assure adherence to regulations promulgated by the federal or state government pertaining to the certified local government program.;

(4) Regarding application for and acceptance and utilization of grants from federal, state and local agencies or other entities and individuals;

(5) For budgetary appropriations to promote and advance historic preservation within the City and to otherwise implement this ordinance;

(6) Concerning any historic preservation issues or concerns including, without limitation, its enforcement of federal, state and local legislation for the designation and protection of historic properties and/or historic districts;

(7) Concerning the need for protection of historic properties and/or historic districts within the impact area of any government approved, funded, assisted or licensed projects and proposed means of mitigating any adverse effect;

(8) Designate property within the City that meets the Secretary of the Interior' s Standards for Identification and Registration of Historic Properties, the Secretary of the Interior' s Criteria of Significance, the standards set by the National Register of Historic Places, and/or the North Dakota Historic Sites Registry;

(9) To implement the program referred to in (e), below;

(10) To prepare and submit, in accordance with all applicable federal and state laws and regulations, property nominations to the National Register of Historic Places, and/or the North Dakota Historic Sites Registry;

(11) To accept gifts or grants;

(12) To contract to obtain expertise from persons with professional qualifications in a discipline not represented by membership on the commission.

(c) To make recommendations to administrative staff, the Planning and Zoning Commission and Board of Adjustment of the City and any Renaissance Zone Commission established within the City:

(1) With respect to any building permits, zoning changes, or variances which are pending or issued by the City which may affect historic properties and/or historic districts. The commission shall have no power to prohibit the issuance of any building permit;

(2) To review and comment on any issues concerning historic properties and/or historic districts or historic preservation, even if a building permit is not otherwise required by City ordinances for its construction, alteration, demolition or relocation;

(3) Concerning any historic preservation issues or concerns;

(d) To prepare, or have prepared on its behalf, a comprehensive survey, according to the standards promulgated by the State Historical Society of North Dakota, to assist the City in designating properties within the City that meet the Secretary of the Interior's Standards for Identification and Registration of Historic Properties, the standards set by the National Register of Historic Places, and/or the North Dakota Historic Sites Registry;

(e) To develop, or to have developed on its behalf, a program for the designation, protection and recognition of historic properties and/or historic districts within the City;

(f) To review property nominations to the National Register of Historic Places according to the standards and procedures promulgated by the State Historical Society of North Dakota;

(g) To preserve records of surveys of historic or potentially historic properties and/or historic districts within the City and to file such information at the North Dakota State Historic Preservation Office;

(h) To review and comment upon plans, proposals, permits and applications which are developed or required by any federal, state, and local agencies or by other entities which may, in the opinion of the commission, either directly or indirectly affect any historic properties and/or historic districts;

(i) To review and comment upon all certifications of significance and certifications of rehabilitation as requested by the North Dakota State Historic Preservation Officer;

(j) To review and comment to state or federal agencies regarding the presence of historic properties and/or historic districts within the impact area of any government funded, assisted or licensed projects, to the extent of the project's effect on historic properties and/or historic districts, and proposed means of mitigating any adverse effect;

(k) To develop and participate in programs to increase public awareness of the value of historic preservation and historic properties and/or historic districts and of the program established by this ordinance;

(l) To perform any other functions which may be delegated to it by the Board of City Commissioners. (Ord. No. 1257 § 1.)

Section 2.45.070 Employment of Staff

The City may provide staff for the commission. (Ord. No. 1257 § 1.)

Section 2.45.080 Appropriations - Funding

The Board of City Commissioners may appropriate funds for the operation of the commission. The commission shall receive, hold, dispose and account for assets of any nature or description and all funds received from any source. A special revenue fund known as the Historic Preservation Fund shall be created to receive all funds and account for all fund expenditures made. (Ord. No. 1257 § 1.)

Section 2.45.090 Definition of Terms

Alteration: Any change to a resource resulting from construction, renovation, improvement, repair, maintenance, or other actions.

Appurtenances: A feature related to a parcel of land or to a property including, but not limited to, buildings, objects, fences, signs, sidewalks, etc.

Building: A structure created to shelter any form of human activity, such as a house, garage, barn, church, hotel, or similar structure.

Chief Elected Official: Means the President of the Board of City Commissioners.

City: Means the city of Dickinson, North Dakota.

Commission: The Dickinson Historic Preservation Commission, a local historic preservation commission.

Construction: The addition, or placement of any improvement onto any historic property or historic district.

Criteria of Significance: The quality of significance in American history, architecture, archeology, engineering, and culture present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

A. That are associated with events that have made a significant contribution to the broad patterns of national, state, regional, county, or local history or prehistory; or,

B. That are associated with the lives of persons significant in our past; or,

C. That embody the distinctive characteristics of an architectural style, type, period, or method of construction, or use of indigenous materials or craftsmanship, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or,

D. That have yielded, or may be likely to yield information important in prehistory or history.

Demolition: The complete or partial removal of buildings, structures, infrastructure, objects, sites, or appurtenances.

Designation: The identification, evaluation and registration of property for protection that meet criteria established by the State Historic Preservation Office or by the commission.

Eligibility: A determination by the commission or other legal authority, that a historic property meets the Criteria of Significance.

Historic District: A geographically definable area, urban or rural, which contains a concentration of significant sites, buildings, structures, or objects united historically or aesthetically in concentration, linkage or continuity by plan or physical development and which meets the Criteria of Significance. Districts may be contiguous or discontiguous and may contain properties that are individually eligible for the National Register of Historic Places and/or the North Dakota State Historic Sites Registry or that are designated as eligible by virtue of their ability to contribute to the significance of concentration.

Historic Property: A building, structure, site, object, resource or district that meets the Criteria of Significance as promulgated by the Secretary of the Interior and adopted by the State Historic Preservation Office.

Improvement: An appurtenance developed by human design, including, but not limited to, buildings, structures, infrastructure, objects, and manufactured units, such as mobile homes, carports, and storage buildings.

North Dakota State Historic Sites Registry: A legislatively approved (North Dakota Century Code (NDCC): Chapter 55-10) listing of significant historic properties located in North Dakota, comparable to the National Register of Historic Places.

National Register of Historic Places: A federal list of cultural resources worthy of preservation, authorized under the National Historic Preservation Act of 1966 as part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect the nation's historic and archaeological resources. The National Register Program is administered by the commission, by the State Historic Preservation Office, and by the National Park Service under the Department of the Interior. Significant federal benefits may accrue to owners of properties listed or determined eligible for the listing in the National Register.

Object: An object is distinguishable from buildings or structures by being a construction that is primarily artistic in nature or relatively small in scale and simply constructed. Although it may be, by nature or design, movable, an object is associated with a specific setting or environment and may include, monuments fountains, statuary, mileposts, sculpture, et.al.

Professional Qualifications: The professional qualifications necessary to comply with this section shall be those defined by the Secretary of the Interior’s Professional Qualification Standards.

Relocation: Any changes in the location of a building, object, or, structure in its present setting or to another setting.

Resource: Sites, buildings, structures, objects and all significant features within a preservation district, together with the appurtenances and improvements, if any. The term “resource” includes, but is not limited to, separate districts, buildings, structures, sites, objects, landscape features, and related groups thereof.

Protection: The commission review process for proposed conservation, demolition, alteration, improvement, relocation or other action that may affect historic properties and/or historic districts.

Site: A location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural or archeological value regardless of the value of any existing structure.

State Historic Preservation Office: The Historic Preservation Division of the State Historical Society of North Dakota.

State Historic Preservation Officer: The person designated by the Governor to hold this position.

Structure: A constructed work of human origination created for purposes other than providing human shelter and may include constructions such as aircraft, automobiles, bridges, dams, earthworks, railroad facilities and equipment, et.al. (Ord. No. 1257 § 1.)

Article 2.50 Oil and Gas Trust Fund

Sections:

2.50.010 Dickinson Future Fund
2.50.020 Deposits
2.50.030 Expenditures
2.50.040 Board of Trustees

Section 2.50.010 Dickinson Future Fund

There is hereby created a limited expendable trust fund called Dickinson Future Fund for the deposit of revenues from oil, gas and other mineral interests, together with other revenues deemed appropriate by the Board of City Commissioners, to be administered as set forth in this article. (Ord. 1221 § 1; Ord. No. 1277 § 1.)

Section 2.50.020 Deposits

The Board of City Commissioners may, annually or at such times as it deems appropriate, deposit all or a portion of the revenues the City of Dickinson derives from oil, gas or other mineral interests and other revenues deemed appropriate by the Board of City Commissioners in the Dickinson Future Fund. Such revenues may include, but are not limited to bonus payments, delay rentals, revenue interests, production payments, and any other revenue derived from oil, gas and other mineral interests owned by the City of Dickinson. (Ord. 1221 § 1; Ord. No. 1277 § 2.)

Section 2.50.030 Expenditures

Upon deposit in the Dickinson Future Fund, such funds shall not be expended by the Board of City Commissioners, except as provided herein.

(a) Principal, Interest and Dividends. The Board of City Commissioners may annually withdraw an amount not to exceed 5% of the cash balance as of January 1 of the current year to supplement the general fund and reduce property taxes.

(b) The principal and interest of said fund shall not be considered unencumbered cash on hand or income therefrom for budgetary purposes under NDCC Chapter 40-40. (Ord. 1221 § 1; Ord. No. 1252 § 1; Ord. No. 1277 § 3.)

Section 2.50.040 Board of Trustees

A Board of Trustees, consisting of two City Commissioners, the City Administrator, and the Finance Director, shall manage the Dickinson Future Fund, and determine investment guidelines for said fund. The Board of Trustees may select a funding agent or agents to hold and invest the funds of the Dickinson Future Fund. The funds may be placed for investment only with a firm or firms whose primary endeavor is money management, and only after a trust agreement or contract has been executed. (Ord. 1240 § 1; Ord. No. 1277 § 4.)

Article 2.60 Cemetery Trust Fund

Sections:

2.60.010 Cemetery Trust Fund No. 2

Section 2.60.010 Cemetery Trust Fund No. 2

There is hereby created a perpetual care fund to be administered by the City Administrator of the City of Dickinson.

The City is hereby authorized to accept donations from any and all sources to such fund.

The principal of such fund shall remain in trust with the interest on said principal to be utilized as operating funds for the care and maintenance of cemeteries owned, maintained or operated by the City of Dickinson.

All non-tax funds currently held by the City which have been designated for such purpose shall be merged herewith and administered as part of this cemetery trust fund.

The Board of City Commissioners may allocate a portion of the fees generated from sale of cemetery lots or other fees received for cemetery purposes to the principal of this fund, to be administered as set forth herein. (Ord. 1222 § 1.)

Article 2.70 Development Impact Fees

Sections:

2.70.010 Requirements for Development Approval
2.70.015 Definitions
2.70.020 Imposition of impact fee
2.70.030 Application for Impact Fee Approval
2.70.040 Review by City Engineer
2.70.050 Notification to Property Owners
2.70.060 Approval of Application and Establishment of development service areas
2.70.070 Plans and Specifications
2.70.080 Assessment
2.70.090 City Commission Approval of Assessment
2.70.100 Payment of Impact Fees
2.70.110 Impact fee exemptions

Section 2.70.010 Requirements for Development Approval

All impact fees approved under this chapter shall comply with the following terms and conditions:
If a developer owns at least 51% of the affected properties in a proposed improvement area, the developer may apply to the City for special assessments to be placed upon properties in the proposed improvement area, in order to pay, in part, for improvements to the affected properties.

The City shall require the developer to cover at least 50% of the costs of improvements. The City may assess up to 50% of the cost of improvements to benefited properties to a maximum amount, as set forth in Section 2.70.020

In enacting this Article 2.70, the Board of City Commissioners finds that by requiring the developer to pay for at least 50% of the costs, that person or company will be at considerable risk for the improvements and less likely to abandon the project after construction of improvements.

If the City initiates a street improvement project, proportionate costs of water, sewer, storm water, curb, gutter, and sidewalk will be assessed to benefited properties.

If the City initiates any necessary infrastructure improvements in an area a developer or landowner is not ready to develop, the City will cover the costs of the improvement and assess proportionate impact fees on benefited properties following development.

All developer proposed improvements are subject to approval by the City and must be designed to City standards.

All properties served by City improvements or services must be in the City limits.

All properties eligible to apply for development impact fees must be within city limits or annexed thereto prior to approval of the development impact fee application. No property lying outside of city limits shall be eligible to obtain development impact fees or cost participation by the City.

The Board of City Commissioners finds that it is in the best interests of the City to prioritize “in-fill” development projects over those that may wish to be annexed to the City. Accordingly, preference in the granting and approval of development impact fees may be given to those properties within city limits as of August 1, 2010.

Application for development impact fees shall not be made prior to approval of a final plat by the Planning and Zoning Commission.

Cost share reimbursement by the City shall be made only upon the City’s receipt of actual invoices from the developer. Total cost share reimbursement shall not exceed 50% of the actual costs incurred by the developer for the improvements. Total cost share reimbursement shall not exceed the estimates provided by the developer in the development impact fee application filed with the City.

A developer shall have a period of 12 months from the date of the approval of the application in which to begin construction. In the event construction has not commenced within 12 months of the date of approval of the

application, such application and approval shall be null and void, and shall require a new application and approval. (Ord. No. 1285 § 1; Ord. No. 1311 §1 Ord. No. 1396 § 1.)

Section 2.70.015 Definitions

For the purpose of this Article, the following terms shall have the definitions set forth below:

A. Contiguous Lot. Two or more platted lots which share a common boundary. Lots shall be considered contiguous, regardless of whether one or more of said lots is outside the development service area.

B. Developer. The person or entity who submits an Application for impact fee approval pursuant to

C. Improvement. Any public improvement for which impact fees may be assessed, including streets, water, sewer, storm water, curb, gutter an sidewalk.

D. Residential Improvement Project. Any proposed development project for which the majority of land within the proposed development area consists of lots intended and designated for residential development and appropriately zoned therefore.

E. Commercial/Industrial Improvement Project. Any proposed development project for which the majority of the land within in proposed development area consists of lots intended and designated for commercial or industrial development and appropriately zoned therefore. (Ord. No. 1285 §1 Ord. No. 1396 §1)

Section 2.70.020 Maximum Financial Participation by the City

1. The City will permit a maximum of $7 million in assessments and/or cost share in improvements at any time citywide.
2. The City will permit a maximum of $300,000 in assessments and/or cost share for any single Residential Improvement Project.
3. The City will permit a maximum of $600,000 in assessments and/or cost share for any single Commercial/Industrial Improvement Project.
4. The City shall endeavor to limit outstanding development impact fees for Residential Improvement Projects to less than $4 million, and for Commercial/Industrial Improvement Projects to less than $3 million; provided, however, that such limits may temporarily be exceeded, so long as the maximum limit of $7 million for all outstanding development impact fees is not exceeded. (Ord. No. 1396 § 1)

Section 2.70.030 Application for Impact Fee Approval

Any person or entity desiring to utilize impact fees for the construction of improvements and infrastructure for undeveloped property shall make application to the City Engineer on the form provided by the City Engineer. The developer shall also pay, at the time the application is submitted, an application fee in such amount as is set in the City Fee Schedule. (Ord. No. 1285 § 1.)

Section 2.70.040 Review by City Engineer

After receipt of an impact fee application, the City Engineer shall review said application, and may request additional information from the developer. (Ord. No. 1285 § 1.)

Section 2.70.050 Notification to Property Owners

If the development service area contains property owned by any person or entity other than the developer, the City shall provide written notice by Certified Mail to each such property, which shall include a map of the service area, and the application. Each property owner shall have 15 days after the date of mailing of said notice to file a written protest to the application. (Ord. No. 1285 § 1.)

Section 2.70.060 Approval of Application and Establishment of development service areas

At any time after receiving the recommendation of the City Engineer, but not less than 15 days after the date of mailing Notification to Property Owners pursuant to Section 2.70.050, the Board of City Commissioners shall consider the Application and any written protests and, may in its discretion:

A. Approve the Application with or without changes or conditions;

B. Establish the maximum financial participation of the City of Dickinson in the project; and

C. Designate the development service area for the project.

In designating service areas, such areas shall provide a nexus between those paying the fees and receiving the benefits to ensure that those developments paying impact fees receive substantial benefits. Service areas may be designated by the city commission upon consideration of the following factors:

1. The comprehensive plan.
2. Standards for adequate public facilities incorporated in the capital improvement plan.
3. The projections for full development as permitted by all applicable, zoning, storm water and other land use ordinances and timing of development.
4. The need for funding unprogrammed capital improvements necessary to support projected development.
5. Such other factors as the city may deem relevant. (Ord. No. 1285 § 1.)

Section 2.70.070 Plans and Specifications

The developer shall provide plans and specifications for the improvements prepared by an engineer licensed and certified by the State of North Dakota, which must be approved by the City Engineer. (Ord. No. 1285 § 1.)

Section 2.70.080 Assessment

After the total amount of impact fees to be charged to all property owners within the development service area has been determined, the amount of fees to be assessed against each parcel of property shall be determined in the same manner as special assessments are assessed under the provisions of Article 2.40 of the City Code, and Chapter 40-23 and 40-23.1 of the North Dakota Century Code. If a developer has made payments for improvements for which the impact fee is assessed to property not owned by the developer, the developer may, at the discretion of the Special Assessment Commission, receive a credit for the amount of such payments. (Ord. No. 1285 § 1.)

Section 2.70.090 City Commission Approval of Assessment

The City Commission shall consider and approve, by resolution, the impact fees to be assessed against each parcel located in the development service area. (Ord. No. 1285 § 1.)

Section 2.70.100 Payment of Impact Fees

Impact fees certified pursuant to this chapter shall be assessed and paid as follows:

A. The impact fee shall be due and payable by the property owner at the time the city's commitment to the project is met.

B. The impact fee may be paid in full, immediately, at the option of the property owner.

C. If not paid in full immediately, the impact fee shall be assessed against the property owner as follows:

1. For a Residential Improvement Project, the impact fee shall be assessed against the property for a period not to exceed ten years, with interest charged thereon at the rate allowable for special assessments.

2. For a Commercial Industrial Improvement Project, the impact fee shall be assessed against the property for a period not to exceed five years, with interest charged thereon at the rate allowable for special assessments.

D. If the property owner requests that the impact fee be assessed against the property, the fees shall be certified to the County in the same manner as special assessments. (Ord. No. 1285 § 1; Ord. No. 1311 §3. Ord. No. 1396 §1)

Section 2.70.110 Impact fee exemptions

Parks and recreation facilities owned or operated, in whole or in part, by the city may be exempt from the requirement for payment of impact fees. (Ord. No. 1285 § 1.)

Chapter 3 ADULT ENTERTAINMENT CENTERS OR ESTABLISHMENTS

Last updated March 2011

Sections:

3.010 Legislative intent and purpose
3.020 Definitions
3.030 Licenses generally
3.040 Location and conditions for operation; license application
3.050 Severability

Section 3.010 Legislative intent and purpose

The purpose of this chapter is to recognize and to provide for the fact that the operation of adult entertainment centers or adult establishments and the operation of associated mechanical amusement devices which depict or display specified sexual activities or specified anatomical areas results in increased enforcement problems for the city and additional expense to the city that justifies a higher license fee for these centers, establishments or devices than for other mechanical amusement devices, establishments or centers. This follows because it is not immediately possible to distinguish between constitutionally protected nonobscene depictions or portrayals of explicit sexual conduct, on one hand, from nonconstitutionally protected obscene portrayals of sexual conduct on the other hand. This necessitates greater police vigilance to assure that the lawful business of displaying nonobscene portrayals or depictions of sexual conduct is not used inadvertently or by design as the means of unlawfully displaying or depicting obscenity. In order to recoup some of the costs thus imposed on the city, it is appropriate that there be imposed on the persons who profit from such devices, centers or establishments some of the costs of insuring that the devices, centers or establishments are used only lawfully. For the purposes of promoting the health, safety, morals or general welfare of the city residents as authorized by state law, the state has provided certain powers to the city in furtherance thereof. In addition to the increased enforcement problems for the city and additional expense, it is necessary that the city specify certain zoning areas and establish certain regulations pertaining to licensing adult entertainment centers or adult establishments and associated mechanical amusement devices, delineating the placement of such centers, establishments or devices in certain specified zoning areas and requiring certain information, before licensing such centers, establishments or devices and placement of such businesses. (Ord. No. 814, § 1.)

Section 3.020 Definitions

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

Adult Bookstore. A bookstore having as a preponderance of its publications books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this section, or which also sells sexually oriented devices as herein defined in conjunction with their business as defined herein.

Adult Cabaret. Any commercial premises or private club, to which a member of the public or a club member is invited or admitted, and where an entertainer provides live entertainment or activity that includes any exhibition, performance or dance of any type involving a person who performs in such clothing or removes such clothing such that the areola of the female breast or any portion of the pubic area, anus, buttocks, vulva or genitals are less than completely and opaquely covered. This definition shall include the following:

- any exhibition, performance or dance involving the performance of acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts prohibited by law.
- the actual or simulated touching, caressing or fondling of the breast, buttocks, anus or genitals.

- the actual or simulated display of pubic hair, anus, vulva or genitals, or the nipples of a female.
- appearances, entertainment or performances of any type consisting of or containing any nude performer or topless female dancer.
- any exhibition, performance or dance that is intended to sexually stimulate any member of the public and which is conducted on a regular basis or as a substantial part of the premises activity.

Adult Establishment or Adult Entertainment Center. An adult bookstore, an adult cabaret, an adult motion picture theater, or an adult mini-motion picture theater, all as defined in this section, or any other business the preponderance of whose activities or sales are designed to display, show, perform or depict specified sexual activities or specified anatomical areas as defined in this section, or which may otherwise be designed to sexually arouse any member of the public. Any establishment or center that displays or sells sexually oriented devices as herein defined as a preponderance of its business is also an adult entertainment center or adult establishment within the meaning of this section.

Adult Mini-Motion Picture Theater. An enclosed building with a capacity for less than fifty persons and which is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this section, for observation by patrons of the theater.

Adult Motion Picture Theater. An enclosed building with a capacity of fifty or more persons and which is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this section, for observation by patrons of the theater.

Mechanical Amusement Device. Without limitation, any machine which, upon the insertion of a coin or the payment of consideration, operates or may be operated for use as a game, contest or amusement of any description, or which depicts, displays or projects, directly or indirectly, pictures, photographs or other visual images.

Sexually Oriented Device. Without limitation, any artificial or simulated specified anatomical area or any other device or paraphernalia that is designed, in whole or in part, for specified sexual activities.

Specified Anatomical Areas.

(a) Less than completely and opaquely covered human genitals and pubic regions, buttocks or female breasts below a point immediately above the top of the areola.

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities.

(a) Human genitals in a state of sexual stimulation or arousal;

(b) Actual or simulated acts of human masturbation, sexual intercourse or sodomy; or

(c) Fondling or other erotic touching of human genitals and pubic regions, buttocks or female breasts. (Ord. No. 814, § 1.)

Section 3.030 Licenses generally

(a) The annual license fee for adult entertainment centers or adult establishments and mechanical amusement devices shall be as follows:

(1) For each entertainment center or adult establishment, two thousand dollars. ($2,000), or as may otherwise be determined by the Board of City Commissioners by resolution and incorporated into the City's fee schedule.

(2) For mechanical amusement devices used on a regular basis to depict or display specified anatomical areas or specified sexual activities as defined herein, three hundred dollars ($300) per machine per year, irrespective of the number of machines owned by any one person, or as may otherwise be determined by the Board of City Commissioners by resolution and incorporated into the City's fee schedule.

(b) The owner of any mechanical amusement device shall furnish a complete list of all devices owned or operated subject to licensing, with an indication thereon of the location of each machine and a list of all films used and the date of any film or placement during the license period.
(c) The fees provided for herein shall be payable on July 1 of each year and prorated on a daily basis if the license becomes effective at any time other than July 1.
(d) No license issued under the provisions of this chapter shall be transferable by a licensee, and any attempt to do so shall constitute a violation of this chapter; provided, that upon the death of the licensee, the license may be transferred to the executors or administrators of such deceased licensee. For the purposes of this section, the transfer of twenty-five percent or more of the capital stock of any licensee corporation or the change in the vesting of voting rights of over twenty-five percent of the stock of the licensee corporation shall be considered a transfer and change of ownership, and in such event a new license must be obtained by such corporation. (Ord. No. 814, § 1.)
(e) A license may only be issued to the owner of the center or establishment.

Section 3.040 Location and conditions for operation; license application

Notwithstanding anything in Chapter 39 of this Code and this chapter to the contrary, an adult entertainment center or adult establishment shall be allowed to operate only in General Industrial (GI) or Light Industrial (LI) zoning districts and in no other zoning district, provided the center or establishment meets the following conditions:

(a) The center or establishment is located no closer than one thousand two hundred (1,200) feet from any preexisting church, school, private residence, residentially-zoned property, or downtown commercial zoned property.
(b) The center or establishment excludes from its premises those persons less than eighteen years of age.
(c) The center or establishment displays no signs visible from the exterior of the center, except non-obscene signs identifying the center as an adult entertainment center or adult establishment as defined herein.
(d) No materials depicting specified sexual activities or specified anatomical areas shall be visible from the exterior of the center or establishment.
(e) The manager and the owners of the center or establishment are registered with the chief of police and have provided him with such information as is reasonably required herein with respect to names, addresses, fingerprints and prior criminal records or criminal convictions associated with the operations of the business of adult entertainment centers or adult establishments in particular, if any.
(f) The business premises of the center or establishment that are generally open to its patrons shall be closed to its patrons from 1:00 A.M to 8:00 A.M. daily, except 12:01 A.M. on Sundays to 8:00 A.M. the following day.
(g) The center or establishment is licensed by the city.
(h) Any person who is eligible for a license as provided herein may obtain a license as delineated herein within the city, if otherwise entitled thereto under this chapter and upon fully complying with all of the provisions of this chapter, by executing, under oath, forms provided by the city administrator and/or the chief of police, setting forth the name, citizenship and place of residence of the applicant and the legal description of the premises where the center or establishment is proposed to operate its business, together with such detailed description of the premises and facilities as the city administrator or chief of police may require. The application shall have attached to it a receipt of the county treasurer showing that all taxes of the applicant on real and personal property levied and assessed him are paid. The application must also show the age of the applicant if an individual, the name, place of residence, citizenship and the age of each partner if the applicant is a partnership and if the applicant is a corporation, either private or municipal, the name, place of residence, citizenship and age of each

officer, director, manager and any stockholder owning more than five percent of the stock in such corporation.

(i) Every applicant shall be required, as a portion of his written application, to promise and agree to abide by and obey all applicable laws of the state and all applicable ordinances of the city so far as such laws or ordinances may be concerned with his operation of the licensed premises and any activities conducted thereon. There shall also be incorporated on any such application the following consent, which shall be signed by the applicant: "The applicant herein does expressly consent that any member of the Board of City Commissioners, any police officer of the city and city attorney or any person or persons duly authorized by the Board of City Commissioners may enter upon the premises described in this application at any reasonable hour of the day or night; and at such time they shall have free access to all portions of the property comprising the licensed premises for the purpose of inspecting such premises for any possible violation of any of the laws of the state or any of the ordinances of the city, whether they pertain specifically to the operation of the business or not. Such access shall be permitted for such purposes without the necessity of a search warrant."

(j) In addition to the provisions required of all applicants, all new applicants or those who previously have not been granted a license under this chapter shall be required to furnish the following:

(1) Such applicant shall furnish a complete statement of the type of business contemplated and give a comprehensive description of its physical layout.

(2) Each applicant shall submit a complete financial statement, detailing all his assets and liabilities of every nature and description and including all property interests of every nature and description.

(3) Each applicant shall cooperate to the fullest extent in obtaining and submitting to the city ~~auditor~~ administrator and/or city police chief complete military and police records concerning any persons involved with the applicant organization. Each applicant shall prepare and submit a complete history of his business experience.

(4) The applicant shall show a history of his residency and employment for five years immediately prior to the date of the application. If the applicant is a partnership, this information shall be furnished for all of the partners; and if a corporation, the amount of authorized capital, the amount paid in capital, whether such corporation is a subsidiary of any corporation and, if so, the name of the parent corporation, the purposes for which the corporation was incorporated and the names and addresses of all officers, directors and managing agents and the names and addresses of all stockholders holding more than five percent of the capital stock of such corporation shall be furnished.

(5) The applicant shall state the name and address of the legal title owner of the premises for which the license is sought, and if the license is sought for a person other than the owner of the premises, the terms and conditions of the lease under which the applicant holds the possession of such premises shall be stated, insofar as the terms of the lease and the rental to be paid are concerned. The applicant shall, when required by the Board of City Commissioners, furnish to the Board a copy of the lease under which he holds possession of the premises. If the license is sought by the owner of the premises, the application shall state the time when such applicant acquired title thereto.

(6) The applicant shall state whether he has ever engaged in the form of business he is applying for prior to the date of application, and if so, the date and type of business and the place where such business was conducted shall be furnished.

(7) It shall be stated whether the applicant has ever had a license for such business revoked or canceled by any municipality, state or federal authority, and if so, the date of cancellation, the place and authority canceling the same and the reasons for such cancellation shall be stated.

(8) It shall be stated whether the applicant has ever been convicted of a violation of any law of the United States or of any state or of the violation of any local ordinance, and if so, the dates, names of places and courts in which such convictions were obtained.

(9) The applicant shall state whether any other persons other than the applicant have any right, title or interest in the leasehold or in the furniture and fixtures of the premises for which the license is sought, and if so, names and addresses of such persons, together with a statement of the interest held, shall be furnished.

(10) It shall be stated whether the applicant has any agreement, understanding or intention to have any agreement or understanding with any person to obtain for any other person or to transfer to any other person the license obtained or to use the license for any other purpose other than the specific use of the applicant, and if so, the names and addresses of such persons and the conditions of such agreements shall be stated.

(11) The applicant shall state whether he has any interest whatsoever, directly or indirectly, in any other similar business within or without the state, and if so, the names, addresses and details concerning such establishments shall be furnished.

(k) All portions of the licensed premises to which members of the general public are admitted shall be readily visible from immediately within the front entrance of the center or establishment; and the center or establishment shall contain no private booths or other areas screened off or otherwise not visible from immediately within the front entrance of the center or establishment, ordinary restrooms or bathrooms excepted; provided that any entrance and exit to such restrooms or bathrooms is readily visible from immediately within the front entrance of the center or establishment. No member of the public shall be permitted at any time to enter into any of the non-public portions of the licensed premises, which shall include but are not limited to: the dressing rooms of entertainers or other rooms provided for the benefit of employees, the kitchen and storage areas; provided that persons delivering goods and material, food and beverages, or performing maintenance or repairs to the premises or equipment may be permitted into non-public areas to the extent necessary to perform their job duties.

(l) The center or establishment shall not sell, distribute, or permit the consumption of any alcohol or other intoxicating substance on the premises of the center or establishment.

(m) No center or establishment may be located within one thousand two hundred (1,200) feet of any other center or establishment licensed herein.

(n) The following standards of conduct shall be observed and adhered to by all employees and entertainers of any center or establishment:

(1) No employee or entertainer shall be unclothed or in less than completely opaque attire so as to expose to view any portion of the female breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva or genitals.

(2) No employee shall caress, fondle, or erotically touch any member of the public. No employee or entertainer shall encourage or permit any member of the public to caress, fondle or erotically touch any employee or entertainer.

(3) No employee or entertainer shall perform any actual or simulated act of sexual conduct as defined in this Chapter, or any act that constitutes a violation of NDCC Chapters 12.1-27.1 or 12.1-27.2, or which may otherwise be a criminal violation under North Dakota state law.

(4) No employee or entertainer shall conduct any dance, performance or exhibition in or about the non-stage area of the center or establishment for less than all members of the public present in the center or establishment.

(5) No employee or entertainer shall accept tips or gratuities in advance of their performance. No employee or entertainer shall accept tips or gratuities directly from patrons. All tips or gratuities shall be deposited in a receptacle provided by the center or establishment.

(6) The performance area where any performance, exhibition or dance where adult entertainment is provided shall be a stage or platform at least eighteen (18) inches in elevation above the level of the patron seating areas, and shall be separated by a distance of at least six (6) feet from all areas to which members of the public have access. A continuous railing at least three (3) feet high and located at least six (6) feet from all points of the performance area shall separate the performance area from the patron seating area.

(7) Sufficient lighting shall be provided and equally distributed throughout the public areas of the premises so that all objects are plainly visible at all times.
(8) A sign at least two feet by two feet, with letters at least one inch in height shall be conspicuously displayed in the public areas of the premises, stating as follows:

THIS CENTER OR ESTABLISHMENT IS REGULATED BY THE CITY OF DICKINSON. ENTERTAINERS ARE:

(1) NOT PERMITTED TO ENGAGE IN ANY TYPE OF SEXUAL CONDUCT
(2) NOT PERMITTED TO APPEAR NUDE OR SEMI-NUDE
(3) NOT PERMITTED TO ACCEPT TIPS OR GRATUITIES IN ADVANCE OF THEIR PERFORMANCE
(4) NOT PERMITTED TO ACCEPT TIPS DIRECTLY FROM PATRONS AT ANY TIME. TIPS MAY BE DEPOSITED IN THE RECEPTICLE PROVIDED BY THIS CENTER OR ESTABLISHMENT.

(Ord. No. 814, § 1; Ord. No. 1409 §1)

Section 3.050 Severability

(a) The City may, upon recommendation of the City Administrator, suspend or revoke any license issued under this Chapter at any time for the following reasons:

(1) The licensee has violated or failed to comply with any provision of this Chapter.
(2) The license was procured by fraud or false representation of fact.
(3) Any agent, servant, partner, business associate or employee, of the licensee has violated any provision of this Chapter under circumstances where the licensee knew or should have known of the violation.
(4) The conviction of the licensee of any crime involving prostitution, promoting prostitution, or transactions involving controlled substances committed on the licensed premises
(5) The conviction of the licensee of any crime involving moral turpitude.

(b) A license procured by fraud or misrepresentation shall be revoked. Where other violations of this Chapter or other applicable ordinances, statutes or regulations are found, the license shall be suspended for a period of 30 days upon the first such violation, 90 days upon the second violation within a 24 month period, and revoked for the third and subsequent violations within a 24 month period, not including periods of suspension.
(c) The city administrator shall provide at least ten days prior written notice to the licensee of the recommendation to suspend or revoke the license and the date of the hearing before the Board of City Commissioners, which must not be more than 30 days from the date of service of the notice, either by certified mail with a return receipt or by personal service upon the manager or owner of the licensed premises. Such notice shall inform the licensee of the right to a hearing before the Board of City Commissioners, the date of the scheduled hearing, and shall state the grounds for revocation and suspension. The Board of City Commissioners shall hold the hearing within 30 days of service upon the licensee and shall issue its decision within 15 days following the close of the hearing. Any person aggrieved by the decision of the Board shall have a right to appeal to the district court. The decision of the Board shall be stayed during the pendency of the appeal except as provided in Subsection (d) below.
(d) Where the city building official or fire chief or their designees or the city health officer find that any condition exists upon the premises of a center or establishment which constitutes a threat of immediate serious injury or damage to persons or property, said official may immediately suspend any license issued under this Chapter pending a hearing in accordance with the provisions of subsection (c) above. The official shall issue notice setting forth the basis for the action and the facts that constitute a threat of immediate serious injury or damage to persons or property, and informing the licensee of the right to appeal the suspension to the Board of City Commissioners under the same appeal provisions set forth in Subsection (c) above, provided, however, that

a suspension based on threat of immediate serious injury or damage shall not be stayed during the pendency of the appeal and the licensee may request an expedited hearing at the next scheduled regular meeting of the Board.

(e) Any person aggrieved by the action of the Board in refusing to issue or renew any license issued under this Chapter shall have the right to appeal such action to the district court. Pending completion of the appeal process the City shall issue a temporary license, provided the aggrieved person files a notice of appeal with the City within 30 days of notice of the refusal to issue or renew. (Ord. No. 1409 §1)

Section 3.060 Severability

The provisions in this chapter are severable, and if any of the provisions, sentences, clauses or paragraphs shall be held unconstitutional, contrary to statute, exceeding the authority of the city or otherwise illegal or inoperative by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the other remaining provisions, unless the court should conclude that the partial invalidation would frustrate the intent of this chapter. . (Ord. No. 814, § 1; Ord. No. 1409 §1)

Chapter 4 ALCOHOLIC BEVERAGES

Last updated January 2016

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4.04 In General
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Article 4.ED Editor's note to Chapter 4

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4.ED.010 Editor's note to Chapter 4

Section 4.ED.010 Editor's note to Chapter 4

As to driving under influence of liquor, see § 20.76.010 of this Code. As to intoxication or drunkenness generally, see § 25.16.08.040. As to use, possession, etc., of controlled substances, see § 25.16.12.130.

Article 4.04 In General

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Section 4.04.00E Editor's note to Article 4.04

For state law as to alcoholic beverages generally, see NDCC, § 5-01-01 et seq. As to authority of city to regulate and license alcoholic beverages generally, see NDCC, §§ 5-02-09, 40-05-01.

Section 4.04.010 Definitions

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

Alcoholic Beverages. Any liquid suitable for drinking by human beings which contains one-half of one percent or more of alcohol by volume and shall include, but is not necessarily limited to, any whiskey, rum, beer, hard cider and wine. It shall be presumed, for purposes of this chapter, that any such beverages contain more than one-half percent of alcohol by volume.

For similar state law, see NDCC, § 5-01-01.

Hotel or Motel License. A license issued to the owner or lessee of any hotel or motel containing seventy-five or more rental units in one contiguous area.

Licensed premises. All areas or spaces where alcoholic beverages are sold, served or dispensed as identified in the comprehensive site drawing required in the application for a license under this Chapter. The licensed premises may be located in two buildings, but all portions of the licensed premises must be contiguous. Any licensee whose licensed premises was located in more than one noncontiguous building as of January 1, 2005 may continue to operate in such buildings, provided that, if either building ceases to be a portion of the licensed premises at any time, the licensed premises thereafter must comply with the current definition of licensed premises.

Lodge or Club. Any corporation or association organized for civic, fraternal, social or business purposes or the promotion of sports, which has at least two hundred members at the time the license is applied for and was in existence at the time of the adoption of the Liquor Control Act of the state. The effective date of the adoption of the Liquor Control Act of the state is defined and determined to be December 3, 1936.

Microbrewery License. A license issued to the owner or lessee of any licensed premises which brews alcoholic beverages on premises. A microbrewery license may be issued only to a licensee who also has a restaurant license.

Minor. A person under twenty-one years of age.

Off-Sale. The sale of intoxicating beverages in original packages for consumption off or away from the premises where sold.

On-Sale. The sale of any alcoholic drinks for consumption on the premises where sold. An on-sale license shall authorize the person named therein to conduct such sales at the place designated in such license and not elsewhere. An on-sale license issued pursuant to the provisions of this chapter shall permit off-sales of liquor under the terms and conditions set forth therein.

On/off Sale License. A license issued to the owner or lessee of an establishment, which shall authorize the person named therein to sell alcoholic beverages for consumption either on or off the premises on which it is sold.

Person. Any of the following: Any individual who is a bona fide resident and a citizen of the state; any domestic, private or municipal corporation organized and existing under the laws of the state; any limited liability company organized and existing under the laws of the state; and partnership, all of whose members are bona fide residents in and citizens of the state; or any lodge or club existing as defined in this section and maintaining its main lodge or club rooms within the city. No foreign corporation shall be considered a person for purposes of this chapter, nor shall any foreign corporation be entitled to a license under this chapter.

Qualified alcoholic beverage licensee. Unless the context otherwise indicates, means a commercial establishment that is licensed to engage in the sale of alcoholic beverages, and which has paid and continues to pay the city Hospitality tax under section 35.125 of this Code. A commercial establishment licensed to engage in the sale of alcoholic beverages that is not required to pay the Hospitality tax may voluntarily pay the tax to become a qualified alcoholic beverage licensee. A commercial establishment shall be considered to have paid the tax upon its first payment of said tax to the State Tax Department. Failure to continuously pay the tax will void the remaining term of the permit and the licensee will be ineligible for reinstatement until it has continuously paid the tax for a period of 12 months. Said licensee, upon request of the City, shall provide sufficient proof of payment of the tax.

Restaurant. An establishment having sufficient dining areas, commercial kitchen and complete food service facilities to adequately serve its patrons, and for which gross sales of food are equal to or greater than gross sales of alcoholic beverages.

Restaurant License. A license issued to the owner or lessee of any restaurant.

Retailer. Any person engaged in the sale and distribution of alcoholic beverages of any type under any type of license, except a wholesale license.

Sale and Sell. Any transfer, exchange or barter in any manner or by any means whatsoever for an amount of money or its equivalent, including all sales made by any person, whether as principal proprietor, agent, servant or employee.

Sunday opening permit. A permit awarded to qualified alcoholic beverage licensees in accordance with Section 35.125 of this Code, which permits the licensee to open for business on Sundays. (Ord. No. 396; Ord. No. 456, § 3-1; Ord. No. 701, § 1; Ord. No. 832, § 2; Ord. No. 1106, § 1; Ord. No. 1113, § 1; Ord. No. 1184 § 1; Ord. No. 1298 §1; Ord. No. 1327 §1.)

Section 4.04.020 Territorial jurisdiction of chapter

This chapter shall apply to all territory within the corporate limits of the city and to such outlying, contiguous territory without the corporate limits within which this city may exercise police jurisdiction as defined by law. (Ord. No. 396.)

Section 4.04.030 Enforcement of chapter - REPEALED

This section was repealed with passage of Ordinance No. 1298 dated July 5, 2005.

Section 4.04.040 Minors--Employment by establishments having on-sale license

Any licensee who dispenses alcoholic beverages to a person under twenty-one years of age or who permits such a person to remain on the licensed premises while alcoholic beverages are being sold or displayed is guilty of a class B misdemeanor, subject to the provisions of Article 25.16 of this Code. Any person under twenty-one years of age may remain:

(a) in a restaurant where alcoholic beverages are being sold, if accompanied by a parent or legal guardian,

(b) any person under 19 years of age if employed by the restaurant as a food waiter, food waitress, busboy or busgirl under the direct supervision of a person over twenty-one years of age, and not engaged in the sale, dispensing, delivery or consumption of alcoholic beverages,

(c) in a restaurant where alcoholic beverages are being sold if the seating is separated from the area in which alcoholic beverages are opened or mixed,

(d) in an area of a site where beer, wine or sparkling wine is sold in accordance with the conditions of an event permit issued pursuant to Section 4.08.270,

(e) any person who is nineteen years of age or older but under twenty-one years of age may be employed by the restaurant to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person twenty-one or more years of age, but may not be engaged in mixing, dispensing or consuming alcoholic beverages,

(f) any establishment where alcoholic beverages are sold may employ persons from eighteen to twenty-one years of age to work in the capacity of musicians under the direct supervision of a person over twenty-one years of age,

(g) if the person is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages,

(h) if the person is a law enforcement officer or other public official who enters the premises in the performance of official duty, or

(i) if the person enters the premises for training, education, or research purposes under the supervision of a person twenty-one or more years of age with prior notification of the local licensing authority.

Ord. No. 396; Ord. No. 647, § 2; Ord. No. 987, § 1; Ord. No. 1188, § 1; Ord. No. 1298 § 3.)

For state law as to employment of minor in restaurant where alcoholic beverages are being sold, see NDCC, § 5-02-06.

Section 4.04.050 Conduct on premises where sale permitted

Every person holding a license to sell alcoholic beverages shall be responsible for the conduct in his place of business and shall maintain order and sobriety in such place. (Ord. No. 396.)

Section 4.04.060 Nudity, seminudity and sexually explicit acts prohibited

(a) No person who is within or upon premises which are licensed under this chapter shall knowingly omit to cover securely with an opaque covering the following portions of his or her anatomy:

(1) the nipples;

(2) the pubes;

(3) the cleavage between the buttocks; and

(4) the genitals.

(b) No person while upon or within premises licensed under this chapter shall perform or simulate acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or shall perform or simulate the touching, caressing or fondling of breasts, buttocks, anus or genitals.

(c) Premises licensed under this chapter for the purposes of this section shall include any area or room under control of the licensee, or as to which he has the lawful right to assert control, whether control is exercised or not:

(1) in which or in any portion of which alcoholic beverages are stored, mixed, prepared, opened, served or consumed as an incident of the business operation of the licensee carried on pursuant to the license; or

(2) the interior of which his visible from an area or room described in subparagraph (1) but only while its interior is so visible.

(Ord. No. 922, 1; Ord. No. 1298 §4.)

Section 4.04.070 Sale, consumption, etc. on streets, public ways, etc.

Unless authorized by Event Alcoholic Beverage Permit the sale, serving, possession, or consumption of any alcoholic beverage upon or across any street, alley or public way is hereby prohibited. A person who violates this section shall be guilty of an infraction and sentenced accordingly. (Ord. No. 396; Ord. No. 950, § 1; Ord. No. 1176, § 8; Ord. No. 1184 § 2.)

Section 4.04.080 Sale to certain persons

No licensee under this chapter nor any of his agents, servants or employees shall sell, serve or dispense in any manner any alcoholic beverage to any habitual drunkard, intoxicated person, incompetent person under guardianship or to any person under twenty-one years of age. No such licensee shall permit any of such persons to be furnished with any type of alcoholic beverage on the premises for which such license is granted.

Whosoever shall in any way procure or furnish any alcoholic beverage for the use of any person named in this section shall be deemed to have sold the same to such person and to have violated the terms and conditions of this section. (Ord. No. 3906.)

For similar state laws, see NDCC, § 5-01-09.

Section 4.04.090 Prohibited hours and days of sale

A person may not dispense or permit the consumption of alcoholic beverages on licensed premises between 1:00 A.M. and twelve noon on Sundays; between the hours of 1:00 A.M. and 8:00 A.M. on all other days of the week; on Christmas Day, or after 6:00 P.M. on Christmas Eve. In addition, a person may not provide off-sale after 1:00 A.M. on Thanksgiving Day. (Ord. No. 396; Ord. No. 425, § 1; Ord. No. 515, § 1; Ord. No. 987, § 2; Ord. No. 1020, § 1; Ord. No. 1075, § 1; Ord. No. 1088, § 1; Ord. No. 1298 § 5.)

For state laws as to hours of sale, see NDCC, § 5-02-05.

Section 4.04.100 Purchases on certain days

It shall be unlawful for any person to purchase or seek to purchase any beer, liquor or any form of alcoholic beverage within the city at any time or any day when such purchases are prohibited by state law. (Ord. No. 396; Ord. No. 425, § 2; Ord. No. 515, § 2.)

For state laws as to sale of alcoholic beverages on certain days, see IVDCC, § 5-02-05.

Section 4.04.110 Drive-in and walk-up facilities

It is hereby declared to be unlawful on or after January 1, 1978, for any person holding any license for the sale of alcoholic beverages within the city to maintain or operate any walk-up or drive-in facility for the sale, dispension or delivery of any alcoholic beverage. (Ord. No. 396; Ord. No. 701, § 3.)

Section 4.04.120 Toilet requirements for on-sale premises

The premises where any on-sale license is granted for the sale of any alcoholic beverages must be equipped with adequate and sufficient lavatories and toilets separately maintained for men and women and kept in a clean and sanitary condition. (Ord. No. 396.)

For state law as to authority of city to establish health standards for licensed premises, see NDCC, § 5-02-09.

Section 4.04.130 Sale of alcoholic beverages prohibited after certain hours

No alcoholic beverage licensee or any of his agents or employees shall allow any on-sale alcoholic beverages to be sold after 12:45 A.M. Sales of on-sale alcoholic beverages shall cease and be prohibited from and after 12:45 A.M. This restriction is additional to any restrictions and prohibitions now required by state law. (Ord. No. 711, § 1; Ord. No. 836, § 1; Ord. No. 987, § 3.)

Section 4.04.140 Credit sales - REPEALED

This section was repealed with Ordinance No. 1298 § 5 approved July 5, 2005.

Section 4.04.150 Side rooms, booths, etc., on premises where beverages are sold - REPEALED

This section was repealed with Ordinance No. 1298 § 7 approved July 5, 2005.

Section 4.04.160 Sale of beer in kegs; records and marking required

(a) A retail licensee selling beer in a container having a liquid capacity greater than six gallons (22.71 liters) shall place a distinctive symbol, notation or mark on the container which uniquely identifies him/her, and moreover, shall mark such container with a "registration" number or letters, or both, unique to that container. The paint or ink used to mark the containers or other manner of marking the containers must be approved by the attorney general.

(b) Whenever a retail licensee sells beer in a container with a liquid capacity greater than six gallons (22.71 liters), he/she shall record the date of sale and the name, address, driver's license number or number of other official state or military identification card of the person to whom the beer is sold, together with the signature, and registration number or letters of the container, or both. Such records must be retained for a period of no less than six months and must be kept on the licensed premises of the retail establishment where the sales are made.

(c) Each retail licensee shall register his or her unique identification symbol, notation or mark with the attorney general and shall permit any law enforcement officer to inspect the records required to be kept pursuant to this section during times the retail establishment is normally open for business or at other reasonable times.

(d) This section shall not apply to the sale of beer in a container by a retail licensee if the contents of the container are consumed on the licensed premises where the sale occurred. (Ord. No. 851, § 1; Ord. No. 987, § 4.)

Article 4.08 Licenses.

Sections:

4.08.010 Eligible persons
4.08.020 License Required
4.08.030 License - Classes
4.08.040 Repealed by 1184
4.08.060 License Requirements - Limitation on number; issuance generally; renewal
4.08.070 License Applications
4.08.075 License Renewals
4.08.080 Term; fees
4.08.090 Wholesale
4.08.100 Licensee to be owner of business
4.08.110 Premises near churches or schools
4.08.120 Number per person
4.08.130 Identification number and record; display
4.08.140 Issuance to certain persons prohibited--Minors or immoral persons - REPEALED
4.08.150 Restrictions on issuance to lodge or club
4.08.160 Repealed by 1184
4.08.170 Issuance or refusal generally
4.08.180 Approval of applications by city commission
4.08.190 Majority vote by city commission required for issuance
4.08.200 Change in location of licensed premises
4.08.210 Transfer of On/Off Sale Licenses
4.08.220 Transfer of ownership of business - REPEALED
4.08.230 Payment, proration and refund of fees
4.08.240 Revocation and suspension by city commission
4.08.250 Same--Effect on imposition of other penalties
4.08.260 Repealed by 1184
4.08.270 Event alcoholic beverage permit
4.08.280 Sunday alcoholic beverage permit

Section 4.08.010 Eligible persons

No license shall be issued under the provisions of this Chapter to any applicant, except as follows:

(1) If the applicant is an individual, such individual must be at least 21 years of age, a legal resident of the United States, a legal resident of the State of North Dakota, and must establish residency in Stark County within three months of the issuance of the license.

(2) If the applicant is a partnership, all such partners must be at least 21 years of age, legal residents of the United States, legal residents of the State of North Dakota, and must establish residency in Stark County within three months of the issuance of the license.

(3) If the applicant is a corporation or other limited liability entity, the designated manager of the licensed premises must be at least 21 years of age, a legal resident of the United States, a legal resident of the State of North Dakota, and must establish residency in Stark County within three months of the issuance of the license. (Ord. No. 1492 §1)

Section 4.08.020 License Required

It shall be unlawful for any person to sell, exchange, dispose of or keep for sale any alcoholic beverage within the city without first obtaining a license for the sale thereof from the city. Persons violating this section shall be guilty of a Class A misdemeanor. (Ord. No. 396; Ord. No. 1298 § 9, Ord. No. 1492 §1)

For state law requiring both state and local licenses, see NDCC, § 5-02-01.

Section 4.08.030 License - Classes

The City may issue the following licenses for the retail sale of alcoholic beverages:

(a) On/off-Sale licenses.
(b) Lodge or club licenses.
(c) Motel or hotel licenses.
(d) Restaurant on-sale licenses.
(e) Military club beer and wine licenses.
(f) Microbrewery license.
(g) Restaurant Beer and wine.
(h) Beer only.

(Ord. No. 396; Ord. No. 456, § 3-4; Ord. No. 832, § 1; Ord. No. 969, § 1; Ord. No. 1106, § 3; Ord. No. 1184 § 3; Ord. 1232 § 1; Ord. No. 1298 § 10, Ord. No. 1492 §1; Ord. No. 1589 §1)

Section 4.08.060 License Requirements - Limitation on number; issuance generally; renewal

The Board of City Commissioners hereby finds that in order to ensure compliance by all licensees with all applicable federal, states, and city laws, ordinances, and regulations, and in order to adequately police establishments engaged in the retail sale of alcoholic beverages, and in order to promote the public welfare, it is necessary and proper to limit the number of certain classes of licenses, as provided herein, pursuant to the city's police powers and the authority granted by Title 5 of the North Dakota Century Code.

(a) On/Off Sales Licenses

As of December 31, 2012, a total of seventeen on/off sale licenses existed within the city limits of the City of Dickinson. No additional on/off sale licenses shall be granted~~,~~ until the population of the city reaches an estimated twenty one thousand (21,000) people, at which time the City Commission may, but shall not be required to, grant an additional on/off sale license, as hereinafter provided.

The City Commission may grant an additional on/off sale license for each incremental population increase of three thousand people above 21,000 people, as may be determined in the sole discretion of the City Commission from time to time, based upon annexations, household units, census projections, census results, or other methods of estimated population.

If additional licenses have been granted because of an increase in population, said licenses will be eliminated when the population falls below the population level that authorized the additional license. In addition, if the population of the city falls below twenty one thousand, one on/off sale license shall be eliminated from the number authorized under this section. However, said licenses shall not be eliminated until such time as a license is vacated.

(b) Annexation of Pre-Existing License

Any on/off sale license which is added to the city by virtue of annexation shall automatically increase the number of on/off sale licenses available under subsection (a) of this section Notwithstanding addition of on/off sale licenses added by annexation, the city may nevertheless add additional on/off sale licenses based upon the requisite population increases, as stated in subsection (a) of this section.

(c) Addition of On/Off Sale License – Procedure for Granting.

In the event that the City Commission elects to grant an additional on/off sale license as provided in subsection (a) of this section, the City shall award the additional on/off sale license pursuant to a public bidding process. The City shall proceed as follows:

1) The City shall set a date for the receipt of sealed bids from interested parties, and a date and time for bid opening.
2) The City shall provide notice to the general public of its intent to grant an additional on/off sale license by sealed bids. Such notice shall be published in the official newspaper of the City at least fifteen (15) days prior to the deadline for receipt of bids. Notice shall further be given by such other means as the City Commission or City staff shall deem appropriate. The Board of City Commissioners may, in its sole discretion, establish a minimum bid amount, which shall be made known to any and all potential bidders.
3) Interested parties shall submit an application for an on/off sale license, together with the information required by Dickinson City Code 4.08070, or as may otherwise be required for City staff to determine the party's qualifications for a license. Interested parties shall further submit the non-refundable application fee set by the City. Parties failing to submit the required application, information, and application fee shall have their bids removed from consideration.
4) Interested parties shall further submit to the City a sealed bid for the additional on/off sale license.
5) City staff shall review the application and information submitted by all interested parties. Parties who are determined by City staff to be not qualified for a license shall have their bids removed from consideration.
6) Opening of sealed bids shall be held at the time and date set by the City. Parties shall have the opportunity to improve their written bids pursuant to an auction process.
7) City staff shall submit all final, qualified bids to the City Commission, together with a recommendation from City staff regarding the award of the bid.
8) At its sole discretion, the City Commission may grant the additional on/off sale license to the highest responsible bidder.
9) Upon grant of the on/off sale license from the City Commission, the successful party shall immediately pay the full bid price. If the successful party is unable to immediately pay the full bid price, the City Commission may offer the license to the next highest bidder or, in the Commission's sole discretion, decline to offer the license to any remaining bidder.
10) The City reserves the right to reject any and all bids, to waive any informalities in the bidding process or any bid received, and to accept any bid which, in sole judgment of the City Commission, is in the City's best interest.
11) The successful bidder shall have a period of one year from the date of granting of the addition on/off sale license in which to open and operate a business pursuant to the on/off sale license. The successful bidder may request, in writing, an extension from the City Administrator of up to 12 months in the event that extraordinary circumstances prevent the successful bidder from opening and operating a business pursuant to the additional on/off sale license within the initial time allotted. The City Administrator shall grant such extension if it is in the best interests of the public health, safety and welfare. Additional extensions may be granted in the sole discretion of the Board of City Commissioners upon a showing by the successful bidder of extraordinary circumstances preventing the successful bidder from opening and operating a business pursuant to the on/off sale license within the time allotted, and upon a showing of significant progress

toward opening and operating a business pursuant to the on/off sale license. If a business is not opened and operated by the licensee within one year of its granting by the City Commission, or within such additional time as may be granted, in writing, the license shall revert back to the City, without refund or reimbursement to the licensee.

12) The additional on/off sale license shall be non-transferable during the first year of its actual operation and sales.

(d) Lodge or Club Licenses.

As of December 31, 2012, there were three lodge or club licenses in existence. None of them shall be transferable to any other owner. Any additional lodge or club license shall be granted only to organizations qualifying as a lodge or club, and then only in the discretion of the board of city commissioners. No electronic or mechanical gaming devices or games of chance shall be allowed upon the premises licensed hereunder in any area where minors are allowed to be present.

(e) Motel or Hotel Licenses.

The City may grant an alcoholic beverage license for both on- and off-sale to any hotel or motel within the city limits which has seventy-five or more rental units or rooms.

(f) Restaurant On-Sale License.

The City may grant an alcoholic beverage license for on-sale only to any restaurant within the city limits. The restaurant shall have sufficient dining area and facilities to adequately serve its patrons, as well as the public generally. The restaurant may have a lounge area or waiting area lounge for patrons waiting to be seated for the purposes of serving alcoholic beverages in conjunction with its restaurant business. Permission for such area should be duly noted on the licensee's license. No electronic or mechanical gaming devices or games of chance shall be allowed upon the premises licensed hereunder. Those receipts from the sales of alcoholic beverages hereunder shall not exceed fifty percent of the gross receipts from the sale of all food items and alcoholic beverages combined. All restaurant on-sale license holders shall file with the application for license renewal a sworn statement executed by the licensee and a certified public accountant certifying that gross food sales and liquor sales for the previous calendar year meet the requirements of this section. The Board of City Commissioners may, in its discretion, require the licensee to provide such additional proof of the licensee's compliance with this section as the Commission deems necessary.

All sales of alcoholic beverages by restaurant on-sale licensees must be separately receipted to the customer by cash register receipt and clearly identified as sales of liquor, beer or wine on all receipts. In order to qualify for an alcoholic beverage license under this provision, it is necessary that the dining area and other food service facilities be in operation and be open for business.

(g) Military Club Beer and Wine.

The City may grant beer and wine licenses to military clubs of the armed forces permitting beer sales and/or wine sales. For the purposes of this section and others pertaining thereto, "armed forces" shall mean the Army, Navy, Air Force, Marine Corps and Coast Guard of the United States of America. A license hereunder shall comply with all of the laws of the state relating to the sale and dispensation of alcoholic beverages. The beer and/or wine license hereunder shall be for the sale of beer and/or wine for consumption on the premises only, to military club members only, and no sales for consumption off the premises shall payable in the manner provided in section 4.08.080. A license hereunder shall comply with and be subject to all of the remaining provisions of this Code, including this chapter.

(h) Microbrewery License.

The City may grant microbrewery licenses to a licensee to operate a microbrew pub and to sell beer on-sale and off-sale. Said license may be issued only to licensees currently holding a restaurant license. A microbrewery license will authorize the licensee to sell only beer which is

brewed on the premises, and may be sold on-sale and off-sale. A microbrewery license shall not modify any of the restrictions or requirements on the licensee as the owner of any other alcoholic beverage license.

(i) Restaurant Beer and Wine.

The City may grant an alcoholic beverage license permitting on-sale restaurant beer sales and/or wine sales subject to the following restrictions and conditions:

(1) A licensee hereunder shall comply with all of the laws of the state relating to the sale and dispensation of alcoholic beverages.

(2) A license hereunder must be a restaurant as defined in this chapter.

(3) The receipts from the sale of alcoholic beverages hereunder shall not exceed fifty percent of the gross receipts from the sale of all food items and alcoholic beverages combined. All restaurant beer and wine license holders shall file with the application for license renewal a sworn statement executed by the licensee and a certified public accountant certifying that gross food sales and liquor sales for the previous calendar year meet the requirements of this section. The Board of City Commissioners may, in its discretion, require the license to provide such additional proof of the licensee's compliance with this section as the Commission deems necessary.

(4) The beer and wine license hereunder shall be for the sale of beer and wine for consumption on the premises only, and no sales for consumption off the premises shall be made.

(5) A licensee hereunder may sell tap beer or beer in bottles, cans or similar packages. Wine may be sold by bottles for consumption on-premises.

(6) Beer and wine shall be consumed at tables or booths only, and no beer shall be consumed at a counter or bar.

(7) The license fee for restaurant beer and wine license shall be payable in the manner provided in section 4.08.080 of this Code.

(8) Except as modified in this section, a license hereunder shall comply with and be subject to all the remaining provisions of this Code, including this chapter.

(j) Beer Only License.

The City may grant an alcoholic beverage license permitting sale of on-sale tap beer or beer in open bottles ~~sales~~ subject to the following restrictions and conditions:

(1) A licensee hereunder shall comply with all of the laws of the state relating to the sale and dispensation of alcoholic beverages.

(2) A licensee hereunder may sell tap beer or beer in opened bottles, cans or similar packages.

(3) The license hereunder shall be for the sale of beer for consumption on the premises only, and no sales for consumption off the premises shall be made.

(4) Except as modified herein, a licensee hereunder shall comply with and be subject to all the remaining provisions of this Code, including this Chapter.

(Ord. No. 396; Ord. No. 456, § 3-5; Ord. No. 701, § 4; Ord. No. 832, § 4; Ord. No. 969, § 2; Ord. No. 1012, § 1; Ord. No. 1106, § 4; Ord. No. 1113, § 2; Ord. No. 1164 § 1; Ord. No. 699 § 1; Ord. No. 706, § 1; Ord. No. 832, § 3; Ord. No. 1184 § 5; Ord. 1232 § 2 & 3; Ord. No. 1253 § 1; Ord. No. 1298 § 11; Ord. No. 1402 §1, Ord. No. 1492 §1; Ord. No. 1589 §1)

For state law as to local regulations of licensees including determining the number of licenses granted, see NDCC, § 5-02-09.

Section 4.08.070 License Applications

(a) Any person desiring to obtain a license for the retail sale of alcohol pursuant to this Chapter shall make and file an application for such license with the Board of City Commissioners. The application shall be made on a form approved by the Board and made available through the office of the City Administrator. In addition to information required on the application form, the Board, in its discretion, may require such other information as it deems necessary in determining whether a license should be issued to the applicant.

Every applicant shall be required, as a portion of the written application, to promise and agree to abide by and obey all applicable laws of the state and all applicable ordinances of the city so far as such laws or ordinances may be concerned with the operation of the licensed premises and any activities conducted thereon.

There shall also be incorporated on any such application the following consent which shall be signed by the applicant:

> The applicant hereby does expressly consent that any person(s) duly authorized by the city of Dickinson may enter upon the premises described in this application at any reasonable hour of the day or night including all hours in which the establishment is occupied, and at such times they shall have free access to all portions of the property comprising the licensed premises for the purpose of inspecting such premises for any possible violations of laws of the state of North Dakota or ordinances of the city of Dickinson regardless whether said laws pertain to the sales of alcoholic beverages. Such access shall be permitted without necessity of a search warrant.

(b) New Applicants. In addition to the provisions required of all applicants, all new applicants or those who previously have not been granted alcoholic beverage licenses by the city shall be required to furnish the following:

(1) Such applicant shall furnish a complete statement of the type of business contemplated and give a comprehensive site drawing, including exact location(s) and extent of the area(s) in the building in which alcoholic beverages will be sold and/or served.

(2) Each applicant shall cooperate to the fullest extent in obtaining a complete background investigation concerning any persons involved with the individual applicant or the applicant's organization.

(3) The applicant, if an individual, shall show a history of the applicant’s residency, employment and business ownership for five years immediately prior to the date of application. If the applicant is a partnership, this information shall be furnished for all the partners; and, if a corporation, or other limited liability entity, the amount of authorized capital, the amount paid in capital, whether such corporation is a subsidiary of any corporation, and, if so, the name of the parent corporation, the purposes for which the corporation was incorporated and the names and addresses of all officers, directors and managing agents and the names and addresses of all stockholders holding more than five percent of the capital stock of such corporation shall be furnished.

(4) The applicant shall state the name and address of the legal title owner of the premises for which the license is sought, and if the license is sought for a person other than the owner of the premises, the terms and conditions of the lease under which the applicant holds the possession of such premises shall be stated insofar as the terms of the lease and the rental to be paid are concerned. The applicant shall, when required by the board of city commissioners, furnish to the board a copy of the lease under which he holds possession of the premises. If the license is sought by the owner of the premises, the application shall state the time when such applicant acquired title thereto.

(5) The applicant shall state whether he has ever engaged in the sale or distribution of alcoholic beverages prior to the date of application, and, if so, the date and type of business and the place of each instance where such distribution was conducted shall be furnished.
(6) It shall be stated whether during the five (5) years preceding the date of the Application, the applicant has ever had a license for the sale of alcoholic beverages revoked or canceled by any municipality, state or federal authority; and, if so, the date of cancellation, the place and authority canceling the same and the reasons for such cancellation shall be stated.
(7) It shall be stated whether during the five (5) years preceding the date of the Application, the applicant has ever been convicted of a violation of any law of the United States or of any state or of the violation of any local ordinance with regard to the manufacture, sale, distribution or possession of alcoholic beverages or driving under the influence and, if so, the dates, names of places and courts in which such convictions were obtained.
(8) The applicant shall state whether any person other than the applicant has any right, title or interest in the leasehold or in the furniture and fixtures or equipment of the premises for which the license is sought and, if so, the names and addresses of such person or persons together with a statement of the interest held shall be furnished.
(9) It shall be stated whether the applicant has any agreement, understanding or intention to have any agreement or understanding with any person to obtain for any other person or to transfer to any other person the license obtained or to use the license for any other purpose other than the specific use of the applicant; and, if so, the names and addresses of such persons and the conditions of such agreements shall be stated.
(10) The applicant shall state whether he has any interest whatsoever, directly or indirectly, in any other liquor or alcoholic beverage establishment, either wholesale or retail, within or without the state; and, if so, the names and addresses and details concerning such establishments shall be furnished.
(11) The applicant shall state the classification of the license applied for, whether on/off-sale, lodge or club, restaurant on-sale, restaurant wine & beer, beer only, hotel/motel, military club beer and wine, or microbrewery license.
(12) If the license is sought for a lodge or club, the date of the organization of the club and the number of the members therein as well as the purpose for which such club was organized shall be stated in full. (Ord. No. 396; Ord. No. 456, § 3-6; Ord. No. 1184, § 6; Ord. No 1298 § 12. (Ord. No. 1492 §1; Ord. No. 1589 §1)

Section 4.08.075 License Renewals

Each year when the issuance of licenses is considered by the city commission, it shall first consider applications from persons holding existing licenses before considering any request for new applicants.

In considering whether or not to issue licenses to those previously licensed, the board of city commissioners will review and evaluate the past record of such licensees, including any violations of city ordinances and state law and the general manner in which the licensed premises has been conducted and managed, including the licensee's control of its licensed premises and the prevalence of bar fights, violence, or police calls necessary to control the licensed premises and other areas, such as parking lots surrounding or servicing the licensed premises.

The actual decision of whether or not a license should be issued under this chapter, whether it is to a previous licensee or to a new applicant, shall be made only in the discretion of the board of city commissioners and in accordance with the various requirements of this chapter. No licensee shall necessarily be entitled to an automatic renewal of his license.

In the event that the licensed establishment has been closed for six months or more during the previous calendar year, the Board of City Commissioners may, in its sole discretion, not renew such licensee.

In the event that a holder of an on/off sale license has failed to, or refrained from, opening or operating a business pursuant to such license for a period of more than six months in the preceding calendar year, the Board of City Commissioners shall not grant a renewal of the license. However, upon a showing of extraordinary circumstances, the holder of an on/off sale license may request, in writing, an extension of time in which to open and operate under such license. The City Administrator shall grant such an extension of time upon a showing by the licensee of a plan to open and operate under the license, and upon finding that an extension of time is in the best interests of the public health, safety and welfare. (Ord. No. 1298 § 13, Ord. No. 1492 § 1)

Section 4.08.080 Term; fees

All licenses under this chapter shall run for annual periods commencing January 1 of each year and terminating on December 31 of the same year. The license renewal application must be received and fees shall be paid prior to November 1. Failure to pay the license fees when due shall be cause for nonissuance of the license.

Annual license fees shall be set by resolution of the Board of City Commissioners, and included in the City Fee Schedule.

Each applicant for a new license, or a transfer of a license as described in 4.08.200 and 4.08.210, shall at the time of submission of the application for such issuance or transfer, pay (1) an application fee; and (2) an issuance fee or transfer fee as may be set by the Board of City Commissioners by resolution and incorporated into the City Fee Schedule.

(Ord. No. 396; Ord. No. 456, § 3-7; Ord. No. 557; Ord. No. 647, § 1; Ord. No. 701, § 5; Ord. No. 832, § 5; Ord. No. 1010, § 1; Ord. No. 1084, §1; Ord. No. 1106, § 5; Ord. No. 1184, §7; Ord. 1232 § 4; Ord. No. 1288 § 1; Ord. No. 1298 14; Ord. No. 1402 §2)

For state law as to local license fees, see NDCC, § 5-02-03.

Section 4.08.090 Wholesale

Any person engaging in the sale at wholesale of beer or liquor in the city must first procure a license from the State Treasurer for the state of North Dakota. The city shall not issue wholesale beer or liquor licenses. (Ord. No. 396; Ord. No. 1106, § 6.)

Section 4.08.100 Licensee to be owner of business

No license provided for in this chapter shall be issued to any person engaged in business as a representative or agent of another. The license may be issued only to the person owning the business being conducted or to be conducted at the locations sought to be licensed.

Proof of ownership interest in the business conducted or to be conducted at the locations sought to be licensed, shall be the responsibility of the person making application for the license, and shall be shown to the reasonable satisfaction of the Board of City Commissioners. (Ord. No. 396; Ord. No. 1346 §1.)

Section 4.08.110 Premises near churches or schools

No license for the sale of alcoholic beverages shall be granted or issued under this chapter for any premises within three hundred feet of any church, public or parochial school or synagogue. In determining such distance, it shall be measured by the ordinary route of travel from the main entrance from such church, school or synagogue to the nearest entrance of such premises sought to be licensed. (Ord. No. 396; Ord. No. 1298 § 15)

Section 4.08.120 Number per person

Any one person may have an interest in no more than two on/off sale licenses for the sale of alcoholic beverages, whether such interest is acquired by direct ownership or indirect ownership of the business being conducted or to be conducted at the locations sought to be licensed.

An interest in an on/off sale license acquired by "indirect ownership" shall be deemed to exist whenever a person has any financial interest whatsoever in the business conducted or to be conducted at the location sought to be licensed, regardless of the amount of the financial interest, the percentage ownership of the business, or the corporate form in which the financial interest is held; provided, however, that in the event that an on/off sale license is granted to a publicly traded company, persons holding less than five percent of the total voting shares of such publicly traded company shall be deemed not to have an interest acquired by "indirect ownership".

An interest in an on/off sale license acquired by "indirect ownership" shall further be deemed to exist where, under the totality of the circumstances, in the sole discretion of the Board of City Commissioners, any two on/off sale licenses may be operated in conjunction with one another, due to familial relationships or other business interests held in common among persons holding or applying for a license, or having any interest therein.

This provision applies only to the on/off sale licenses governed by Section 4.08.060(a) of this Code. (Ord. No. 396; Ord. No. 1184, § 8; Ord. No. § 16; Ord. No. 1346 §2.)

Section 4.08.130 Identification number and record; display

Each license issued under the provisions of this chapter 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 a description of the place licensed. All licenses must be displayed at all times in a prominent place on the premises described in the application and license. (Ord. No. 396.)

Section 4.08.140 Issuance to certain persons prohibited--Minors or immoral persons - REPEALED

This section was repealed with Ordinance No. 1298, Section 17, approved July 5, 2005 (Ord. No. 396; Ord. No. 1298 § 17.)

Section 4.08.150 Restrictions on issuance to lodge or club

No license shall be issued to any lodge or club where sales of alcoholic beverages in such lodge or club are made for the profit of individuals and unless the profit made on the sale of such alcoholic beverage by such lodge or club is used for benevolent purposes.

Lodges and clubs are prohibited from advertising or displaying off-sale sales.
(Ord. No. 396; Ord. No. 1106. § 7; Ord. No. 1298 § 18.)

Section 4.08.170 Issuance or refusal generally

If an application for a license under this chapter is approved, the city administrator shall issue to the applicant a license showing the amount paid and for what location the license is authorized. Such license shall further state the class of license.

Any license provided for in this chapter shall be denied to any applicant who, in the discretion of the board of city commissioners, is a person of questionable character or for any other cause which would, in the opinion of the board, render the applicant or the premises to be licensed, improper or unfit or which would, in the board's opinion, make the granting of the license contrary to the best interests of this city and its citizens.

If a license becomes available, and there is more than one applicant, the City Commission may conduct an auction amongst all qualified applicants, and award the license to the successful bidder at said auction.
(Ord. No. 396; Ord. No. 1106, § 8; Ord. No. 1184, § 9; Ord. No. 1298 § 19.)

Section 4.08.180 Approval of applications by city commission

The city administrator shall submit each application for a license under this chapter to the board of city commissioners, who shall have whatever hearings they deem appropriate and who shall then act upon such application at the next meeting thereafter. Every new applicant for a license under this chapter shall be required to make a personal appearance before the board of commissioners. If the applicant is a copartnership, such appearance shall be made by at least one of such copartners, and if a corporation, such appearance shall be made by the manager of the premises for which the application is made. (Ord. No. 396; Ord. No. 1184, § 10.)

Section 4.08.190 Majority vote by city commission required for issuance

No license shall be issued hereafter, whether it be a renewal of an old license or not, without the affirmative vote of a majority of all of the members of the board of city commissioners. (Ord. No. 396.)

Section 4.08.200 Change in location of licensed premises

No change of location of a licensed premises shall be permitted or considered unless the licensee shall first make a written application for such change to the city administrator clearly stating when and to what location the change is requested. Thereafter, the city administrator shall cause a public notice to be published in the official newspaper of the City one time at least fifteen days prior to a public meeting to be held by the City Commission for the purpose of reviewing the proposed change in location of licensed premises. Such an application for change of location may be granted only upon the majority vote of all of the members of the board of city commissioners.
(Ord. No. 396; Ord. No. 1298 § 20.)

Section 4.08.210 Transfer of On/Off Sale Licenses

Licenses issued under the provisions of this Chapter shall be transferable to a qualified applicant with the approval of the Board of City Commissioners. The transferee shall file an application for license on the prescribed form, and a written request for transfer shall be filed with the City Administrator signed by both the transferor and the transferee. In addition to the regular annual fee for the license, the transferee shall further pay a transfer fee as may be set by the Board of city Commissioners by resolution and incorporated in to the City Fee Schedule.
(Ord. No. 396; Ord. No. 1164 § 2; Ord. No. 1298 § 21; Ord. No. 1402 §3)

Section 4.08.220 Transfer of ownership of business - REPEALED

This section was repealed with Ordinance No. 1298 approved July 5, 2005
(Ord. No. 396; Ord. No. 1298 § 22.)

Section 4.08.230 Payment, proration and refund of fees

A license under this chapter shall not be issued until a check in the appropriate amount of the license fee payment is submitted to the City Administrator.

In the event that the license is issued after the expiration of a portion of the licensing year, the licensee shall then be granted a credit toward the payment of the fee for such year. The credit so granted shall bear the same relation to the annual license fee as does the period that the applicant was not in business to the annual licensing period.

If the application for a license is denied, the city administrator shall refund the fee deposited with him to the applicant upon demand. All license fees collected by the city administrator under this chapter shall be credited to the general fund of the city.

In the event of a sale or transfer of the licensed premises during the licensing period, January 1 through December 31, the annual license fee previously paid by the prior license holder is not refundable. (Ord. No. 396; Ord. No. 557; Ord. No. 1010, § 3; Ord. No. 1164, § 3; Ord. No. 1184, § 11.)

Section 4.08.240 Revocation and suspension by city commission

(a) Review of License. The Board of City Commissioners may review the status of any license issued pursuant to this Chapter, and take appropriate action against the licensee pursuant to this section.

(1) Suspension and Revocation for Cause. Any license issued pursuant to this chapter may be revoked or suspended for cause by the board of city commissioners, which cause may include, among other grounds, the following:

a. When a licensee is adjudged bankrupt.

b. When a licensee has made any false statement or statements in an application for the issuance of such license.

c. When the licensee or, in the case of a corporation or other entity, manager of a licensee has been convicted of a violation of any felony crime under the laws of the United States or of any state.

d. When the licensee or, in the case of a corporation or other entity, manager of a licensee ceases to be a legal, bona fide resident and citizen as required by this chapter to be eligible for a license.

e. When the license or permit of the licensee from the United States government or from the state to sell alcoholic beverages at the location licensed has been terminated or has been revoked.

f. When the business of the licensee at the location licensed has been conducted in violation of the health or sanitary regulations of the city or of the state.

g. When the licensee, if an individual, or one of the partners if the licensee is a partnership, or one of the officers or managers if the licensee is a corporation, is convicted of drunkenness, disorderly conduct or a violation of any law of the United States or of any state or of the violation of any local ordinance with regard to the manufacture, distribution or possession of alcoholic beverages (including driving under the influence of intoxicating beverages or illegal drugs) or if an appeal is taken from such conviction, then when such conviction is sustained by the higher court or courts.

h. When in the opinion of the board of city commissioners, the licensee has conducted his business or permitted his business to be conducted in a disorderly manner or in a manner that is dangerous or detrimental to the public welfare and morals.

i. When the licensee, or an agent or employee of the licensee, violates any term or condition of the license or any provision of this Chapter.

(2) Server Training. Server training shall be available for licensees, together with their managers and employees. Server training shall mean training that has been approved by the Dickinson Police Chief and/or the City Administrator for managers and employees involved in selling alcoholic beverages at licensed liquor establishments, including restaurants. Persons successfully completing an approved class with a test score of at least 72% will receive a server training certificate card which will remain with that individual wherever employed. For new managers and employees not having previously received server training, there shall be a grace period of 90 days in which to successfully complete the approved class. The server training card must be renewed every three (3) years from the anniversary date as shown on the card.

(3) Penalty for Ordinance Violations. Any license issued pursuant to this Chapter may be suspended or revoked by the Board of City Commissioners for violating any of the provisions of this Chapter. Any licensee or agent or employee of a licensee who has violated any provisions of this Chapter shall be subject to the following penalties, in addition to possible license revocation:

a. First Offense: (i) If the agent or employee of the licensee possesses a server training certificate card, or is within the 90-day grace period referenced in subsection (2), above, at the time of the violation by said agent or employee, the licensee will receive a written warning. (ii) If the

agent or employee of the licensee does not possess a server training certificate card at the time of the violation by said agent or employee, the licensee will receive a written warning and a $500.00 administrative penalty.

b. Second Offense: $1,000 administrative penalty, plus one day suspension of alcoholic beverage license. Mandatory hearing before the Board of City Commissioners.

c. Third Offense: $2,500 administrative penalty, plus a three-day suspension of alcoholic beverage license. Mandatory hearing before Board of City Commissioners.

The level of offenses shall be determined by reference to a 24-month period from the first offense by the licensee. By way of illustration, a second offense occurring more than 24 months after a first offense would then be deemed a first offense. Any offenses occurring prior to the effective date of this ordinance (April 18, 2005 - Ordinance No. 1296) shall not be considered an offense for purposes of this Section.

(b) Suspensions--food sales. Any suspension of alcoholic beverage license provided for herein shall relate to liquor sales only so that food sales, if applicable, may continue on the licensed premises.

(c) Notice--public hearing. Sanctions or penalties under this section may not be invoked without a public hearing if requested by the licensee. Upon written notification to the licensee by the City Administrator that a penalty is being sought under this section, the licensee may notify the City Administrator's office within ten (10) days of the date of such written notification and request a hearing on the proposed penalty. Failure to notify the City Administrator within ten (10) days of the date of such written notification will be deemed acceptance of the penalty without hearing.

A hearing shall be set before the Board of City Commissioners specifying the time and place of the hearing, and shall be served on the licensee in the same manner as provided by law for the service of a Summons in a civil action. No suspension hearing shall be held before the expiration of fifteen (15) days after the date of service of the notice. A record of any hearing shall be made by electronic recording device.

If, upon such hearing, it appears to a majority of the Board of City Commissioners that sufficient cause exists for the penalty sanctions, the Board of City Commissioners shall make its order in accordance with the provisions of this Chapter. The Board of City Commissioners shall further issue its findings, conclusions and order which shall be served upon the licensee. The order is appealable pursuant to Chapter 28-34 of the North Dakota Century Code.

(d) No Refunds on Suspension. When any license is revoked or suspended for any reason, no portion of the license fee shall be returned to the licensee.

(Ord. No. 396; Ord. No. 1296 § 1; Ord. No. 1305 § 1; Ord. No. 1319 §1; Ord No. 1366 §1)

Section 4.08.250 Same--Effect on imposition of other penalties

The revocation or suspension of a license granted under this chapter shall not be considered as a penalty so as to bar any other penalty being enforced for such a violation. (Ord. No. 396.)

Section 4.08.270 Event alcoholic beverage permit

(a) Authorization and Fee. The City Administrator may, by permit, authorize a qualified alcoholic beverage licensee to engage in the sale of alcoholic beverages at events, public dances, private groups, or parties, conventions or similar gatherings, shows, exhibitions, beer gardens, music festivals or similar event sponsored, operated or conducted in the expectation of a profit on such premises, including public buildings other than the licensed property identified with the primary license as may be designated by such permit. The fee for such local permit shall be set from time to time by action of the City Commission through the adoption of the City Fee Schedule and related resolution. Such permit shall not be valid for a period greater than ten consecutive days. A separate application must be submitted for each event for which a permit is sought.

(b) Application for Permits. An alcoholic beverage licensee desiring to conduct an event as described in (a) above wherein alcoholic beverages will be sold, or to sell alcoholic beverages at an event as described in

(a) above conducted by any other person who has been granted a local permit shall make an application for a permit to the City. The application shall set forth:

(1) The name of the applicant;

(2) The time or period for which the permit is desired;

(3) The place where such event is to be conducted or held;

(4) Detailed drawing of area/location to be used and in the case of outdoor events, to include the area to be fenced, in order to define the site;

(5) Statement of one entrance, one exit;

(6) Verification that a person will be stationed at the entrance/exit at all times to check ID's;

(7) Verification that food items will be sold/served in an area separate from area where alcohol is sold.

(c) The city may authorize persons under twenty-one years of age to remain in the area of the event, or portion thereof, where beer, wine or sparkling wine may be sold pursuant to the permit, subject to the following:

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

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

(3) Subject to section 4.04.040, the area where persons under twenty-one years of age may remain may not be qualified alcoholic beverage licensee's fixed or permanent licensed premises as shown on the state and local governing body's alcoholic beverage license issued pursuant to section 5-02-01; and

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

(d) Refusal and Revocation of Permit for Cause. The city administrator shall refuse to issue such permit and shall revoke a permit already issued, where it appears following inspections prior and during such event that:

(1) The permitted site is or is likely to become a public nuisance or detrimental to public morals;

(2) Alcoholic beverages or controlled substances are being sold or given away except as provided by such permit;

(3) Any of the ordinances of this city or of the laws of the state are being violated; or

(4) In the sole judgment of the City, protests to the issuing of such permit are made, either orally or in writing, by a sufficient number of the people living in the neighborhood of the site for which application for such permit is made to warrant refusal or revocation of such permit as being in the public interest.

(e) State and Local Laws Apply. The sale or dispensation of alcoholic beverages pursuant to a permit issued under this section shall fully comply with all state laws and with the remaining provisions of this chapter which are consistent with the purposes and intent of this section.

(f) Appeal of the City Administrator's Decision of Refusal or Revocation of Permit. The applicant may appeal a decision by the City Administrator to refuse to issue or to revoke a permit to the City Commission during the first regular commission meeting following the refusal or revocation decision unless the complaint is filed following the deadline for the order of business. In which case, the appeal will be scheduled during the next regular meeting. The appeal must be filed on a form provided by the City and signed by the applicant. (Ord. No. 720, § 1; Ord. No. 1088, § 2; Ord. No. 1155 § 1; Ord. No. 1184, § 12; Ord. No. 1188, § 2; Ord. No. 1298 § 23.)

Section 4.08.280 Sunday alcoholic beverage permit

(a) Permit Authorized. A Sunday alcoholic beverage permit may be issued to a qualified alcoholic beverage licensee, licensed as a retail alcoholic beverage establishment under NDCC chapter 5.02 or to a publicly owned or operated facility which collect and submit the City hospitality tax as described in Section 35.125. The authority to issue a special permit rests solely in the discretion of the board of city commissioners.

(b) Application for Permit. A Sunday alcoholic beverage permit may be granted only upon proper application to and approval by the board of city commissioners. The application for a Sunday alcoholic beverage permit must be made in writing.

(c) Use of Sunday Alcoholic Beverage Permit. Under the permit, alcoholic beverages may be distributed between the hours of 12:00 noon on Sunday and 1:00 A.M. on Monday, unless otherwise prohibited by this Code. The general public may consume alcoholic beverages distributed under the authority of the permit. The establishment or facility shall enforce the requirements of this section and any other conditions established by the city commissioner under the permit.

(d) Failure to continuously pay the Hospitality tax will void the remaining term of the Sunday permit and the licensee will be ineligible for a Sunday permit for the remainder of the term of the license.

(e) Sunday Beer and Wine. Eating establishments which have a special restaurant beer and wine license pursuant to section 4.08.060 of this Code may obtain a Sunday alcoholic beverage permit by complying with all requirements of this section. Said permit shall be limited to serving beer and wine on Sundays, for consumption only in that part of the eating establishment habitually used for the serving of prepared meals, excluding any room that has a bar in it where alcoholic beverages are mixed, opened or stored. Said permit may be withdrawn by action of the City Commission for failure to abide by the requirements of this section. (Ord. No. 1020, § 2; Ord. No. 1073, 1; Ord. No. 1084, § 2; Ord. No. 1088 § 3; Ord. No. 1184, § 13.)

Chapter 5 ANIMALS AND FOWL

Last updated October 2007

Articles:

5.ED Editor's note to Chapter 5
5.02 Definitions
5.04 Animals In General
5.08 Animals
5.12 Other Animals

Article 5.ED Editor's note to Chapter 5

Sections:

5.ED.010 Editor's note to Chapter 5

Section 5.ED.010 Editor's note to Chapter 5

As to driving animals across sidewalks and curbs, see § 33.04.380. As to fastening animals to trees, see § 33.04.450.

Article 5.02 Definitions

Sections:

5.02.010 Definitions

Section 5.02.010 Definitions

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

Animal. Every living animal except humans.

At Large. An animal off the premises of the owner, and not under the control of the owner or a member of his immediate family by a reasonable length leash, cord or chain.

Dangerous animal. An animal which because of its poisonous bite or sting, size, or propensity to viciousness or aggressiveness would constitute a hazard or threat to the safety of other animals or humans.

Dangerous or Vicious Dog or Cat. Any dog or cat that (a) inflicts severe injury on a human being without provocation on public or private property, (b) kills or severely injuries a dog or cat without provocation while the dog is off the owner's property, or (c) has been previously found to be potentially dangerous because of injury inflicted on a human, the owner having received notice of such and the dog or cat aggressively bites, attacks, or endangers the safety of dogs, cats, or humans.

Dog. An animal which is a domesticated canid, *Canis familiaris*, bred in many varieties. Does not include hybrids which include *Canis lupus* (wolf) and other wild canids.

Domestic Fowl. Means poultry which are valued for their meats and eggs including chickens, turkeys, ducks, geese, and guinea fowl. Also includes pigeons.

Cat. An animal which is a small domesticated carnivore, *Felis catus*, bred in a number of varieties.

Exotic Pet. An animal that is not a dog, cat, or fish and is non-indigenous to North Dakota.

Farm Animals/Livestock. Animals generally bred, raised, and housed on farms and in rural places for production of food, or for work purposes, such as horses.

Fish. Animals of various cold-blooded, aquatic vertebrates, having gills, commonly fins, and typically an elongated body covered with scales.

Kennel. A facility permitted through either zoning or a special use permit as defined in Chapter 39 to breed, raise, and house dogs and/or cats.

Owner. Any person owning, keeping or harboring an animal.

Severe Injury. Means any physical injury to a human being or animal that results in muscle tears or disfiguring lacerations or requires multiple sutures or corrective or cosmetic surgery.

Wild Animal. An animal that may be native to North Dakota, but is not considered domestic and may be listed as a huntable animal or protected by the state or federal government. (Ord. No. 1332 § 1.)

Article 5.04 Animals In General

Sections:

5.04.010 Designation of pound
5.04.020 Poundmaster--Appointment - REPEALED
5.04.030 Same--Duties generally - REPEALED
5.04.040 Disposition of dead animals
5.04.050 Cruelty to animals
5.04.055 Rabid animals
5.04.058 Right of city animal control officer to enter property to confiscate an animal.
5.04.060 Penalties

Section 5.04.010 Designation of pound

The City shall maintain or designate an animal shelter, with buildings, for housing animals as provided by this chapter. (Ord. No. 857, § 1; Ord. No. 1272, § 3; Ord. No. 1332 § 2.)

Section 5.04.020 Poundmaster--Appointment - REPEALED

This section was repealed September 3, 2003. (Ord. No. 857, § 1, Ord. No. 1272, § 4.)

Section 5.04.030 Same--Duties generally - REPEALED

This section was repealed September 2, 2003. (Ord No. 857, § 1, Ord. No. 1272, § 5.)

Section 5.04.040 Disposition of dead animals

No owner or person having custody or responsibility for the care of any animal which shall have died shall abandon or allow the same to lie on any public ground, right of way or any private lot or place within the city limits, nor shall any person throw or discard any dead animal or decayed animal matter into any pool of water in the city, nor shall any person bury the remains of any animal on any public ground, right of way, or any private property not owned by that person. The expense of burying or removing any dead animal shall be a charge against the owner or person having custody or responsibility for the care of the same, the fee for which shall be established in the City Fee Schedule. (Ord. No. 857, § 1; Ord. No. 1272 § 6; Ord. No. 1332 § 3.)

Section 5.04.050 Cruelty to animals

Every person who shall willfully (a) torture, torment, deprive of necessary food or water or cruelly beat any animal, or (b) harmfully and knowingly expose any animal to heat or cold, shall be guilty of a misdemeanor and subject to the penalties provided for in this code. (Ord. No. 857, § 1.)

For state law as to authority of city to prohibit cruelty to animals, see NDCC, § 40-05-01(42).

Section 5.04.055 Rabid animals

The owner or person in possession of any animal which has contracted rabies, been exposed to the same, suspected of having rabies, or bitten any person, shall, upon demand of the police department, surrender the animal to the police department to be held in quarantine for observation for at least two weeks (14 days). If, upon examination, any animal is found to be infected with rabies, the animal shall be destroyed.

No person shall knowingly keep or harbor any animal infected with rabies, or any known to have been bitten by any wildlife, nor fail to report to the police or to the city health officer the existence of any animal which he knows to be so infected or exposed to infection.

Any animal running at large and noticeably infected with rabies and displaying vicious propensities shall be killed by the police or animal control officer without notice to the owner. Any animal found to be infected with rabies during the impoundment shall be destroyed. (Ord. No. 1332 § 4.)

Section 5.04.058 Right of city animal control officer to enter property to confiscate an animal.

Whenever the animal control officer shall have satisfactory evidence of any resident of the city harboring an animal of any description on said person' s premises deemed in violation of any portion of this chapter, the animal control officer may confiscate said animal and hold in the animal shelter for a period of up to ten days. If, by the end of the impoundment period the owner has not licensed the dog or cat, it may be destroyed or given to another individual. Should the party harboring the animal refuse to surrender the animal, the keeper or owner shall be subject to a misdemeanor. (Ord. No. 1332 § 5.)

Section 5.04.060 Penalties

Any violation of or failure to comply with any of the provisions of this chapter is punishable by a fine not exceeding five hundred dollars or by imprisonment of not more than thirty days, or both, in the discretion of the court, unless stated otherwise. (Ord. No. 857, § 1; Ord. No. 1272 § 7.)

Article 5.08 Animals

Sections:

5.08.00E Editor's note to Article 5.08
5.08.001 Definitions - REPEALED
5.08.002 When dog or cat is a public nuisance
5.08.004 "Keeping dangerous or vicious dog or cat prohibited
5.08.006 Owner or keeper of nuisance
5.08.008 Citation to dog or cat owner.
5.08.010 Procedure for Person Filing a Complaint Regarding a Nuisance.
5.08.012 Disposition of dog or cat waste
5.08.014 Limitation on number of dogs and cats; permit to exceed limitation; kennels
5.08.016 Regulation of pit bull dogs - REPEALED
5.08.018 Impoundment Generally
5.08.020 Abatement of a Nuisance
5.08.022 Notice to owner regarding impounded dog or cat
5.08.024 Disposition of unreclaimed animals - REPEALED
5.08.026 Rabid animals - REPEALED
5.08.028 Muzzling of Vicious Animals in public - REPEALED
5.08.030 License requirements
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5.08.036 Refunds and transfer of license prohibited
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5.08.04000 Division 5.08.04 Impoundment - REPEALED
5.08.06000 Division 5.08.06 Licensing – REPEALED

Section 5.08.00E Editor's note to Article 5.08

For state law as to authority of city to license, regulate and prohibit dogs, see NDCC, § 40-05-02 (22).

Section 5.08.001 Definitions - REPEALED

This section was repealed on March 19, 2007 (Ordinance No. 1332 § 6.)

Section 5.08.002 When dog or cat is a public nuisance

Any dog or cat within the city limits is a public nuisance when:

(a) It frequently frightens, annoys, barks at or chases any person or vehicle;
(b) It is a female in heat and not continually confined indoors by its owner;
(c) Is more than six months old and that does not have a current vaccination or inoculation against rabies and/or has not been vaccinated against distemper;

(d) It is not wearing a collar bearing a City Dog or Cat license tag and rabies vaccination tag verifying up to date vaccination;
(e) An unattended animal that exhibits loud and frequent yelping, barking, crying or howling;
(f) It damages any property not the property of its owner;
(g) It runs at large upon any right of way, public property or upon the private premises of any person other than the owner or keeper of the dog or cat;
(h) It is determined to be a dangerous or vicious dog or cat;
(i) When it is dead and buried improperly, so as to cause a hazard or potential hazard to the public health. (Ord. No. 857, § 1; Ord. No. 1272 § 10; Ord. No. 1332 § 7.)

Section 5.08.004 "Keeping dangerous or vicious dog or cat prohibited

Any person who shall knowingly keep, harbor or shelter a dangerous or vicious dog or cat within the city limits or in the extraterritorial jurisdiction of the city shall be guilty of a misdemeanor and subject to the penalties provided for this code. (Ord. No. 857, § 1; Ord. No. 1272 § 12; Ord. No. 1332 § 8.)

Section 5.08.006 Owner or keeper of nuisance

Any person who owns or keeps and permits a nuisance within the city shall be subject to an administrative fee set and maintained on file in the City fee schedule. (Ord. No. 857, § 1; Ord. No. 1272 § 13.)

Section 5.08.008 Citation to dog or cat owner.

Whenever the animal control officer or any police officer shall find a dog or cat, whether licensed or unlicensed, that meets the definition of a nuisance under any of the provisions of this article, that person may issue a citation to the owner or keeper of the dog or cat. (Ord. No. 857, § 1; Ord. No. 1272 § 14; Ord. No. 1332 § 9.)

Section 5.08.010 Procedure for Person Filing a Complaint Regarding a Nuisance.

Any person desiring to sign a complaint against the owner of a nuisance, as defined in this article must contact the city police department and state his/her name, address and facts supporting the alleged nuisance. (Ord. No. 857, § 1, Ord. No. 1176, § 1; Ord. No. 1272 § 16.)

Section 5.08.012 Disposition of dog or cat waste

Every person having custody or control of a dog or cat on property other than his own shall be equipped to, and shall collect such dog's or cat's solid waste when eliminated. Any person having custody of a dog or cat on his premises shall not permit animal waste to accumulate on his/her property. (Ord. No. 857, § 1; Ord No. 1272 § 19; Ord No. 1332 § 10.)

Section 5.08.014 Limitation on number of dogs and cats; permit to exceed limitation; kennels

(a) No person shall harbor or keep more than three dogs and/or cats upon premises within the city which are owned or controlled by said person, except where permitted by the City Zoning Code and unless a special use permit is obtained, if necessary pursuant to subsections (b).
(b) The City may grant a person a special use permit and license to operate a kennel within permitted zones as described in Chapter 39. The special use permit and license shall specify the number of dogs and/or cats which the licensee may harbor or keep subject to such limitations and conditions listed in the

special use permit and the license. The license shall attach to the premises to which it relates and shall be personal to the licensee and may not be transferred.

(c) In determining whether a permit shall be issued or not, the City shall consider:

(1) The area in square footage of the premises to which the permit relates;

(2) The proposed facilities to house the dogs and/or cats and to provide them with an exercise area;

(3) The proposed sanitation measures the licensee will employ;

(4) The size and customary habits of each type or breed of dog and/or cat sought to be kept;

(5) The distance from the kennel to premises owned by other persons;

(6) The past history of the applicant with regard to violations of this chapter and generally with regard to providing sanitary and humane care for dogs and/or cats; and

(7) Any other factor reasonably likely to affect adversely the persons who live, work, visit or transact business in close proximity to the proposed permit area.

(d) The willful violation of any permit term or condition shall be subject violator to an administrative fee as specified in the City fee schedule;

(e) Each person; group, association, or corporation engaged in the commercial business of buying, selling, breeding or boarding animals who owns or keeps more than three animals where permitted to do so, shall pay an annual kennel license fee in such amount as determined from time to time by the board of city commissioners and shall be on file in the city fee schedule. (Ord. No. 1069, § 1; Ord. No. 1272 § 20; Ord. No. 1332 §11.)

Section 5.08.016 Regulation of pit bull dogs - REPEALED

This section was repealed on March 19, 2007. (Ord. No. 1332 § 12.)

Section 5.08.018 Impoundment Generally

It is the duty of every police officer and animal control officer to apprehend any dog or cat found at large or found to be a public nuisance as provided in this article, and to impound such dog or cat in the city animal shelter or other suitable place. Upon receiving any dog or cat, the City shall make a complete registry, entering the breed, color and sex of such dog or cat and whether it is licensed and vaccinated against rabies and distemper. If the dog or cat is licensed and vaccinated against rabies and distemper, the name and address of the owner and number of the tag shall be recorded and the owner contacted. Licensed and vaccinated animals shall be separated from unlicensed and unvaccinated animals. Whether a dog or cat is surrendered, captured at large, or seized, the dog or cat may be impounded in the city animal shelter for a period as required in section 5.04.055. The owner of the dog or cat shall make arrangements to remove the animal from the animal shelter. If the owner fails to make such arrangements within ten (10) days of receiving notice of capture, the animal may be destroyed by the City or given to another person who is willing to adopt the animal and commits to licensing, vaccinating, and spaying or neutering the animal. Said owner will be subject to a fee as described in the city fee schedule for impoundment of the dog or cat. (Ord. No. 857, § 1; Ord. No. 1272 § 22; Ord. No. 1332 § 13.)

Section 5.08.020 Abatement of a Nuisance

An animal control officer or a police officer may direct the owner of a nuisance pursuant to this Article to forthwith surrender the dog or cat. Failure to do so constitutes a violation of this article. In the event the owner fails to voluntarily surrender the dog or cat, the dog or cat may be seized by the animal control officer or police officer. (Ord. No. 857, § 1; Ord. No. 1272 § 23; Ord. No. 1332 § 14.)

Section 5.08.022 Notice to owner regarding impounded dog or cat

Not later than two days after the impounding of any dog or cat, the owner shall be notified or, if the owner of the dog or cat is unknown, written notice shall be posted for three days at the police headquarters,

describing the dog or cat and the place and time of taking. Except as provided in section 5.08.018, the owner of any dog or cat so impounded may reclaim the dog or cat upon payment of the license fee and verification that the dog or cat will be vaccinated if necessary, and all costs and charges incurred by the city for impounding and maintenance of the dog or cat. Failure to vaccinate an unvaccinated dog or cat within the time specified will subject the dog or cat to seizure and further impoundment and violation of a misdemeanor. The charges for impounding any animal shall be as determined from time to time by the board of city commissioners and shall be on file in the city fee schedule (Ord. No. 857, § 1; Ord. No. 1086, § 1; Ord. No. 1272 § 24; Ord. No. 1332 § 15.)

Section 5.08.024 Disposition of unreclaimed animals - REPEALED

This section was repealed on March 19, 2007 (Ord. No. 1332 § 16.)

Section 5.08.026 Rabid animals - REPEALED

This section was repealed March 19, 2007. (Ord. No. 1332 § 16.)

Section 5.08.028 Muzzling of Vicious Animals in public - REPEALED

This section was repealed March 19, 2007. (Ord. No. 1332 § 16.)

Section 5.08.030 License requirements

All dogs and cats kept or maintained in the city shall display a valid City dog or cat license. A dog or cat license shall be issued by the city upon payment of license fee and verification that animal has an up to date vaccination against rabies and has been vaccinated against distemper. The owner shall state at the time application is made for such license, upon printed forms provided for such purpose, said owner's name and address and the breed, color and sex of the dog or cat, date of rabies inoculation of the animal, and documentation of whether or not the dog or cat is neutered or spayed. A license shall not be issued unless the license application is accompanied by a certificate showing the dog or cat has current rabies and distemper vaccinations. No license for a neutered or spayed dog or cat shall be issued unless satisfactory evidence of neutering or spaying is submitted. The licensing provision of the section shall not apply to dogs or cats brought into the city for the purpose of participating in any city authorized dog or cat show. The license herein provided for shall be in force for the life of the dog or cat. (Ord. No. 856, § 1; Ord. No. 1044, § 1; Ord. No. 1086, § 2; Ord. No. 1272 § 29; Ord. No. 1332 § 17.)

Section 5.08.032 Terms; cancellation for failure to have rabies and distemper inoculation

Such license shall be canceled if the records of the city contain written evidence that the dog or cat does not have an up to date vaccination against rabies and/or has not been vaccinated against distemper. (Ord. No. 857, 1; Ord. No. 1044, § 2; Ord. No. 1272 § 30; Ord. No. 1332 § 18.)

Section 5.08.034 Issuance of tag; records - REPEALED

This section was repealed March 19, 2007. (Ord. No. 1332 § 19.)

Section 5.08.036 Refunds and transfer of license prohibited

No refund of any license fee required by this article shall be made upon the death of the dog or cat or the removal of a dog or cat from the city. A tag issued for a dog or cat shall not be transferable to any other dog or cat. (Ord. No. 857, § 1; Ord. No. 1272 § 32; Ord. No. 1332 § 20.)

Section 5.08.038 Tag to be affixed to collar

Each owner or keeper of a dog or cat shall cause the license tag issued by the city to be affixed to a collar and the collar shall be securely fastened about the neck of the animal licensed. The owner of the dog or cat shall see that the collar is constantly worn. (Ord. No. 857, § 1; Ord. No. 1044, § 4; Ord. No. 1272 § 33; Ord. No. 1332 § 21.)

Section 5.08.040 Failure to license dog or cat

In case of the failure of an owner or keeper of a dog or cat to license said dog or cat, the dog or cat shall be surrendered by the owner or keeper thereof for the purpose of being disposed of as provided in this article upon the demand of the animal control officer or any police officer of the city. (Ord. No. 857, § 1; Ord. No. 1272 § 34; Ord. No. 1332 § 22.)

Section 5.08.042 Right of city animal warden to enter property to collect license fee - REPEALED

This section was repealed on March 19, 2007. (Ord. No. 1332 § 23.)

Section 5.08.044 Fraudulent licenses

It shall be unlawful for any person, with the intention to defraud the city of the collection of a license fee, to put a collar or tag attached around the neck of any animal without having first paid the license fee required by this article. (Ord. No. 857, § 1; Ord. No. 1272 § 36.)

Section 5.08.02000 Division 5.08.02 Generally - REPEALED

This section was repealed September 2, 2003. (Ord. No. 1272 § 8)

Section 5.08.02030 Female cats and dogs in heat - REPEALED

This section was repealed September 2, 2003. (Ord, No, 857, § 1; Ord. No. 1272 § 11.)

Section 5.08.02070 Procedure for complaint - Generally - REPEALED

This section was repealed September 2, 2003. (Ord. No. 857 § 1, Ord. No. 1272 § 15.)

Section 5.08.02090 Citation to animal owner; disposition - REPEALED

This section was repealed September 2, 2003. (Ord. No. 1068, § 1; Ord. No. 1272 § 17.)

Section 5.08.2100 Running at large prohibited - REPEALED

This section was repealed September 2, 2003. (Ord. No. 857, § 1, Ord. No. 1176, § 2; Ord. No. 1272 § 18.)

Section 5.08.04000 Division 5.08.04 Impoundment - REPEALED

This section was repealed September 2, 2003 (Ord. No. 1272 § 21.)

Section 5.08.06000 Division 5.08.06 Licensing - REPEALED

This section was repealed on September 2, 2003 (Ord. No. 1272 § 28.)

Article 5.12 Other Animals

Sections:

5.12.010 Domestic fowl not to run at large
5.12.020 Keeping chickens or poultry generally
5.12.030 When keeping fowl declared nuisance
5.12.040 Farm animals, livestock -- Restrictions on keeping, etc.
5.12.045 Citation to animal owner.
5.12.050 Impoundment
5.12.060 Keeping of wild animals prohibited
5.12.070 Exposure of male animals - REPEALED
5.12.080 What constitutes nuisance; nuisances prohibited
5.12.090 Dangerous Animals
5.12.100 Exotic Pets

Section 5.12.010 Domestic fowl not to run at large

In this chapter unless the context or subject matter otherwise requires:

1. "Animal" means every living animal except the human race.
2. "Dangerous animals" mean animals which because of their poisonous bite or sting, their size, or their propensity to viciousness or aggressiveness would constitute a hazard or threat to the safety of the citizens of Dickinson.
3. "Domestic fowl" means chickens, ducks, geese, turkeys, pigeons or other domestic fowl. (Ord. No. 857, § 1; Ord. No. 1131 § 2.)

Section 5.12.020 Keeping chickens or poultry generally

This section was repealed in 1996. (Ord. No. 1131, § 1.)

Section 5.12.030 When keeping fowl declared nuisance

This section was repealed in 1996. (Ord. No. 1131, § 1.)

Section 5.12.040 Farm animals, livestock -- Restrictions on keeping, etc.

1. The raising and keeping of farm animals is hereby prohibited except: As permitted in the zoning ordinances of the City; at zoos; at schools, clinics or laboratories for recognized educational, scientific or research purposes; providing the keeping of them does not create a public health or safety problem.
2. A person may not keep or raise domestic fowl, livestock or non-traditional livestock, within the City of Dickinson except as permitted in property which is zoned as Residential Agricultural - "RA" or Rural Residential - "RR", as defined by zoning ordinances. Domestic fowl when kept as permitted may not be kept within 150 feet of any dwelling unit other than that of the owner of such fowl. All fowl must be kept within a secure enclosure and it is unlawful to allow confinement areas of fowl to cause unpleasant odors, or to permit fowl to create noise or attract vermin which may affect the health and well-being of persons living nearby. The restrictions concerning where fowl may be kept do not apply to young domestic fowl being kept temporarily in business places for sale.
3. It is unlawful to keep animals or fowl in the city which have been bred or trained for fighting for sport or exhibition.
4. It is permitted to display farm animals in parades approved by the city. (Ord. No. 857, § 1; Ord. No. 1131 § 3; Ord. No. 1332 § 24.)

Section 5.12.045 Citation to animal owner.

Whenever the animal control officer or any police officer encounters an animal meeting the definition of a nuisance under any of the provisions of this article, said officer may issue a citation to the owner or keeper of the animal. (Ord. No. 1332 § 25.)

Section 5.12.050 Impoundment

Any animals mentioned in article 5.12 found to be in violation of the provisions of any section 5.12 shall be subject to impoundment according to law. (Ord. No. 857, § 1; Ord. No. 1131 § 4; Ord. No. 1332 § 26.)

Section 5.12.060 Keeping of wild animals prohibited

The keeping or maintaining of any wild animal within the corporate limits or within the area of extended planning and zoning jurisdiction of the city as defined in section 39.04.060(b) is hereby prohibited. Any zoo, circus, animal show, carnival or any other entity which shall receive a permit from the board of city commissioners to exhibit wild animals shall be exempt from the provisions hereof. (Ord. No. 857, § 1; Ord. No. 1332 § 27.)

Section 5.12.070 Exposure of male animals - REPEALED

This section was repealed March 19, 2007. (Ord. No. 1332 § 28.)

Section 5.12.080 What constitutes nuisance; nuisances prohibited

The keeping of any animal described in this article 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;

(b) Biting, threatening, chasing or molesting persons upon the public sidewalk or streets, or the property of persons other than the owner;

(c) The failure of any person responsible for an animal to maintain all structures, pens, coops or yards wherein any animal is kept in a clean and sanitary condition devoid of rodents and vermin, and free from all objectionable odors;

(d) Keeping any animal in violation of any provision of this article, is hereby declared to be a nuisance and the keeping or maintaining of any such nuisance is hereby prohibited. Each day's continuance of such nuisance shall be a separate offense; or

(e) Allowing solid waste of animal to accumulate. (Ord. No. 857, § 1; Ord. No. 1332 § 29.)

Section 5.12.090 Dangerous Animals

The keeping of dangerous animals is prohibited. When such an animal is discovered, the City will confiscate said animal and hold it in the animal shelter until arrangements are made to remove the animal from the City limits. (Ord. No. 1332 § 30.)

Section 5.12.100 Exotic Pets

Exotic pets, except those which fall under the definition of a dangerous animal may be kept in the city, so long as such pets are confined to the owner' s property and do not impact any other properties. If an exotic pet is found to be in violation of this chapter, the City will remove the animal and hold it in the animal shelter until arrangements are made to remove the animal from the City limits. (Ord. No. 1332 § 31.)

Chapter 6 BICYCLES

Last updated October 2007

Articles:

6.ED Editor's note to Chapter 6
6.04 In General
6.08 Operation

Article 6.ED Editor's note to Chapter 6

Sections:

6.ED.010 Editor's note to Chapter 6

Section 6.ED.010 Editor's note to Chapter 6

As to motor vehicles and traffic, see Ch. 23 of this Code. As to attaching bicycles to vehicles on roadways, see § 23.08.060.

Article 6.04 In General

Sections:

6.04.010 Permitting child to violate article; applicability of chapter generally
6.04.020 Licenses--Required
6.04.030 Same--Application
6.04.040 Same--Issuance; term; records kept by chief of police
6.04.050 Same--Destruction, defacement or loss of license
6.04.060 License plates or decals--Issuance and form
6.04.070 Same--Attachment; removal
6.04.080 Rentals
6.04.090 Records of purchases and sales by dealers
6.04.100 Equipment--Lamps
6.04.110 Same--Aural warning devices
6.04.120 Same—Brakes

Section 6.04.010 Permitting child to violate article; applicability of chapter generally

The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this chapter.

The regulations applicable to bicycles shall apply whenever a bicycle is operated upon any street or upon any public path set aside for the exclusive use of bicycles, subject to those exceptions stated in this chapter. (Ord. No. 483, art. 11, § 20-100.)

Section 6.04.020 Licenses--Required

No person who resides within the city shall ride or propel a bicycle on any street or upon any public path set aside for the exclusive use of bicycles unless such bicycle has been licensed and a license plate or decal is attached thereto as provided in this chapter. (Ord. No. 483, art. 11, § 20-101.)

For state law as to authority of city to fix amount, terms, etc., of licenses, see NDCC, § 40-05-01.

Section 6.04.030 Same--Application

Application for a bicycle license and license plate or decal shall be made upon a form provided by the city and shall be made to the city auditor. The city auditor may designate local business establishments who sell, maintain, or repair bicycles as licensing facilities provided that said local business establishments shall issue said licenses in accordance with appropriate forms, rules and regulations as provided to them by the city auditor.

(a) A nonrefundable license fee shall be paid to the city before each license is granted. Said license shall constitute a permanent license until transferred when the ownership of the bicycle changes. Upon a transfer of ownership a nonrefundable license fee shall be paid to the city for said transfer thereof. The amount of the license fee shall be determined from time to time by the board of city commissioners and shall be on file in the office of the city auditor in the city fee schedule. (Ord. No. 483, art. 11, § 20-102; Ord. No. 642, § 4; Ord. No. 1051, § 1; Ord. No. 1086, § 3.)

Section 6.04.040 Same--Issuance; term; records kept by chief of police

The city auditor upon receiving proper application is authorized to issue a bicycle license which shall be effective until transfer of ownership of said bicycle.

The city auditor shall not issue a license for any bicycle when he knows or has reasonable ground to believe that the applicant is not the owner of or entitled to the possession of such bicycle.

The city auditor shall keep a record of the number of each license, the date issued, the name and address of the person to whom issued, the number on the frame of the bicycle for which issued and a record of all bicycle license fees collected by him. (Ord. No. 483, art. 11, § 20-103; Ord. No. 1051, § 2.)

Section 6.04.050 Same--Destruction, defacement or loss of license

Upon the destruction, defacement or loss of any bicycle license, a new license plate or decal can be obtained upon a showing of proof of ownership of bicycle and payment of the same fee as upon an original application. (Ord. No. 483, art. 11, § 20-106; Ord. No. 1051, § 3.)

Section 6.04.060 License plates or decals--Issuance and form

The city auditor upon issuing a bicycle license shall also issue a license plate or decal bearing the license number assigned to the bicycle, the name of the city and the calendar year for which issued. (Ord. No. 483, art. 11, § 20-104; Ord. No. 1051, § 4.)

Section 6.04.070 Same--Attachment; removal

The license holder shall cause such license plate or decal to be firmly attached to the rear mudguard or frame of the bicycle for which issued in such position as to be plainly visible from the rear.

No person shall remove a license plate or decal from a bicycle during the period for which issued, except upon a transfer of ownership or in the event the bicycle is dismantled and no longer operated upon any street in this city. (Ord. No. 483, art. 11, § 20-104; Ord. No. 1051, § 5.)

Section 6.04.080 Rentals

A rental agency shall not rent or offer any bicycle for rent unless the bicycle is licensed and a license plate or decal is attached thereto as provided in this chapter and such bicycle is equipped with the lamps and other equipment required in this article. (Ord. No. 483, art. 11, § 20-107.)

Section 6.04.090 Records of purchases and sales by dealers

Every person engaged in the business of buying or selling new or secondhand bicycles within the city shall keep a record of every bicycle purchased or sold by such dealer, giving the name and address of the person from whom purchased or to whom sold, a description of such bicycle by name or make, the frame number thereof and the number of license plate or decal, if any, found thereon. Such record shall be made available to the city auditor at reasonable times and hours. (Ord. No. 483, art. 11, § 20-108; Ord. No. 1051, § 7.)

Section 6.04.100 Equipment--Lamps

Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred feet to the front and with a red reflector on the rear of a type which shall be visible from all distances from fifty feet to three hundred feet to the rear when directly in front of lawful upper beams of handlamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred feet to the rear may be used in addition to the red reflector. (Ord. No. 483, art. 11, § 20-119.)

For similar state law, see NDCC, § 39-10-63.1.

Section 6.04.110 Same--Aural warning devices

No person shall operate a bicycle unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least one hundred feet; except, that a bicycle shall not be equipped with nor shall any person use upon a bicycle any siren or whistle. (Ord. No. 483, art. 11, § 20-119.)

Section 6.04.120 Same--Brakes

Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheel skid on dry, level, clean pavement. (Ord. No. 483, art. 11, 20-119.)

For similar state law, see NDCC, § 39-10-63.1.

Article 6.08 Operation

Sections:

6.08.010 **Compliance of riders with laws, etc., governing vehicles**
6.08.020 **Obedience to traffic control devices**
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6.08.040 **Proper side of road; passing other vehicles; riding two abreast; use of paths adjacent to roadways**
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6.08.100 **Riding on sidewalks generally**

Section 6.08.010 Compliance of riders with laws, etc., governing vehicles

Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by the laws of this state declaring rules of the road of the city applicable to vehicles or by the traffic provisions of this Code or other ordinances of the city applicable to the driver of a vehicle, except as to special regulations in this article and those provisions which by their nature can have no application. (Ord. No. 483, art. 11, § 20-109.)

For similar state law, see NDCC, § 39-10-02.1. As to motor vehicles and traffic generally, see Ch. 23 of this Code.

Section 6.08.020 Obedience to traffic control devices

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

Whenever authorized signs are erected indicating that no right, left or U turn is permitted, no person operating a bicycle shall disobey the direction of any such sign, except where such person dismounts from the bicycle to make any such turn, in which event such person shall then obey the regulations applicable to pedestrians. (Ord. No. 483, art. 11, § 20-110.)

Section 6.08.030 Propelling; number of riders permitted

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

No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped. (Ord. No. 483, art. 11, § 20-111.)

For similar state law, see NDCC, § 39-10-60.

Section 6.08.040 Proper side of road; passing other vehicles; riding two abreast; use of paths adjacent to roadways

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

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

Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway. (Ord. No. 483, art. 11, § 20-112.)

For similar state law, see NDCC, § 39-10-62.

Section 6.08.050 Speed

No person shall operate a bicycle at a speed greater than is reasonable and prudent under the conditions then existing. (Ord. No. 483, art. 11, § 20-113.)

Section 6.08.060 Emerging from alleys, driveways or buildings

Upon approaching a sidewalk or the sidewalk area extending across any alleyway, the operator of a bicycle emerging from an alley, driveway or building shall yield the right-of-way to all pedestrians approaching on such sidewalk or sidewalk area and upon entering the roadway, shall yield the right-of-way to all vehicles upon such roadway. (Ord. No. 483, art. 11, § 20-114.)

Section 6.08.070 Clinging to vehicles

No person riding upon any bicycle shall attach such bicycle or himself to any vehicle upon a roadway. (Ord. No. 483, art. 11, § 20-115.)

For similar state law, see NDCC, § 39-10-61.

Section 6.08.080 Carrying articles

No person operating a bicycle shall carry any package, bundle or article which prevents the rider from keeping at least one hand upon the handlebars. (Ord. No. 483, art. 11, § 20-116.)

For similar state law, see NDCC, § 39-10-63.

Section 6.08.090 Parking

No person shall park a bicycle upon a street other than upon the roadway against the curb or upon the sidewalk in a rack to support the bicycle or against a building or at the curb in such a manner as to afford the least obstruction to pedestrian traffic. (Ord. No. 483, art. 11, § 20-117.)

Section 6.08.100 Riding on sidewalks generally

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

No person fifteen or more years of age shall ride a bicycle upon any sidewalk in any district.

Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing such pedestrian. (Ord. No. 483, art. 11, § 20-118.)

Chapter 7 BUILDINGS

Last updated November 2011

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Section 7.00E Editor's note to Chapter 7

For state law as to authority of city to regulate building construction, see NDCC, § 40-05-02(7). As to building permits, see NDCC, § 40-05-02(6). As to electricity, see Ch. 12 of this Code. As to Fire Prevention Code, see §§ 13.08.010 to 13.08.050. As to gas installation generally, see Ch. 19. As to inspection of buildings, etc., by public health officer, see § 20.04.060. As to maintenance of blighted structures, see §§ 24.08.010 to 24.08.060. As to erection, construction, etc., of barbed wire fences, see § 25.16.12.020. As to plumbing, see Ch. 30. As to house numbering, see §§ 33.08.010 to 33.08.040.

Section 7.010 Housing Code--Adoption - REPEALED

This section was repealed September 15, 2003. (Ord. No. 586; Ord. No. 646, § 1; Ord. No. 850, § 1; Ord. No. 1071, § 1; Ord. No. 1109, § 1; Ord. No. 1276 § 3.)

For state law as to authority of city to adopt standard copies printed in pamphlet form, see NDCC, § 40-05-01(1).

Section 7.020 Building Code--Adoption

The erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, uses, height, area and maintenance of buildings or structures in the City of Dickinson shall meet with the provisions of the rules and regulations of the North Dakota State Building Code as set forth in NDCC Chapter 54-21.3, and any future updates and amendments to that code, copies of which are on file with the City Administrator and are hereby made a part of this chapter by reference; with the exception of the sections hereinafter set forth affecting local conditions in the City, which are amended, for use and application in the City, and the City hereby adopts said code, with the following additions, deletions and amendments:

To the International Building Code:

(a) Section 101.1. Insert: City of Dickinson
(b) Section 1612.3. Insert: City of Dickinson
(c) Section 1612.3. Insert: [June 1, 1978]
(d) Section 3409.2. Insert: [1969]

To the International Mechanical Code:

(e) Section 101.1. Insert: City of Dickinson
(f) Section 106.5.2. Insert: City of Dickinson Fee Schedule
(g) Section 106.5.3. (2) Insert: 0%.
(h) Section 106.5.3 (3) Insert: 0%
(i) Section 108.4. Insert: Offense, $1,000, 30 days
(j) Section 108.5. Insert: $100, $500

To the International Residential Code:

(k) Section R101.1 Insert: City of Dickinson
(l) Table R301.2 (1) Insert: (see chart below):

TABLE R301.2 (1)
CLIMATIC AND GEOGRAPHICAL DESIGN CRITERIA

GROUND SNOW LOAD	WIND DESIGN		SEISMIC DESIGN CRITERIA	SUBJECT TO DAMAGE FROM			WINTER DESIGN TEMP	ICE BARRIER UNDERLAYMENT REQUIRED	FLOOD HAZARDS	AIR FREEZING INDEX	MEAN ANNUAL TEMP
	Speed (mph)	Topographic effects		Weathering	Frost Depth Line	Termite					
30	90	No	A	Severe	4'-0"	None to Slight	-10º	Yes	Amendment to Local Zoning Ordinance	2800	

For SI: 1 pound per square foot = 0.0479kPa, 1 mile per hour = 0.447m/s.

a. Weathering may require a higher strength concrete or grade of masonry than necessary to satisfy the structural requirements of this code. The weathering column shall be filled in with the weathering index (i.e., "negligible," "moderate" or "severe") for the concrete as determined from Weathering Probability Map [Figure R301.2(3)]. This grade of masonry units shall be determined from ASTM C 34, C 55, C 62, C 73, C 90, C 129, C 145, C 216 or C 652.

b. The frost line depth may require deeper footings than indicated in Figure R403.1 (1). The jurisdiction shall fill the frost line depth column with the minimum depth of footing below finish grade.

c. The jurisdiction shall fill in this part of the table to indicate the need for protection depending on whether there has been a history of local subterranean termite damage.

d. The jurisdiction shall fill in this part of the table with the wind speed from the basic wind speed map [Figure R301.2 (4)]. Wind exposure category shall be determined on a site-specific basis in accordance with Section R301.2.1.4.

e. The outdoor design dry-bulb temperature shall be selected from the columns of 97 1/2 percent values for winter from Appendix D of the *Uniform Plumbing Code*. Deviations from Appendix D temperature shall be permitted to reflect local climates or local weather experience as determined by the building official.

f. The jurisdiction shall fill this part of the table with the seismic design category determined from Section R301.2.2.1.

g. The jurisdiction shall fill this part of the table with (a) the date of the jurisdiction's entry into the National Flood Insurance Program (date of adoption of the first code or ordinance for management of flood hazard areas), (b) the date(s) of the Flood Insurance Study and (c) the panel numbers and dates of all currently effective FIRMs and FBFMs or other flood hazard maps adopted by the authority having jurisdiction, as amended.

h. In accordance with Sections R905.2.7.1, R905.4.3.1, R905.5.3.1, R905.6.3.1, R905.7.3.1 and R905.8.3.1, where there has been a history of local damage from the effects of ice damming, the jurisdiction shall fill in this part of the table with "Yes." Otherwise, the jurisdiction shall fill in this part of the table with "No."

i. The jurisdiction shall fill in this part of the table with the 100-year return period air freezing index (BF-days) from Figure R403.3(2) or from the 100- year (99%) value on the National Climatic Data Center data table "Air Freezing Index – USA Method (Base 32º)" at www.ncdc.noaa.gov/fpsf.html.

j. The jurisdiction shall fill in this part of the table with the mean annual temperature from the National Climatic Data Center data table "Air Freezing Index – USA Method (Base 32º)" at www.ncdc.noaa.gov/fpsf.html.

k. In accordance with Section R301.2.1.5, where there is local historical data documenting structural damage to buildings due to topographical wind speed-up effects, the jurisdiction shall fill in this part of the table with "Yes." Otherwise, the jurisdiction shall indicate "No" in this part of the table.

(Ord. No. 533, § 1; Ord. No. 578; Ord. No. 605; Ord. No 625, § 1; Ord. No. 655, § 1; Ord. No. 713, § 1; Ord. No. 728, § 1; Ord. No. 789, § 1; Ord. No. 819, § 1; Ord. No. 892, § 1; Ord. No. 981, § 1; Ord. 1071, § 2; Ord. No. § 1109, 2; Ord. No. 1143 § 1; Ord. No. 1166 § 1; Ord. No. 1276 § 1; Ord. No. 1422 § 1.)

For state law as to authority of city to adopt a building code by reference, see NDCC, § 40-05-01(1).

Section 7.030 Dangerous Buildings or Structures

For the purpose of this ordinance, 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. For purposes of this ordinance, the term "Building Code", shall mean the building code adopted by the City of Dickinson in Chapter 7 of the Dickinson City Code.

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.

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.

Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is 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.

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.

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.

Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or in 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.

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.

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.

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

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.

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.

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 as to (c) enable persons to resort thereto for the purpose of committing unlawful or immoral acts.

Whenever any building or structure has been constructed, exits 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.

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 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.

Whenever a building or structure, 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 in such a condition that is likely to cause sickness or disease.

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.

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.

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. (Ord. 1230 § 2.)

Section 7.030.010 Standards for Repair, Vacation or Demolition

The following standards shall be followed in substance by the building inspector and the city commission in ordering repair, vacation or demolition:

If the "dangerous building" can be reasonably repaired so that it will no longer exist in violation of the terms of this ordinance, it shall be ordered repaired.

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.

In any case where a "dangerous 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 ordinance or any ordinance of the City or statute of the State of North Dakota, it shall be demolished. (Ord. 1230 § 2)

Section 7.030.020 Dangerous Buildings - Nuisances

All "dangerous buildings" within the terms of section 7.030 are hereby declared to be public nuisances and shall be repaired, vacated or demolished as provided in this ordinance. (Ord. 1230 § 2)

Section 7.030.030 Duties of Building Inspector

The Building Inspector shall:

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 ordinance.

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.

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 Register of Deeds, of any building found by the Building Inspector to be a "“dangerous building” within the standards set forth in section 1 of this ordinance that: (a) the owner must vacate, or repair, or demolish said building in accordance with the terms of the notice and this article; (b) the owner or occupant must vacate said building or may have it repaired in accordance with the notice and remain in possession. Provided, that any person notified under this subsection to repair, vacate, or demolish any building shall be given such reasonable time, not exceeding thirty days, as may be necessary to do, or have done, the work or act required by the notice.

Set forth in the notice provided for in subsection 3 a description of the building or structure deemed unsafe, a statement of the particulars which make the building or structure a "dangerous building", and an order requiring the same to be put in such condition as to comply with the terms of this ordinance within such length of time, not exceeding thirty days, as is reasonable.

Report to the City Commission any noncompliance with the notice provided for in subsections 3 and 4.

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

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 as shown by the records of the County Register of Deeds. It is unlawful to remove this notice until its requirements have been met." (Ord. 1230 § 2)

Section 7.030.040 Duties of the City Commission

The City Commission shall:

Upon receipt of a report of the Building Inspector as provided for in section 7.030.030, give written notice to the owner, occupant, mortgagee, lessee and all other persons having an interest in said building as shown by the records of the County Register of Deeds, to appear before it on the date specified in the notice to show cause why the building or structure reported to be a "dangerous building" should not be repaired, vacated or demolished in accordance with the statement of particulars set forth in the Building Inspector' s notice provided for in section 7.030.030.

Hold a hearing and hear such testimony as the Building Inspector or the owner, occupant, mortgagee, lessee or any other person having an interest in said building as shown by the records of the County Register of Deeds shall offer relative to the "dangerous building".

Make written findings of fact from the testimony offered as to whether or not the building in question is a "dangerous building" within the terms of section 7.030.

Issue an order based upon findings of fact requiring the owner, occupant, mortgagee, lessee, or other persons having an interest in said building as shown by the records of the County Register of Deeds to repair, vacate or demolish any building found to be a "dangerous building" within the terms of this article and provided that any person so notified, except the owners, shall have the privilege of either vacating or repairing said "dangerous building". (Ord. 1230 § 2)

Section 7.030.050 Failure to Comply with Decision of the City Commission

If the owner, occupant, mortgagee or lessee fails to comply with the order of the City Commission or fails to appeal to the District Court within thirty days, the City through its officers and employees shall cause such building or structure to be repaired, vacated or demolished as ordered by the City governing body and shall bill the owner, occupant, mortgagee or lessee for the costs of such repair, vacation or demolition. If the bill is not paid when due, the costs may be assessed against the land on which the building existed. (N.D.C.C. §40-05-01.1) (Ord. 1230 § 2)

Section 7.030.060 Violations - Penalty for Disregarding Notices or Orders

The owner of any "dangerous building" who shall fail to comply with any notice or order to repair, vacate or demolish said building given by any person authorized by this article to give such notice or order shall be guilty of an infraction and upon conviction thereof shall be fined not exceeding five hundred dollars ($500) for each offense and every day subsequent to such notice in which said owner shall fail to comply with any notice or order 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 shall be guilty of an infraction and upon conviction thereof shall be fined not exceeding five hundred dollars ($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 section 7.030.030, subsection 7, shall be guilty of an infraction and upon conviction shall be fined not exceeding five hundred dollars ($500) for each offense. (Ord. 1230 § 2)

Section 7.030.070 Duties of the City Attorney

The City Attorney shall:

Prosecute all persons failing to comply with the terms of the notice provided for in section 7.030.030, subsections 3 and 4, and the order provided for in section 7.030.040, subsection 4.
Appear at all hearings before the City governing body in regard to "dangerous buildings".
Take such other legal action as is necessary to carry out the terms and provisions of this ordinance. (Ord. 1230 § 2)

Section 7.030.080 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 the building, as shown by the records of the County Register of Deeds, to the last known address of each, and a copy of such notice shall be posted in a conspicuous place on the "dangerous building" to which it relates. Such mailing and posting shall be deemed adequate service. (Ord. 1230 § 2)

Section 7.030.090 Duties of Fire Department, Police Department and Southwest District Health Unit

All employees of the Fire Department, Police Department and Southwest District Health Unit 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 defined in section 7.030. (Ord. 1230 § 2)

Section 7.030.100 Appeal

The City Commission 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, lessee or other person shall have thirty days from the date of the service of such order in which to appeal to the District Court or to take such other legal steps to enjoin the enforcement of such order. (Ord. 1230 § 2)

Section 7.040 Mechanical Code--Adoption - REPEALED

This section was repealed September 15, 2003. (Ord. No. 1071, § 4; Ord. No. 1109, § 3; Ord. No. 1166 § 2; Ord. No. 1276 § 3.)

Section 7.050 International Property Maintenance Code adopted

The terms, provisions and conditions of the International Property Maintenance Code, including all supplements, additions and amendments thereto, copies of which are on file in the office of the City Administrator, are hereby adopted as a part of this Code as through the same were set forth in full. (Ord. No. 1071, § 5; Ord. No. 1109, § 4; Ord. No. 1276 § 2.)

Section 7.060 Rain gutters and downspouts

All residential buildings within the city must have gutters, downspouts and splash blocks installed with a minimum of a two foot extension from any wall of the structure. (Ord. No. 981, § 9.)

Section 7.070 Drainage

As regards residential building structures within the city, for the purposes of drainage, there shall be a minimum slope of three-eighths inch to one inch per foot from the sides of the house towards the lot lines; and in relation to the backyard, a slope of three-eighths inch to one inch per foot for a minimum distance of fifteen feet from the house to the back yard lot line. (Ord. No. 981, § 10.)

Section 7.080 Day care and child care facilities

The following are minimum requirements for day care and child care facilities being provided for and housed in existing residential type occupancies:

(a) Interior finish of walls must be a minimum of one-half inch gypsum. Ceilings shall have a flame spread rating of not greater than Class I (0-25) for required vertical exits and passways.

(b) Draperies, hangings and other decorative materials suspended from walls or ceilings shall be noncombustible or flame resistant. The permissible amount of flame resistant decorative wall hangings shall not exceed ten percent of the total wall and ceiling area.

(c) Maximum floor area allowances per occupant must meet all state requirements.

(d) Exits shall meet the following requirements:

(1) All required exits shall be located so as to be discernable and accessible, with unobstructed access to lead directly to the street or area of refuge that will not be obstructed or impaired by fire, smoke or other cause.

(2) Egress from a room or space shall not open into an adjoining or intervening room or area, except where such adjoining room or area is accessory to the area served, is not a high hazard use and provides a direct means of egress to an exit. A maximum of one exit access shall be permitted to pass through a kitchen, storeroom, restroom, closet or similar space; provided, that it is not the only means of access to an exit. An exit access shall not pass through a room subject to locking.

(3) Exterior exit doors must be a minimum of thirty-six inches.

(4) Every floor area shall be provided with two independent exits, to be as remote from each other as practical.

(5) Passageways, aisles and corridors shall be a minimum of thirty-six inches, unless the occupant load is fifty or more, in which case the minimum width shall be forty-four inches.

(6) All exit corridors shall be enclosed in fire separation walls having a fire resistant rating of one hour when serving an occupant load greater than thirty.

(7) Each egress door shall be readily openable from the side from which egress is to be made, without the use of a key or special knowledge.

(8) Interior exit stairways shall not be less than forty-four inches in width; except, that such width may be reduced to thirty-six inches when serving an occupancy of fifty or less.

(9) Interior exit stairs shall have a maximum of seven-inch rise and a minimum four-inch rise and minimum eleven-inch tread. Stairs shall have guards and handrails on both sides. Stairways less than forty-four inches may have one handrail.

(10) Balusters shall not be spaced more than six inches apart.

(11) The width of every exit door, to and from a stairway, shall not be less than thirty-two inches.

(12) Approved internally-illuminated signs reading "Exit" shall be installed in corridors, stairwells, adjoining or intervening rooms and multistory buildings where egress is not easily discernible. Signs shall be visible from the exit access and, when necessary, supplemented by directional signs in the exit access corridors indicating the direction and way of egress. All exit signs shall be located at exit doors. A structure constructed for the specific purpose of day-care center operations shall be equipped with internally illuminated "Exit" signs.

a. "Exit" signs shall have red letters at least six inches high, the minimum width of each stroke being three fourths inch, on white background.

b. "Exit" signs must be illuminated at all times, when the building is occupied, from an emergency electrical system.

(13) Emergency lighting must be provided, for egress, from an independent power source, to assure continued illumination in case of emergency or primary loss for a duration of one hour.

(e) A manual fire alarm system must be provided and maintained in full operating condition in multistory buildings and structures. An automatic fire alarm system (smoke detectors) may be installed in lieu of a manual fire alarm system, provided the detection system is interconnected and shall cause an audible alarm in all areas.

(f) A fire suppression system shall be installed in every basement where there is not provided at least twenty square feet of opening entirely above the adjoining ground level in each fifty linear feet on at least one side of the building. The minimum dimension shall not be less than twenty-two inches. Such openings shall be accessible to the fire department from the exterior and shall be unobstructed to allow firefighting and rescue operations from the exterior.

(g) All facilities shall be provided with one fire extinguisher for each two thousand five hundred square feet of floor area, but not less than one fire extinguisher per floor.

(h) Automatic smoke detectors shall be installed in all rooms (e.g., furnace, mechanical rooms). (Ord. No. 989, § 1.)

Section 7.090 Bond or cash deposit for removal of house or building from existing foundation

No person shall remove any house or any building of any kind or nature from an existing foundation within the city limits without first giving a surety bond in the sum of two thousand dollars approved by the board of city commissioners, or giving a cash deposit in the same amount. The bond or cash deposit as submitted to the city auditor's office shall be conditioned upon the party removing such house or building and causing the vacant lot to be filled and property brought into compliance with applicable city ordinances. After the city's inspection department determination that the vacant lot and property are in compliance with such ordinances, the party shall be entitled to return of the bond or cash deposit within a reasonable period of time. In the event the party, after proper notice, fails to fill the vacant lot or otherwise fails to comply with the applicable city ordinances, the city may fill the vacant lot and bring the property into conformance with this Code, and the bond or cash deposit shall be forfeited to cover the city's costs. (Ord. No. 991, § 1.)

Section 7.100 Mover's license required

No person shall engage in the occupation of moving houses or buildings of any kind or nature whatsoever from place to place within the city limits or upon the streets or alleys of the city without first obtaining a license therefor from the city auditor. (Ord. No. 1071, § 6.)

Section 7.110 Bond requirement of applicant

The applicants for a license under section 6-14 above shall give a surety bond in the sum of one thousand dollars approved by the president of the board of city commissioners, such bond to run to the city for the use and benefit of the city and its inhabitants, and shall be conditioned, among other things, that the party asking for the license will pay any and all damages which, by reason of the granting of the license or the moving of any house or building thereunder, may be caused to any property, either public or private, within the city, whether such damage or injury shall be inflicted by such part or his agent, employees or workmen and conditioned also that the party will indemnify and keep harmless the city against all liability, judgments, costs and expenses which may accrue against the city in consequence of granting of such license and that the party will in all things comply with the conditions of such license or of any permit issued to him. Upon the execution of the required bond and the payment of the license fee, the license applied for under this section shall be issued by the city auditor. (Ord. No. 1071, § 6.)

Section 7.120 Fee

The fee to be paid for the annual license provided for in this section shall be on file in the office of the city auditor in the city fee schedule. (Ord. No. 1071, § 6; Ord. No. 1086, § 4.)

Section 7.130 Application for moving permit

The holder of a license granted pursuant to sections 7.100 and 7.110 above shall not move any house, building or other structure without first obtaining a moving permit therefor for each house, building or other structure to be moved. Prior to obtaining such a moving permit, the owner of the structure to be moved or the license holder described herein shall provide the director of inspections, the following:

(a) The streets over which said house or building is proposed to be moved, a certificate from the director of inspections showing that he has previously inspected the said house or building and that the requirements for construction, alteration and repairs necessary to place said building or house in conformity with the building code and other ordinances of the city.

(b) Mover shall also agree that he will notify the director of inspections, forty-eight hours in advance of actual removal of a house, building or structure.

(c) The permit fee for moving a building shall be twenty-five dollars. (Ord. 1071, § 6.)

Section 7.140 Building Relocation Permit

(a) Moving Permit: A City building relocation permit is required to move a building. Application for a building relocation permit must be obtained from the City before any action is taken to move the structure. Application must be made on a form provided by the City which includes a description of the building to be moved, the location in the City onto which it is to be moved, the name of the mover, proof of liability insurance and other requirements of the form and the applicable fee. A hearing before the Board of Adjustment shall be required before a building relocation permit is granted to a building owner. All persons within 200 feet of the subject property to which a building is proposed to be moved will be notified of a proposed building relocation and the date of the hearing before the City's Board of Adjustment. Any decision of the Board of Adjustment may be appealed to the City Commission by the applicant or a petition signed by at least 51 percent of the property owners within 200 feet of the proposed location. Before a building relocation permit is issued, all affected utilities must sign a petition verifying that they are aware of the proposed move and have worked out arrangements with mover.

(b) City Inspection: Prior to the hearing before the Board of Adjustment and before a building is moved into or within the City's jurisdiction the building must first be inspected by a City building inspector to determine compliance with building related codes. The building inspector may also require

building improvements including, but not limited to: painting of exterior; new windows and/or doors; reshingling; new roof; site work to control drainage; setbacks; and such other improvements as determined by the building inspector.

(c) Code and Order Compliance: The building must meet all applicable codes and other orders of the building inspector before it is occupied in the new location. All mandated work must be completed within one year of placement of the building on the foundation in the new location. If the owner of the house fails to complete the work proposed and required within the one-year time frame, that person will be subject to a fine of $50 with each day after the expiration of the one year time frame being considered a separate violation. A building permit and other permits and fees must be obtained and paid before the building is moved. The building must be moved by a city licensed mover.

(d) Limitations: No permit shall be issued to relocate any building, or structure which is considered by a City building inspector in such a condition as to be dangerous or unsafe or if to be used for human habitation, considered unfit for human habitation, or which is dilapidated or defective or in such a state of deterioration that its relocation to the proposed site would create a safety hazard.

(e) Costs: The cost of all fees and charges related to this section shall be declared and maintained in the City Fee Schedule.

(Ord. 1071, § 6; Ord. No. 1270 § 1.)

Section 7.150 Director of inspections

The department of building inspection is hereby created and the executive official in charge thereof shall be known as the director of inspections. (Ord. 1071, § 6.)

Section 7.160 Appointment

The director of inspections shall be appointed by the board of city commissioners from a list certified by the Civil Service Commission. (Ord. 1071, § 6.)

Section 7.170 Permit fees

Fees shall be based on valuation and shall be as follows:

Valuation of $1.00 to $1,000.00	$15.00 permit fee
Valuation in excess of $1,000.00	$15.00 for the first $1,000.00, plus $3.00 for each additional $1,000.00 or fraction thereof.

Plan reviews will be minimum of $20.00.

(Ord. No. 1071, § 6; Ord. No. 1109, § 5.)

Section 7.180 Violation--Penalties

Any person who shall violate a provision of this Code or shall fail to comply with any of the requirements thereof or who shall erect, construct, alter or repair a building or structure in violation of an approved plan or directive of the code official, or of a permit or certificate issued under the provisions of this Code, shall be guilty of: (1) for the first conviction, an infraction punishable by a fine of at least fifty dollars but not more than five hundred dollars; (2) Any person who has previously been convicted under this section may be charged with a misdemeanor punishable by a fine of not more than one thousand dollars, or by imprisonment, not exceeding thirty days, or both such fine and imprisonment. Each day that a violation continues shall be deemed a separate offense. (Ord. 1071 § 6; Ord. No. 1150 § 1; Ord. No. 1157 § 1.)

Chapter 8 CARNIVALS AND CIRCUSES

Last updated October 2007

Articles:

8.04 In General
8.08 Permits, Contracts and Licenses

Article 8.04 In General

Sections:

8.04.00E **Editor's note to Article 8.04**
8.04.010 **Definitions**
8.04.020 **Enforcement of chapter generally; policeman's right of entry**
8.04.030 **Exits in tents**
8.04.040 **Fire resistance of tents**
8.04.050 **Fire-fighting equipment**

Section 8.04.00E Editor's note to Article 8.04

For state law as to authority of city to regulate and license amusements, see NDCC, § 40-05-01 (26). As to carnivals generally, see NDCC, § 53-03-01 et seq.

Section 8.04.010 Definitions

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

Carnival. An aggregation of attractions, whether shows, acts, animals, vending devices, riding devices or amusement devices, whether conducted under one or more managements or individually, which are temporarily set up or conducted in a public place or upon any private premises and accessible to the public with or without admission fee and which from the nature of the aggregation attracts attendance and causes promiscuous commingling of persons in the spirit of merrymaking and revelry.

Circus. Any show under a tent where there are exhibited feats of horsemanship, animals and animal shows, acrobatic feats or trained animals and having a ring or rings. (Code 1958, § 8-1.)

Section 8.04.020 Enforcement of chapter generally; policeman's right of entry

The police department of the city shall aid and assist in the enforcement of the provisions of this chapter, and it is hereby made the duty of each and every police officer of the city to see that no person granted a permit or license under the provisions of sections 8.08.04.010 to 8.08.06.030 of this Code shall violate any of the provisions of this chapter.

Any police officer or policeman of the city shall have the right to enter upon the premises upon which any circus or carnival is showing for the purpose of inspecting its tent or tents as to exits and the number and kind thereof. (Code 1958, § 8-2.)

Section 8.04.030 Exits in tents

No person shall set up, run, operate or exhibit any show, carnival or circus in a tent or tents within the city, unless such circus, show or carnival shall provide and have three well defined and unobstructed exits from such tent or tents. (Code 1958, § 8-12.)

Section 8.04.040 Fire resistance of tents

No person shall show or exhibit any circus or carnival within the city in a tent, unless such tent shall be made or treated with fire-resistant material. (Code 1958, § 8-13.)

Section 8.04.050 Fire-fighting equipment

No person shall set up, run, operate or exhibit any show, carnival or circus within the city, unless such circus, show or carnival shall provide and have adequate fire-fighting equipment, either for the use of water or for the use of chemicals, for the purpose of extinguishing any fire that might endanger the lives or property of patrons in or about such tent, containing such circus, show or carnival. (Code 1958, § 8-14.)

Article 8.08 Permits, Contracts and Licenses

Sections:

8.08.02000 Division 8.08.02 Generally
8.08.02010 Payment of fees; issuance of licenses generally; disposition of fees collected
8.08.04000 Division 8.08.04 Carnivals
8.08.04000E Editor's note to Division 8.08.04
8.08.04010 Issuance generally
8.08.04020 Written contract and permit required
8.08.04030 Conditions precedent to issuance
8.08.04040 License fee
8.08.04050 Possession and display
8.08.06000 Division 8.08.06 Circuses
8.08.06000E Editor's note to Division 8.08.06
8.08.06010 License--Required
8.08.06020 Same--Consent of surrounding landowners
8.08.06030 Same—Fee

Section 8.08.02000 Division 8.08.02 Generally

Section 8.08.02010 Payment of fees; issuance of licenses generally; disposition of fees collected

The license fees provided for in this article shall be paid to the city auditor, who, upon the payment of the fees provided for herein, shall issue a license to such applicant; provided, that the same has been approved by the board of city commissioners, where such approval is required, and the city auditor shall deliver such fees to the treasurer of the city, and the same shall be credited to the general fund of the city. (Code 1958, § 8-4.)

Section 8.08.04000 Division 8.08.04 Carnivals

Section 8.08.04000E Editor's note to Division 8.08.04

For state law requiring contract and permit from city prior to operation of a carnival, see NDCC, § 53-03-02.

Section 8.08.04010 Issuance generally

It shall be unlawful for the city to enter into any contract or grant a permit to any group or organization acting for or on behalf of any carnival or carnival company. The permit or contract mentioned in this article shall be issued only to such persons as are bona fide engaged in the carnival business. (Code 1958, § 8-3; Ord. No. 1083, § 18.)

Section 8.08.04020 Written contract and permit required

No person shall, within the city limits, set up, run, operate or conduct any itinerant carnival, unless and until such person shall have procured and has in his possession a written contract and permit from the city auditor, setting forth the conditions under which such carnival shall be operated. (Code 1958, § 8-5; Ord. No. 1083, § 19.)

For similar state law, see NDCC, § 53-03-02.

Section 8.08.04030 Conditions precedent to issuance

(a) Consent of Surrounding Property Owners. The board of city commissioners shall not issue a permit for the renting, setting up, operating or conducting of any itinerant carnival to be conducted outdoors and not within a permanent building, unless the applicant for such permit shall file with his application the consent of the owners of seventy-five percent of the property by area within a distance of three hundred feet from the outer boundary lines upon which the applicant proposes to exhibit or conduct the performances for which application is made.

(b) Prohibited Activities. The permit required by section 8.08.04.020 of this Code shall be granted upon the condition, and the contract shall state that there shall not be set up or operated any gambling device, lottery, number or paddle wheel, number board, punchboard or other game of chance or skin game of any kind whatsoever, lewd, lascivious or indecent show, indecent exposure of the person, suggested lewdness or immorality, hoochie-coochie or other indecent dance, men only shows where women or girls perform or any other lewd, immoral or indecent show or attraction, and that such shows, etc., will not be allowed or permitted, and that such person will not knowingly allow or permit to follow or be connected with such carnival any man or woman affected with venereal disease and will cooperate with the board of city commissioners in discovering and apprehending any such man or woman.

For similar state law, see NDCC, § 53-03-04.

(c) Inspections and Bond. No permit shall be granted by the board of city commissioners until they have caused to be investigated such carnival and are satisfied that, if permitted, such carnival will be operated in accordance with the laws of the state, the provisions of this Code and other ordinances of the city and that none of the illegal or unlawful acts mentioned in the contract and set forth in this section shall be permitted.

The board of city commissioners is hereby authorized to enter into such contract, issue such permits, collect such permit fees as are necessary to pay the expense of the investigation, aid in policing such grounds, and otherwise compensate the municipality in such amount as they determine, and shall require such person to execute and deliver to the city a bond in the penal sum of five hundred dollars to be approved by the board of city commissioners, conditioned for the faithful conduct of such carnival, in accordance with the laws and ordinances of the city, and that the same shall be forfeited upon the violation of the laws or acts prohibited by such contract.

The board of city commissioners is hereby required to enforce the provisions of this article, the contract made and entered into, and the laws of the state, the provisions of this Code and other ordinances of the city, in reference to such carnivals and shall not allow or permit the acts prohibited in this article by such person. (Code 1958, § 8-6.)

For state law as to bond and authority of city generally, see NDCC, § 53-03-05. As to enforcement of contract by board of commissioners, see NDCC, § 53-03-06.

Section 8.08.04040 License fee

The license fee for a permit to operate a carnival shall be payable in advance for the number of days the permit is issued. The amount is to be determined from time to time by the board of city commissioners and shall be on file in the office of the city auditor in the city of fee schedule. (Code 1958, § 8-7; Ord. No. 1086, § 5.)

For state law as to authority of city to collect permit fees, see NDCC, § 53-03-05.

Section 8.08.04050 Possession and display

Contracts and permits as provided for in this article shall be made in duplicate, and one shall be in the possession of the city auditor and the other in the possession of the manager of such carnival.

In either case, the contracts and permits shall, upon request of an officer or citizen, be produced and shown. Refusal to show such contract, etc., to one asking to see it shall be presumptive evidence that such carnival is being operated without such contract or permit. (Code 1958, § 8-8.)

For similar state law, see NDCC, § 53-03-07.

Section 8.08.06000 Division 8.08.06 Circuses

Section 8.08.06000E Editor's note to Division 8.08.06

For state law defining carnival so as to include circus, see NDCC, § 53-03-01.

Section 8.08.06010 License--Required

No person shall set up, run, operate or exhibit any circus within the city, without having first procured or obtained a license therefor. (Code 1958, § 8-10.)

For similar state law, see NDCC, § 53-03-03.

Section 8.08.06020 Same--Consent of surrounding landowners

The board of city commissioners shall not issue a license for the renting, setting up, operating or conducting of any circus to be conducted outdoors and not within a permanent building, unless the applicant for such license shall file with his application the consent of the owners of seventy-five percent of the property by area within a distance of three hundred feet from the outer boundary lines upon which the applicant proposes to exhibit or conduct the performances for which application is made. (Code 1958, § 8-10.)

Section 8.08.06030 Same--Fee

For a license for the exhibition of any circus, there shall be taxed and collected a license fee in an amount that shall be determined by the board of city commissioners, and no person shall be permitted to exhibit a circus within the limits of the city without first having obtained a license as provided in this division. The license fee shall be in such amount as determined from time to time by the board of city commissioners and shall be on file in the office of the city auditor in the city fee schedule. (Code 1958, § 8-11; Ord. No. 1086, § 6.)

For state law as to authority of city to collect license fees, see NDCC, § 53-03-05.

Chapter 9 CEMETERIES

Last updated November 2009

Sections:

9.010 "Cemetery" defined
9.020 Cemetery director--Office created; appointment - REPEALED
9.030 Cemetery Management Duties generally - REPEALED
9.035 Cemetery Advisory Committee created appointment duties - REPEALED
9.040 Disclaimer by city
9.050 "Resident" defined; applicability of definition to infants
9.060 Regulations applicable to general care area
9.070 Monuments and Markers generally
9.080 Markers generally - REPEALED
9.090 Use of vault generally
9.100 Surface vaults prohibited
9.110 Outer burial containers
9.120 Interments and funerals generally
9.130 Disinterments
9.140 Relocating bodies
9.150 Vacated lots
9.160 Services by city for Funeral Directors
9.170 Conduct of persons in cemetery
9.180 Selecting sites
9.190 Payments for right of burial
9.200 Purchase of cemetery lots--Generally
9.210 Charges for sites for burial
9.220 Same--Right of burial
9.230 Repurchase of lots by city
9.235 Title to Cemetery Lots or Burial Spaces reverts after 80 years - Procedure
9.240 Recording change of ownership
9.250 Payments for services payable in advance
9.260 Charges for use of vault - REPEALED
9.270 Disinterment charge
9.280 Funeral Directors to assume liability for certain charges
9.290 Reports; disposition of fees collected; accounting procedures
9.300 Endangered gravesites

Section 9.010 "Cemetery" defined

Wherever the word "cemetery" appears in this chapter, it shall be construed to mean a place for burying the dead on all grounds owned and maintained by the city for this purpose." Cemetery" shall be construed to mean the St. Patrick's Catholic Cemetery, St. Wenceslaus Catholic Cemetery, St. Joseph's Catholic Cemetery and the Dickinson Cemetery. (Ord. No. 1006, § 1; Ord. No. 1364 § 1.)

Section 9.020 Cemetery director--Office created; appointment - REPEALED

This section was repealed September 2, 2003. (Ord. No. 1006, § 1; Ord. No. 1273 § 1.)

Section 9.030 Cemetery Management Duties generally - REPEALED

This section was repealed October 6, 2008 with the passage of Ordinance No. 1364.

Section 9.035 Cemetery Advisory Committee created appointment duties - REPEALED

This section was repealed with Ordinance No. 1322 passed June 19, 2006.

Section 9.040 Disclaimer by city

The city shall take every reasonable precaution to protect the property within the cemetery, but it distinctly disclaims all responsibility for loss or damage, whether direct or collateral, from the acts of thieves, vandals, rioters and malicious mischief makers; from all acts of Providence, including but not limited to winds, tornadoes, cyclones, hail, snow, frost, fire, explosion or lightning; and from breakage or accident to equipment of any kind and character and from all causes beyond its reasonable control. (Ord. No. 1006, § 1.)

Section 9.050 "Resident" defined; applicability of definition to infants

(a) For the purpose of this chapter, the word "resident" is defined as a person who lived within the corporate limits of the city immediately preceding the date of death and is a bona fide resident of the city under North Dakota law. Reference NDCC Sections 54-01-21, 54-01.26, and other pertinent sections of NDCC. All other persons shall be considered as nonresidents.

(b) In the case of the death of an infant whose parents meet residency requirements, resident rates shall apply. In all other cases, nonresident rates shall apply. (Ord. No. 1006, § 1.)

Section 9.060 Regulations applicable to general care area

(a) In the cemetery area the city shall not provide for the care of private mausoleums, monuments or markers or set out or take care of any decorative planting; it shall, however, undertake to keep the grass cut and to maintain the entire area in a neat and generally tidy condition.

(b) Lot owners or authorized persons may have any special work, consistent with this section, done by the city by making arrangements with the City, which shall furnish estimates of cost to perform the work. Lot owners or authorized persons wishing to have the work done must give the City a signed order covering the proposed improvements.

(c) Lot owners or members of their families are permitted to do any work not involving construction and not otherwise prohibited by this chapter on their sites, either before or after interments, and the performance of such work must be confined to the working hours of the cemeteries.

(d) No corner stakes of any lot shall be disturbed.

(e) No lot or grave shall be defined by any fence, railing, coping, hedge, embankment or depression, nor may trees or shrubs be planted to define corners or boundaries. No cement curbs shall be permitted, and all unsightly curbs shall be removed.

(f) The planting of common lilac bushes and any kind of iris or vines is not permissible.

(g) Existing trees generally will not be removed to make additional burial space.

(h) To prevent injury to adjoining lots and to preserve the beauty of the grounds, no trees or shrubs shall be planted on lots or graves, nor shall any existing trees or shrubs be cut down, removed or trimmed, unless permitted by the City.

(i) The placing of wreaths, sprays or flower boxes, and the placing of cut flowers shall be restricted to those graves which have a regular container for that purpose. The use of jars, tin cans, etc., is prohibited. Spading up of grass will be permitted only for the purpose of planting grass. Planting of flowers is restricted to flower boxes and vases upon concrete foundations upon the grave site only.

(j) Withered plants and flowers will be removed from the lots, vases and urns.

(k) The city may remove or order removed all floral designs, trees, shrubs, plants or herbage of any kind, and may also remove toys or any other kind of non-green decoration as soon as such items become

unsightly, interferes with Maintenance Activities, detrimental or diseased, in the opinion of city staff. The city has no responsibility to return to its owners any item the city so removes or orders removed.

(l) Individual mausoleums are not permitted.

(m) The use of monuments is permitted, subject to the provisions of this chapter.

(n) Grave covers shall not be allowed in a cemetery. Any and all grave covers which are situated in any city cemetery and determined by the City to be in a state of disrepair or otherwise in need of maintenance, repair or servicing shall be removed.

(o) The cemetery will be available to the public per city policy or during posted days and hours. (Ord. No. 1006, § 1; Ord. No. 1041, § 2; Ord. No. 1208, § 1. Ord. No. 1273 § 3; Ord. No. 1364 § 1; Ord. No. 1371 §1)

Section 9.070 Monuments and Markers generally

(a) Any stone or object which shall be placed upon a burial site or plot for the purposes of marking a grave site or identifying the person or persons buried therein shall be classified as a monument or marker.

(b) Only one monument shall be permitted for any one plot.

(c) No monuments or markers or portions thereof made of any material other than granite, marble, standard bronze or other durable material such as (but not limited to) natural stone, petrified stone, stainless steel, etc., shall be allowed in the cemetery.

(d) All foundations for monuments or markers shall be of concrete, not to exceed six inches in depth, and shall be installed at the expense of the individual and/or family.

(e) The foundations shall be constructed so as to permanently support the monument or marker in true position and shall have a border around the bottom of the base of the monument (three and one half inches minimum on each side).

(f) All monuments or markers must be located as directed by authorized city personnel.

(g) No person shall be allowed to remove any monument or marker from the cemetery or to alter any monument erected in the cemetery without first securing permission from the City.

(h) Markers for use in making infant graves must not exceed 2.5 feet in length or 2.5 feet in width or 3.0 feet in height and shall not be more than six inches thick. (Ord. No. 1006, § 1; Ord. No. 1273 § 4; Ord. No. 1364 § 1; Ord No. 1371 §1)

Section 9.080 Markers generally - REPEALED

This section was repealed with Ordinance No. 1363 §1 on October 6, 2008.

Section 9.090 Use of vault generally

(a) In no event will any remains be accepted for storage before October 15 or be kept in the vault after April 15, except at the discretion of the City.

(b) Remains of persons having died of contagious disease can only be placed in the vault when all legal requirements relating to the handling of such cases have been complied with.

(c) The city reserves the right to interment of any remains whenever it may appear necessary for sanitary reasons, on twenty-four hours notice to the Funeral Director in charge.

(d) The city reserves the right to refuse the storage of any remains which are in an offensive condition, or during epidemics.

(e) Visiting the vault will not be permitted. (Ord. No. 1006, § 1; Ord. No. 1273 § 5.)

Section 9.100 Surface vaults prohibited

(a) Surface vault burials shall no longer be allowed in any city cemetery. (Ord. No. 1006, § 1; Ord. No. 1208, § 2; Ord. No. 1273 § 6.)

Section 9.110 Outer burial containers

(a) All burials in city-owned cemeteries shall be enclosed concrete vaults, enclosed concrete grave liners, or other approved material in a grave with a base or floor five feet below the surface with a minimum of 18 inches at any point, of earth on top of the vaults or grave liners. (Ord. No. 1006, § 1; Ord. No. 1208, § 3; Ord. No. 1364 § 1.Ord No. 1371 §1)

Section 9.120 Interments and funerals generally

(a) The time of funeral services shall be scheduled by the funeral director and the City as soon as reasonably possible and at least forty-eight (48) hours in advance of the services. Requests are to be accompanied by the legal burial permits and local burial requests.

(b) Not wanting to prolong the grief of those mourning the loss of loved ones, it is the intention of the city to accommodate the burial of deceased individuals in a timely manner. However, the physical condition of the cemeteries, i.e., frozen soil, saturated ground, the placement of graves, accumulation of snow, etc., may make timely interment difficult. The city reserves the right to require that the remains of any deceased person be stored in the city's retaining vault until such time as interment becomes possible without damaging city cemeteries. The judgment of the City shall prevail in these matters.

(c) All information required by the state of North Dakota to appear on a Burial Transit Permit shall be furnished to the City prior to internment. No burials will be allowed without this information.

(d) If the order for the interment is for a deceased person not of the immediate family of the lot owner, permission in writing from the lot owner or other authorized person must be filed with the City of Dickinson.

(e) When lots are held jointly by two or more persons, by descent, devise or purchase, an order will be accepted from either of them or their heirs for interment in the lots as the order shall require.

(f) Orders of burials over the telephone will be accepted only at the option of the City, because of the possibility of mistakes.

(g) Funerals while within the cemetery grounds shall be under the control of the City.

(h) The city shall allow no more than (4) four cremations buried on any single grave plot. (Ord. No. 1006, § 1; Ord. No. 1208, § 4; Ord. No. 1273 § 7; Ord. No. 1322 §2; Ord. No. 1364 §1.)

Section 9.130 Disinterments

Graves will be reopened for official inspection or for any other purpose only when all statutory provisions relating to the opening of graves have been complied with and the regular charge for a disinterment is paid to the city. (Ord. No. 1006, § 1.)

Section 9.140 Relocating bodies

Should the owner of a single lot in the cemetery area in which an interment has been made or should an authorized person wish to secure two or more laterally adjacent lots elsewhere in the cemetery in order to provide for contiguous burials, he may have the body in the single lot disinterred and reinterred in the new location by paying the regular charges both for disinterment and for reinterment and by conveying to the city the vacated lot. The amount of the refund for such vacated lot, if any, shall be determined by the city and shall not exceed the purchase price paid by the owner. (Ord. No. 1006, § 1; Ord. No. 1364 § 1.)

Section 9.150 Vacated lots

Should any single lot be vacated and the body removed from the cemetery, the regular charge for disinterment must be paid. The title to the lot remains in the family or may be bought back by the city. (Ord. No. 1006, § 1; Ord. No. 1208, § 5; Ord. No. 1273 § 8.)

Section 9.160 Services by city for Funeral Directors

For the convenience of the city as well as the Funeral Directors, the city, if requested, shall perform such services for the Funeral Directors as, in the opinion of the City, may be proper and feasible and which will in no manner whatsoever interfere with the duties and functions of the cemetery employees. (Ord. No. 1006, § 1; Ord. No. 1273 § 9; Ord No. 1371 §1.)

Section 9.170 Conduct of persons in cemetery

(a) Lot owners, their families and visitors shall be admitted daily to the cemetery and are requested to observe all rules adopted for the regulation of visitors.
(b) Children must be accompanied by parent or guardian.
(c) Bicycle riding shall not be permitted in cemetery.
(d) Bicycles shall not be leaned against stonework of any kind.
(e) Liquor consumption shall not be allowed within the cemetery grounds.
(f) Firearms shall not be permitted, other than for regular burial services.
(g) Dogs shall not be permitted.
(h) Cumbersome trucks and vehicles shall not be allowed to enter the grounds without special permission of the city.
(i) All persons are strictly prohibited from plucking any wild or cultivated plants, breaking any tree or shrub, marring any stonework or defacing property of lot owners or of the city.
(j) No improper use of the national flag will be permitted in the cemetery, nor will the display of any worn out and tattered flag be allowed.
(k) It is the utmost importance that there should be a strict observance of all the proprieties due the place, whether embraced in this section or not. No impropriety will be tolerated, and all well-disposed persons will confer a favor by informing the city at once of any breach of decorum that may come to their notice. (Ord. No. 1006, § 1; Ord. No. 1364 §1.)

Section 9.180 Selecting sites

Persons desiring to purchase rights of burial are invited to visit City Hall located at 99 2nd Street East, Dickinson, North Dakota and authorized city personnel will aid in making a selection. (Ord. No. 1006, § 1; Ord. No. 1364 § 1.)

Section 9.190 Payments for right of burial

All payments for lots are payable in advance, except as otherwise provided. (Ord. No. 1006, § 1.)

Section 9.200 Purchase of cemetery lots--Generally

(a) When the buyer desires to purchase a right of burial on two or more single grave lots in the cemetery area, the city reserves the right to insist that the selection shall be made in such a location and manner as not to leave any isolated single grave lots alongside those purchased.
(b) Single grave lots shall normally be sold only from single grave lot sections, except as isolated single grave lots may be elsewhere available. In single grave lot sections there can be no choice of location, as

these lots must be filled in regular order, nor can any such lots be reserved or sold for future use. (Ord. No. 1006, § 1; Ord. No. 1208, § 6; Ord. No. 1364 § 1.)

Section 9.210 Charges for sites for burial

(a) The charges for sites for the right of burial in all city-owned cemeteries and the charges for opening and closing cremation graves shall be in such amount as determined from time to time by the board of city commissioners and shall be on file by the city in the city fee schedule.

(b) The charges to open and close graves shall be set by the board of city commissioners and maintained in the City Fee Schedule.

(c) The city may provide a grave site at no charge for any person in the armed services killed in a conflict, who lived in Dickinson prior to current military service or any Dickinson city employee killed in the line of duty in which the body of the deceased is to be buried. (Ord. No. 1006, § 1; Ord. No. 1086, § 7; Ord. No. 1273 § 10.)

Section 9.220 Same--Right of burial

(a) Burial sites are conveyed by "right of burial" form furnished the purchaser, his family and heirs, granting a right forever for the purpose of burying the human dead only, subject to the rules and regulations that are now in force or may be adopted by the city but exempt from taxation and liability for debt.

(b) In the event that a burial site is unused for more than 80 years after its sale, resale and/or transfer, title to the burial space shall revert to the city as provided in section 9.235.

(c) No "right of burial" will be issued until a lot is fully paid for, and if interment is permitted before such time, the city retains the right to refuse future interments or any improvements until the balance due on the lot is fully paid, and in case of persistent default, to remove any body already interred to the single grave section.

(d) A "right of burial" from the city and its record on the books of the city is the only evidence of title recognized by the city; therefore, no lot shall be subdivided or transferred by deed or otherwise; and in the event of any subdivision or transfer or use of the property contrary to any of the provisions of the right of burial, the whole thereof shall revert to the city. (Ord. No. 1006, § 1; Ord. No. 1273 § 11; Ord No. 1371 §1)

Section 9.230 Repurchase of lots by city

The city may, by mutual agreement with any site owner, repurchase any unused site from owner or authorized person at a reasonable price determined by the cemetery director. (Ord. No. 1006, § 1.)

Section 9.235 Title to Cemetery Lots or Burial Spaces reverts after 80 years - Procedure

It is a conclusive presumption that an owner has abandoned a cemetery lot or burial space if for a period of more than 80 years the owner has not used any portion of the lot for purposes of burial and has not made provision for care of the lot beyond that provided uniformly to all lots within the cemetery, and if the owner has failed to express an interest in retaining the cemetery lot or burial space after notice provided for in this section.

Cemetery lots or burial spaces remaining unused for more than 80 years from the date of their sale, resale and/or transfer shall revert to the city upon occurrence of the following events:

(1) Upon the request of any person, the City may pass a resolution demanding that the record owner of a cemetery lot or burial space that has been unused for more than 80 years express an interest in the cemetery lot or burial space. The resolution shall notify the owner that the owner must,

within 60 days after service of the resolution upon the owner, express an interest in retaining the unused cemetery lot.

(2) A copy of the resolution shall be served upon the owner in the same manner as personal service of process in a civil action. If the owner is unknown or cannot be found, the City shall publish its resolution once a week for three consecutive weeks in the official newspaper of the county where the cemetery is located, and shall further mail a copy of the resolution to the owner at the last known address of the owner, if known.

(3) If within 60 days after personal service or after publication of the City's resolution is completed, the owner or person with a legal interest in the cemetery lot or burial space fails to express an interest in retaining the unused cemetery lot or burial space, the owner's rights therein are terminated and title to that person's plot reverts to the City. (Ord No. 1371 §1)

Section 9.240 Recording change of ownership

On the death of an owner or part-owner of a site, the heirs or designees of the deceased, if required, shall file with the city satisfactory proof of their heirship for the purpose of establishing the new ownership on the books of the city. (Ord. No. 1006, § 1; Ord. No. 1364 § 1.)

Section 9.250 Payments for services payable in advance

All payments for charges for all services are payable in advance, except as otherwise provided. (Ord. No. 1006, § 1.)

Section 9.260 Charges for use of vault - REPEALED

This section was repealed September 2, 2003 (Ord. No. 1006, § 1; Ord. No. 1208, § 7; Ord. No. 1273 § 12.)

Section 9.270 Disinterment charge

The charge for disinterring any body shall be determined by the city commission and on file in the city fee schedule. (Ord. No. 1006, § 1; Ord. No. 1273 § 13.)

Section 9.280 Funeral Directors to assume liability for certain charges

In all instances where a funeral director arranges for lots or interments, the funeral director shall assume the liability for payment to the city of the cost of the lots or interments. (Ord. No. 1006, § 1; Ord. No. 1273 § 14.)

Section 9.290 Reports; disposition of fees collected; accounting procedures

This section was repealed September 2, 2003. (Ord. No. 1006, § 1; Ord. No. 1273 § 15.)

Section 9.300 Endangered gravesites

Notwithstanding any other provisions of this Code, the city may move graves or cremate the bodies in any graves which are located in the city and maintained by the city when the gravesites are in imminent danger of destruction by natural elements. The city commissioners shall, to the extent possible, give personal notice to a relative of a deceased person whose grave is to be moved or whose body is to be cremated, if the identity of that person and the identity of the relative are known. The city commissioners shall provide at least thirty days prior notice in a legal newspaper of the city of the commissioners' intended action to be taken pursuant to this section. (Ord. No. 1078, § 1.)

Chapter 10 COMMUNITY ANTENNA TELEVISION SYSTEMS

Last updated October 2007

Articles:

10.04 In General
10.08 Franchise
10.12 Service

Article 10.04 In General

Sections:

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10.04.020 Grant of authority--General
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10.04.050 Liability insurance required
10.04.060 Conditions upon street occupancy
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10.04.080 Approval of transfer of system
10.04.090 Access to plans, etc; filing of rules and regulations; inspection of records
10.04.100 Promulgation of rules and regulations by company
10.04.110 Penalty

Section 10.04.010 Definitions

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

Commission. The city commission.

Company. Any grantee of rights under the terms of this chapter. (Ord. No. 406, § 2.)

Section 10.04.020 Grant of authority--General

Authority is hereby made available by the city to any person, who qualifies under all of the provisions of this chapter, to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in the city poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the city of a system for the transmission of television, FM radio and electrical impulses and signals for all public and private uses. (Ord. No. 406, § 3.)

Section 10.04.030 Same--Exclusiveness

The right to use and occupy such streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive and the city reserves the right to grant a similar use of such streets, alleys, public ways and places to any other person or persons at any time during the period of any franchise granted pursuant to this chapter. (Ord. No. 406, § 4.)

Section 10.04.040 Subjection of franchised company to police power of city

Any company shall at all times during the life of its franchise be subject to all lawful exercise of the police power by the city and to such reasonable regulations as the city shall hereafter by resolution or ordinance provide. (Ord. No. 406, § 5.)

Section 10.04.050 Liability insurance required

Any company obtaining a franchise under the provisions of this chapter shall indemnity and save the city and its agents and employees harmless from any and all claims for personal injuries or property damages and any other claims, costs including attorneys' fees, expense of investigation and litigation of claims and suits thereon which may arise from the installation, operation or maintenance of its system within the city. For this purpose each company shall carry and at all times maintain on file with the city auditor and at all times keep in force a public liability policy of insurance insuring the company and the city against any and all such liability

for not less than fifty thousand dollars property damage, one hundred thousand dollars for any one person for personal injury or death, and three hundred thousand dollars for any one accident resulting in personal injury or death. Such policy or policies of insurance or certificates thereof, by a company licensed to do business in the state, shall be filed with the city prior to the final approval of any franchise granted hereunder. Any company, upon receipt of due notice in writing from the city, shall defend at its own expense any action or proceeding against the city in which it is claimed that injury or damages arose from the company's activities in the operation of its community antenna system. The city shall notify the company's representatives within the city within thirty days after the presentation of any claim or demand, either by suit or otherwise, made against the city on account of any negligence as aforesaid on the part of the company. (Ord. No. 406, § 6.)

Section 10.04.060 Conditions upon street occupancy

(a) Use Generally. All transmission and distribution structures, lines and equipment erected or constructed by the company within the city shall be so located as to cause minimum interference with any other proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of such streets, alleys or other public ways and places.

(b) Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the company shall, at its own cost and expense and in a manner approved by the city engineer, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed in as good condition as before the work was commenced and shall maintain the restoration in an approved condition for a period of at least one year thereafter.

(c) Relocation. In the event that at any time during the period of a franchise the city shall lawfully elect to alter or change the grade of any street, alley or other public way, the company, upon reasonable notice by the city, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other telephone and television fixtures at its own expense.

(d) Placement of Fixtures. The company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixtures, water hydrant or main; and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line; and those placed in alleys shall be placed close to the line of the lot abutting on such alley and then in such a manner as not to interfere with the usual travel on such streets, alleys and public ways; provided, however, that the company will place all wires, cables, fixtures and other equipment underground when other telephone, telegraph or other electrical utilities services are so located in such area unless the company is specifically, by action of the commission, permitted to do otherwise where extreme hardship would result or where an underground installation is not workable. It is the intention of this section to require that any company granted a franchise hereunder use a portion of other utility poles already erected for the development of the company's aboveground distribution system, and no company shall be permitted to erect its own poles, except where existing utility poles are inadequate to handle the additional load and where the placing of such additional poles is specifically authorized by the commission or its duly authorized representatives.

(e) Temporary Removal of Wire for Building Moving. The company shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting such removal, etc., and the company shall have the authority to require such payment in advance. The company shall be given at least forty-eight hours advance notice to arrange for such temporary wire changes.

(f) Tree Trimming. The company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the city so as to prevent the branches of such trees from coming in contact with the wires, cables, fixtures and equipment of the company; all such trimming shall be done under the supervision and direction of the city and at the expense of the company. (Ord. No. 406, § 10.)

For state law as to authority of city to regulate the use, etc., of streets, see NDCC, § 40-05-01 (8).
As to streets and sidewalks generally, see Ch. 30 of this Code.

Section 10.04.070 Warranting by city of authority to use streets

It is understood that there may be within the city various streets, alleys and other public ways which the city does not have the unqualified right to authorize any company to use because of reservations in favor of the dedicators or because of other legal impediments. Therefore, in granting any franchise pursuant to this chapter, the city does not warrant or represent as to any particular street or portion thereof that it has the right to authorize any company to install or maintain portions of its systems therein, and in each case the burden and responsibility for making such determination in advance of the installation shall be upon the company. (Ord. No. 406, § 22.)

Section 10.04.080 Approval of transfer of system

The company shall not sell or transfer its plant or system or any portion thereof to any person nor transfer any right under any franchise except by operation of law to any person without prior approval of the commission. No sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the city auditor an instrument duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise by the transferee and agreeing to perform all the conditions thereof. (Ord. No. 406, § 13.)

Section 10.04.090 Access to plans, etc; filing of rules and regulations; inspection of records

The city shall have access at all reasonable hours to all of the company's plans, engineering drawings and statistical customer records relating to the property and operation of the company and to all other records required to be kept hereunder insofar as the same are concerned with the community antenna television system of the company.

Along with the other matters required to be filed by this chapter, a complete copy of the company's rules and regulations, adopted by the company for the conduct of its business, shall be filed with the city auditor and in the local office of the company.

The city shall be entitled to inspection of any records bearing on the number of subscribers for service with the company and to require reasonable documentation of such information by the company when the annual payment, provided in section 8-16, is tendered. (Ord. No. 406, § 17.)

Section 10.04.100 Promulgation of rules and regulations by company

The company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the company to exercise its rights and perform its obligations under its franchise and to assure an uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions of this chapter or the laws of the state and shall be subject to approval by the commission and any other duly authorized public agency or board. (Ord. No. 406, § 9.)

Section 10.04.110 Penalty

Any violation by any company, its lessee or successor under any franchise granted pursuant hereto or the failure to promptly perform any of the provisions of such franchise shall be cause for the forfeiture of such franchise and all rights thereunder to the city after reasonable written notice to such company and continuation thereafter of such violation, failure or default. (Ord. No. 406, § 24.)

Article 10.08 Franchise

Sections:

10.08.00E Editor's note to Article 10.08
10.08.010 Application generally; final approval of application
10.08.020 Application fee
10.08.030 Bonds and commitments
10.08.040 Submission of extension policy; extensions made under franchise
10.08.050 Payment to city for privilege; method of computation of payment to city
10.08.060 Term
10.08.070 Rights of city in franchise

Section 10.08.00E Editor's note to Article 10.08

For state law as to authority of city to grant franchises, see NDCC, § 40-05-01 (57).

Section 10.08.010 Application generally; final approval of application

(a) Any person wishing to apply for a franchise under this chapter shall fill out its application and file the same in the office of the city auditor for consideration by the commission. Such application need not be in any particular form but shall include the following information:

(1) The complete name and address of the applicant.

(2) If a corporation, the amount of authorized and issued stock, the names and the addresses of all stockholders owning more than five percent of the stock of such corporation and the interest held by each.

(3) If a corporation, the names and addresses of all officers and managing agents thereof insofar as the same are concerned in any respect with the community antenna television system of such corporation.

(4) A complete financial statement of the assets and liabilities of the applicant as prepared by a certified public accountant insofar as such are concerned with the completion of the community antenna television project.

(5) A statement of the number of channels of television service to be offered by the company and an explanation of the source and method of transmission of such signals. Each applicant shall be required to guarantee to offer no less than five separate channels of viewing throughout the period of the franchise with a minimum of duplication of programs.

(6) Any other information which may from time to time be requested by the city auditor or by the commission.

(7) Any other information that the applicant may wish to submit bearing on its qualifications.

(8) A complete schedule of all rates and charges to be effective following the issuance of the franchise.

(b) All applications received shall be considered by the commission, which shall be authorized to accept any number that it deems advisable. Such acceptance shall be considered a preliminary approval and thereafter such successful applicant shall secure and submit, as required elsewhere in this chapter, all insurance policies, surety bonds, its extension policy and everything else required for the issuance of a franchise. The commission shall then reconsider all information available to it including the original application and all other matters submitted pursuant to this chapter and shall then, in its own discretion, determine whether or not to grant final approval to any application. The final approval shall be indicated by the passage of a special ordinance granting the franchise to the successful applicant, subject to all of the terms and conditions of this chapter. (Ord. No. 406, § 20.)

Section 10.08.020 Application fee

Every applicant for a franchise shall be required to pay a franchise fee of five hundred dollars, which shall be submitted at the time of the initial application. In the event that the franchise is refused by the commission, the fee shall be refunded in full. (Ord. No. 406, § 21.)

Section 10.08.030 Bonds and commitments

(a) Before any franchise shall be finally approved by the commission, the company shall submit and file with the city auditor the following bonds and commitments to be approved by the commission at the time of or prior to the issuance of a franchise:

(1) A written commitment signed by the company guaranteeing the city that all wires, cables, fixtures and facilities of the company shall be removed at the termination of the franchise or at such earlier date as the franchise may be terminated by revocation or otherwise. Such commitment shall be in the minimum amount of ten thousand dollars and shall be made in favor of the city. The amount of such commitment shall be adjusted semiannually during the term of the franchise and such adjustments shall be subject to approval by the city commission so as to provide a total commitment of the applicant corporation equal to at least one thousand dollars for each mile of cable constructed by the company within the city. Such commitment must guarantee that the company has assets over and above all debts and liabilities equal to at least twice the amount of the commitment herein required from time to time.

(2) A surety bond in the amount of twenty thousand dollars in favor of the city guaranteeing that if any resident of the city pays any fees to the company and does not obtain community antenna television service within six months thereafter, that the full amount paid shall be refunded to the individual involved. Such bond may be obtained for an annual period but must be renewed from year to year throughout the period of any franchise granted hereunder and must allow for the payment of bona fide claims presented within one year after the termination of the bonding period; provided, that the claimant makes payment to the company during the bonding period. Any valid claim held by any resident of the city under the provisions of this paragraph may be satisfied against such bond and may be presented by filing such claim with the office of the city auditor.

(b) Any bond or commitment required under this section is subject to approval by the city commission which approval may be revoked at any time for cause. Such bond, etc., shall at all times be filed in the office of the city auditor. Any franchise granted hereunder shall be immediately revoked upon the noncompliance of any franchisee with any requirements of this section. (Ord. No. 406, § 19; Ord. No. 415, § 1.)

Section 10.08.040 Submission of extension policy; extensions made under franchise

At the time that any application is submitted under the terms of this chapter, the applicant shall submit therewith its extension policy which shall be considered in connection with such application by the city commission. Such extension policy shall specify in detail the area of the city that will be served following the initial installation of the company's system and shall further indicate the plans of the company to extend services to other areas of the city, indicating the times and the conditions precedent for such extensions. No precise form of an extension policy is specified herein but any applicant shall agree to furnish any information that may be requested from time to time by the city commission in clarification of the company's extension policy. Once a company is granted a franchise under this chapter, following approval of its extension policy as submitted and filed, it shall not make or refuse to make any extension thereunder except as provided by such extension policy or as may otherwise be permitted by this chapter or subsequent enactments of the commission. The extension policy, and any amendments thereto, which in turn must be first approved by the commission

before becoming effective, shall at all times be on file at the office of the city auditor and be available to inspection by the public. (Ord. No. 406, § 12.)

Section 10.08.050 Payment to city for privilege; method of computation of payment to city

The company shall pay to the city for the privilege of operating a system pursuant to any franchise granted under this chapter a sum equivalent to one dollar per year for each subscriber doing business with the company. Such payment shall be made annually at the end of the fiscal year of the company and shall be computed on the total number of subscribers doing business with the company at any time during the fiscal year just concluded. The failure to pay such amount within thirty days following the conclusion of the fiscal year shall be justification for the revocation of any franchise granted hereunder. (Ord. No. 406, § 15.)

Section 10.08.060 Term

Any franchise and rights granted thereunder shall take effect and be in full force from and after final approval thereof by the commission, as specifically provided in section 10.08.010, and upon filing of a written acceptance of such franchise by the company with the city auditor, and such franchise shall continue in full force and effect for a term of fifteen years after such date; provided, that if a written acceptance is not filed within sixty days after such final approval of the franchise by the commission or if the system authorized thereunder is not completely constructed within six months after the time of such acceptance, unless such construction is prevented by strike, insurrection, an act of God or other cause beyond the control of the applicant, the provisions of such franchise shall then become automatically null and void, unless such delay in construction is reasonably explained to the city commission and the commission, in its sole discretion, elects to grant an extension of time in which to complete such construction work. In the event that any system contemplated hereunder requires approval by the Federal Communications Commission or any other state or federal board or agency prior to the commencement of construction, the six month period allowed herein for construction to be completed shall not begin until after such federal or state approval is obtained, although application therefor must be made no later than sixty days after the final approval of the franchise by the city commission. (Ord. No. 406, § 18; Ord. No. 896, § 1.)

Section 10.08.070 Rights of city in franchise

(a) Adoption of Rules. The right is hereby reserved to the city to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power and in the exercise of its power over any franchise that is granted; provided, that such regulations, by ordinance or otherwise, shall be reasonable and shall not be in conflict with the laws of the state.

(b) Use of System. The city shall have the right during the life of any franchise, free of charge where aerial construction exists, of maintaining upon the poles of the company within the city wire and pole fixtures necessary for a police and fire alarm system; such wires and fixtures shall be constructed and maintained to the satisfaction of the company and in accordance with its specifications. The city in its use and maintenance of such wires and fixtures shall at all times comply with the rules and regulations of the company so that there may be a minimum danger of contact or conflict between the wires and fixtures of the company and the wires and fixtures used by the city. The city shall be solely responsible for all damage to persons or property arising out of the construction or maintenance of such wires and fixtures authorized by this section and shall save the company harmless from all claims and demands whatsoever arising out of the attachment, maintenance, change or removal of such wires and fixtures to the poles of the company. In case of rearrangement of the company plant or removal of poles or fixtures, the city shall save the company harmless from any damage to persons or property arising out of the removal or construction of the wires or other fixtures belonging to the city.

(c) Supervision and Inspection. The city shall have the right to supervise all construction or installation work performed subject to the provisions of this chapter and to make such inspections as it shall find necessary to insure compliance with governing laws, ordinances and resolutions.

(d) Procedure after Termination, etc., of franchise. Upon the revocation or termination of any franchise granted hereunder, the city shall have the right to determine whether the company may continue to operate and maintain its distributing system pending the decision of the city as to the future maintenance and operation of such system.

(e) Revocation of Franchise. Should any company fail or refuse to reasonably comply with all of the provisions of this chapter or any other rules, regulations, ordinances or resolutions enacted by the city or with any state law or rules or regulations promulgated pursuant to state law or laws, rules or regulations issued pursuant to the laws of the United States or any of its duly authorized agencies or boards, the commission shall have the power and authority, upon reasonable notice to such company and upon its failure thereafter to comply, to revoke or suspend, in the sole discretion of the commission, any franchise granted hereunder. (Ord. No. 406, § 14.)

Article 10.12 Service

Sections:

10.12.010 Standards generally
10.12.020 Notice of interruption for repairs
10.12.030 Interference with reception of nonusers; attachment of coin collection boxes
10.12.040 Preferential or discriminatory practices
10.12.050 Rates generally

Section 10.12.010 Standards generally

Any company shall maintain and operate its system and render efficient service in accordance with the rules and regulations as are or may be set forth by the commission, in this chapter or otherwise, by the public service commission of the state, the Federal Communications Commission or any other duly authorized public commission or authority. (Ord. No. 406, § 7.)

Section 10.12.020 Notice of interruption for repairs

Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the company shall do so at such time as will cause the least amount of inconvenience to its customers, and unless such interruption is unforeseen and immediately necessary, the company shall give reasonable notice thereof to its customers. (Ord. No. 406, § 8.)

Section 10.12.030 Interference with reception of nonusers; attachment of coin collection boxes

It shall be unlawful for any company to interfere in any way with normal television reception by individuals not utilizing cable television. It shall further be unlawful for any company to install any box or other fixture on or near the sets connected to the company system for the purpose of the deposit of coins therein or to in any other way limit the use of a television set connected to the company's system; except, that it shall be permissible for any company to discontinue service upon nonpayment of appropriate fees. (Ord. No. 406, § 23.)

For state law as to authority of city to prevent interference with radio reception, see NDCC, § 40-05-01 (64).

Section 10.12.040 Preferential or discriminatory practices

The company shall not, as to rates, charges, services, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person nor subject any person to any prejudice or disadvantage; provided, that nothing in this section shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled. (Ord. No. 406, § 11.)

Section 10.12.050 Rates generally

Rates charged by any company for service shall be fair and reasonable and designed to meet all necessary costs of this service, including a fair rate of return on the net valuation of the properties devoted thereto under efficient and economical management. The company agrees that it shall be subject to all authority now or hereafter possessed by the city, or any other regulatory body having competent jurisdiction to fix just, reasonable and compensatory rates. (Ord. No. 406, § 16.)

Chapter 11 COURTS, FINES AND IMPRISONMENTS

Last updated October 2007

Articles:

11.ED Editor's note to Chapter 11
11.04 In General
11.08 Municipal Judge
11.12 Fines and Imprisonments

Article 11.ED Editor's note to Chapter 11

Sections:

11.ED.010 Editor's note to Chapter 11

Section 11.ED.010 Editor's note to Chapter 11

As to citations, arrests, fines and forfeitures relative to motor vehicles and traffic, see §§ 23.32.070 to 23.36.140 of this Code. As to police, see Ch. 31.

Article 11.04 In General

Sections:

11.04.010 Peace bonds
11.04.020 Judgements based on violations not originally charged

Section 11.04.010 Peace bonds

The municipal judge is hereby empowered to issue peace bonds in accordance with the procedure in chapter 29-02 of the North Dakota Century Code. (Ord. No. 477, § 1.)

For state law as to authority of city to provide for issuance of peace bonds, see NDCC, § 40-05-02 (27).

Section 11.04.020 Judgements based on violations not originally charged

In all actions and proceedings brought and heard in the municipal court for violations of a provision of this Code or other city ordinance or the enforcement and recovery of any penalty provided for violation thereof when it shall appear from the evidence that another provision or ordinance of the city other than that charged to have been violated has been violated, the court shall have power and authority to find and adjudge the defendant guilty of the violation of such other ordinance; provided, that upon demand of the defendant so to do, a new complaint shall be made and filed charging the defendant with such violation, and the proceeding thereunder shall be had in manner and form as by law provided in cases otherwise instituted in such court. Such new complaint shall be made and filed by the chief of police when so directed by the municipal judge. (Ord. No. 489.)

Article 11.08 Municipal Judge

Sections:

11.08.00E Editor's note to Article 11.08
11.08.010 Election; term
11.08.020 Compensation--Generally
11.08.030 Same--Fees and other payments
11.08.040 Bond
11.08.050 Hours
11.08.060 Records of actions
11.08.070 Collection of fines and costs--Generally
11.08.080 Same--Reports to city auditor; disposition of fees
11.08.090 Suspended or deferred sentences

Section 11.08.00E Editor's note to Article 11.08

For state law as to municipal judges generally, see NDCC, § 40-18-01 et seq.

Section 11.08.010 Election; term

There shall be elected within the city a municipal judge, who shall hold his office for four years and until his successor is elected and qualified. (Code 1958, § 10-1; Ord. No. 455, § 10-1.)

Section 11.08.020 Compensation--Generally

The salary of the municipal judge shall be in such amount as may be fixed from time to time by resolution of the board of city commissioners. (Code 1958, § 10-2; Ord. No. 455, § 10-2.)

Section 11.08.030 Same--Fees and other payments

The municipal judge shall not be permitted to receive fees of any kind or in any amount, nor shall he be entitled to receive any payments of any kind for his service other than the salary as provided above. (Code 1958, § 10-3; Ord. No. 455, § 10-3.)

For similar state law, see NDCC, § 40-18-06.

Section 11.08.040 Bond

Before entering upon the duties of his office, the municipal judge shall furnish a bond in a penal sum to be fixed by the board of city commissioners, conforming to the provisions of sections 2-2.16.010 to 2.16.060 of this Code. (Code 1958, § 10-4; Ord. No. 455, § 10-4.)

Section 11.08.050 Hours

The municipal judge shall be in attendance at municipal court for the transaction of business that may come before him and shall devote the time necessary to handle and dispose of the business coming before him. (Ord. No. 455, § 10-5.)

Section 11.08.060 Records of actions

The municipal judge shall keep a complete record of all actions instituted before him under this Code and other ordinances of the city. (Code 1958, § 10-6; Ord. No. 455, § 10-6.)

Section 11.08.070 Collection of fines and costs--Generally

It shall be the duty of the municipal judge to collect all fines and costs imposed by him in actions instituted under this Code or any other ordinance of the city. (Code 1958, § 10-7; Ord. No. 455, § 10-7.)

For state law as to the collection of fines and costs, see NDCC, § 40-18-06.

Section 11.08.080 Same--Reports to city auditor; disposition of fees

At the end of each month the municipal judge shall make and file with the city auditor a report in writing under oath showing an account of all fines and costs collected by him during the preceding month in actions before him and showing the actions in which the same were collected; and he shall pay over to the city auditor at the time of filing such report all fines and costs collected by him for violations of this Code and other ordinances; and the city auditor shall then, after checking and approving the report, pay over all such fines and costs to the city treasurer. (Code 1958, § 10-8; Ord. No. 455, § 10-8.)

Section 11.08.090 Suspended or deferred sentences

The municipal judge may, in his discretion concerning suspended sentences and upon application or its own motion concerning deferred imposition of sentences, upon the conviction of any person of any offense against this Code or other ordinances of the city then and there impose a sentence of imprisonment as may be appropriate but defer imposition of sentence or suspend the sentence imposed on such person for a period of not to exceed two years after the order imposing probation; after the defendant's release from incarceration; or after termination of the defendant's parole. In any case of a suspended or deferred sentence, the court shall place the defendant on probation during such term of suspension and period of deferment. The municipal judge may, during such term or period, allow the defendant to go upon his own recognizance or upon such bail as may be regulated by law or the ordinances of the city; and may, in his discretion, at or before the expiration of such term or period have the defendant brought before him and commit such defendant or cause such sentence of imprisonment to be then and there imposed and executed in like manner, so far as applicable, as may be provided by law, this Code or other ordinances of the city, in cases where the commitment and imposition of the sentence of imprisonment is not deferred or suspended and may then and there forthwith commit such defendant and require that such sentence of imprisonment be executed and carried out. (Code 1958, § 10-18; Ord. No. 455, § 10-15; Ord. No. 1024, § 1.)

For state law as to suspension of sentence, see NDCC, § 40-18-13.

Article 11.12 Fines and Imprisonments

Sections:

11.12.010 General penalty; continuing violations
11.12.020 Commitment until fine is paid
11.12.030 Hard labor--Authorized
11.12.040 Same--Refusal to work
11.12.050 Release of prisoners by president of board of commissioners
11.12.060 Remittance of fines, costs, etc.
11.12.070 Fee assessment for funding crime victim and witness program.

Section 11.12.010 General penalty; continuing violations

Whenever in this Code or in any ordinance of the city any act is prohibited or is made or declared to be unlawful or an offense, or whenever in this Code or any ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, any person, upon conviction for the violation of any such provision of this Code or any ordinance where such violation is deemed an infraction, shall be punished by a fine not exceeding five hundred dollars. 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 may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

Whenever in this Code or in any ordinance of the city any act is prohibited or is made or declared to be unlawful or an offense, or whenever in this Code or any ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefor, any person, upon conviction for the violation of any such provision of this Code or any ordinance, shall be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding thirty days, or both such fine and imprisonment, for each such offense. Each day any violation of any provision of this Code or of any ordinance shall continue shall constitute a separate offense. In the construction and interpretation of this section, the revocation of a license or permit shall not be considered as a recovery or a penalty so as to bar any other penalty being enforced. (Code 1958, § 1-9; Ord. No. 516, § 1; Ord. No. 939, § 1; Ord. No. 1157 § 2.)

For state law as to authority of city to impose penalty, see NDCC, § 40-05-06.

Section 11.12.020 Commitment until fine is paid

Any person upon whom any fine shall be imposed for violation of a provision of this Code or other ordinance of the city may be committed, upon the order of the court before whom the conviction is had, to the city jail until the fine and costs shall be fully paid in money or discharged by labor.

If such person is committed as provided by this section, the term of his imprisonment shall not exceed three months for any one offense. Each person so committed may be required to work for the city at such labor as his strength will permit, not exceeding ten hours in each working day, and for such work such person shall be allowed for each day, exclusive of his board, five dollars on account of the fines and costs assessed against him. (Code 1958, § 10-13; Ord. No. 455, § 10-10.)

Section 11.12.030 Hard labor--Authorized

When any person is convicted before the municipal judge for the violation of any provision of this Code or other ordinance of the city and is sentenced to imprisonment either on account of failure to pay the fine or otherwise, the municipal judge may order and sentence such offender to hard labor on the public streets of the city or any public works in the city for the full term of such imprisonment, and the sentence shall be carried into execution under the direction of the chief of police of the city. (Code 1958, § 10-14; Ord. No. 455, § 10-11.)

Section 11.12.040 Same--Refusal to work

Any person refusing to perform manual labor in accordance with the sentence of the municipal judge shall be deemed in contempt of court and shall be punished accordingly. No credit shall be allowed such person on account of such fine and costs for the day or days that such person refuses to perform manual labor in accordance with the sentence of the court. (Code 1958, § 10-15; Ord. No. 455, § 10-12.)

Section 11.12.050 Release of prisoners by president of board of commissioners

The president of the board of city commissioners may at any time release any person imprisoned for the violation of any provision of this Code or other ordinance of the city and shall report such release with the reason therefor to the board at its first session thereafter. (Code 1958, § 10-16; Ord. No. 455, § 10-13.)

Section 11.12.060 Remittance of fines, costs, etc.

Under no circumstances shall the municipal judge remit fines or penalties or payment of costs to any person other than to the city auditor or to the city treasurer. (Code 1958, § 10-17; Ord. No. 455, § 10-14.)

Section 11.12.070 Fee assessment for funding crime victim and witness program.

Whenever in this Code or in any ordinance any person pleads guilty to or is convicted of violating a municipal ordinance for which the maximum penalty that may be imposed under the ordinance for the violation includes imprisonment, the municipal judge may assess a fee of not more than twenty-five dollars as part of a sentence imposed for the purpose of funding a crime victim and witness program. The municipal judge may assess the fee when sentence is imposed or when sentence is suspended or imposition of sentence is deferred, unless the defendant is indigent and unable to pay the fee. All fees paid to the municipal court under this section shall be deposited monthly in the city treasury for allocation by the governing body of the city to a private, non-profit domestic violence or sexual assault program or a victim and witness advocacy program of which the primary function is to provide direct service to victims of and witnesses to crime. (Ord. No. 1174, § 1.)

Chapter 12 ELECTRICITY

Last updated October 2007

Sections:

12.00E Editor's note to Chapter 12
12.010 Adoption of Electrical Code

Section 12.00E Editor's note to Chapter 12

For state law as to electricians generally, see NDCC, § 43-09-01 et seq.

For state law authorizing the city to make requirements for wiring and equipment, see NDCC, § 43-09-21.

As to buildings generally, see Ch. 7 of this Code. As to electrical interference with radio receptions, see §§ 25.16.12.060 to 25.16.12.100. As to plumbing, see Ch. 30.

Section 12.010 Adoption of Electrical Code

There is hereby adopted by reference by the board of city commissioners, for the purpose of regulating all electrical construction and materials and appliances used in connection with electrical work and the operation of all electrical apparatus within the city, that certain code known and designated as the National Electrical Code, 1987 Edition, as recommended by the National Fire Protection Association. A copy of the National Electrical Code shall be kept on file in the city auditor's office for inspection and use of the public. (Code 1958, § 11-1; Ord. No. 966, § 2.)

Chapter 13 FIRE PREVENTION AND PROTECTION

Last updated December 2014

Articles:

13.ED Editor's note to Chapter 13
13.04 In General
13.08 International Fire Code
13.12 Fire Department

Article 13.ED Editor's note to Chapter 13

Sections:

13.ED.010 Editor's note to Chapter 13

Section 13.ED.010 Editor's note to Chapter 13

As to fire prevention and protection at carnivals and circuses, see §§ 8.04.030 to 8.04.050. As to obedience to fire department officials generally, see § 23.08.030. As to powers of officers of fire department at scene of fire relative to motor vehicles, see § 23.12.040. As to following or parking near fire apparatus, see § 23.36.270. As to driving over fire hose, see § 23.36.280. As to parking near fire hydrant, see § 23.76.050. As to injuring of fire alarms, see § 25.12.04.100. As to fire protection system, see §§ 38.08.150 to 38.08.180.

Article 13.04 In General

Sections:

13.04.00E Editor's note to Article 13.04
13.04.010 Obstructing or interfering with firemen
13.04.020 Occupying or entering rooms used by department
13.04.030 Handling department apparatus
13.04.040 Right of way of fire department's apparatus and vehicles
13.04.050 Private use of fire-fighting apparatus
13.04.060 False fire alarms; tampering with or damaging fire safety equipment
13.04.070 Setting fire to drapes, furniture, etc., in public or semipublic establishments
13.04.080 Storage of liquefied petroleum gases

Section 13.04.00E Editor's note to Article 13.04

For state law as to authority of city to regulate fire hazards, see NDCC, § 40-05-01 (35).

Section 13.04.010 Obstructing or interfering with firemen

Any person found guilty of obstructing or interfering with any firefighter of the fire department while in the discharge of his duties shall be guilty of a misdemeanor. (Code 1958, § 12-26.)

For state law as to interference with firemen, see NDCC, § 18-08-09.

Section 13.04.020 Deleted

(Ord. No. 1411, § 1)

Section 13.04.030 Deleted

(Ord. No. 1411, § 1)

Section 13.04.040 Right of way of fire department's apparatus and vehicles

When going to or returning from a fire, any apparatus or vehicle belonging to the fire department shall have the right of way in all streets, alleys and public places over any team, wagon, automobile or other vehicle of any kind whatever. Any person in charge of any team, wagon, automobile or other vehicle must stop such vehicle, etc., whenever necessary to permit any apparatus or vehicle of the fire department to pass without hindrance or delay. (Code 1958, § 12-29.)

Section 13.04.050 Private use of fire-fighting apparatus

No person shall use or cause to be used any firefighting apparatus for any private purpose whatsoever; nor shall any person, without authority from the chief of the fire department, remove the same from the place where kept; nor shall any person having charge of fire-fighting apparatus permit the same to be used for private purposes. (Code 1958, § 12-30; Ord. No. 360, § 1.)

Section 13.04.060 False fire alarms; tampering with or damaging fire safety equipment

Any person who shall knowingly give or cause to be given any false alarm of fire or who shall tamper with, damage or destroy or temporarily place out of order, or remove from its storage place without authority or in the absence of an emergency any fire extinguishers, fire extinguishing tools, equipment, chemicals or devices, sprinkler systems, smoke alarms, early fire warning devices, fire alarm box, wires or other apparatus in

connection with a fire alarm system, or any other fire prevention or safety equipment or devices whatsoever, shall be guilty of a class B misdemeanor. The penalty for violation hereof shall be as provided in this Chapter. (Code 1958, § 12-31; Ord. No. 737, § 2.; Ord. No. 1411 §1)

Section 13.04.070 Setting fire to drapes, furniture, etc., in public or semipublic establishments

Any person who by smoking or attempting to light or to smoke cigarettes, cigars, pipes or tobacco in any manner in which lighters or matches are employed shall in any careless, negligent or reckless manner whatsoever, whether willfully or wantonly or not, set fire to any building, furniture, curtains, drapes, house or any household fittings or furnishings whatsoever in any public or semipublic establishment or place of business so as to endanger life or property in any way or to any extent shall be guilty of violating this chapter. The words "public" and, "semipublic establishments" shall include all hotels, motels, rooming houses and places where sleeping quarters are regularly rented or furnished to persons as a regular matter and as a matter of business. (Code 1958, § 12-4; Ord. No. 1411, § 1)

Section 13.04.080 Deleted

(Ord. No. 1411, § 1)

Article 13.08 International Fire Code

Sections:

13.08.010 Adoption of 2012 International Fire Code
13.08.020 Definitions
13.08.030 Appeals
13.08.040 (Deleted)
13.08.050 Penalty
13.08.060 Establishment of limits of districts in which storage of flammable or combustible liquids in outside above-ground tanks is prohibited
13.08.070 Establishment of limits in which storage of liquefied petroleum (LP) gases is to be restricted
13.08.080 Establishment of limits of districts in which storage of explosives and blasting agents is to be prohibited
13.08.090 Establishment of International Fire Code
13.08.100 Retail Sales and Storage of Fireworks

Section 13.08.010 Adoption of 2012 International Fire Code

For the purpose of prescribing regulations governing conditions hazardous to life and property from fire, hazardous materials, or explosion, there is hereby adopted by the City of Dickinson the 2012 International Fire Code. Copies of the 2012 International Fire Code have been and are now on file in the office of the fire chief and city administrator.

The provisions of the 2012 International Fire Code shall be controlling within the limits of the City of Dickinson, with the following additions, deletions, and amendments:

(a) Definitions

1. Whenever the word “municipality”, “jurisdiction” or “city” is used in any code adopted pursuant to this title, it means the City of Dickinson, North Dakota.
2. Whenever the words “corporate counsel” or “city attorney” is used in any code adopted pursuant to this title, it means the city attorney of the City of Dickinson, North Dakota.

3. Whenever the term “International Building Code” is used in the International Fire Code, it shall mean the “Dickinson Building Code.”
4. Whenever the term “International Plumbing Code” is used in the International Fire Code, it shall mean the “North Dakota State Plumbing Code.”
5. Whenever the term “ICC Electrical Code” is used in the International Fire Code, it shall mean the “Wiring Standards of North Dakota.”

(b) Permit Fees

The fee for any permit or license required by the International Fire Code and authorized by the fire chief, shall be as approved by the Board of City Commissioners.

(c) Amendments to 2012 International Fire Code

The 2012 International Fire Code, as adopted by the City of Dickinson, is amended to state as follows:

1. **101.1 Title** These regulations shall be known as the City of Dickinson Fire Prevention Code, hereinafter referred to as "this code."
2. **102.7 Referenced codes and standards**. The code and standards referenced in this code shall be those that are listed in Chapter 80 and such codes and standards shall be considered part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between the provisions of this code and the referenced standards, the provisions of this code shall apply.
3. **105.6.32 Open flames and candles**. An operational permit is required to use open flames or candles in connection with assembly areas, dining areas or restaurants or drinking establishments. Churches shall not be required to obtain a permit to utilize candles in religious ceremonies.
4. Section 108 of the 2012 International Fire Code as adopted by the City of Dickinson, regarding Board of Appeals, is deleted in its entirety.
5. **109.4. Violation Penalties**. Any persons who violates a provision of this code or who fails to comply with any of the requirements thereof or who erects, installs, alters, repairs or does work in violation of the approved construction documents or directives of the fire code official, or of a permit or certificate used under the provisions of this code, shall be guilty of an infraction. Each day that a violation continues after due notice has been served shall be deemed a separate offense.
6. **111.4 Failure to Comply**. Any person who continues any work after having been served with a stop work order, except work as that person is directed to perform to remove a violation of unsafe condition, shall be subject to a fine of not less than one hundred dollars ($100) or more than five hundred dollars ($500).
7. **307.1.1 Open Burning**. Open Burning, as defined in Chapter 2 of the 2012 International Fire Code, is not allowed within the City of Dickinson.
8. Section 307.4.1 of the 2012 International Fire code as adopted by the City of Dickinson, regarding Bonfires, is deleted in its entirety.
9. **307.4.2 Recreational Fires**. Recreational Fires, as defined in Chapter 2 of the 2012 International Fire Code, are not allowed within the City of Dickinson.
10. The Exception to Section 307.4.3, Portable outdoor fireplaces, is deleted in its entirety.
11. Exception 3 to Section 308.1.4, Open-flame cooking devices, is amended to state a limitation of “not greater than 20 pounds.”
12. Chapter 9 and Chapter 10 of the 2012 International Fire Code as adopted by the City of Dickinson are hereby adopted with such amendments, additions and deletions as necessary to make such Chapters consistent with the concurrent sections of the applicable International Building Code, as adopted pursuant to

Dickinson City Code Section 7.020. In the event of any dispute, the then applicable sections of the International Building Code, as adopted pursuant to Dickinson City Code Section 7.020 shall take precedence.

13. In Section 905, all references to Class II standpipes or Class III standpipes are amended to state "Class I standpipes."
14. Section 905.3.4.1 of the 2012 International Fire Code as adopted by the City of Dickinson, regarding Hose and cabinet, is deleted in its entirety.
15. Section 905.6 of the 2012 International Fire Code as adopted by the City of Dickinson, regarding Location of Class III standpipe hose connections, is deleted in its entirety.
16. **5601.1.3 Fireworks.** The possession, manufacture, storage, sale, handling, and use of fireworks are prohibited.
17. Exception 2 to Section 5601.1.3 is deleted in its entirety.
18. Exception 4 to Section 5601.1.3 is deleted in its entirety.
19. Appendix A, Board of Appeals, to the 2012 International Fire Code is deleted in its entirety.
20. Appendix B, Fire-Flow Requirements for Buildings, to the 2012 International Fire Code is adopted in its entirety.
21. Appendix C, Fire Hydrant Locations and Distribution, to the 2012 International Fire Code is adopted in its entirety.

22 Appendix D, Fire Apparatus Access Roads, to the 2012 International Fire Code, is adopted in its entirety.

(Ord. No. 342, § 1; Ord. No. 446, § 1; Ord. No. 546, § 1; Ord. No. 655, § 2; Ord. No. 737, 1; Ord. No. 1072, § 1; Ord. No. 1123 § 1; Ord. No. 1159 § 1; Ord. No. 1306 § 1; Ord. 1355 §1; Ord. No. 1411 §1. Ord. No. 1544 § 1.)

Section 13.08.020 DELETED (Ord. No. 1411 § 1)

Section 13.08.030 Appeals

Whenever the fire chief disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the fire chief to the board of appeals within 30 days from the date of the decision. (Code 1958, § 12-13; Ord. No. 342, § 9; Ord. No. 1072, § 3; Ord. No. 1123 § 3; Ord. No. 1159 § 3.)

Section 13.08.040 DELETED (Ord. No. 1544 § 1)

(Ord. No. 1411 § 1)

Section 13.08.050 Penalty

(a) Any person who violates any of the provisions of this code or standards hereby adopted or fail to comply therewith, or who violates or fails to comply with any order made thereunder, or who builds in violation of any detailed statement of specifications or plans submitted and approved thereunder or any certificate or permit issued thereunder, within the time fixed herein, shall severally for each and every such violation and noncompliance, respectively, be guilty of: (1) for the first conviction, an infraction punishable by a fine of at least fifty dollars but not more than five hundred dollars; (2) any person who has previously been convicted under this section may be charged with a misdemeanor punishable by a fine of not more than one thousand dollars, or by imprisonment, not exceeding thirty days, or both such

fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or defects within a reasonable time; and all such persons shall be required to correct or remedy such violations or defects within a reasonable length of time; and when not otherwise specified, each ten days that prohibited conditions are maintained shall constitute a separate offense.

(b) The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions. (Ord. No. 342, § 11; Ord. No. 1072, § 5; Ord. No. 1123 § 5; Ord. No. 1159 § 5.)

As to the general penalty for violation of Code, see § 11.12.010 of this Code.

Section 13.08.060 Establishment of limits of districts in which storage of flammable or combustible liquids in outside above-ground tanks is prohibited

The limits referred to in IFC Sections 5704.2.9.6.1 and 5706.2.4.4 of the 2012 International Fire Code in which the storage of Class I and II liquids is restricted are hereby established as follows:

No conditional use permit for storage of Class I and II liquids will be allowed adjacent to or within to residential zoned areas, heavily populated areas and congested commercial zoned areas without appropriate spacing as deemed necessary by the authority having jurisdiction. (Ord. No. 1072, § 6; Ord. No. 1123 § 6; Ord. No. 1306 § 4, Ord. No. 1355 §3. Ord. No. 1544 § 1.)

Section 13.08.070 Establishment of limits in which storage of liquefied petroleum (LP) gases is to be restricted

The limits referred to in Section 6104.2 of the 2012 International Fire Code, in which storage of liquefied petroleum gas is restricted, are hereby established as follows:

No conditional use permit shall be allowed for liquefied petroleum LP storage adjacent to or within residential zoned areas, heavily populated areas and congested commercial zoned areas without appropriate spacing as deemed necessary by the authority having jurisdiction. At no time shall the aggregate capacity exceed 2,000 gallons per location in areas approved by authority having jurisdiction. (Ord. No. 1072, § 7; Ord. No. 1123 § 7; Ord. No. 1159 § 7; Ord. No. 1306 §5; Ord. No. 1355 §4; Ord. No. 1411 §1. Ord. No. 1544 § 1.)

Section 13.08.080 Establishment of limits of districts in which storage of explosives and blasting agents is to be prohibited

The limits referred to in Sections 5604.5 and 5604.5.3.1 of the 2012 International Fire Code, in which storage of explosives and blasting agents is prohibited, are hereby established as follows:

Conditional use permit shall be allowed only in isolated industrial areas and shall comply with nationally recognized standards for separation distances. (Ord. No. 1072, § 8; Ord. No. 1123 § 8; Ord. No. 1306 § 6; Ord. No. 1355 §5. Ord. No. 1544 § 1.)

Section 13.08.090 Enforcement of International Fire Code

The International Fire Code shall be enforced by the fire department of the city which is hereby established and which shall be operated under the supervision of the chief of the fire department. (Ord. No. 1123 § 9; Ord No. 1159 § 9; Ord. No. 1306 § 7.)

Section 13.08.100 Retail sales and storage of 1.4G Fireworks

(a) Retail Sale Permitted. Retail sale of 1.4G fireworks shall be permitted within the city limits of the City of Dickinson as provided in the 2012 International Fire Code, and as otherwise provided and limited in this Chapter. 1.4G fireworks shall be defined as stated in Section 3302 of the 2012 International Fire Code.

(b) Limited to Industrial Zones. Retail sales of 1.4G fireworks within the city limits of the City of Dickinson is permitted in industrial zoned areas only. At no time shall such retail sale locations be sited within 300 feet of any residentially-zoned area, or in any location where flammable or combustible liquids or gases are stored.

(c) Limits as to Dates. No person shall offer fireworks for retail sale within the City of Dickinson before the twenty-seventh (27th) day of June or after the fifth (5th) day of July in any calendar year.

(d) Permit Fee. No retail outlet shall offer for sale any fireworks without obtaining a city permit as per Section 3301.2 and 105.6.14 of the 2012 International Fire Code and a permit or license issued by the State of North Dakota. Before firework sales may commence, the fire department shall inspect the location and issue a certificate. Permit fee shall be $75.00, or as otherwise may be established by the Board of City Commissioners by resolution and incorporated in the City's fee schedule.

(e) Seizure. The fire chief may seize, take, remove or cause to be removed at the expense of the owner all stocks of fireworks offered or exposed for sale, that are sold, stored or held in violation of this section.

(f) Retail Sales and Storage. The retail sales and storage shall comply with applicable requirements of NFPA 1124.

(Ord. No. 1411 §1)

Article 13.12 Fire Department

Sections:

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13.12.02010 Composition
13.12.02020 Election of members
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13.12.02040 Members eligible under Public Safety Officers' Benefits Act of 1976
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13.12.06020 Appointment, term and removal of chief
13.12.06030 Annual report

Section 13.12.02000 Division 13.12.02 Generally

Section 13.12.02010 Composition

The fire department shall consist of a chief of the department, and such other officers, employees, and volunteer members as may from time to time be deemed necessary.
(Code 1958, § 12-15; Ord. No. 1411 §1)

Section 13.12.02020 Election of members – DELETED (Ord. No. 1411 §1)

Section 13.12.02030 Duties of members generally– DELETED (Ord. No. 1411 §1)

Section 13.12.02040 Members eligible under Public Safety Officers' Benefits Act of 1976

All of the members of the Dickinson Volunteer Fire Department, all of whom have been, are and shall be available for service on a twenty-four hour basis, are hereby officially recognized and designated as members of a legally organized volunteer fire department for all purposes, including but not limited to eligibility for benefits pursuant to the United States Public Safety Officers' Benefits Act of 1976. (Ord. No. 760, § 1.)

Section 13.12.02050 Duties of police commissioner – DELETED (Ord. No. 1411 §1)

Section 13.12.02060 Presiding officer at meetings – DELETED (Ord. No. 1411 §1)

Section 13.12.02070 Secretary and treasurer – DELETED (Ord. No. 1411 §1)

Section 13.12.02080 Assignment of firemen – DELETED (Ord. No. 1411 §1)

Section 13.12.02090 Receipt of rewards by firemen – DELETED (Ord. No. 1411 §1)

Section 13.12.02100 Appointment of members as inspectors generally; technical inspectors – DELETED (Ord. No. 1411 §1)

Section 13.12.02110 Use of liquor by personnel – DELETED (Ord. No. 1411 §1)

Section 13.12.02120 Police power of firefighters

While in actual attendance at fires, the chief of the department, assistant chiefs, and officers shall have, and are hereby vested with, police power insofar as the exercise of the same may be necessary to prevent disorder, breach of the peace, interference with the work of the department, or the destruction or larceny of property. (Ord. No. 1411 §1)

Section 13.12.02130 Bylaws, rules and regulations generally

The members of the fire department shall adopt such bylaws and rules and regulations for their government as they may deem fit and proper, embodying the requirements of this Code and other ordinances of the city and laws of the state relative to fire departments or companies. Such bylaws, when so adopted, shall be submitted to the board of city commissioners for its approval. (Code 1958, § 12-32.)

Section 13.12.02140 Obedience of firemen to rules, regulations and orders – DELETED (Ord. No. 1411 §1)

Section 13.12.02150 Removal or suspension of members – DELETED (Ord. No. 1411 §1)

Section 13.12.04000 Division 13.12.04 Chief

The chief of the fire department shall be a competent and experienced fire officer who shall have charge, supervision, and control over all of the property, equipment, and supplies of the fire department, subject to the general supervision and control of the board of city commissioners. (Ord. No. 1411 §1)

Section 13.12.04000E Editor's note to Division 13.12.04

As to inspection of dry cleaning establishments by fire chief, see § 24.04.070 of this Code.

Section 13.12.04010 Oath

Before entering upon the duties of the office of chief of the fire department, the person selected for such position shall take and subscribe the oath of office required to be taken by the members of the city commission. (Code 1958, § 12-35.)

Section 13.12.04020 Bond – DELETED (Ord. No. 1411 §1)

Section 13.12.04030 Vacancies in office – DELETED (Ord. No. 1411 §1)

Section 13.12.04040 Property of department – DELETED (Ord. No. 1411 §1)

Section 13.12.04050 Control of personnel – DELETED (Ord. No. 1411 §1)

Section 13.12.04060 Leave of absence – DELETED (Ord. No. 1411 §1)

Section 13.12.04070 Command at fires generally – DELETED (Ord. No. 1411 §1)

Section 13.12.04080 Authority to command civilian assistance at fires

In case of necessity the chief or officer in charge of an incident may, while actively engaged in the performance of their duties, call upon able-bodied bystanders for assistance.
(Code 1958, § 12-43; Ord. No. 1411 §1; Ord. No. 1411 §1)

Section 13.12.04090 Establishment of limits at fires

The chief of the fire department or his designee may prescribe limits in the vicinity of any fire within which no person, except those who reside therein, firefighters, police officers and those admitted by his order; shall be permitted to come.
(Code 1958, § 12-44; Ord. No. 1411 §1)

Section 13.12.04100 Removal of property for protection and containment of fire

The chief of the fire department or his designee shall have power to cause the removal of any 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.

Section 13.12.04110 Investigation of fires

The chief of the fire department shall immediately after each fire carefully and thoroughly investigate such fire and may, for that purpose, call on the chief of police for assistance and, if possible, shall ascertain, record and report the cause of such fire.
(Code 1958, § 12-46; Ord. No. 1411 §1.)

Section 13.12.04120 Inspection of buildings – DELETED (Ord. No. 1411 §1)

Section 13.12.04130 Obedience to board of commissioners and police commissioner

The chief of the fire department shall at all times obey the instructions of the board of city commissioners and the police commissioner. (Code 1958, § 12-48.)

Section 13.12.04140 Records – DELETED (Ord. No. 1411 §1)

Section 13.12.04150 Permission required to leave city; attendance at fires – DELETED (Ord. No. 1411 §1)

Section 13.12.04160 Reports – DELETED (Ord. No. 1411 §1)

Section 13.12.04170 Rules and regulations

The chief of the fire department shall, in cooperation with the board of city commissioners, prescribe such rules and regulations for the government of the department as are in his judgment necessary to secure the best and most efficient service. (Code 1958, § 12-51.)

Section 13.12.04180 Removal

The board of city commissioners may, at any time and for cause which may seem sufficient to it and after an opportunity to be heard, remove the chief of the fire department. (Code 1958, § 12-53.)

Section 13.12.04190 Acting chief

In the absence of the chief of the fire department, the assistant chief or such other officer in charge of the company shall possess all the power granted in this article to perform all the duties herein required of the chief and shall be subject to all the requirements, conditions and restrictions of this article relating to the chief of the fire department.

Section 13.12.06010 Establishment and duties of bureau of fire prevention– DELETED (Ord. No. 1411 §1)

Section 13.12.06020 Appointment, term and removal of chief – DELETED (Ord. No. 1411 §1)

Section 13.12.06030 Annual report – DELETED (Ord. No. 1411 §1)

Chapter 14 FLOOD PREVENTION

Last updated November 2010

Sections:

14.010 Adoption of Flood Damage Prevention Ordinance

Section 14.010 Adoption of Flood Damage Prevention Ordinance

That certain model Flood Damage Prevention Ordinance consisting of fourteen pages of printed material and made a part hereof by reference, and all of the provisions thereof, are hereby enacted and adopted as the Flood Damage Prevention Ordinance of the city. (Ord. No. 732, § 1; Ord. No. 973, § 1; Ord. No. 1404 §1))

Chapter 15 FOOD AND FOOD ESTABLISHMENTS

Last updated October 2007

Sections:

15.00E **Editor's note to Chapter 15**
15.010 **Adoption and amendment of United States Public Health Service Ordinance**
15.020 **Operation of restaurants generally**

Section 15.00E Editor's note to Chapter 15

For state law as to hotels and restaurants generally, see NDCC, § 23-09-01 et seq. As to authority of city to regulate food products, see NDCC, § 40-05-01 (32). As to authority of city to make health regulations, see NDCC, § 40-05-01 (45).

As to frozen desserts generally, see Ch. 16 of this Code. As to meat and meat products generally, see Ch. 22.

Section 15.010 Adoption and amendment of United States Public Health Service Ordinance

The inspection, grading, regrading and placarding of eating and drinking establishments within the city or its police jurisdiction; the issuing, suspension and revocation of permits for the operation of such establishments; the sale of adulterated, misbranded or unwholesome food and drink; the enforcement of this chapter and fixing of penalties shall be regulated in accordance with the terms of the unabridged form of the 1962 edition of the Food Service Sanitation Manual published by the United States Department of Health Education and Welfare, a certified copy of which shall be kept on file in the office of the city auditor; provided, that the words "City of _____" in such ordinance shall be understood to refer to the City of Dickinson; and provided, that in such manual all parentheses signs which enclose words referring to grading shall be understood to be deleted; and provided, that sections seven, twelve, thirteen and fourteen of such manual shall be deleted; and provided, that in section two of such manual, itinerant restaurants shall be required to secure a permit. (Code 1958, § 13-1.)

Section 15.020 Operation of restaurants generally

No restaurant shall be operated within the city or its police jurisdiction except grade A or grade B or approved itinerant restaurants; provided, that when any restaurant fails to qualify for any of these grades, the public health officer is authorized to suspend the permit or, in lieu thereof, to degrade the restaurant and permit its operation during a temporary period not exceeding thirty days. (Code 1958, § 13-2.)

Chapter 16 FROZEN DESSERTS - This Chapter was repealed with Ordinance No. 1312 (March 6, 2006)

Last updated October 2007

Chapter 17 GAMES OF CHANCE

Last updated October 2007

Sections:

17.010 Definitions
17.020 When playing or conducting games of chance lawful
17.030 Local license--Eligibility
17.040 Same--Application
17.050 Same--Fees
17.060 Same--Method of granting
17.070 Same--Form and contents
17.080 Same--Suspension or revocation
17.090 Site approval
17.100 License for blackjack dealer or blackjack pit boss
17.110 Miscellaneous provisions

Section 17.010 Definitions

(a) The definitions in North Dakota Century Code, section 53-06.1-01 and in the rules promulgated by the state attorney general pursuant thereto are adopted herein by reference thereto.

(b) A "local license" is one authorized under North Dakota Century Code, section 53-06.1-03 or 53-06.1-05. (Ord. No. 877, § 1.)

Section 17.020 When playing or conducting games of chance lawful

Notwithstanding any other provision of this chapter, it shall not be unlawful to play or conduct games of chance pursuant to chapter 53-06.1 of the North Dakota Century Code, as that section may be amended from time to time, in accordance with that chapter and implementing rules and regulations of the attorney general and guidelines established by the city and set forth in this chapter. (Ord. No. 877, § 1.)

Section 17.030 Local license--Eligibility

An organization eligible to conduct games of chance under a local license, which conducts its principal activities within the city, may apply to the city commission for a local license to conduct games of chance within the city in the manner and subject to the restrictions set forth in this chapter. (Ord. No. 877, § 1.)

Section 17.040 Same--Application

(a) An application for a local license shall be made on a form provided by the city auditor, shall be sworn to under oath by an officer of the organization making such application and shall contain the following information:

(1) The full legal name of the organization;

(2) The mailing address of the organization;

(3) An indication as to which of the following classes of exempt organizations describe the applicant:

a. Veterans,

b. Charitable,

c. Educational,

d. Religious,

e. Fraternal,

f. Civic and service club,

g. Other public-spirited organization, or
h. College fraternity or sorority;

(4) A brief recitation of the facts which establish that the organization applying for the local license is an eligible organization of the class indicated on the application;

(5) A statement as to whether the local license is to authorize bingo or a raffle and the time and place at which the games of chance will be conducted during the period of time in which the local license is in effect;

(6) A statement as to the length of time for which the local license is to be in effect;

(7) A description of the educational, charitable, patriotic, fraternal, religious or other public-spirited uses to which the entire net proceeds will be devoted;

(8) The office held in the organization by the person applying for a local license on behalf of the organization.

(b) If the applicant for a local license is a college fraternity or sorority, the applicant shall file with the city auditor a signed acknowledgement by the administration of the college or university with which the applicant is affiliated to the effect that the applicant is a recognized fraternity or sorority. (Ord. No. 877, § 1.)

Section 17.050 Same--Fees

(a) The city auditor shall collect a nonrefundable application fee for a local license, as follows:

(1) With respect to a college fraternity or sorority:

a. Ten dollars if the applicant requests a local license to operate games of chance during all or a portion of one calendar day; or

b. Twenty-five dollars if the applicant requests the local license for a period of time in excess of one calendar day.

(2) With respect to an applicant for a local license under North Dakota Century Code, section 53-06.1-03(1), ten dollars.

(b) An applicant required to pay a fee under paragraph (a) (2) shall make a separate application and pay a separate fee for each month under which and for each location at which a bingo game will be conducted pursuant to the local license. The application forms can be consolidated into one form by specifying more than one month or more than one location thereon but in any event the fee shall be calculated and paid as though separate applications had been filed.

(c) An applicant required to pay a fee under paragraph (a) (2) shall make a separate application for each raffle which will be conducted pursuant to the local license. For purposes of this subsection the raffle shall consist of the issuance and distribution of a group of tickets or chances which all relate to the winning of one particular prize or group of prizes, and the eventual selection of the winning ticket or tickets from such group.

(d) The city commission, by resolution, may permit the payment of fees imposed herein by installments upon such terms and conditions as it sees fit. (Ord. No. 877, § 1; Ord. No. 942, § 1.)

Section 17.060 Same--Method of granting

(a) The city auditor shall present any application for a local license to the next meeting of the city commission, whether a regularly scheduled meeting or a special meeting, whereupon the commission may approve or disapprove the same by way of a resolution passed by the majority or the members then present and voting. Alternatively, the commission, by majority vote of the members then present and voting, may postpone action thereon indefinitely or until a time and place certain, of which the applicant shall be notified. A postponement by the commission of action on the application may be made any number of times in the like manner.

(b) The city commission shall have the power to issue a local license for a lesser period of time, or for fewer games of chance, than requested by the applicant, without requiring that the application be amended.

(c) If the commission approves the issuance of a local license the city auditor shall, within three business days thereafter, issue a local license to the applicant. (Ord. No. 877, § 1.)

Section 17.070 Same--Form and contents

A local license shall be signed by the city auditor or his deputy or other delegate who shall also affix thereto the official seal of the city. The local license shall state the name of the licensee to whom issued, the address of the licensee, the games of chance authorized under such local license, the particular times and places where and when such games may be operated, and the date upon which the local license first becomes effective and the period of time during which the local license shall remain in effect following such date. No local license will be issued to a college fraternity or sorority hereunder with an initial effective date which is less than thirty days after the date when the application for such local license was filed with the city auditor. Further, the maximum period of time for which a local license may remain in effect is one year next following the initial effective date of the local license. (Ord. No. 877, § 1.)

Section 17.080 Same--Suspension or revocation

(a) A failure to comply with any of these requirements or with any of the laws of the state or the rules and regulations of the Attorney General governing games of chance shall be cause for revocation or suspension of an eligible organization's permit to conduct games of chance at a particular site.

(b) The board of city commissioners may revoke or suspend a permit granted pursuant to this article upon notice to the eligible organization and after hearing to consider revocation or suspension before the board of city commissioners. Such notice shall specify the time and place when and where the hearing shall be held and shall be served on the eligible organization in the same manner as provided by law for the service of the summons in a civil action or by certified mail. (Ord. No. 877, § 1.)

Section 17.090 Site approval

(a) As part of its application for site approval for use with a state Class B license, an applicant shall submit duplicate copies of all documents filed or to be filed with the state attorney general with respect to the Class B state license which the applicant intends to use at the site for which approval is sought.

(b) No organization may conduct more than six blackjack or twenty-one tables simultaneously at the same site within the city.

(c) An applicant for site approval, by making such application, engages and agrees to comply with all rules, regulations and other restrictions imposed by this Section or by the commission enacting separate regulations. The commission hereby reserves the power to issue additional rules and regulations by way of resolution which shall be retroactively binding on the applicant.

(d) The application fee for site approval shall be such amount as is determined from time to time by the Board of City Commissioners by Resolution and shall be on file in the office of the City Administrator in the annual fee schedule.

(e) No grant of site approval to an organization with respect to all or a portion of a license period shall be construed as a commitment or representation that the organization will receive approval to use the same site or sites or any other site during the next or any subsequent license period. The city commission reserves the right, with respect to a request for renewal of a site approval by an organization holding a current site approval, to refuse to renew approval for any one or more of the currently approved sites and, furthermore, to refuse to grant any new site approvals in lieu of those for which renewal is denied.

(f) Temporary site authorizations, for periods of five (5) day or less, may be issued by the City Administrator, provided all of the requirements of this section are met. The applicant may appeal a decision by the City Administrator to refuse to issue a permit to the City Commission during the first regular commission meeting following the refusal unless the appeal is filed following the deadline for the order of business, then the appeal will be heard during the next regular meeting. The appeal must be

filed on a form provided by the City and signed by the Applicant. (Ord. No. 877, § 1; Ord. No. 1214, § 1.)

Section 17.100 License for blackjack dealer or blackjack pit boss

(a) No person shall serve or act as a dealer or pit boss in a site authorized to conduct games of chance under the Class B provisions of the state charitable gambling laws for the game of blackjack (21) unless he shall first be licensed as a blackjack dealer in accordance with state law.

(b) Such a person must further be fingerprinted in accordance with state law. The police department is available for the actual fingerprinting and the charges for same shall be three dollars for one set of fingerprints and five dollars for two sets.

(c) Such a person must comply with all of the licensing and fingerprinting requirements as delegated by state law and state process. A person holding a valid dealer's license shall conspicuously display it about his person while actively serving as a blackjack dealer or blackjack pit boss.

(d) Such a person shall comply with any and all other state law and regulations pertaining to conducting and assisting games of chance as authorized by state law. (Ord. No. 877, § 1; Ord. No. 915, § 1; Ord. No. 1048, § 1.)

Section 17.110 Miscellaneous provisions

(a) If the city commission is requested to grant special permission to a local licensee to hold the entire proceeds of games of chance for a period in excess of three months, as provided for in North Dakota Century Code, section 53-06.1-06(7), then the grant or denial of permission shall be by resolution of majority of the members present and voting, which resolution shall be entered upon the minutes of the city commission and a copy of which shall be sent to the office of the attorney general of the state.

(b) There is no limit to the number of local licenses which may become consecutively or concurrently issued to an organization but each license must be separately applied for in the manner prescribed in this chapter.

(c) Applications for designation as a local "civic and service club" or as an "other public-spirited organization" shall conform as nearly as practical with the requirements imposed by this chapter for the issuance of a local license.

(d) No one shall conduct or participate in a game of chance upon premises licensed under chapter 4 of this Code when, pursuant to that chapter, the consumption or dispensing of alcoholic beverages upon the premises is forbidden.

(e) Pursuant to North Dakota Century Code, section 53-06.1-03, only one eligible organization at a time may be authorized to conduct games of chance at a specific location; except, that a raffle drawing may be conducted for special occasions when one of the following conditions is met:

  (1) When the area for the raffle drawing is physically separated from the area where gaming is conducted by the regular licensee.

  (2) When, upon request of the licensee, the license is suspended for that specific day by the attorney general.

(f) Individuals under the age of twenty-one may not conduct, assist or play games of chance in licensed premises, as those licensed premises are defined and described in chapter 4 of this Code. Individuals eighteen years of age or older may conduct or assist in the conduct of any raffle or bingo operation except at licensed premises. There is no age restriction as to individuals playing raffles and bingo; except, that individuals under the age of twenty-one may not play any games of chance on those licensed premises as defined and described under chapter 4 of this Code.

(g) No person, except a member or employee of an eligible organization or a member of an organized auxiliary to an eligible organization may assist in the holding, operation or conducting of any games of chance.

(h) If an eligible organization withdraws its games of chance from an approved site without the commission's consent, no other organization may conduct games of chance at that location for a sixty day period. An organization withdrawing from one location must wait sixty days to operate in a new location. The organization must submit to the city auditor a final report for the previous location, including the final money balance and explanation for closing previous location.

(i) If a liquor license for a site at which games of chance are conducted is sold or transferred, site approval for games of chance at that site shall be reauthorized for the remainder of the period for which granted with the consent and approval of the buyer or grantee of the liquor license.

(j) A copy of all information to be submitted to the state by applicant seeking a license to conduct games of change within the city limits must also be provided to the city auditor at the time the application for site approval is submitted. (Ord. No. 877, § 1; Ord. No. 927, § 1; Ord. No. 942, § 2.)

Chapter 18 GARBAGE AND REFUSE

Last updated October 2007

Articles:

18.04 In General
18.08 Household Garbage and Refuse
18.12 Garbage from Business Establishments
18.16 Repealed by Ord. No. 1177
18.20 Penalty

Article 18.04 In General

Sections:

18.04.00E Editor' s note to Article 18.04
18.04.010 Municipal solid waste collection system generally
18.04.020 Landfill
18.04.030 Landfill regulations; penalty
18.04.040 Disposal of items collected or created by independent contractor

Section 18.04.00E Editor' s note to Article 18.04

For state law as to solid waste collection and disposal in cities generally, see NDCC, § 40-34-01 et. seq.

Section 18.04.010 Municipal solid waste collection system generally

The municipal solid waste collection system of the city shall be operated as an enterprise fund, and the rates, charges and regulations provided by this chapter shall be and remain applicable thereto until duly amended. The board of city commissioners reserves the right and power to amend this article from time to time as the need or propriety thereof arises, and the rates and charges shall be specified in the annual City Fee Resolution and may thereby be increased or decreased; provided, that the gross revenues derived from such system shall be sufficient to pay all costs of operation and maintenance of the system.

The municipal solid waste collection and disposal service of the city shall collect and dispose of all municipal solid waste and the regulations provided by this chapter shall be and remain applicable thereto until duly amended as provided by law. All municipal solid waste accumulated in the city shall be collected, conveyed and disposed of by the city or its duly authorized contractor. No persons shall collect, convey over any of the streets or alleys of the city or dispose of any refuse accumulated in the city except by the terms of this chapter; provided, that this chapter shall not prohibit the actual producers of municipal solid waste, or the owners and occupants of premises upon which municipal solid waste has accumulated, from personally collecting, conveying and disposing of such municipal solid waste, provided such producers, owners or occupants comply with the provisions of this chapter and with any other governing law or ordinance; provided, further, that this chapter shall not prohibit collectors of municipal solid waste from outside of the city from hauling such municipal solid waste over streets, provided such outside collectors comply with the provisions of this chapter and with any other governing law or ordinance. (Code 1958, § 14-2; Ord. No. 845, § 1; Ord. No. 1337 §2.)

For state Law as to authority of city to establish a garbage disposal system, see NDCC, § 40-34.01.

Section 18.04.020 Landfill

There is hereby established and created a public municipal solid waste landfill upon land located in section 17, township 139 north, range 95 west, fifth p.m., Stark County, North Dakota, more particularly described as follows:

Southwest quarter of the southeast quarter (SW 1/4 SE 1/4), and the west half of the northwest quarter of the southeast quarter (W 1/2 NW 1/4 SE 1/4) of section 17, township 139 north, range 95 west, fifth p.m.; and

A strip of land sixty feet wide lying north of and adjacent to the south line of the NW 1/4 of section 17, township 139 north, range 95 west, fifth p.m., bounded on the west side by the east firm easement line of the county road as constructed across such NW 1/4 of section 17 and on the east by the east line of such NW 1/4 of section 17, and also the south sixty feet of the west one hundred feet of the NE 1/4 of such section 17; and

That portion of the SW 1/4 of section 17, township 139 north, range 95 west, fifth p.m., bounded by the east firm easement line of the county road as constructed across such SW 1/4 of section 17 and the north and east lines of such SW 1/4 of section 17.

The tract contains 61.33 acres, more or less, and the disposal of municipal solid waste is permitted at such location under such rules and regulations as adopted by the city. (Ord. No. 784, § 1; Ord. No. 965, § 1; Ord. No. 1337 § 2.)

Section 18.04.030 Landfill regulations; penalty

It shall be unlawful for any person to scavenge, rummage, move, remove, sort or handle refuse material at the city landfill grounds, other than an employee of the city engaged to work there, and no person shall enter upon or in such ground or deposit solid waste except as permitted and directed by solid waste operations personnel.

The penalty for violation of sections 18.04.020 and 18.04.030 shall be the general penalty as provided by section 11.12.010. (Ord. No. 784, §§ 1, 2; Ord. No. 1337 § 2; Ord. No. 1337 § 2.)

Section 18.04.040 Disposal of items collected or created by independent contractor

Any municipal solid waste collected by an independent contractor shall be disposed of by the contractor at his expense. (Ord. No. 411, § 5; Ord. No. 1337 § 2.)

Article 18.08 Household Garbage and Refuse

Sections:

18.08.010 Definitions
18.08.020 Municipal Solid Waste containers--Generally
18.08.030 Location of Municipal Solid Waste containers and additional requirements
18.08.040 Refuse containers - REPEALED
18.08.050 Violation of the rules and regulations governing preparation, handling, etc. of municipal solid waste generally
18.08.060 Refusal to accept refuse collection and disposal service - REPEALED
18.08.070 Draining and wrapping household garbage - REPEALED
18.08.080 Disposal of tin cans - REPEALED
18.08.090 Collection by city generally
18.08.100 Storage of refuse, garbage or rubbish for collection generally - REPEALED
18.08.110 Street litter and waste disposal containers - REPEALED
18.08.120 Construction debris - REPEALED
18.08.130 Burning prohibited - REPEALED
18.08.140 Unlawful acts generally
18.08.150 Separation of certain materials from municipal solid waste
18.08.160 Rates and charges--Generally
18.08.170 Billing; failure to pay, etc.
18.08.180 Collection by legal action
18.08.190 Disposition of proceeds

Section 18.08.010 Definitions

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

Owner or Occupant. A person as herein defined in possession, charge, custody and control of any premises where municipal solid waste is collected or accumulated.

Person. Any individual, firm, partnership, corporation, institution or other entity acting as principal, agent, officer, servant or employee for himself or itself, or for any other individual, firm, partnership, corporation, institution or other entity, who owns, leases, rents or occupies any real property within the city limits.

Solid Waste Containers. Any of the following:

(a) Ninety gallon or three hundred gallon round plastic containers; or

(b) Such other containers as shall be approved by the City's Solid Waste operation and which containers are compatible with the solid waste disposal system and the solid waste to be removed.

White Goods. All appliances of whatever nature and kind, including but not limited to stoves, refrigerators, garbage compactors, dishwashers, and other appliances made of porcelain, metal or other such materials. (Code 1958, § 14-1; Ord. No. 411, § 1; Ord. No. 845, § 2; Ord. No. 1013, § 1; Ord. No. 1337 § 3.)

Section 18.08.020 Municipal Solid Waste containers--Generally

The city shall furnish for each property owner or occupant or groups of property owners or occupants within the city one or more suitable containers, equipped with close fitting tops. Containers serving more than one residence or premises shall be positioned along rear or side alleys, wherever possible and practicable, not more than one hundred feet from the property line of any residence or other premises so serviced. If there are no alleys, individual portable containers may be supplied by the city. Covers shall be kept on such containers at

all times, and they shall be kept clean by the property owner(s) or occupant(s). Paper containers shall not be used for the collection of municipal solid waste.

Should the property owner or occupant lose the container furnished to such property owner or occupant of a household establishment, it shall be the responsibility of the property owner or occupant of a household establishment to purchase a new container from the City with the appropriate capacity required by the city at the owner's or occupant's expense. It is expected that at some point these containers may become worn out or incapable of use due to the normal wear and tear; at such time, upon notification to the city and upon return of the worn out container to the city, the city shall furnish the appropriate replacement container at the city's expense.

All property owners or occupants of household establishments shall comply with the terms herein and shall not maintain any other type containers which would prevent collection of municipal solid waste with the municipal solid waste collection equipment used by the city. (Code 1958, § 14-3; Ord. No. 411, § 2; Ord. No. 845, § 3; Ord. No. 1337 § 3.)

Section 18.08.030 Location of Municipal Solid Waste containers and additional requirements

The following rules apply to municipal solid waste containers:

(a) It shall be the responsibility of the customer to move his/her municipal solid waste container to and from the collection location. It shall be unlawful to leave solid waste containers adjacent to a street or alley except on regular collection days with the exception of large alley solid waste containers which may remain in same position regardless of day. The containers shall be kept out from sight of the street and from the property, except on collection days.

(b) Municipal solid waste containers and the area around the location of said container(s) authorized under this article, shall be maintained in good condition. The city shall have the authority to refuse collection service for failure to comply herewith. It shall be the duty of the user to maintain the same in a reasonable sanitary condition, in keeping with reasonable health standards. The city shall have the responsibility of inspecting containers and of notifying the user for failure to maintain the same in a reasonable sanitary condition.

(c) When possible, all municipal solid waste shall be placed in city supplied or approved municipal solid waste containers. If municipal solid waste will not fit in the container, sealed, plastic bags weighing less than 50 pounds may be placed adjacent to the solid waste container.

(d) Leaves, grass, and weeds will only be collected if they are placed in sealed plastic bags weighing less than 50 pounds situated adjacent to the municipal solid waste container. Tree branches will only be collected if they are bundled or secured in lengths of not more than four feet nor weighing more than 50 pounds situated adjacent to the municipal solid waste container. Leaves, grass, weeds not placed in sealed plastic bags and tree branches more than four feet in length shall be hauled by the owner or customer to the solid waste baling facility for disposal.

(e) Carpets and construction debris will not be collected by City Solid Waste personnel. These materials must be transported to the solid waste baling facility by the property owner, customer, or contractor performing work resulting in debris at the site. (Code 1958, § 14-4; Ord. No. 411, § 3; Ord. No. 845, § 4; Ord. No. 1337 § 3.)

Section 18.08.040 Refuse containers - REPEALED

This section was repealed on March 7, 2007. (Ord. No. 1337 § 5.)

Section 18.08.050 Violation of the rules and regulations governing preparation, handling, etc. of municipal solid waste generally

City municipal solid waste collection personnel may not collect municipal solid waste from any premises when the rules and regulations are violated, and the decision on the part of the City to not collect such municipal solid waste shall not relieve the owner or occupant of the premises from the payment of fees nor from the enforcement of penalties for violating this article. (Code 1958, § 14-13; Ord. No. 411, § 7; Ord. No. 1337 § 3.)

Section 18.08.060 Refusal to accept refuse collection and disposal service - REPEALED

This ordinance was repealed on May 7, 2007. (Ord. No. 1337 § 5.)

Section 18.08.070 Draining and wrapping household garbage - REPEALED

This section was repealed on May 7, 2007. (Ord. No. 1337 § 5.)

Section 18.08.080 Disposal of tin cans - REPEALED

This section was repealed May 7, 2007. (Ord. No. 1337 § 5)

Section 18.08.090 Collection by city generally

All municipal solid waste shall be collected by the city as often as is necessary to maintain and preserve the health of the community; except, that this section shall not require the collection of municipal solid waste where the streets or alleys are in a temporary condition which makes it impossible to collect such municipal solid waste, such failure shall not relieve the occupant of the premises from properly disposing of such municipal solid waste as is accumulated nor shall it relieve the occupant of the premises from the payment of garbage collection fees. (Code 1958, § 14-8; Ord. No. 1337 § 3.)

Section 18.08.100 Storage of refuse, garbage or rubbish for collection generally - REPEALED

This section was repealed May 7, 2007. (Ord. No. 1337 § 5.)

Section 18.08.110 Street litter and waste disposal containers - REPEALED

This section was repealed May 7, 2007. (Ord. No. 1337 § 5.)

Section 18.08.120 Construction debris - REPEALED

This section was repealed on May 7, 2007. (Ord. No. 1337 § 5.)

Section 18.08.130 Burning prohibited - REPEALED

This section was repealed May 7, 2007. (Ord. No. 1337 § 5.)

Section 18.08.140 Unlawful acts generally

It shall be unlawful for any person to:

(a) Place or cause to be placed any municipal solid waste upon any public or private property not owned or under his control.

(b) Place or cause to be placed any unbagged putrescible waste in any solid waste containers, unless all liquid shall have been drained therefrom.

(c) Place or cause to be placed any unbagged municipal solid waste in any refuse containers, unless the container is used only for that purpose.

(d) Place or cause to be placed any unbagged small dead animal or fish and animal waste in a container.

(e) Fail to restrain any dog or prevent interference with collection employees acting in the course of their employment.

(f) Remove, haul or cause to be removed any solid waste on or along any city right-of-way, street or alley, unless the same is contained in watertight containers so constructed as to prevent any such solid waste from falling, leaking or spilling therefrom.

(g) Hot and/or cold ashes shall not be placed in solid waste containers. Disposal of such ashes shall be the responsibility of the owner or occupant.

(h) Trees, tree branches, limbs, and the like shall be bundled and secured in accordance with section 14-6 of the city code for purposes of separation at the landfill. Further, white goods as defined under this section and tires shall be separated from other municipal solid waste for the purposes of separation at the landfill. Further, vehicle and equipment batteries shall not be placed in the containers and at no time shall be deposited in the landfill.

(i) The use of litter containers in commercial areas for disposal of any municipal solid waste other than litter.

(j) The burning of any municipal solid waste.

(k) Refusal to accept the municipal solid waste collection and disposal service provided by the City.

(l) Failure to remove any existing accumulation of municipal solid waste within forty-eight hours after notice from the city.

(m) Casting, placing, sweeping or depositing anywhere within the city any municipal solid waste in such a manner that it may be carried or deposited by the elements upon any street, sidewalk, alley or other public place or in or on any occupied premises within the city.

(n) Debris resulting from the construction, reconstruction or repairs of premises shall not be placed with municipal solid waste for collection but shall be disposed of directly by the person owning, occupying or leasing the premises. (Ord. No. 845, § 11; Ord. No. 887, § 1; Ord. No. 1013, § 2; Ord. No. 1337 § 3.)

Section 18.08.150 Separation of certain materials from municipal solid waste

All trees, tree branches, limbs and the like, white goods and tires shall be separated at the municipal solid waste collection point. Further, the City Administrator or his designee is hereby empowered to require separation of other items when necessary in accordance with federal, state and local law.

In the event laws, codes, ordinances, rules, regulations and standards are hereby passed, adopted or promulgated by state or federal agency or department of the United States or any other proper agency or authority having jurisdiction over matters relating to the hauling, disposal and dumping of municipal solid waste, which would require compliance with EPA regulations or such other agency regulations as are appropriate, the City Administrator or his designee is hereby empowered to take action necessary to comply with such laws, codes, ordinances, rules, regulations and standards. (Ord. No. 1013, § 3; Ord. No. 1337 § 3; Ord. No. 1337 § 3.)

Section 18.08.160 Rates and charges--Generally

The rates and charges related to the solid waste operation will be set, maintained, and changed in the City Fee Schedule. (Code 1958, § 14-9; Ord. No. 598; Ord. No. 633; 1; Ord. No. 683, § 1; Ord. No. 734, § 1; Ord. No. 754, § 1; Ord. No. 860, § 1; Ord. No. 1008, § 1; Ord. No. 1050, § 1; Ord. No. 1065, § 1; Ord. No. 1082, § 1; Ord. No. 1086, § 9; Ord. No. 1337 § 3.)

For state law as to authority of city to levy charges for use of city garbage system, see NDCC, § 40-34-05.

Section 18.08.170 Billing; failure to pay, etc.

The City will include applicable charges for municipal solid waste collection in the City utility billing. Late charges may be applicable to accounts for which payment is late. (Code 1958, § 14 - 10; Ord. No. 411, § 6; Ord. No. 754, § 2; Ord. No. 1337 § 3.)

Section 18.08.180 Collection by legal action

If the fees authorized in this article and detailed in the City fee schedule are not paid when due, said fees may be recovered by the city in an action at law against the owner or occupant, or both, of the property so served and may also be assessed against the premises so served and collected and returned in the same manner as other county and municipal taxes are assessed, certified, collected and returned. (Code 1958, § 14-11; Ord. No. 1337 § 3.)

For similar state law, see NDCC, § 40-34-05.

Section 18.08.190 Disposition of proceeds

The proceeds from collection of fees and charges provided for in this article shall be placed in a fund to be known as City of Dickinson Solid Waste Fund, and all of the expenses of the city in the collection and disposal of such solid waste shall be paid out of such fund. (Code 1958, § 14-12; Ord. No. 1337 § 3.)

Article 18.12 Garbage from Business Establishments

Sections:

18.12.010 Definitions - REPEALED
18.12.020 Storage generally - REPEALED
18.12.030 Applicability of sections 18.08.100, 18.08.110, 18.08.120, 18.08.130 and 18.08.140 - REPEALED
18.12.040 Compliance with article - REPEALED
18.12.045 Collection by City-Generally - REPEALED
18.12.050 Charges--Generally - REPEALED
18.12.060 Same--Billing; failure to pay, etc. - REPEALED
18.12.070 Same--Collection by legal action - REPEALED
18.12.080 Same--Disposition of proceeds – REPEALED

Section 18.12.010 Definitions - REPEALED

This section was repealed May 7, 2007. (Ord. No. 1337 § 6.)

Section 18.12.020 Storage generally - REPEALED

This section was repealed May 7, 2007. (Ord. No. 1337 § 6.)

Section 18.12.030 Applicability of sections 18.08.100, 18.08.110, 18.08.120, 18.08.130 and 18.08.140 - REPEALED

This section was repealed on May 7, 2007. (Ord. No. 1337 § 6.)

Section 18.12.040 Compliance with article - REPEALED

This section was repealed May 7, 2007. (Ord. No. 1337 § 6.)

Section 18.12.045 Collection by City-Generally - REPEALED

This section was repealed May 7, 2007. (Ord. No. 1337 § 6.)

Section 18.12.050 Charges--Generally - REPEALED

This section was repealed May 7, 2007. (Ord. No. 1337 § 6.)

Section 18.12.060 Same--Billing; failure to pay, etc. - REPEALED

This section was repealed May 7, 2007. (Ord. No. 1337 § 6.)

Section 18.12.070 Same--Collection by legal action - REPEALED

This section was repealed May 7, 2007. (Ord. No. 1337 § 6.)

Section 18.12.080 Same--Disposition of proceeds - REPEALED

This section was repealed May 7, 2007. (Ord. No. 1337 § 6.)

Article 18.20 Penalty

Sections:

18.20.010 Violations

Section 18.20.010 Violations

Violation of this chapter is punishable by an administrative penalty as established and amended from time to time in the annual fee resolution. (Ord. No. 845, § 16; Ord. No. 992, § 3; Ord. No. 1337 § 4.)

Chapter 19 GAS

Last updated October 2007

Articles:

19.04 In General
19.08 Plumber's and Gas Fitter's License
19.12 Pipes Generally

Article 19.04 In General

Sections:

19.04.010 Jurisdiction of chapter
19.04.020 Work on mains and meters generally; temporary repair of leaks
19.04.030 Installation, extension or alteration of gas piping generally

Section 19.04.010 Jurisdiction of chapter

The provisions of this chapter are intended to apply to the installation of gas piping in buildings and the use of city gas, natural and artificial, in and about buildings. They do not apply to the underground gas distribution system leading up to the building and to such parts of the system as the manufacturing plant, if any, which are the property of the gas company.

This chapter shall apply to all new and existing installations, extensions, additions or alterations. (Code 1958, § 15-1.)

Section 19.04.020 Work on mains and meters generally; temporary repair of leaks

No plumber or gas fitter, unless in the employ of the gas company or having a permit from the gas company, shall repair, alter or open the service pipe or set or remove the service meter or do any other work on the part of the gas supply system up to and including the meter. However, if gas is leaking from any part of the gas supply system referred to, a plumber or gas fitter not in the employ of the gas company may make necessary temporary repairs and report such repairs to the gas inspector, who shall notify the gas company to make permanent repairs. (Code 1958, § 15-2.)

Section 19.04.030 Installation, extension or alteration of gas piping generally

Gas piping and all work in connection with the installation, extension or alteration of gas piping, fixtures and equipment shall be done only by or under the supervision of a licensed plumber or a licensed gas fitter. (Code 1958, § 15-3.)

Article 19.08 Plumber's and Gas Fitter's License

Article 19.12 Pipes Generally

Sections:

19.12.010 Permit to install, alter or extend--Required
19.12.020 Same--Application
19.12.030 Same--Fee
19.12.040 Same—Issuance

Section 19.12.010 Permit to install, alter or extend--Required

The act of installing, altering or extending any system of piping for the conveyance, distribution or use of illuminating or fuel gas in any building or structure in the city, except meter installations by employees of the gas company in accordance with the provisions of this chapter and chapter 13 of this Code, is hereby declared unlawful unless the owner of the premises on which the work is to be done or someone on his behalf shall first obtain from the gas inspector a written permit authorizing such installation, extension or alteration. (Code 1958, § 15-9.)

Section 19.12.020 Same--Application

All applications for permits for the installation of any new gas piping or the making of extensions or alterations to present equipment or existing installations shall be made in writing to the gas inspector on special permit forms to be provided by the city. (Code 1958, § 15-10.)

Section 19.12.030 Same--Fee

In order to procure a permit for the installation of any new gas piping or the making of or extensions or alterations to present equipment or existing installations, the person applying for and receiving such permit shall pay to the city for such permit and for inspection of the work such sum as the board of city commissioners may, from time to time fix. Such fee must accompany the application for the permit. (Code 1958, § 15-11.)

Section 19.12.040 Same--Issuance

When the gas inspector is satisfied that the work for which a permit is sought under this article has been done in accordance with the provisions of this chapter and chapter 13 of this Code, he shall issue a permit therefor. (Code 1958, § 15-12.)

Chapter 20 HEALTH AND SANITATION

Last updated October 2007

Articles:

20.ED Editor's note to Chapter 20
20.04 In General
20.08 Weeds

Article 20.ED Editor's note to Chapter 20

Sections:

20.ED.010 Editor's note to Chapter 20

Section 20.ED.010 Editor's note to Chapter 20

For state law as to authority of city to make regulations necessary or expedient for the promotion of health and sanitation or for the suppression of disease, see NDCC, § 40-05-01 (45).

As to rabies control, see §§ 5.08.06.020 to 5.08.06.050 of this Code. As to food and food establishments, see Ch. 15. As to frozen desserts generally, see Ch. 16. As to garbage and refuse generally, see Ch. 18. As to meat and meat products generally, see Ch. 22.

Article 20.04 In General

Sections:

20.04.010 Department of health--Established
20.04.020 Same--Composition
20.04.030 Public health officer--Qualifications; appointment; term
20.04.040 Same--Oath and bond
20.04.050 Same--Powers and duties generally
20.04.060 Same--Inspection of buildings, lots, etc., for health purposes
20.04.070 Same--Abatement of nuisances, sources of filth, etc.
20.04.080 Depositing of garbage, human excreta, etc., in Heart River

Section 20.04.010 Department of health--Established

There is hereby established a department of health in and for the city. (Code 1958, § 16-1.)

Section 20.04.020 Same--Composition

The department of health shall consist of the public health officer and such assistants as he may appoint, subject to confirmation by the board of city commissioners. (Code 1958, § 16-2.)

Section 20.04.030 Public health officer--Qualifications; appointment; term

The public health officer shall be a competent physician engaged in the regular practice of medicine and shall be appointed by the board of city commissioners at their regular meeting on the third Tuesday in the month of April of each odd-numbered year or at such other meeting as may be designated by the board, and such appointment shall be for a period of two years. (Code 1958, § 16-3.)

Section 20.04.040 Same--Oath and bond

The public health officer shall take or subscribe the usual oath of office and shall be under bond in the sum of one thousand dollars for the faithful performance of his duties. (Code 1958, § 16-4.)

Section 20.04.050 Same--Powers and duties generally

The public health officer shall perform such duties as may be conferred upon him by the laws of the state or the ordinances of the city. The public health officer shall have all the power and authority granted by the statutes of this state, and it shall be his duty to provide such additional rules and regulations as shall be proper and necessary for the preservation of the health of the people of the city, to prevent the spread of contagious disease, to cause the removal of all objects detrimental to the health of the people and to enforce such rules and regulations as may be provided for the government of the department of health. (Code 1958, § 16-5.)

Section 20.04.060 Same--Inspection of buildings, lots, etc., for health purposes

The public health officer or any person acting under him shall have authority to enter into and examine at any time all buildings, lots and places of any description within the city for the purpose of ascertaining the condition thereof so far as the public health may be affected thereby. (Code 1958, § 16-6.)

Section 20.04.070 Same--Abatement of nuisances, sources of filth, etc.

In all cases in which the public health officer shall deem it necessary for the protection of the health of the city to abate or to remove any nuisance, source of filth or cause of sickness that shall be found on private

property, he shall cause notice to be served on the owner or occupant thereof, requiring him to remove such nuisance, etc., at his own expense within a reasonable time, not less than twenty-four hours.

If such owner or occupant shall refuse or neglect to comply with such notice or if such nuisance, source of filth or cause of sickness exists on property of nonresident owners or upon property the owners of which cannot be found, the public health officer shall cause the removal of such nuisance, source of filth or cause of sickness at his discretion at the expense of the city. The cost of such removal shall be charged against the lot, piece or parcel of land upon which the work has been done and shall be assessed against the property in the manner provided for the assessment and certification of sidewalk assessments. (Code 1958, § 16-7.)

For state law authorizing cities to prevent, abate and remove nuisances, see NDCC, § 40-05-01 (44). As to assessment of costs for removal by city, see NDCC, § 40-05-01.1.

Section 20.04.080 Depositing of garbage, human excreta, etc., in Heart River

It shall be unlawful for any person to deposit, throw or leave any garbage, dead animals or parts thereof, offal, human excreta or any waste animal or vegetable matter in the Heart River or at any place within the drainage basin or area of the Heart River within the city. Any violation of this section shall constitute a nuisance and shall be abated as provided by law. (Code 1958, § 16-9.)

Article 20.08 Weeds

Sections:

20.08.00E Editor's note to Article 20.08

Section 20.08.00E Editor's note to Article 20.08

For state law as to authority of city to establish weed control authority, see NDCC, § 63-01.1-07. As to weed control generally, see NDCC, § 63-01.1-07 et seq.

Chapter 21 LICENSES

Last updated January 2016

Articles:

21.04 In General
21.08 Going out of Business, Fire and Bankrupt Sales - This Article was repealed with Ordinance No. 1312 (March 6, 2006)
21.12 Mobile Home Courts and Trailer Parks - This Article was repealed with Ordinance No. 1312 (March 6, 2006)
21.20 Authority to Sell Tobacco
21.30 Temporary Homeless Shelter

Article 21.04 In General

Sections:

21.04.010 Applicability of article
21.04.020 Applications
21.04.030 Issuance; form of license
21.04.040 Surrender and cancellation
21.04.050 Payment of fees; inclusion of fee amount and date on license
21.04.060 Term
21.04.070 Revocation
21.04.080 Appeal of auditor's denial of license application

Section 21.04.010 Applicability of article

Unless otherwise specifically provided, licenses required for the carrying on of a business or trade within the city shall be applied for, issued, terminated and revoked according to the provisions of this article. (Code 1958, § 17-1.)

Section 21.04.020 Applications

Every application for a license shall be made upon a blank form furnished by the city auditor and verified and shall contain the name, place of residence, age and occupation of the applicant, the purpose for which a license is desired, the place where and the term for which he proposes to carry on the business or trade to be licensed and such other information as may be required according to provisions of this article. (Code 1958, § 17-2; Ord. No. 550.)

Section 21.04.030 Issuance; form of license

If it shall appear that the applicant in section 21.04.020 is entitled to a license, the city auditor shall issue a license signed by him. Licenses shall be issued from a bound book and shall be consecutively numbered. Each license in such book shall have a stub attached thereto upon which the substance of the license shall be entered. (Code 1958, § 17-3.)

Section 21.04.040 Surrender and cancellation

Upon surrender or cancellation of a license, the fact that it has been surrendered or canceled shall be entered by the city auditor on the stub from which it was detached. (Code 1958, § 17-4.)

Section 21.04.050 Payment of fees; inclusion of fee amount and date on license

No license under the provisions of this article shall be issued until the fee prescribed therefor has been paid to the city auditor. The amount paid and the date thereof and the term for which the license was issued shall be shown on each license. (Code 1958, § 17-5.)

Section 21.04.060 Term

All licenses issued under the provisions of this article shall expire on the first day of January of each year; provided, that should any license issued pursuant to this article specify an expiration date, such license shall expire upon the date as stated upon the license issued pursuant to this article. (Code 1958, § 176; Ord. No. 550.)

Section 21.04.070 Revocation

Whenever it shall appear that a license has been improvidently issued or that the holder thereof is violating the authority granted to him thereby, it shall be the duty of the city auditor to revoke the license and to give notice of such revocation forthwith to the licensee. After such revocation the licensee shall be without authority to carry on the business or trade for which the license has been granted. (Code 1958, § 17-7.)

Section 21.04.080 Appeal of auditor's denial of license application

Whenever, by the provisions of this Code, the auditor is granted the authority to grant permits or licenses, and the auditor denies said application, the applicant shall have the right to appeal said denial to the city commission. The appeal shall be made by making a written request to the auditor within ten days of the decision. (Ord. No. 1083, § 21.)

Article 21.08 Going out of Business, Fire and Bankrupt Sales - This Article was repealed with Ordinance No. 1312 (March 6, 2006)

Article 21.12 Mobile Home Courts and Trailer Parks - This Article was repealed with Ordinance No. 1312 (March 6, 2006)

Article 21.20 Authority to Sell Tobacco

Sections:

21.20.010 Purpose
21.20.020 Authority to Sell
21.20.030 Grant of Authority
21.20.040 Grounds for Suspension or Revocation of Authority to Sell
21.20.050 Hearing for Revocation or Suspension

Section 21.20.010 Purpose

The City of Dickinson has recognized that illegal tobacco purchase and use by minors is a significant problem with the city. This section is intended to reduce the illegal purchases of tobacco products by minors and to reduce the accessibility of tobacco products to minors. (Ord. 1234 § 1)

Section 21.20.020 Authority to Sell

No person, firm, business or other entity may directly or indirectly or by means of device, offer or dispose of, or give away, tobacco products (as defined in Section 25.06.010) without:

1. A North Dakota State Tobacco Dealers License issued pursuant to NDCC Chapter 57-36 when required by the State.
2. A valid license to sell tobacco products at retail as granted by the City of Dickinson.

An employee age 18 or older acting on behalf of his/her employer, shall have the same license and authority with regard to tobacco products as the employer. As used in this chapter, "tobacco" or "tobacco products" are defined as in Section 25.06.010. A "person or business" means any individual, business, firm, fiduciary, partnership, corporation, limited liability company, trust, or association however formed. (Ord. 1234 § 1; Ord. 1478§ 1; Ord. 1601§ 3)

Section 21.20.030 Grant of Authority

The City of Dickinson shall grant a license to sell tobacco or tobacco products at retail, to persons or businesses who have a North Dakota State Tobacco Dealers License under NDCC Chapter 57-36, when required by the State, except as such license may be suspended or revoked by the City of Dickinson or State of North Dakota. The city-issued license granted by this section may be suspended or revoked as provided in this chapter. (Ord. 1234 § 1; Ord. 1478§ 1; Ord. 1601§ 3)

Annual license fees shall be set by resolution of the Board of the City Commissioners, and incorporated into the City Fee Schedule.

Such licenses shall be non-transferable. (Ord. 1478§ 1)

Section 21.20.040 Grounds for Suspension or Revocation of Authority to Sell

The license and authority to sell tobacco products granted under this Chapter may be revoked or suspended temporarily by the Board of City Commissioners upon any violation of Dickinson City Code 21.20 or 25.06. The City shall also assess against the licensee administrative fines as follows:

(a) First Offense: In the event of a first violation within a 24 month period by the licensee, its agent or employee, of Article 21.20 or 25.06, the City shall assess against the licensee an administrative fine in the amount of $150.00. The City shall further suspend the licensee's license and authority to sell tobacco products for no less than one day. This administrative fine and temporary suspension shall be waived in the event that both the licensee and its agent or

employee who violated the ordinance have taken approved server training through the Southwestern District Health Unit regarding sale of tobacco products.

(b) Second Offense: In the event of a second violation within a 24 month period by the licensee, its agent or employee, of Article 21.20 or 25.06, the City shall assess against the licensee an administrative fine in the amount of $250.00. The City shall further suspend the licensee's license and authority to sell tobacco products for no less than three days.

(c) Third Offense: In the event of a third violation within a 24 month period by the licensee, its agent or employee, of Article 21.20 or 25.06, the City shall assess against the licensee an administrative fine in the amount of $500.00. The City shall further suspend the licensee's license and authority to sell tobacco products for no less than five days.

Section 21.20.050 Hearing for Revocation or Suspension.

Prior to the entry of fines and sanctions provided herein, the licensee shall have the right to an informal hearing before the City Administrator and, if requested, a formal hearing before the Board of City Commissioners. An informal hearing before the City Administrator may be arranged at such dates and times as mutually agreeable to the City Administrator and the licensee. In the event that a formal hearing before the Board of City Commissioners is requested, the City Administrator shall notify the licensee of the hearing by written notice, including the following: (1) the proposed action to be taken; (2) the reason for such action; (3) the time and place of the hearing; and (4) the right of the licensee to present evidence or testimony on its behalf

The notice shall be mailed to the licensee, by certified mail, not less than five days nor more than fifteen days before the hearing.

If after the hearing the Board of City Commissioners finds that the violations did occur, it may ~~enter~~ the fines and sanctions provided herein.

The Board of City Commissioners shall issue Findings of Fact, Conclusions and Order, which shall be served on the licensee. The decision of the Board of City Commissioners is final.

(Ord. 1234 § 1; (Ord. 1478 § 1)

Article 21.30 Temporary Homeless Shelter

Sections:

21.30.010 Purpose
21.30.020 Permit Required
21.30.030 Permit Application
21.30.040 Issuance of Permit

Section 21.30.010 Purpose

The Board of City Commissioners of the City of Dickinson hereby recognizes and finds that it is in the best interests of the public health, safety and general welfare to provide for temporary homeless shelter for transient or homeless individuals within the community pursuant to the terms provided herein. (Ord. 1526§ 1)

Section 21.30.020 Permit Required

No person shall operate a temporary homeless shelter within the city limits of the City of Dickinson without a permit as provided for in this Article.

Any person or group of persons may apply to the City for a temporary homeless shelter permit as provided in this Article. Such permit shall entitle the grantee to certain uses of its property that would otherwise not conform to the requirements of the City's zoning code. The Board of City Commissioners shall issue such permit by resolution, following public hearing as provided herein, and may attach to the permit such reasonable conditions as they may deem necessary and appropriate, in order to ensure the protection of the public health, safety and general welfare. (Ord. 1526§ 1)

Section 21.30.030 Permit Application

Unless otherwise determined by the Board of City Commissioners, the applicant shall, as part of its application, provide the City with at least the following information:

1) The physical structure in which the temporary homeless shelter will be operated.
2) Identify a temporary homeless shelter coordinator for each physical structure in which the temporary homeless shelter will be operated.
3) A manual of rules and regulations, acceptable to the City Administrator or his designee, for operation of the temporary homeless shelter at each physical structure in which the temporary homeless shelter will be operated. (Ord. 1526§ 1)

Section 21.30.040 Issuance of Permit

Upon receipt of the application materials, the City shall set the matter for a public hearing before the Board of City Commissioners. At least ten (10) days prior to such public hearing, the temporary homeless shelter coordinator identified in the application materials shall notify, in writing, all property owners within 300 feet of the proposed location of the temporary homeless shelter and provide verification to the City of such notification. Such notification shall include at least: (1) the location of the proposed temporary homeless shelter; (2) the date, time and place of the public hearing; and (3) at the public hearing the Board of City Commissioners will take public comment from any interested person.

Following the public hearing, the Board of City Commissioners may grant the temporary homeless shelter permit if it finds that the applicant has met all requirements of Dickinson City Code regarding operating a temporary homeless shelter; the applicant appears to be a responsible and appropriate operator of a temporary homeless shelter; and granting such temporary homeless shelter permit is in the best interests of the public health, safety and general welfare.

Prior to beginning operations as a temporary homeless shelter, each proposed temporary homeless shelter facility shall be inspected by the City's building department and fire department, which shall verify

whether the facility is in compliance with City Code. Any violations of Code shall be required to be corrected prior to beginning operations as a temporary homeless shelter.

If, at any time, a temporary homeless shelter facility is determined to be not in compliance with City Code, or with any other conditions of approval attached by the Board of City Commissioners, the City shall be entitled to: (1) require immediate compliance with City Code or other conditions of approval; or (2) revoke the temporary homeless shelter permit.

The temporary homeless shelter coordinator shall provide a summary of the activities of the temporary homeless shelter at such times as may be required by the City. (Ord. 1526§ 1)

Chapter 22 MEAT AND MEAT PRODUCTS - This Chapter was repealed with Ordinance No. 1312 (March 6, 2006)

Last updated October 2007

Chapter 23 MOTOR VEHICLES AND TRAFFIC

Last updated January 2016

Articles:

23.ED Editor's note to Chapter 23
23.04 In General
23.08 Traffic Administration
23.12 Enforcement of and Obedience to Traffic Regulations
23.16 Traffic-Control Devices
23.20 Speed Regulations
23.24 Turning Movements
23.28 One-Way Streets and Alleys
23.32 Stop and Yield Intersections
23.36 Miscellaneous Driving Rules
23.40 Pedestrians' Rights and Duties
23.44 Motorcycles
23.46 Motorized Skateboards and Motorized Scooters
23.48 Bicycles
23.52 Angle Parking
23.56 Stopping, Standing or Parking Generally
23.60 Reserved Parking Areas
23.64 Time Limit Parking Zones
23.68 Equipment of Vehicles
23.72 Regulation of Kinds and Classes of Traffic on Certain Roadways
23.76 Criminal Traffic Violations
23.80 Disposition of Traffic Offenses
23.84 Equipment of Vehicle Size, Weight, and Load Restrictions

Article 23.ED Editor's note to Chapter 23

Sections:

23.ED.010 Editor's note to Chapter 23

Section 23.ED.010 Editor's note to Chapter 23

For state law as to authority of city to regulate traffic, see NDCC, §§ 40-05-01(17), 40-05-02(14). As to motor vehicles generally, see NDCC, § 39-01-01 et seq.

As to bicycles, see Ch. 6 of this Code. As to police, see Ch. 31. As to driving vehicles and animals across sidewalks and curbs, see § 33.04.380.

Article 23.04 In General

Sections:

23.04.010 Definitions

Section 23.04.010 Definitions

Words and phrases used in this chapter shall have the meanings and be defined as provided in the North Dakota Century Code in Title 39, and North Dakota Century Code section 39-10-01 and all subsequent amendments shall be and are hereby incorporated by reference in this section.

In this chapter, unless the context or subject matter otherwise requires, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Authorized emergency vehicles.

(a) "Class A Authorized Emergency Vehicles" shall mean:

(1) Vehicles of a governmentally-owned fire department.

(2) Vehicles when operated by or under the control of a police officer having authority to enforce the provisions of this chapter or by a salaried employee of any municipal police department within the municipality or by any sheriff or deputy sheriff, not to include special deputy sheriffs or by the warden of the state penitentiary and his authorized agents.

(3) Ambulances.

(4) Vehicles operated by or under the control of the commissioner, and district deputy commissioner, and district deputy game warden of the state game and fish department.

(5) Vehicles owned or leased by the United States government used for law-enforcement purposes.

(6) Vehicles designated for the use of the adjutant general and assistant adjutant general in cases of emergency.

(7) Vehicles operated by or under the control of the director, assistant director and park superintendents of the state parks and recreation department.

(b) "Class B Authorized Emergency Vehicles" shall mean wreckers and such other emergency vehicles as are authorized by the local authorities.

(c) "Class C Authorized Emergency Vehicles" means those vehicles authorized by state and local disaster emergency services organizations and those vehicles used by volunteer firemen while performing their assigned disaster and emergency responsibilities.

Bicycle. A motorized bicycle and every device propelled by human power upon which any person may ride, having two tandem wheels either of which is more than twenty inches (50.8 centimeters) in diameter.

Bus. Every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons, and every motor vehicle, other than a taxicab, designated and used for the transportation of persons for compensation; provided, every motor vehicle designed for carrying not more than fifteen persons and used for a ride-sharing arrangement, as defined in North Dakota Century Code, section 8-02-07, is not a "bus."

Business District. The territory contiguous to a highway when fifty percent or more of the frontage thereon for distance of three hundred feet (91.44 meters) or more is occupied by buildings in use for business.

Commercial Freighting. The carriage of things, other than passengers, for hire; except, that such terms shall not include:

(a) The carriage of things other than passengers within the limits of the same city;

(b) Carriage by local dray lines of baggage or goods to or from a railroad station from or to places in such city or in the immediate vicinity thereof, in the state, and not to exceed two miles (3.22 kilometers) from the corporate or recognized limits of the city; or

(c) Hauling done by farmers for their neighbors in transporting agricultural products to or from market.

Commercial passenger transportation. The carriage of passengers for hire; except, that the term shall not include:

(a) The carriage of passengers within the limits of the city.

(b) The carriage by local buslines of passengers to or from a railroad station from or to places within any city or within two miles (3.22 kilometers) of the limits of the city.

(c) The carriage of passengers under a ride-sharing arrangement, as defined in North Dakota Century Code, section 8-02-07.

Commissioner. The commissioner of the state highway department, acting directly or through his authorized agents.

Controlled-Access Highway. Every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway.

Crosswalk. That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs, or, in the absence of curbs, from the edges of the traversable roadway; or any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

Dealer. Every person, partnership or corporation engaged in the business of buying, selling or exchanging motor vehicles, or who advertises or holds himself out to the public as engaged in the buying, selling or exchanging of motor vehicles for resale. Any person, partnership, corporation or association doing business in several cities or in several locations within a city shall be considered a separate dealer in each such location.

Department. The motor vehicle department of this state.

Director. The director of the division of public safety of this state.

Division. The division of public safety of this state.

Driver. Every person who drives or is in actual physical control of a vehicle.

Essential Parts. All integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type or mode of operation.

Explosives. Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or by destroying life or limb.

Farm Tractor. Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry.

Farm Trailer. Those trailers and semitrailers towed by a bona fide resident farmer hauling his own agricultural, horticultural, dairy and other farm products if the gross weight, not including the towing vehicle, does not exceed twenty-four thousand pounds (10,886.22 kilograms).

Flammable Liquid. Any liquid which has a flash point of seventy degrees Fahrenheit (21.11 degrees Celsius) or less, as determined by a Tagliabue or equivalent closed-cup test device.

Gross Weight. The weight of a vehicle without load plus the weight of any load thereon.

Guest. A person who accepts a ride in any vehicle without giving compensation therefor.

Highway. The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel and of every way privately maintained within a mobile home park, trailer park or campground containing five or more lots for occupancy by mobile homes, travel trailers or tents when any part thereof is open for purposes of vehicular travel.

House Car. A motor vehicle which has been reconstructed or manufactured for private use as sleeping or living quarters.

Implement of Husbandry. Every vehicle designed and adopted exclusively for agricultural, horticultural or livestock raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highway.

Intersection. The area embraced within the prolongation or connection of the lateral curb lines or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. Where a highway includes two roadways thirty feet (9.14 meters) or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet (9.14 meters) or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

Intoxicating Liquor. Any beverage containing alcohol.

Judgment. Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state of the United States, upon a cause of action arising out of ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

Legal Owner. A person who holds the legal title to a vehicle.

Lienholder. A person holding a security interest in a vehicle.

Local Authorities. Every county, municipal and other local board or body having authority to adopt local police regulations under the constitution and laws of this state.

Mail. To deposit mail properly addressed and with postage prepaid with the United States Postal Service.

Manufacturer. Any person who manufactures, assembles or imports and sells new motor vehicles to new motor vehicle dealers for resale in the state; but such term shall not include a person who assembles or specifically builds interior equipment on a completed vehicle supplied by another manufacturer, distributor or supplier.

Metal Tires. All tires the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material; except, that this provision shall not apply to pneumatic tires.

Motor Vehicle. "Motor vehicle" includes every vehicle which is self-propelled, every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and, for purposes of motor vehicle registration, title registration, and operator's licenses, motorized bicycles.

Motorcycle. Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding implements of husbandry.

Motorized Bicycle. A vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion, a power source providing up to a maximum of two brake horsepower having a maximum piston or motor displacement of 3.05 cubic inches (49.98 milliliters) if a combustion engine is used, which will propel the vehicle, unassisted, at a speed not to exceed thirty miles (48.38 kilometers) per hour on a level road surface, is equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged, and shall have a width no greater than thirty-two inches (81.28 centimeters).

Nonresident. Any person who is not a resident of this state.

Nonresident's Operating Privilege. The privilege conferred upon a nonresident by the laws of this state pertaining to the operation by such person of a motor vehicle, or the use of a vehicle owned by such person, in this state.

Official Traffic-Control Devices. All signs, signals, markings and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.

Operator. Every person who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

Owner. A person, other than a lienholder, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security.

Park. When prohibited, the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

Pedestrian. Any person afoot.

Person. Every natural person, firm, copartnership, association or corporation.

Pneumatic tires. All tires inflated with compressed air. Pole Trailer. Every vehicle without motive power designated to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

Police Officer. Every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

Private Road or Driveway. Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

Proof of Financial Responsibility. Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of such proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and in the amount of ten thousand dollars because of injury to or destruction of property of others in any one accident.

Railroad. A carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

Railroad Sign or Signal. Any sign, signal or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

Reconstructed Vehicle. Every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition or substitution of essential parts, new or used.

Residence District. Territory contiguous to a highway not comprising a business district, when the frontage on such highway for a distance of three hundred feet (91.44 meters) or more is occupied mainly by dwellings, or by dwellings and buildings in use for business.

Right-of-Way. The privilege of the immediate use of a roadway.

Road Tractor. Every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

Roadway. That portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

Saddle Mount. Placing the front wheels of the drawn vehicle upon the bed of the drawing vehicle.

Safety Zone. The area or space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set aside as a safety zone.

Salvage Certificate of Title. A document issued by the department for purposes of proof of ownership of a salvage or destroyed vehicle and not acceptable for motor vehicle registration purposes.

School Bus. Any motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or to or from school-related activities, or privately owned and operated for compensation for the transportation of children to or from school or to or from school-related activities.

Semitrailer. Every vehicle of the trailer type so designed and used in conjunction with a truck or truck tractor that some part of its own weight and that of its own load rests upon or is carried by a truck or truck tractor; except, that it shall not include a "house trailer" or "mobile home" as defined in this section.

Sidewalk. That portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.

Solid Tire. Every tire made of rubber or other resilient material other than a pneumatic tire.

Specially Constructed Vehicle. Any vehicle under distinctive name, make, model or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

Stand or Standing. The halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

State. A state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a province of the Dominion of Canada.

Stop. When required, complete cessation from movement.

Stop or Stopping. When prohibited, any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.

Street. The entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Through Highway. Every highway or portion thereof on which vehicular traffic is given preferential right-of-way, and at the entrances to which vehicular traffic from intersecting highways is required by law to yield right-of-way to vehicles on such through highway and in obedience to either a stop sign or yield sign, when such signs are erected by law.

Trackless Trolley Coach. Every motor vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

Traffic. Pedestrians, ridden or herded animals, vehicles, streetcars and other conveyances either singly or together while using any highway for purpose of travel.

Traffic-Control Signal. Any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

Trailer. Every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle; except, that it shall not include a "house trailer" or "mobile home," which terms shall mean a vehicle as defined herein which is designed and intended for use as living or sleeping quarters for people and which is not used for commercial hauling of passengers.

Truck. Every motor vehicle designed, used or maintained primarily for transportation of property.

Truck Tractor. Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

Urban District. The territory contiguous to and including any street which is built up with structures devoted to business, industry or dwelling houses situated at intervals of less than one hundred feet (30.48 meters) for a distance of a quarter of a mile (402.34 meters) or more.

Used Vehicle. A motor vehicle which has been sold, bargained, exchanged, given away or the title to which has been transferred to another by the person who first acquired it from the manufacturer or importer, dealer or agent of the manufacturer or importer.

Vehicle. Every device in, upon or by which any person or property may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks. (Ord. No. 866, § 1; Ord. No. 1002, § 1.)

Article 23.08 Traffic Administration

Sections:

23.08.010 Traffic division--Established
23.08.020 Same--Duties generally
23.08.030 Records of traffic violations
23.08.040 Accidents--Traffic division to investigate
23.08.050 Same--Studies
23.08.060 Same--Reports
23.08.070 Traffic division to designate method of identifying funeral processions

Section 23.08.010 Traffic division--Established

There is hereby established in the police department of this city a traffic division to be under the control of an officer or police person appointed by and directly responsible to the chief of police. (Ord. No. 866, § 1.).

Section 23.08.020 Same--Duties generally

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 traffic engineer and other officers of the city in the administration of the traffic laws and in developing ways and means to improve traffic conditions, and to carry out those duties specially imposed upon such division by this chapter and the traffic ordinances of the city. (Ord. No. 866, § 1.)

Section 23.08.030 Records of traffic violations

(a) 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. Such record shall accumulate during at least a five-year period and from that time on the record shall be maintained complete for at least for the most recent five-year period.

(b) 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.

(c) All such records and reports shall be public records. (Ord. No. 866, § 1.).

Section 23.08.040 Accidents--Traffic division to investigate

It shall be the duty of the traffic division, assisted by other police officers of the department, to investigate traffic accidents, to arrest and to assist in the prosecution of those persons charged with violations of law causing or contributing to such accidents. (Ord. No. 866, § 1.)

Section 23.08.050 Same--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. (Ord. No. 866, § 1.)

Section 23.08.060 Same--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 and information of the city traffic engineer. (Ord. No. 866, § 1.)

Section 23.08.070 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 processions. (Ord. No. 866, § 1.)

Article 23.12 Enforcement of and Obedience to Traffic Regulations

Sections:

23.12.010 Authority of police and fire department officials
23.12.020 Traffic commission--Created; composition; chairman; appointment and terms of members; resignations and removals
23.12.030 Same--Duties
23.12.040 Obedience to chapter required
23.12.050 Obedience to police officer or fireman required; fleeing or attempting to elude police officer
23.12.060 Issuance of warrant
23.12.070 Illegally parked vehicles--Issuance and affixing of citation
23.12.080 Same--Failure to comply with citation
23.12.090 Same--Presumption of ownership and parking of vehicle
23.12.100 Certain nonmotorized traffic to obey traffic regulations
23.12.110 Use of coasters, roller skates and similar devices restricted
23.12.120 Public employees to obey traffic regulations
23.12.130 Emergency vehicles
23.12.140 Operation of vehicles on approach of authorized emergency vehicle
23.12.150 Immediate notice of accidents; reports by garages or repair shops

Section 23.12.010 Authority of police and fire department officials

(a) 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 the city and all of the state vehicle laws.

(b) 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.

(c) 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. (Ord. No. 866, § 1.)

Section 23.12.020 Traffic commission--Created; composition; chairman; appointment and terms of members; resignations and removals

There is hereby established a traffic commission, to serve without compensation, consisting of the public works director, or in his discretion, his representative, the chief of police or, in his discretion, his representative, a City Commissioner, and a state highway patrol representative. There shall, in addition to the aforesaid members, be appointed five members from the electorate of the city, whose terms shall be for a period of three years. The board of city commissioners shall appoint one member for a term of five years, one member for a term of four years, one member for a term of three years, one member for a term of two years and one member for a term of one year. Commencing on January 1, 2000, as the terms of office expire, the board of city commissioners shall make appointments for vacancy for three year terms. Any member of the commission may resign or may be removed at the will of the board of city commissioners. (Ord. No. 483, art. 2, paragraph 20-030; Ord. No. 511, paragraph 1; Ord. No. 898, § 1; Ord. No. 1200, § 1; Ord. No. 1247 § 1.)

Section 23.12.030 Same--Duties

It shall be the duty of the traffic commission, and it shall have the authority within the limits of the funds at its disposal, to coordinate traffic activities, to carry on educational activities in traffic matters, to supervise the

preparation and publication of traffic reports, to receive complaints having to do with traffic matters and to recommend to the legislative body of the city, the city engineer, the chief of police and other city officials ways and means for improving traffic conditions and the administration and enforcement of traffic regulations. (Ord. No. 483, art. 2, paragraph 20-030; Ord. No. 511, paragraph 1; Ord. No. 898, § 1.)

Section 23.12.040 Obedience to chapter required

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 shall be punished as provided in section 20-162. (Ord. No. 866, § 1.)

Section 23.12.050 Obedience to police officer or fireman required; fleeing or attempting to elude police officer

(a) No person shall willfully refuse to comply with any lawful order or direction of any police officer or fireman vested by law with authority to direct, control or regulate traffic. Such violation shall be a class B misdemeanor as required by state law.

(b) Any driver of a motor vehicle who willfully fails or refuses to bring his vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police vehicle when given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a class B misdemeanor. The signal given by the police officer may be by hand, voice, emergency light or siren. The officer giving such signal shall be in uniform, prominently displaying his badge of office, and his vehicle shall be appropriately marked showing it to be an official police vehicle. (Ord. No. 866, § 1; Ord. No. 872, § 1.)

Section 23.12.060 Issuance of warrant

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 municipal court, as the case may be, or if any person fails or refuses to deposit bail as required and within the time permitted by ordinance, the clerk of the municipal court shall secure and issue a warrant for his arrest. (Ord. No. 881, § 1.)

Section 23.12.070 Illegally parked vehicles--Issuance and affixing of citation

Whenever any motor vehicle without driver is found parked or stopped in violation of any of the restrictions imposed by ordinance of the 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. (Ord. No. 881, § 1.)

Section 23.12.080 Same--Failure to comply with citation

If a violator of the restrictions of article 23.56 does not appear in response to a traffic citation affixed to such motor vehicle within a period of five days, the municipal court 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. (Ord. No. 881, § 1.)

Section 23.12.090 Same--Presumption of ownership and parking of vehicle

(a) In any prosecution charging a violation of any law or regulation governing the standing or parking of a vehicle proof that the particular vehicle described in the complaint was parked in violation of any such law or regulation together with proof that the defendant named in the complaint was at the time of such

parking 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 or placed such vehicle at the point where and for the time during which such violation occurred.

(b) The foregoing stated presumption shall apply only where the procedure as prescribed in sections 23.12.070 and 23.12.080 has been followed. (Ord. No. 881, § 1.)

Section 23.12.100 Certain nonmotorized traffic to obey traffic regulations

(a) 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 chapter 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.

(b) 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 chapter except those provisions of this chapter which by their very nature can have no application. (Ord. No. 866, § 1.)

Section 23.12.110 Use of coasters, roller skates and similar devices restricted

No person upon roller skates, or riding in or by means of any coaster, toy vehicle or similar device, shall go upon any roadway except while crossing a street on a crosswalk and when so crossing such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. This section shall not apply upon any street while set aside as a play street as authorized herein. (Ord. No. 866, § 1.)

Section 23.12.120 Public employees to obey traffic regulations

The provisions of this chapter shall apply to the drivers of all vehicles owned or operated by the United States, this state or any county, town, district or any other political subdivision of the state, subject to such specific exceptions as are set forth in this chapter or in the State Vehicle Code. (Ord. No. 866, §1.)

Section 23.12.130 Emergency vehicles

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

(a) Class A Authorized Emergency Vehicles.

(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; and

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 audible signal by siren or when giving adequate warning by use of a flashing red or combination red and white lights which are

visible under normal atmospheric conditions for at least five hundred feet (152.4 meters); or

c. In any instance when the head of a law-enforcement agency deems advisable within the area of his jurisdiction for the protection of persons and property and when giving audible signal by siren or when giving adequate warning by use of a flashing red or combination red and white lights which are visible under normal atmospheric conditions for at least five hundred feet (152.4 meters).

(3) No emergency vehicle shall display or permit to be displayed any red lamp except when operated on official business.

(b) Class B Authorized Emergency Vehicles.

(1) The driver of a class B authorized emergency vehicle 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; and

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

(2) The exceptions herein granted to a class B authorized emergency vehicle shall apply only when the authorized emergency vehicle is displaying an amber light visible under normal atmospheric conditions for a distance of five hundred feet 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.

(c) Class C Authorized Emergency Vehicle. All class B specifications apply to class C authorized emergency vehicles; except, that a rotating blue flashing light shall be displayed in place of an amber light as provided in section 39-10-03.1 of the North Dakota Century Code. The division of disaster emergency services shall be responsible for promulgating the rules for the use of flashing blue lights in accordance with chapter 28-32 of the North Dakota Century Code.

(d) Any law-enforcement officer who has stopped another vehicle along a highway and is still involved in that incident, where flashing red or combination red and white lights were used in making the stop, may switch to the use of amber lights, visible under normal atmospheric conditions for at least five hundred feet (152.4 meters), for the purpose of maintaining traffic flow. (Ord. No. 866, § 1.)

Section 23.12.140 Operation of vehicles on approach of authorized emergency vehicle

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

(a) Upon the immediate approach of an authorized emergency vehicle giving an audible signal by bell, siren or exhaust whistle and displaying a visible flashing, revolving or rotating blue, white or red light, the driver of every other vehicle shall yield to the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of 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.

(b) 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.

(c) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highways. (Ord. No. 866, § 1.)

Section 23.12.150 Immediate notice of accidents; reports by garages or repair shops

(a) The driver of a vehicle involved in an accident resulting in injury to or death of any person, or property damage to an apparent extent of at least one thousand dollars, shall immediately give notice of the accident to the local police department if the accident occurs within a municipality. Any person who violates this section must be assessed a fine of one hundred dollars. 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, 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, the driver shall, within five days of the accident, supply that information to the driver's license division in the form the division requires.

(b) When it shall appear to the magistrate that any person has failed to give immediate notice in compliance with this section or has failed to furnish the necessary insurance information to the driver's license division within five days of the accident, should the person not have the required information at the time of the accident, the magistrate shall notify the highway commissioner of such failure, so that appropriate action may be taken pursuant to North Dakota Century Code, section 39-08-09.

(c) (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, the owner of the vehicle involved shall, within five days after learning of the accident, give such notice and insurance information not given by the driver.

(d) 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 subsection (a) of this section or of being struck by any bullet, shall report or cause a report to be made to a police officer within twenty-four hours after such motor vehicle is 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 thereto 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 subsection requires and may begin repairs immediately. After repairs have been made and before the vehicle is released, the sticker provided for herein shall be removed. (Ord. No. 866, § 1; Ord. No. 972, §§ 1 to 3; Ord. No. 993, § 1; Ord. No. 1202, § 1.)

Article 23.16 Traffic-Control Devices

Sections:

23.16.010 Authority to install
23.16.020 Specifications
23.16.030 Traffic-control signal legend
23.16.040 Flashing signals
23.16.050 Pedestrian control signals
23.16.060 Designation of walks, lanes, etc.
23.16.070 Obedience to required traffic-control devices.
23.16.080 Unauthorized signs
23.16.090 Interference with official traffic-control devices or railroad signs or signals
23.16.100 Avoiding a Traffic Device

Section 23.16.010 Authority to install

The city engineer or any person authorized by the governing body shall place and maintain traffic-control signs, signals, traffic preemption devices and devices when and as required under the traffic ordinances of the city to make effective the provisions of such ordinances, and may place and maintain such additional traffic-control devices as he may deem necessary to regulate traffic under the traffic ordinances of the city or under state law, or to guide or warn traffic. (Ord. No. 866, § 1.)

Section 23.16.020 Specifications

All traffic-control signs, signals and devices shall conform to the specifications approved by the state highway commissioner pursuant to North Dakota Century Code, section 39-13-06. All signs and signals required hereunder for a particular purpose shall, so far as practicable, be uniform as to type and location throughout the city. All traffic-control devices so erected and not inconsistent with the provisions of state law or this article shall be official traffic-control devices. (Ord. No. 866, § 1.)

Section 23.16.030 Traffic-control signal legend

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

Whenever traffic is controlled by traffic-control signals exhibiting different colored lights or colored lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word or legend, and such lights shall indicate and apply to drivers of vehicles and pedestrians as follows.

(a) Green Indication.

(1) Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersections or an adjacent crosswalk at the time such signals are exhibited.

(2) Vehicular traffic facing a green arrow signal, 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.

(3) Unless otherwise directed by a pedestrian-control signal as provided for in section 23.16.050, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(b) Steady Yellow Indication.

(1) Vehicular traffic facing a steady yellow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

(2) Pedestrians facing a steady yellow signal unless otherwise directed by a pedestrian-control signal as provided for in section 23.16.050 are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

(c) Steady Red Indication.

(1) Vehicular traffic facing a steady red signal 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 for in paragraph (2) of this subsection.

(2) Except when a sign is in place prohibiting a turn, vehicular traffic facing a steady red signal 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 paragraph (1) of this subsection. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within adjacent crosswalk and to other traffic lawfully using the intersection.

(3) Unless otherwise directed by a pedestrian-control signal as provided for in section 23.16.050, pedestrians facing a steady red signal alone shall not enter the roadway.

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. (Ord. No. 866, § 1.)

Section 23.16.040 Flashing signals

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

(a) 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:

(1) Flashing Red (Stop signal). 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.

(2) Flashing Yellow (Caution Signal). 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.

(b) 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 section 23.32.060. (Ord. No. 866, § 1.)

Section 23.16.050 Pedestrian control signals

The provisions of North Dakota Century Code, section 39-10-06, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

(a) "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;

(b) "Don't Walk." No pedestrians shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the "Don't Walk" signal is showing. (Ord. No. 866, § 1.)

Section 23.16.060 Designation of walks, lanes, etc.

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

(a) Designate and maintain, by appropriate devices, marks or lines upon the surface of the roadway, crosswalks at intersections where there is particular danger to pedestrians crossing the roadway, and at such other places as directed by the governing body.

(b) Establish safety zones of such kind and character and at such places as may be deemed necessary for the protection of pedestrians as determined by the governing body.

(c) 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. (Ord. No. 866, § 1.)

Section 23.16.070 Obedience to required traffic-control devices.

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

(a) The driver of any vehicle shall obey the instruction 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.

(b) 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 the devices are required, such statute shall be effective even though no devices are erected or in place.

(c) Whenever official traffic-control devices are placed in positions approximately conforming to the requirements of this chapter, 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.

(d) Any official traffic-control device placed pursuant to the provisions of this chapter and purporting to conform to the lawful requirements pertaining to services shall be presumed to comply with the requirement of this chapter, unless the contrary shall be established by competent evidence. (Ord. No. 866, § 1.)

Section 23.16.080 Unauthorized signs

No person shall place, maintain or display upon or in view of any street any authorized sign, signal, marking or device which purports to be or is in 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 any official traffic-control device or any railroad sign or signal. (Ord. No. 866, § 1.)

Section 23.16.090 Interference with official traffic-control devices or railroad signs or signals

The provisions of North Dakota Century Code, section 39-10-07 3, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down or remove any official traffic-control device or any railroad sign or signal or any inscription, shield or insignia thereon, or any other part thereof. (Ord. No. 866, § 1.)

Section 23.16.100 Avoiding a Traffic Device

It is unlawful for a driver of any motor vehicle to drive off of a street, highway, or other public way and across a parking lot, private drive, or other private property to another street, highway, or other public way, so as to avoid a traffic signal or sign or to take a “short-cut” across such parking lot, private drive, or private property from one street or highway to another. (Ord. No. 1400 § 1)

Article 23.20 Speed Regulations

Sections:

23.20.010 Basic rule
23.20.020 Speed limitations generally
23.20.030 When local authorities may or shall alter maximum speed limits; posting of signs
23.20.040 Speed limitations inapplicable to certain emergency vehicles; liability of exempt driver for reckless driving
23.20.050 Minimum speed limits
23.20.060 Regulation of speed by traffic signals
23.20.065 Speed of trains
23.20.070 Exhibition driving and drag racing prohibited; penalty
23.20.080 Radar evidence in speed violations
23.20.090 Care required in operating vehicle
23.20.100 Use of Compression Brakes Prohibited

Section 23.20.010 Basic rule

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

No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions. Any person who shall drive a vehicle upon a highway or private or public property open to the public for the operation of motor vehicles without heed to the requirements or restrictions of this section shall have committed careless driving, and shall be assessed a fee of thirty dollars. (Ord. No. 866, § 1.)

Section 23.20.020 Speed limitations generally

The provisions of North Dakota Century Code, section 29-09-02, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

Subject to the provisions of section 23.20.010 and state law regulating the speed of vehicles it shall be unlawful for any person to drive a vehicle at a speed in excess of 25 miles per hour or at a speed in excess of the speed limit when signs are in place giving notice thereof. (Ord. No. 866, § 1; Ord. No. 881, § 1; Ord. No. 938, § 1; Ord. No. 947, § 1; Ord. No. 955, § 1; Ord. No. 962, § 1; Ord. No. 1005, § 1; Ord. No. 1018, § 1; Ord. No. 1061, § 1; Ord. No. 1165 § 1.)

Section 23.20.030 When local authorities may or shall alter maximum speed limits; posting of signs

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

(a) Whenever the city, on the basis of any engineering and traffic investigation, determines that the maximum speed permitted under this chapter 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:

(1) Decreases the limit at an intersection;

(2) Increases the limit within an urban district but not to more than fifty-five miles per hour; or

(3) Decreases the limit outside an urban district, but not to less than thirty-five miles per hour.

(b) 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.

(c) 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.

(d) Any alteration of maximum limits on state highways or extensions thereof in the municipality shall not be effective until such alteration has been approved by the state highway commissioner.

(e) 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 an ten miles (16.09 kilo-meters) per hour. (Ord. No. 866, § 1.)

Section 23.20.040 Speed limitations inapplicable to certain emergency vehicles; liability of exempt driver for reckless driving

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

The speed limitations provided for in this article shall not apply to class A authorized emergency vehicles. The exceptions provided for in this section shall not protect the driver of any such vehicle from the consequences of a reckless disregard of the safety of others. (Ord. No. 866, § 1.)

Section 23.20.050 Minimum speed limits

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

(a) No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(b) Whenever the state highway commissioner and the superintendent of the highway patrol, acting jointly, or the city, determine on the basis of engineering and traffic investigation that slow speeds on any highway or part of a highway impede the normal and reasonable movement of traffic, the commissioner and superintendent or the city may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law, and that limit shall be effective when posted upon appropriate fixed or variable signs. (Ord. No. 866, § 1.)

Section 23.20.060 Regulation 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 intersection and shall erect appropriate signs giving notice thereof. (Ord. No. 866, § 1.)

Section 23.20.065 Speed of trains

No person shall operate any locomotive engine, railroad car or train of cars across any street or sidewalk crossing any railroad in the city at a greater speed than the speed as set forth as the maximum allowable

operating speed for the Classification of the track at such crossing, in Part 213.9 of the Code of Federal Regulations, but in no event shall the speed at any crossing exceed forty miles per hour. This speed restriction herein shall apply only to the engine or leading end of all trains.

All track in the City of Dickinson is currently classified as CLASS 3 Track. If the Classification of any track is changed, the railroad shall file with the City Administrator a notice specifying the new Classification. The allowable speed for the new Classification shall be effective upon the filing of said notice. (Ord. No. 1110, § 2; Ord. No. 1172 § 1.)

Section 23.20.070 Exhibition driving and drag racing prohibited; penalty

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

(a) No person shall engage in exhibition driving of any vehicle on a highway, street, alley, sidewalk or any public or private parking lot or area, nor shall any person engage in a race, a speed competition, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration. Any person who violates this section by engaging in an act defined by subsection (b) must be assessed a fee

(b) As used in this section:

(1) "Drag Race" means the operation of two or more vehicles from a point side-by-side by accelerating rapidly in a competitive attempt to cause one vehicle to outdistance the other; or the operation of one or more vehicles over a common selected course from the same point to the same point for the purpose of comparing the relative speed or powers of acceleration of such vehicle or vehicles within a certain distance or time limit.

(2) "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.

(3) "Race" means the use of one or more vehicles in an attempt to outgain, outdistance or to arrive at a given distance ahead of another vehicle or vehicles; or the use of one or more vehicles to willfully prevent another vehicle from passing the racing vehicle or vehicles, or to test the physical stamina or endurance of the persons driving the vehicles over a long distance driving route.

(c) 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. (Ord. No. 866, § 1; Ord. No. 1202, §2.)

Section 23.20.080 Radar evidence in speed violations

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

The speed of any motor vehicle may be checked by the use of radio microwaves or other electrical device. The results of such checks shall be accepted as prima facie evidence of the speed of such motor vehicle in any court or legal proceedings where the speed of the motor vehicle is at issue. The driver of any such motor vehicle may be arrested without a warrant under this section, provided the arresting officer is in uniform or displays his badge of authority; provided, that such officer has observed the record of the speed of such motor vehicle by the radio microwaves or other electrical device, or has received a radio message from the officer who observed the speed of the motor vehicle recorded by the radio microwaves or other electrical device. (Ord. No. 866, § 1.)

Section 23.20.090 Care required in operating vehicle

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

Any person driving a vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in the City shall drive the vehicle in a careful and prudent manner, having due regard to the traffic, surface and width of the highway or said public or private areas and other conditions then existing, and shall give such warnings as are reasonably necessary for safe operation under the circumstances. No person may drive any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in a manner to endanger the life, limb or property of any person. (Ord. No. 866, § 1; Ord. No. 1117 § 1.)

Section 23.20.100 Use of Compression Brakes Prohibited

It shall be unlawful for the operator of a motor vehicle to retard the forward motion of said vehicle through the use of compression brakes, commonly known as "jake brakes," which use the vehicle' s engine compression to slow the engine' s revolutions per minute. The fine for violating this section is forty dollars ($40) (Ord. No. 1263 § 1; Ord. No. 1267 § 1.)

Article 23.24 Turning Movements

Sections:

23.24.010 Authority to place devices altering normal course for turns
23.24.020 Authority to place restricted turn signs
23.24.030 Obedience to signs required
23.24.040 Required position and method of turning at intersections
23.24.050 Vehicle turning left at intersection
23.24.060 Limitations on turning around
23.24.070 Turning movements and required signals generally
23.24.080 Signals by hand and arm or signal lamps
23.24.090 Methods of giving hand and arm signals

Section 23.24.010 Authority to place devices altering normal course for turns

The city traffic 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 traveled as so indicated may conform to or be other than prescribed by law. (Ord. No. 866, § 1.)

Section 23.24.020 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 maybe 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. (Ord. No. 866, § 1.)

Section 23.24.030 Obedience to signs required

Whenever authorized signs are erected indicating that no right or left or U turn is permitted, no driver of a vehicle shall disobey the direction of such sign. (Ord. No. 866, § 1.)

Section 23.24.040 Required position and method of turning at intersections

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

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

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

(b) Left Turns on Two-Way Roadways. At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the centerline thereof and by passing to the right of such centerline where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the centerline of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection;

(c) Left Turns on Other Than Two-Way Roadways. At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the

extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered.

The city may cause markers, buttons or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when markers, buttons, or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons or signs. (Ord. No. 866, § 1.)

Section 23.24.050 Vehicle turning left at intersection

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

The driver of a vehicle intending to turn to the left within an intersection or into any 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. (Ord. No. 866, § 1.)

Section 23.24.060 Limitations on turning around

The provisions of North Dakota Century Code, section 39-10-36, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

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

(b) No vehicle shall be turned so as to proceed in the opposite direction upon any curve or upon the approach to or near the rest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet.

(c) The driver of any vehicle shall not turn such vehicle so as to proceed in an opposite direction upon any street in a business district and shall not upon any other street so turn a vehicle unless such movement can be made in safety and without interfering with other traffic. (Ord. No. 866, § 1.)

Section 23.24.070 Turning movements and required signals generally

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

(a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section 23.29.040 or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movements can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

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

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

(d) The signals required on vehicles by subsection (b) of section 23.24.080 shall not be flashed on one side only on a disabled vehicle, flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear, nor be flashed on one side only of a parked vehicle except as may be necessary for compliance with this section. (Ord. No. 866, § 1.)

Section 23.24.080 Signals by hand and arm or signal lamps

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

(a) Any stop or turn signal when required herein shall be given either by means of the hand and arm or by signal lamps, except as otherwise provided in subsection (b) of this section.

(b) Any motor vehicle in use on a highway shall be equipped with, and required signals shall be given by, signal lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds twenty-four 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 fourteen feet. The latter measurement shall apply to any single vehicle and to any combination of vehicles. (Ord. No. 866, § 1.)

Section 23.24.090 Methods of giving hand and arm signals

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

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

(a) Left turn: Hand and arm extended horizontally.

(b) Right turn: Hand and arm extended upward.

(c) Stop or decrease speed: Hand and arm extended downward. (Ord. No. 866, § 1.)

Article 23.28 One-Way Streets and Alleys

Sections:

23.28.010 Authority to designate; signs required

Section 23.28.010 Authority to designate; signs required

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. (Ord. No. 866, § 1.)

Article 23.32 Stop and Yield Intersections

Sections:

23.32.010	**Stop signs and yield signs**
23.32.16.100	**Avoiding a Traffic Device**
23.32.020	**Additional provisions as to stop signs and yield signs**
23.32.23.16.100	**Avoiding a Traffic Device**
23.32.030	**Designated through streets**
23.32.040	**Emerging from alley, driveway, private road or building**
23.32.050	**Obedience to signal indicating approach of train**
23.32.055	**Obstruction of streets**
23.32.060	**All vehicles must stop at certain railroad grade crossings**
23.32.070	**Certain vehicles must stop at all railroad grade crossings**

Section 23.32.010 Stop signs and yield signs

The provisions of North Dakota Century Code, section 39-10-44, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

(a) Preferential right-of-way at an intersection may be indicated by stop signs or yield signs.

(b) Every stop sign and every yield sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is no crosswalk, then as near as practicable to the nearest line of the intersecting roadway.

(c) Every stop sign shall bear the word "Stop" in letters not less than eight inches in height. Every yield sign shall bear the word "Yield" in letters not less than six inches in height. Every stop sign and every yield sign shall at night time be rendered luminous by internal illumination, by a light projected on the face of the sign or by efficient reflecting elements in the face of the sign.

(d) Except when directed to proceed by a police officer or traffic-control signal, 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 intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.

(e) 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 the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting highway. (Ord. No. 866, § 1.)

Section 23.32.16.100 Avoiding a Traffic Device

Section 23.32.020 Additional provisions as to stop signs and yield signs

The provisions of North Dakota Century Code, section 39-10-24, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

(a) Preferential right-of-way may be indicated by stop signs or yield signs.

(b) 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, at the point of approaching traffic on the intersecting 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.

(c) 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 line, or, if none, at a point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting 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 continue an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways; provided, however, that if a driver is involved in a collision with a vehicle in the intersection or junction or 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. (Ord. No. 866, § 1.)

Section 23.32.23.16.100 Avoiding a Traffic Device

Section 23.32.030 Designated through streets

The board of city commissioners, with reference to highways, streets, or parts thereof, under their jurisdiction, may, by resolution, designate as through streets, any highway, street, or part thereof. The provisions of NDCC, section 39-07-03, and all subsequent amendments, shall be and are hereby incorporated by reference in this section. (Ord. No. 919, § 1; Ord. No. 1018, § 2.)

Section 23.32.040 Emerging from alley, driveway, private road or building

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

The driver of a vehicle emerging from any alley, driveway, private road or building within a business or residence district shall stop such vehicle immediately prior to driving onto a sidewalk or onto 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 of approaching traffic thereof. (Ord. No. 866, § 1.)

Section 23.32.050 Obedience to signal indicating approach of train

The provisions of North Dakota Century Code, sections 39-10-41, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply when:
   (1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;
   (2) 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;
   (3) A railroad train approaching within approximately one thousand three hundred and twenty 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
   (4) An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(b) No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed. No person

shall drive any vehicle past any human flagman at a railroad crossing until the flagman signals that the way is clear to proceed. (Ord. No. 866, § 1.)

Section 23.32.055 Obstruction of streets

No streets shall be obstructed by any standing locomotive, railroad car or train of cars within the city for a longer period than fifteen minutes. (Ord. No. 1110, § 1.)

Section 23.32.060 All vehicles must stop at certain railroad grade crossings

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

The state highway department and the city, with respect to highways under their respective jurisdictions, are hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs there. When such stop signs are erected, the driver of any vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall proceed only upon exercising due care. (Ord. No. 866, § 1.)

Section 23.32.070 Certain vehicles must stop at all railroad grade crossings

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

(a) The driver of a bus carrying passengers, or of any school bus carrying any school child, 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 two hundred 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 a hazardous materials regulations board, and every motor vehicle which must have the following placards: "explosives," "poison," "flammable oxidizers," "compressed gas," "corrosives," "flammable gas," "radio-active" or "dangerous" before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty feet but not less than fifteen 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 shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so the driver of any such 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 shall not manually shift gears while crossing the track or tracks.

(b) 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 marshall shall be considered a police officer. (Ord. No. 866, § 1.)

Article 23.36 Miscellaneous Driving Rules

Sections:

23.36.010 Driver not to obstruct intersection or crosswalk
23.36.020 Driving through funeral or other procession
23.36.030 Processions--Generally
23.36.040 Same--Funeral processions to be identified
23.36.050 Same--When permits required
23.36.060 Vehicles to be driven on right side of roadway; exceptions
23.36.070 Passing vehicles proceeding in opposite directions
23.36.080 Overtaking vehicle on left generally
23.36.090 When overtaking on right is permitted
23.36.100 Limitations on overtaking on left
23.36.110 Further limitations on driving on left of center of roadway
23.36.120 No-passing zones
23.36.130 Driving on roadways laned for traffic
23.36.140 Following too closely
23.36.150 Driving on divided highways
23.36.160 Entering or leaving restricted-access highways
23.36.170 Restrictions on use of controlled-access roadways
23.36.180 Vehicle entering roadway
23.36.190 Vehicle approaching or entering intersection
23.36.200 Overtaking and passing school bus
23.36.210 Unattended motor vehicle
23.36.220 Limitations on backing
23.36.230 Obstruction of driver's view or driving mechanism
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23.36.250 Coasting prohibited
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23.36.300 Moving heavy equipment at railroad grade crossings
23.36.310 Alteration of odometers, hour meters, etc.
23.36.320 Open bottle law; penalty
23.36.330 Permitting unauthorized minor to drive
23.36.340 Permitting unauthorized person to drive
23.36.350 Use of a wireless communications device prohibited
23.36.360 Use of an electronic communication device by minor prohibited

Section 23.36.010 Driver not to obstruct intersection or crosswalk

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed. (Ord. No. 866, § 1.)

Section 23.36.020 Driving through funeral or other procession

No driver of a vehicle (or motorman of a streetcar) shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when such vehicles are conspicuously designated as

required in this article. This provision shall not apply at intersections where traffic is controlled by traffic-control signals or police officers. (Ord. No. 866, § 1.)

Section 23.36.030 Processions--Generally

Each driver in a funeral or other procession shall drive as near to the right-hand edge of the roadway as practicable and shall follow the vehicle and as close as is practicable and safe. (Ord. No. 866, § 1.)

Section 23.36.040 Same--Funeral processions to be identified

A funeral composed of a procession of vehicles shall be identified as such by headlights burning in daylight hours on all vehicles in the procession, or by such other methods as may be determined and designated by the chief of police. (Ord. No. 866, § 1.)

Section 23.36.050 Same--When permits required

No funeral, procession or parade containing two hundred or more persons or fifty 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. (Ord. No. 866, § 1.)

Section 23.36.060 Vehicles to be driven on right side of roadway; exceptions

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

(a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:
  (1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
  (2) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, that 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;
  (3) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereto; or
  (4) Upon a roadway restricted to one-way traffic.

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn in an intersection or onto a private road or driveway.

(c) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the centerline 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 paragraph (2) of subsection (a) hereof. However, this subsection shall not be construed as prohibiting the crossing of the centerline in making a left turn into or from an alley, private road or driveway. (Ord. No. 866, § 1.)

Section 23.36.070 Passing vehicles proceeding in opposite directions

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

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. (Ord. No. 866, § 1.)

Section 23.36.080 Overtaking vehicle on left generally

The provisions of North Dakota Century Code, section 39-10-11, and all subsequent amendments, shall be and are hereby incorporated by reference in this chapter.

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:

(a) 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.

(b) 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. (Ord. No. 866, § 1.)

Section 23.36.090 When overtaking on right is permitted

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

(a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:
   (1) When the vehicle overtaken is making or about to make a left turn; or
   (2) Upon a roadway which unobstructed pavement of sufficient width for two or more lines of vehicles moving lawfully in the direction being traveled by the overtaking vehicle.

(b) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. Such movement shall not be made by driving off the roadway. (Ord. No. 866, § 1.)

Section 23.36.100 Limitations on overtaking on left

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

No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable, and in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within two hundred feet of any approaching vehicle. (Ord. No. 866, § 1.)

Section 23.36.110 Further limitations on driving on left of center of roadway

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

(a) No vehicle shall be driven to the left side of the roadway under the following conditions:
  (1) 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;
  (2) When approaching within one hundred feet of or traversing any intersection or railroad grade crossing; or
  (3) When the view is obstructed upon approaching within one hundred feet of any bridge, viaduct or tunnel.

(b) The foregoing limitations shall not apply upon a one-way roadway, nor under the conditions described in section 23.36.060, nor to the driver of a vehicle turning left into or from an alley, private road or driveway. (Ord. No. 866, § 1.)

Section 23.36.120 No-passing zones

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

(a) The state highway commissioner and local authorities are hereby authorized to determine those portions of any highway under their respective jurisdiction where overtaking and passing or driving on the left side of the roadway would be especially hazardous and may 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.

(b) Where signs or markings are in place to define a no-passing zone as set forth in subsection (a) hereof, 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.

(c) This section does not apply under the conditions described in section 23.36.060 nor to the driver of a vehicle turning left into or from an alley, private road or driveway. (Ord. No. 866, § 1.)

Section 23.36.130 Driving on roadways laned for traffic

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

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:

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

(b) Upon a roadway which is divided into three lanes and provides for two-way traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane 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.

(c) 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.

(d) 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. (Ord. No. 866, § 1.)

Section 23.36.140 Following too closely

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

(a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(b) The driver of any truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another truck or motor vehicle drawing another vehicle shall, whenever conditions permit leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger; except, that this shall not prevent a truck or motor vehicle drawing another vehicle from overtaking and passing any vehicle or combination of vehicles.

(c) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions. (Ord. No. 866, §1.)

Section 23.36.150 Driving on divided highways

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

Whenever any highway has been divided into two or more roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway, unless directed or permitted to use another roadway by official traffic-control devices or police officers. No vehicle shall be driven over, across or within any such dividing space, barrier or section, except through an opening in such physical barrier or dividing section or space at a crossover or intersection as established by public authority, unless such crossing is specifically prohibited and such prohibition is indicated by appropriate traffic-control devices. (Ord. No. 866, § 1.)

Section 23.36.160 Entering or leaving restricted-access highways

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

No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority. (Ord. No. 866, § 1.)

Section 23.36.170 Restrictions on use of controlled-access roadways

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

The commissioner may by order, and the city may by ordinance, with respect to any controlled-access roadway under their respective jurisdictions, prohibit the use of any such roadway by any class or kind of traffic which is found incompatible with the normal and safe movement of traffic.

The state highway commissioner or the city, as the case may be, shall erect and maintain official signs on the controlled-access roadway on which such regulations are applicable and when so erected no person shall disobey the restrictions stated on such signs. (Ord. No. 866, § 1.)

Section 23.36.175 Closing road because of hazardous conditions – Posting of official traffic-control devices – Entering closed road prohibited.

The provisions of North Dakota Century Code, section 39-10-21.1, and all subsequent amendments, shall and are hereby incorporated by reference in this section.

An individual, while operating a motor vehicle, may not knowingly enter a road closed which is posted with an appropriate traffic-control device at the point of entry. Violation of this section is punishable by a fine as set forth in NDCC 39-06.1-06(2)(g).

Section 23.36.180 Vehicle entering roadway

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

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. (Ord. No. 866, § 1.)

Section 23.36.190 Vehicle approaching or entering intersection

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

(a) When two vehicles approach or enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(b) The right-of-way rule declared in this section is modified at through highways and otherwise as stated in this chapter. (Ord. No. 866, § 1.)

Section 23.36.200 Overtaking and passing school bus

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

(a) The driver of a vehicle meeting or overtaking from either direction any school bus stopped on the highway shall stop the vehicle before reaching such school bus when there is in operation on such school bus the flashing red lights specified in North Dakota Century Code, section 39-21-18, and such driver shall not proceed until such school bus resumes motion or he is signaled by the school bus driver to proceed or the flashing red lights are no longer actuated.

(b) Every school bus shall bear upon the front and rear thereof plainly visible signs containing the words "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" shall be covered or concealed.

(c) Every school bus shall be equipped with red visual signals meeting the requirements of North Dakota Century Code, section 39-21-18, which may be actuated by the driver of such school bus whenever, but only whenever, such vehicle is stopped on the highway for the purpose of receiving or discharging school children. A school bus driver shall not actuate such special visual signals:

(1) On city streets on which the receiving or discharging of school children is prohibited by ordinance;

(2) At intersections or other places where traffic is controlled by traffic-control signals or police officers; or

(3) In designated school bus loading areas where the bus is entirely off the roadway.

(d) 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. (Ord. No. 866, § 1.)

Section 23.36.210 Unattended motor vehicle

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

No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway. (Ord. No. 866, § 1.)

Section 23.36.220 Limitations on backing

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

(a) The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.

(b) The driver of a vehicle shall not back the same upon any shoulder or roadway of any controlled-access highway. (Ord. No. 866, § 1.)

Section 23.36.230 Obstruction of driver's view or driving mechanism

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

(a) No person shall drive a vehicle when it is so loaded, or when there are in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle. (Ord. No. 866, § 1.)

Section 23.36.240 Opening and closing vehicle doors

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

No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers. (Ord. No. 866, § 1.)

Section 23.36.250 Coasting prohibited

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

(a) The driver of any motor vehicle, when traveling upon a down grade, shall not coast with the gears or transmission of such vehicle in neutral.

(b) The driver of a truck or bus, when traveling upon a downgrade, shall not coast with the clutch disengaged. (Ord. No. 866, § 1.)

Section 23.36.260 Following fire apparatus prohibited

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

The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet or stop such vehicle within five hundred feet of any fire apparatus stopped in answer to a fire alarm. (Ord. No. 866, § 1.)

Section 23.36.270 Crossing fire hose

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

No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, private road or driveway to be used at any fire or alarm of fire, without consent of the fire department official in command. (Ord. No. 866, § 1.)

Section 23.36.280 Garbage, glass, etc., on highways prohibited

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

(a) 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.

(b) 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.

(c) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass of other injurious substance dropped upon the highway from such vehicle. (Ord. No. 866, § 1.)

Section 23.36.290 Driving through safety zone prohibited

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

No vehicle shall at any time be driven through or within a safety zone. (Ord. No. 866, § 1.)

Section 23.36.300 Moving heavy equipment at railroad grade crossings

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

(a) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller or any equipment or structure having a normal operating speed of ten 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.

(b) Before making any such crossing, the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen feet nor more than fifty 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 shall not proceed until the crossing can be made safely.

(c) No such crossing shall be made when warning is given by automatic signal or crossing gates or flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is

provided by the railroad, movement over the crossing shall be under his direction. (Ord. No. 866, § 1.)

Section 23.36.310 Alteration of odometers, hour meters, etc.

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

Any person altering a motor vehicle odometer or other mileage recorder, hour meter, tachometer or other hour recorder for the purpose of deceiving another shall be guilty of an infraction. (Ord. No. 866, § 1.)

Section 23.36.320 Open bottle law; penalty

(a) A person may not drink or consume alcoholic beverages, as defined in NDCC section 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 his possession on his person while in or on a private motor vehicle upon a public highway or in an area used principally for public parking, any bottle or receptacle containing 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, as defined by subsection 25 of NDCC section 39-01-01, if the consumption or possession occurs in the area of the house car used as sleeping or living quarters and that area is separated from the driving compartment by a solid partition, door, curtain, or some similar means of separation; however, consumption is not authorized while the house car is in motion. Any person violating this subsection must be assessed a fee of one hundred dollars; 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.

(b) Subsection 1 does not apply to 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. (Ord. No. 866, § 1; Ord. No. 1080, §§ 1, 2; Ord. No. 1202, § 9.)

Section 23.36.330 Permitting unauthorized minor to drive

No person shall cause or knowingly permit his child or ward under the age of eighteen years to drive a motor vehicle upon any highway when such minor is not authorized under the laws of this state. (Ord. No. 866, § 1.)

Section 23.36.340 Permitting unauthorized person to drive

No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized under the laws of this state. (Ord. No. 866, § 1.)

Section 23.36.350 Use of a wireless communications device prohibited.

1. The operator of a motor vehicle that is part of traffic may not use a wireless communications device to compose, read, or send an electronic message.
2. Under this section:
   a. "Electronic message" means a self-contained piece of digital communication that is designed or intended to be transmitted between physical devices. The term includes e-mail, a text message, an instant message, a command or request to access a world wide web page, or other data that uses a commonly recognized electronic communications protocol. The term does not include:
      (1) Reading, selecting, or entering a telephone number, an extension number, or voice mail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a telephone or cellular phone call or using voice commands to initiate or receive a telephone or cellular phone call;
      (2) Inputting, selecting, or reading information on a global positioning system device or other navigation system device;
      (3) Using a device capable of performing multiple functions, such as fleet management systems, dispatching devices, smart phones, citizen band radios, music players, or similar devices, for a purpose that is not otherwise prohibited;
      (4) Voice or other data transmitted as a result of making a telephone or cellular phone call; or
      (5) Data transmitted automatically by a wireless communication device without direct initiation by an individual.
   b. "Traffic" means operation of a motor vehicle while in motion or for the purposes of travel on any street or highway and includes a temporary stop or halt of motion, such as at an official traffic-control signal or sign. The term does not include a motor vehicle that is lawfully parked.
3. This section does not apply if a wireless communications device is used for obtaining emergency assistance to report a traffic accident, medical emergency, or serious traffic hazard or to prevent a crime about to be committed, in the reasonable belief that an individual's life or safety is in immediate danger, or in an authorized emergency vehicle while in the performance of official duties. (Ord. No. 1425, § 1.)

Section 23.36.360 Use of an electronic communication device by minor prohibited.

An individual at least sixteen and under eighteen years of age who has been issued a class D license may not operate an electronic communication device to talk, compose, read, or send an electronic message while operating a motor vehicle that is in motion unless the sole purpose of operating the device is to obtain emergency assistance, to prevent a crime about to be committed, or in the reasonable belief that an individual's life or safety is in danger. (Ord. No. 1425, § 2.)

Article 23.40 Pedestrians' Rights and Duties

Sections:

23.40.010 Obedience to traffic-control devices and traffic regulations
23.40.020 Right-of-way in crosswalks
23.40.030 Crossing other than at crosswalks
23.40.040 Drivers to exercise due care
23.40.050 Pedestrians to use right half of crosswalks
23.40.060 Use of roadways
23.40.070 Right-of-way on sidewalks
23.40.080 Pedestrians to yield to authorized emergency vehicles
23.40.090 Blind pedestrian to have right-of-way
23.40.100 Pedestrians under influence of alcohol or drugs
23.40.110 Bridge and railroad signals
23.40.120 Soliciting rides or business

Section 23.40.010 Obedience to traffic-control devices and traffic regulations

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

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

(b) Pedestrians shall be subject to traffic and pedestrian-control signals as provided for in sections 23.16.030 and 23.16.050. (Ord. No. 866, § 1.)

Section 23.40.020 Right-of-way in crosswalks

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

(a) 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.

(b) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close as to constitute an immediate hazard.

(c) Subsection (a) of this section shall not apply under the conditions in subsection (b) of section 23.44.030.

(d) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the highway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle. (Ord. No. 866, § 1.)

Section 23.40.030 Crossing other than at crosswalks

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

(a) 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.

(b) 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.

(c) Between adjacent intersections at which traffic-control devices are in operation pedestrians shall not cross at any place except in a marked crosswalk.

(d) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic control devices pertaining to such crossing movements. (Ord. No. 866, § 1.)

Section 23.40.040 Drivers to exercise due care

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

Notwithstanding the foregoing provisions of this chapter, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway. (Ord. No. 866, § 1.)

Section 23.40.050 Pedestrians to use right half of crosswalks

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

Pedestrians shall move, whenever practicable, upon the right half of crosswalks. (Ord. No. 866, § 1.)

Section 23.40.060 Use of roadways

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

(a) 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.

(b) 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.

(c) 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.

(d) 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. (Ord. No. 866, § 1.)

Section 23.40.070 Right-of-way on sidewalks

The provisions of North Dakota Century Code, section 39-10-33.1, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

The driver of a vehicle shall yield the right-of-way to any pedestrian on sidewalk. (Ord. No. 866, § 1.)

Section 23.40.080 Pedestrians to yield to authorized emergency vehicles

The provisions of North Dakota Century Code, section 39-10-33.2, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

(a) 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.

(b) This section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway nor from the duty to exercise due care to avoid colliding with any pedestrian. (Ord. No. 866, § 1.)

Section 23.40.090 Blind pedestrian to have right-of-way

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

The driver of a vehicle shall yield the right-of-way to any blind pedestrian carrying a clearly visible white cane or accompanied by a guide dog. (Ord. No. 866, § 1.)

Section 23.40.100 Pedestrians under influence of alcohol or drugs

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

A pedestrian who is under the influence of alcohol or any drug to a degree which renders himself a hazard shall not walk or be upon a roadway. (Ord. No. 866, § 1.)

Section 23.40.110 Bridge and railroad signals

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

No pedestrian shall pass through, around, over or under any crossing gate or barrier at a railroad grade crossing or bridge while such gate or barrier is closed or is being opened or closed. (Ord. No. 866, § 1.)

Section 23.40.120 Soliciting rides or business

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

(a) No person shall stand in a roadway for the purpose of soliciting a ride.

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

(c) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway. (Ord. No. 866, § 1.)

Article 23.44 Motorcycles

Sections:

23.44.010 Applicability of traffic laws
23.44.020 Riding on motorcycles
23.44.030 Operating motorcycles on roadways laned for traffic
23.44.040 Clinging to other vehicles
23.44.050 Footrests
23.44.060 Equipment for riders
23.44.070 Other applicable law

Section 23.44.010 Applicability of traffic laws

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

Every person operating a motorcycle shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under this chapter, except as to special regulations in this article and except as to those provisions of this chapter which by their nature can have no application. (Ord. No. 866, § 1.)

Section 23.44.020 Riding on motorcycles

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

(a) A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the motorcycle at the rear or side of the operator.

(b) A person shall ride upon a motorcycle only while sitting astride the seat, facing forward, with one leg on each side of the motorcycle.

(c) No person shall operate a motorcycle while carrying any package, bundle or other article which prevents him from keeping both hands on the handlebars.

(d) No operator shall carry any person, nor shall any person ride in a position that will interfere with the operation or control of the motorcycle or the view of the operator. (Ord. No. 866, § 1.)

Section 23.44.030 Operating motorcycles on roadways laned for traffic

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

(a) All motorcycles are entitled to a full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This subsection shall not apply to the operation of motorcycles two abreast in a single lane as authorized in subsection (d) hereof.

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

(c) No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

(d) Motorcycles shall not be operated more than two abreast in a single lane.

(e) Subsections (b) and (c) above shall not apply to police officers in the performance of their official duties. (Ord. No. 866, § 1.)

Section 23.44.040 Clinging to other vehicles

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

No person riding upon a motorcycle shall attach himself or the motorcycle to any other vehicle on a roadway. (Ord. No. 866, § 1.)

Section 23.44.050 Footrests

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

Any motorcycle carrying a passenger, other than in a sidecar or enclosed cab, shall be equipped with foot rests for such passengers. (Ord. No. 866, § 1.)

Section 23.44.060 Equipment for riders

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

(a) No person under the age of eighteen years shall operate or ride upon a motorcycle unless protective head gear, which complies with standards established by the motor vehicle department, is being worn on the head of the operator and rider, except when participating in a lawful parade. If the operator of a motorcycle is required to wear protective head gear, any passenger must also wear protective head gear regardless of the age of the passenger.

(b) No person shall operate a motorcycle within the city limits when such person has a passenger upon such motorcycle under the age of fourteen years unless such passenger or person who rides upon such motorcycle wears protective head gear which complies with standards established by the motor vehicle department, except when participating in a lawful parade.

(c) This section shall not apply to persons riding within an enclosed cab or on a golf cart. (Ord. No. 866, § 1.)

Section 23.44.070 Other applicable law

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

All of the provisions of article 23.80 of this chapter derived from North Dakota Century Code, chapter 39-06.1, pertaining to the disposition of traffic offenses, shall apply to this article. (Ord. No. 866, § 1.)

Article 23.46 Motorized Skateboards and Motorized Scooters

Sections:

23.46.010. Motorized skateboard or motorized scooter--definition.
23.46.020. Application of traffic laws.
23.46.030. Responsibility of parents, guardians and custodians.
23.46.040. Prohibited operation.
23.46.050. General operating restrictions.
23.46.060. Operating restrictions on roadway.
23.46.070. Required safety equipment.
23.46.080. License--Required.
23.46.100. Violations.

Section 23.46.010. Motorized skateboard or motorized scooter--definition.

Motorized skateboard or motorized scooter means a self-propelled device which has a motor or engine, a deck on which a person may ride and at least two (2) wheels in contact with the ground and which is not otherwise defined in NDCC §39-01-01(38), as amended, as a "motor vehicle." (Ord. No. 1281 § 1.)

Section 23.46.020. Application of traffic laws.

(a) All traffic laws shall apply to persons riding on motorized skateboards or motorized scooters. Every person operating a motorized skateboard or motorized scooter 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 the laws of this state declaring rules of the road applicable to vehicles, or by the traffic regulations of this city applicable to the driver of a vehicle, except as to special regulations in this chapter and except as to those provisions which by their nature can have no application.

(b) This section shall not be construed to require the licensing or registration of motorized skateboards or motorized scooters, or the carrying of insurance covering accidents involving motorized skateboards or motorized scooters.

(c) It is unlawful for any person operating a motorized skateboard or motorized scooter not to obey the instructions of official traffic-control signals, signs and other traffic direction devices applicable to vehicles, unless otherwise directed by a police officer. (Ord. No. 1281 §1.)

Section 23.46.030. Responsibility of parents, guardians and custodians.

No person shall, if a parent, guardian or custodian of a child, authorize or knowingly permit any child to violate this article. (Ord. No. 1281 §1.)

Section 23.46.040. Prohibited operation.

No person shall operate a motorized skateboard or motorized scooter:

(1) On any sidewalk in the city, except for use in crossing such sidewalk by the most direct route to gain access to any public or private road or driveway;

(2) In any city parking structure or city park, except for use on public roadways within such park;

(3) On any public property that has been posted or designed by the owner of such property as an area prohibiting "skateboards";

(4) On any public roadway consisting of a total of four (4) or more marked traffic lanes, or having an established speed limit of greater than twenty-five (25) miles per hour; or

(5) On any private property of another, or any public property which is not held open to the public for vehicle use, without the written permission of the owner, the person entitled to

immediate possession of the property, or the authorized agent of either. (Ord. No. 1281 §1.)

Section 23.46.050. General operating restrictions.

(a) No child under the age of fourteen (14) shall operate a motorized skateboard or motorized scooter.

(b) No person shall operate a motorized skateboard or motorized scooter in excess of the posted speed limit or at a speed greater than is reasonable and prudent under the circumstances then existing.

(c) The operator of a motorized skateboard or motorized scooter, approaching a sidewalk, bicycle path, bicycle lane or multi-use path in order to cross such, shall yield the right-of-way to all other users.

(d) Motorized skateboards or motorized scooters may be operated on a path or lane that is designated as a bicycle path or lane by state or local authorities. However, motorized skateboard or motorized scooter operators on said bicycle path or lane shall yield at all times to other users.

(e) No operator shall allow passengers when the motorized skateboard or motorized scooter is in operation or motion.

(f) No person operating or riding upon a motorized skateboard or motorized scooter shall attach themselves in any manner to any other vehicle.

(g) No person shall operate a motorized skateboard or motorized scooter while carrying any package, bundle or article which prevents the operator from keeping both hands upon the steering mechanism at all times.

(h) No person, other than the owner, shall operate a motorized skateboard or motorized scooter without the written permission of the owner.

(i) No person shall operate a motorized skateboard or motorized scooter that has been structurally altered from the original manufacturer's design.

(j) No person shall operate a motorized skateboard or motorized scooter in a crosswalk. (Ord. No. 1281 §1.)

Section 23.46.060. Operating restrictions on roadway.

(a) A person operating a motorized skateboard or motorized scooter on a roadway at less than the normal speed of traffic, at the time and place and under the then existing conditions, shall ride as close as practicable to the right-hand curb or edge of the roadway, except under the following conditions and when the movement can be made safely:

  (1) If overtaking and passing a bicycle or vehicle proceeding in the same direction;

  (2) In preparing for a left turn at an intersection or into a private roadway or driveway;

  (3) If reasonably necessary to avoid hazardous conditions ahead in the roadway; or

  (4) If the lane in which the person is operating the motorized skateboard or motorized scooter is too narrow for a motorized skateboard or motorized scooter and a bicycle or another vehicle to travel safely side by side within the lane.

(b) No operator of a motorized skateboard or motorized scooter shall transport extra fuel in a separate container or alter the fuel reservoir from the original manufacturer's design. This includes the prohibition of physically attaching fuel packs or containers to the operator's person.

(c) Persons operating motorized skateboards or motorized scooters on the roadway shall not ride more than two (2) abreast. (Ord. No. 1281 §1.)

Section 23.46.070. Required safety equipment.

(a) No person shall operate a motorized skateboard or motorized scooter without a head lamp emitting a beam and a red rear reflector anytime from sunset to sunrise, or any other time when there is not sufficient light to render clearly discernible, persons or vehicles on the roadway.

  (1) A head lamp shall emit a white light and be visible from the front at a distance no less than five hundred (500) feet;

(2) A rear red reflector shall be visible when illuminated by a vehicle head lamp from a distance of not less than three hundred (300) feet; and

(3) A rear red lamp visible from a distance of five hundred (500) feet to the rear may be used in addition to the rear red reflector.

(b) No person shall operate a motorized skateboard or motorized scooter unless it is equipped with a brake which enables the operator to make a braked wheel(s) skid on pavement.

(c) Any operator of a motorized skateboard or motorized scooter under the age of eighteen (18) years being operated on a roadway shall at all times wear a protective helmet on his or her head in an appropriate and safely secured manner. The helmet shall meet minimum standards of testing and safety inspected by the bicycle industry.

(d) No person shall operate a motorized skateboard or motorized scooter without wearing footwear. The footwear must have a sole and completely cover the feet and toes. (Ord. No. 1281 §1.)

Section 23.46.080. License--Required.

No person who resides within the City shall ride a motorized skateboard or motorized scooter on any street or upon any public path set aside for use of bicycles unless such motorized skateboard or motorized scooter has been licensed and a license plate or decal is attached thereto, as provided in Chapter 6 regarding bicycles. (Ord. No. 1281 §1.)

Section 23.46.100. Violations.

Violations of any of the sections of this article concerning motorized skateboards or motorized scooters are designated as civil traffic violations and shall be prosecuted in the same manner as provided by law for other civil traffic violations. (Ord. No. 1281 §1.)

Article 23.48 Bicycles

Sections:

23.48.010 Effect of regulations
23.48.020 Applicability of traffic laws
23.48.030 Obedience to traffic-control devices
23.48.040 Riding on sidewalks
23.48.050 Riding on roadways and bicycle paths
23.48.060 Clinging to vehicles
23.48.070 Carrying articles
23.48.080 Lamps and other equipment
23.48.090 Riding on bicycles; motorized bicycles; age of operator
23.48.100 Parking
23.48.110 Penalties
23.48.120 Point system not applicable

Section 23.48.010 Effect of regulations

(a) It is a violation of this article for any person to do any act forbidden or fail to perform any act required in this article.

(b) The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this article.

(c) Those regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein. (Ord. No. 866, § 1.)

Section 23.48.020 Applicability of traffic laws

Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except as to special regulations in this article and except as to those provisions of this chapter which by their nature can have no application. (Ord. No. 866, § 1.)

Section 23.48.030 Obedience to traffic-control devices

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

(b) Whenever authorized signs are erected indicating that no right, left or U-turn is permitted, no person operating a bicycle shall disobey the direction of any such sign, except where such person dismounts from the bicycle to make any such turn, in which event such person shall then obey the regulations applicable to pedestrians. (Ord. No. 866, § 1.)

Section 23.48.040 Riding on sidewalks

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

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

(c) 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. (Ord. No. 866, § 1.)

Section 23.48.050 Riding on roadways and bicycle paths

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

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

(b) Persons riding bicycles upon a roadway shall not ride more than one abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

(c) Wherever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway. (Ord. No. 866, § 1.)

Section 23.48.060 Clinging to vehicles

The provisions of North Dakota Century Code, section 39-10.1-04, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

No person riding upon any bicycle, coaster, rollerskates, sled or toy vehicle shall attach the same or himself to any vehicle upon a roadway, except a sled being pulled by a snowmobile. (Ord. No. 866, § 1.)

Section 23.48.070 Carrying articles

The provisions of North Dakota Century Code, section 39-10.1-06, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

No person operating a bicycle shall carry any package, bundle or article which prevents the driver from keeping at least one hand upon the handlebars. (Ord. No. 866, § 1.)

Section 23.48.080 Lamps and other equipment

The provisions of North Dakota Century Code, section 39-10.1-07, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

Every bicycle, when in use at night, shall be equipped with a lamp on the front which shall emit a light visible from a distance of at least five hundred feet to the front and with a red reflector on the rear of a type approved by the motor vehicle department. A lamp emitting a red light visible from a distance of five hundred feet to the rear may be used in addition to the red reflector. (Ord. No. 866, § 1.)

Section 23.48.090 Riding on bicycles; motorized bicycles; age of operator

The provisions of North Dakota Century Code, sections 39-10.1-03 and 39-10.1-07, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

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

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

(c) No person under fourteen years of age may operate a motorized bicycle. (Ord. No. 866, § 1.)

Section 23.48.100 Parking

No person shall park a bicycle upon a street other than upon the roadway against the curb, upon the sidewalk in a rack to support the bicycle, against a building or at the curb, in such manner as to afford the least obstruction to pedestrian traffic. (Ord. No. 866, § 1.)

Section 23.48.110 Penalties

Every person convicted of a violation of any provision of this article shall be punished by a fine of not more than fifty dollars or by impoundment of such person's bicycle for a period not to exceed ninety days or by any combination thereof. (Ord. No. 866, § 1.)

Section 23.48.120 Point system not applicable

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

Any violation of the provisions of this chapter, or any moving violation as defined in section 23.80.090, when committed on a bicycle as defined in section 23.04.010, shall not be cause for the licensing authority to assess points against the driving record of the violator pursuant to North Dakota Century Code, section 39-06.1-10. Any other legally authorized penalty for a criminal traffic offense or noncriminal traffic violation shall be applicable to bicyclists. (Ord. No. 866, § 1.)

Article 23.52 Angle Parking

Sections:

23.52.010 Generally

Section 23.52.010 Generally

The city engineer or other person authorized by the governing body may mark or sign streets upon which angle parking will be permitted (other than federal aid or state highways). Upon those streets which have been signed or marked for angle parking, no person shall park or stand a vehicle other than at the angle to the curb or edge of roadway indicated by such signs or markings. (Ord. No. 866, § 1.)

Article 23.56 Stopping, Standing or Parking Generally

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Section 23.56.010 Outside of business or residence districts

The provisions of North Dakota Century Code, section 39-10-47, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

(a) Upon any highway outside of a business or residence district no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practicable to stop, park or so leave such vehicle off such part of such highway, but in every event an obstructed width of the highway of not less than twelve feet opposite a standing vehicle shall be left for the free passage of the vehicles and a clear view of such stopped vehicles shall be available from a distance of two hundred feet in each direction upon such highway.

(b) This section and sections 23.56.050 and 23.56.060 shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position. (Ord. No. 866, § 1.)

Section 23.56.020 Removal of illegally stopped vehicles--Authority of police officers

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

(a) Whenever any police officer finds a vehicle standing upon a highway in violation of any of the provisions of section 23.56.010, 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.

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

(c) 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:

(1) A report has been made that such vehicle has been stolen or taken without the consent of its owner;

(2) The person or persons in charge of such vehicle are unable to provide for its custody or removal;

(3) 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; or

(4) Whenever a snow emergency condition is declared and parking is prohibited in accordance with sections 23.56.190 through 23.56.260 and 23.56.350. (Ord. No. 866, § 1.)

Section 23.56.030 Same--Generally

Whenever a vehicle remains parked or left standing on any street, alley or public way where such parking is prohibited by this Code or other ordinance of the city, such vehicle shall be removed by or under the direction of the police department to some location selected by the police department, until the costs of such removal and storage have been paid and until the owner or legal possessor of such automobile, truck or vehicle properly identifies himself as being the person entitled to the possession of such vehicle. (Ord. No. 866, § 1.)

Section 23.56.040 Same--Recovery; costs; disposal of unclaimed vehicles

It shall be unlawful for any person to take or attempt to take such vehicle from the place where stored, as provided by sections 23.56.020 and 23.56.030, until it is released by the police department and until the costs of such removal and storage have been paid. The cost of removal of such vehicle shall be the actual cost to the city

of such removal; in addition there shall be further taxed as costs the amount of fifty cents per day for storage of such vehicle by the police department.

If such vehicle is not claimed within one month after removal by the police department, such vehicle may be disposed of or sold in the manner provided by law for the disposal or sale of unclaimed motor vehicles. (Ord. No. 866, § 1.)

Section 23.56.050 Prohibited in certain areas

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

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

(a) On a sidewalk;

(b) From a perpendicular line from the edge of the driveway to the curb of a public or private driveway and for the purposes of this subsection "driveway" means every way or place in private ownership and used for vehicular traffic by the owner and those having express or implied permission from the owner, but not by other persons;

(c) Within an intersection;

(d) From a perpendicular line from the hydrant to the curb and then extending five feet in each direction from this point along the curb or roadway;

(e) On a crosswalk;

(f) Within ten feet of a crosswalk at an intersection;

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

(h) Between a safety zone and the adjacent curb or within fifteen feet of points on the curb immediately opposite the ends of a safety zone, unless the state highway department or the city indicates a different length by signs or markings;

(i) Within fifteen feet of the nearest rail of a railroad crossing;

(j) Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of such entrance when properly signposted;

(k) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;

(l) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(m) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;

(n) At any place where official signs prohibit stopping;

(o) At designated firelanes appropriately marked; or

(p) On the public right-of-way except the street and that portion improved for driveway use so long as the vehicle so parked does not extend over the curbline or the edge of the sidewalk, or as allowed by a temporary right of way occupancy permit.

No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful. (Ord. No. 866, § 1; Ord. No. 1030, §§ 1, 2; Ord. No. 1196, § 1.)

Section 23.56.060 Additional parking regulations

The provisions of North Dakota Century Code section 39-10-50 and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

(a) Except as otherwise provided in this section, every vehicle stopped or parked upon a two-way roadway shall be so stopped or parked with the right-hand wheels of such vehicle parallel to

and within twelve inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder.

(b) Except where otherwise provided by ordinance, every vehicle stopped or parked upon a one-way roadway shall be so stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right-hand wheels within twelve inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder, or with its left-hand wheels within twelve inches of the left-hand curb or as close as practicable to the left edge of the left-hand shoulder.

(c) The city may permit angle parking on a roadway; except, that angle parking shall not be permitted on any federal-aid or state highway without first obtaining the written authorization of the state highway commissioner.

(d) The state highway department with respect to highways under its jurisdiction may place official traffic-control devices prohibiting or restricting the stopping, standing or parking of vehicles on any highway where in its opinion such stopping, standing or parking is dangerous to those using the highway or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic thereon. No person shall stop, stand or park any vehicle in violation of the restrictions indicated by such devices.

(e) No person shall park, allow to stand or stop a vehicle so as to constitute or precipitate a fire hazard.

(f) No motor vehicle, as described in North Dakota Century Code section 39-01-01 may be parked within seventy-five feet of any intersection, if said motor vehicle is over seven feet in height or six feet six inches in width. For purposes of this subsection, the distance from the intersection shall be measured from a point at which the extensions of the lateral curblines intersect. (Ord. No. 866, § 1; Ord. No. 1097, § 2.)

Section 23.56.070 Where prohibited at all times

When signs are erected giving notice thereof, it, shall be unlawful for any person to park or leave standing any motor vehicle, either attended or unattended. (Ord. No. 866, § 1.)

Section 23.56.080 Parking of trucks, trailers, semitrailers, delivery cars and other commercial vehicles

No truck-tractor, trailer, semitrailer, delivery car, service car or other commercial vehicle shall be parked on any street, avenue, boulevard, public property or alley in any residential district of the city for a period longer than one hour; provided, that such vehicles loading or unloading cargo may be parked on the streets, avenues, boulevards, public property or alleys long enough to complete their loading or unloading; provided, further, that such restrictions shall not apply to any truck or service car in use on any repair, maintenance or construction project in progress on any such street, avenue, boulevard, public property or alley. In no case shall any semitruck trailer be parked on any street, avenue, boulevard, public property or alley in any district of the city while such semitruck trailer is disconnected from the tractor, nor shall any truck, trailer, semitrailer, delivery car, service car or other commercial vehicle be parked on any street, avenue, boulevard, public property or alley in any district of the city between the hours of 10:00 P.M. and 6:00 A.M. Vehicles as identified in this section containing any flammable and/or hazardous substances, as defined by state law, are restricted to off-street parking in areas zoned as I (industrial). A violation of this section shall be punishable by the general penalty provided by section 11.12.010 of this Code. (Ord. No. 891, § 1; Ord. No. 902, § 1; Ord. No. 954, § 1.)

Section 23.56.090 Parking for certain purposes prohibited

No person shall park a vehicle upon any roadway for the principal purpose of:

(a) Displaying such vehicle for sale.
(b) Washing, greasing or repairing such vehicle except repairing such vehicle necessitated by emergency. (Ord. No. 866, § 1.)

Section 23.56.100 Stopping, etc., in congested or hazardous places

The city engineer or other person designated by the governing body is hereby authorized to determine and designate by proper signs places in which the stopping, standing or parking of vehicles would create an especially hazardous condition or could cause unusual delay to traffic.

When official signs are erected at hazardous or congested places as authorized herein, no person shall stop, stand or park a vehicle in any such designated place. (Ord. No. 866, § 1.)

Section 23.56.110 Parking, etc., in alleys

No person shall park a vehicle within an alley, nor shall he stop a commercial vehicle so as to leave available less than twelve feet of the width thereof for free movement of vehicular traffic, nor shall he stop in such position as to block the driveway entrance to any abutting property. (Ord. No. 866, § 1.)

Section 23.56.120 Parking adjacent to schools

(a) The city traffic engineer or authorized person may erect signs indicating no parking upon either or both sides of any street adjacent to any school property when such parking would, in his opinion, interfere with traffic or create a hazardous situation.
(b) When official signs are erected indicating no parking upon either side of a street adjacent to any school property as authorized herein, no person shall park a vehicle in any such designated place. (Ord. No. 866, § 1.)

Section 23.56.130 Prohibited on narrow streets

(a) The city traffic engineer or authorized person may erect signs indicating no parking upon any street when the width of the roadway does not exceed twenty feet, or upon one side of a street as indicated by such signs when the width of the roadway does not exceed thirty feet.
(b) When official signs prohibiting parking are erected upon narrow streets as authorized herein, no person shall park a vehicle upon any street in violation of any such sign. (Ord. No. 866, § 1.)

Section 23.56.140 One-way streets

The city traffic engineer or authorized person may erect signs upon the left-hand side of any one-way street to prohibit the standing or parking of vehicles, and when such signs are in place, no person shall stand or park a vehicle upon such left-hand side in violation of any such sign. (Ord. No. 866, § 1.)

Section 23.56.150 One-way roadways

In the event a highway includes two or more separate roadways and traffic is restricted to the direction upon any such roadways, no persons shall stand or park a vehicle upon the left-hand side of such one-way roadway unless signs are erected to permit such standing or parking. The city traffic engineer is authorized to determine when standing or parking may be permitted upon the left-hand side of any such one-way roadway and to erect signs giving notice thereof. (Ord. No. 866, § 1.)

Section 23.56.160 Parking privileges for physically handicapped; certificate; revocation of privilege

The provisions of NDCC section 39-01-15, and all subsequent amendments, are hereby incorporated by reference in this section.

(a) Any mobility impaired person who displays prominently upon an automobile parked by that person or under that person's direction and for the person's use, the distinguishing certificate specified in subsection (c) is entitled to courtesy in the parking of the automobile. Provided, however, that any municipality may, by ordinance, prohibit parking on any street or highway for the purpose of creating a fire lane, or to provide for the accommodation of heavy traffic during morning and afternoon rush hours, and the privileges extended to such impaired persons do not apply on streets or highways where and during such times as parking is prohibited.

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

(c) The registrar of motor vehicles may issue, for a fee of three dollars per year or part of a year, a special identifying certificate to any mobility impaired applicant upon submission by the applicant of a completed application and a written statement issued by a qualified physician to the registrar that the applicant is a mobility impaired person within the criteria of subsection (b). The application must include the information required by the registrar. The physician's statement must describe how the impairment limits the applicant's mobility and daily life functions of the applicant. The certificate is valid for a period, not to exceed three years, as determined by the registrar. A physician who provides a false statement that a person is mobility impaired for the purpose of that person obtaining a certificate under this subsection is guilty of an infraction for which a minimum fine of one hundred dollars must be imposed. A certificate issued under this subsection must be at least five and one-half inches (13.97 centimeters) in height and weight and one-half inches (21.59 centimeters) in width and must bear, in blue on white, the internationally accepted symbol of access for the mobility impaired.

The certificate must bear the expiration date and registration number assigned by the registrar. The registrar shall adopt rules governing the issuance of the certificate. A temporary certificate, valid for an initial period not to exceed three months, may be issued by the registrar for a fee of three dollars upon application supported by a physician's statement. The temporary certificate may be extended an additional period, not to exceed three months, upon application supported by a physician's statement that the extension is warranted. The registrar shall determine the form and size of the temporary certificate.

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

(e) If a law enforcement officer finds that the certificate is being improperly used, the officer may report to the registrar of motor vehicles any such violation and the registrar may, in the registrar's discretion, remove the privilege. Any person who is not mobility impaired and who

exercises the privileges granted a mobility impaired person under subsection (a) is guilty of an infraction for which a fine of one hundred dollars must be imposed.

(f) Whenever any public or private agency or authority designates parking spaces for use by motor vehicles operated by mobility impaired persons, those reserved spaces shall be indicated by blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space. In addition to blue paint, the spaces reserved must also be indicated by official signs approved by the commissioner bearing the internationally accepted symbol of access for the mobility impaired which indicate, through the use of arrows, the total width of the reserved area. The sign must indicate that unauthorized use of the space is a nonmoving violation for which a fine one hundred dollars must be imposed. For particular events, a public or private agency may reserve additional parking spaces for use by motor vehicles operated by mobility impaired persons. In that case, the temporarily reserved spaces must be indicated by signs or other suitable means. A sign indicating that a space is reserved for the mobility impaired and blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space, unless the space is a temporary mobility impaired parking space is sufficient basis for the enforcement of this section. A law enforcement officer may enforce this section in any parking lot or parking facility whether publicly or privately owned.

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

(h) Any motor vehicle licensed in another state which displays a special authorized vehicle designation issued by the licensing authority of that state for vehicles used in the transportation of mobility impaired persons must be accorded the same privilege provided in this section for similar vehicles licensed in this state if the laws of the other state provide the same privileges to North Dakota motor vehicles displaying the special identifying certificate authorized in this section. (Ord. No. 866, § 1; Ord. No. 1015, § 1; Ord. No. 1067, § 1.)

Section 23.56.170 Prohibited at all times on certain streets

Those streets or portions of streets upon which parking is prohibited shall be posted with special signs with wording similar to "NO PARKING ANYTIME". (Ord. No. 866, § 1; Ord. No. 1057, § 1; Ord. No. 1180 § 1.)

Section 23.56.180 Prohibited during certain hours on certain days and streets for cleaning purposes

For street cleaning purposes, when signs are erected in each block giving notice thereof, no person shall park a vehicle between the hours of 1:00 A.M. and 7:00 A.M. on streets running east and west on Mondays, Wednesdays and Fridays and between the hours of 1:00 A.M. and 7:00 A.M. on avenues running north and south on Tuesdays and Thursdays as follows:

Broadway, between west line of Riverside Addition and Fifth Avenue South East.
Eighth Avenue West, between Empire Road (10th Street West) and Villard Street.
First Avenue East, between Third Street and Villard Street.
First Avenue West, between Third Street and Villard Street.
First Street, between Fourth Avenue West and Fourth Avenue East.
First Avenue South East, between Broadway and First Street South East.
First Street South East, between South Main and Fifth Avenue South East.
Fourth Avenue East, between Third Street East and Villard Street.
Fourth Avenue West, between Fourth Street and Villard Street.
Ninth Street, between Fifth Avenue West and Fourth Avenue East.
South Main (Highway 22), between Heart River Bridge and Villard Street.
Second Avenue East, between Second Street and Villard Street.
Second Avenue West, between Third Street and Villard Street.
Second Street, between Eighth Avenue West and State Avenue; between Fourth Avenue West and Fourth Avenue East.
Seventh Street, between Sims Street and Third Avenue West.
Sims Street, between Twelfth Street and Villard Street.
Third Avenue East, between Second Street and Villard Street.
Third Avenue West, between Tenth Street West and Villard Street.
Third Street, between Fourth Avenue East and Eighth Avenue West.
Tenth Avenue East, between North Line of Suncrest Addition and Villard Street.
Villard Street, between Tenth Avenue East and State Avenue.
This prohibition shall be effective from March 15, through October 31 of each year. (Ord. No. 866, § 1.)

Section 23.56.190 Snow emergency routes--Defined; designated

Snow emergency routes are those streets normally traversing the entire city or a major part of the city and which are essential to the rapid movement of emergency vehicles and normally carry the heaviest traffic volumes. The Board of City Commissioners shall designate by resolution the streets or portions of streets which shall constitute the snow emergency routes within the City. (Ord. No. 866, § 1; Ord. No. 1181 § 1.)

Section 23.56.200 Same--Parking on

Upon the declaration of a snow emergency, parking on designated snow emergency routes shall be prohibited. This parking prohibition shall remain in effect until the declaration of a snow emergency has been terminated. (Ord. No. 866, § 1; Ord. No. 1181 § 2.)

Section 23.56.210 Same--Declaration of snow emergency

A declaration of a snow emergency shall be made upon the basis of falling snow, sleet or freezing rain or upon the basis of the forecast of the same. Upon it's declaration, a snow emergency shall remain in effect until it has been officially terminated. The City Commission shall designate by resolution those officials and employees empowered to declare or terminate a snow emergency. The declaration and termination of a snow emergency shall be publicly announced by local radio and television broadcast and when feasible, the official newspaper. These announcements shall contain information regarding the prohibition of parking on snow emergency routes. (Ord. No. 866, § 1; Ord. No. 1181 § 3.)

Section 23.56.220 Same--Signs to mark

Snow emergency routes shall be posted with special signs with wording "NO PARKING DURING SNOW EMERGENCY". (Ord. No. 866, § 1; Ord. No. 880, § 1; Ord. No. 1181 § 4.)

Section 23.56.230 Same--Removal of stalled vehicles

Whenever a vehicle becomes stalled for any reason on a snow emergency route on which there is a parking prohibition in effect, the person operating the vehicle shall take immediate action to have the vehicle towed or pushed off the snow emergency route. No person shall abandon or leave his vehicle on a snow emergency route except for the purpose of securing assistance during the actual time necessary to go to a nearby telephone or nearby garage, gasoline station or other place of assistance, and return without delay (one-half hour maximum allowed).

To facilitate the completion of plowing of all city streets other than snow emergency routes, after a snow emergency has been declared, it shall be unlawful for any person to stop, stand, park or leave unattended, other than adjacent to the street curb, a vehicle for more than one-half hour following the declaration of a snow emergency. (Ord. No. 866, § 1; Ord. No. 1181 § 5.)

Section 23.56.240 Same--Impoundment of illegally stopped vehicles

Any vehicle stopped on any snow emergency route in violation of the provisions of this article or on any other street of the city in violation of sections 23.56.170 through 23.56.260, providing for the completion of plowing of snow or ice may be impounded by members of the city police department and held in accordance with section 23.56.020. (Ord. No. 866, § 1.)

Section 23.56.250 Evidence with respect to vehicles parked or left in violation of article

In any prosecution with regard to a vehicle parked or left in a place of violation of any provision of this article, proof that the particular vehicle described in the complaint was parked or left in violation of a provision of this article, together with proof that the defendant named in the complaint was at the time the registered owner of such vehicle, shall constitute prima facie evidence that the defendant was the person who parked or left the vehicle in violation of this article. (Ord. No. 866, § 1.)

Section 23.56.260 Prohibited during certain hours and days.

For cleaning, construction, marking and other similar purposes, parking shall be prohibited on certain days and or between certain hours by the posting of special signs with wording similar to: "NO PARKING ON (days specified)"; "NO PARKING BETWEEN (hours specified)"; or "NO PARKING ON (days specified) BETWEEN (hours specified)". (Ord. No. 866, § 1; Ord. No. 1180 § 2.)

Section 23.56.270 Parking by employers, employees and public servants prohibited in certain downtown areas

Section 23.56.270 of the City Code of the City of Dickinson is hereby repealed in its entirety. (Ord. No. 1584 § 1)

Section 23.56.280 Assessment of businesses benefitted by certain parking lots; reassessment upon change in use

(a) Businesses. Any corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual, who currently has established or hereafter establishes a business in a building on property within the boundaries of a special assessment district created for downtown parking, including Downtown Improvement District No. 3, Downtown Improvement District No. 4, and all similar Downtown Improvement Districts hereafter created and is benefitted by area

parking lots, shall be assessed to create funds and revenue in order to allow limited free parking in such areas. The Special Assessment Commission shall determine the method of assessment for all buildings within the district, subject to approval of the Board of City Commissioners. Each parking space not provided on the property shall be multiplied by the amount necessary to provide an annual assessment, not to exceed the annual assessment required to maintain said Downtown Improvement District which shall be the amount assessed against such property annually before the city certifies taxes and special assessments to the county.

Any new business established within such district shall be notified of this assessment or reassessment. Notice shall be served personally to the new business, whereupon the proprietor shall be afforded thirty days from such personal service to protest the assessment procedure. All protests which may be filed with the city auditor within such time shall be heard and considered at the next regular meeting of the board of city commissioners or within such time as the matter may properly be scheduled for the governing body to hear and consider the same.

(Ord. No. 998, § 1; Ord No. 1116, § 2; Ord. No. 1213, § 2; Ord. No. 1318 §1)

Section 23.56.290 Leaving vehicle parked in one place for more than forty-eight hours; impoundment and notice procedures

(a) The owner, driver or other person having under his control or charge any automobile, truck, trailer, motor vehicle, tractor, motorcycle, motorized bicycle, semitrailer, truck tractor, house trailer, mobile home or any other type vehicle as described in North Dakota Century Code, section 39-01-01 shall not cause or allow such vehicle to stand or remain to be parked in any one place upon any street, avenue or alley of the city, or any city-owned parking lot, for a period of time longer than forty-eight hours. Nothing in this section shall be deemed to conflict with any other provisions of this article providing parking restrictions or limitations of a lesser time as therein provided.

(b) The city, through its peace officers or other duly authorized officials, shall take into custody and impound any motor vehicle or other vehicle as herein described according to the policies and procedures established by the board of city commissioners and the police department. A notice shall be affixed to the automobile, truck, trailer, motor vehicle, tractor, motorcycle, motorized bicycle, semitrailer, truck tractor, house trailer, mobile home or any other type of vehicle as described in North Dakota Century Code, section 39-01-01 identifying the owner or other person having control of the motor vehicle, and such notice shall state that the vehicle will be towed to a place of impoundment within forty-eight hours. The notice shall set forth the date, and the place of the taking, the year, make, model and such other information established by the board of city commissioners and the police department. The notice shall inform the owner of his right to reclaim the vehicle from the city, thereby taking it into custody, upon payment of all towing and storage charges resulting from taking the vehicle into custody. (Ord. No. 866, § 1; Ord. No. 873, § 3; Ord. No. 930, § 1; Ord. No. 1097, § 1; Ord No. 1367 §1.)

Section 23.56.300 Restricted time parking zone

The city traffic engineer or authorized person may determine and designate vehicle restricted time parking zones for a period of not longer than shown on the sign designating the restriction between the hours of 9:00 A.M. and 5:00 P.M. of any day except Sundays and holidays. The city traffic engineer or authorized person shall cause to be placed and maintain official signs giving notice thereof. No person shall park a vehicle for a period of time longer than shown on the sign and no such restricted time parking zone shall be enforceable unless properly signed. Anyone disagreeing with the determination and designation of the city traffic engineer or authorized person may present their disagreement to the board of city commissioners at a regularly scheduled meeting as to the decision of such location. (Ord. No. 866, § 1; Ord. No. 934, § 1; Ord. No. 1031, § 1.)

Section 23.56.310 Five minute parking zone for U.S. Post Office

When signs are erected giving notice thereof, no person shall park a vehicle for a period of time longer than five minutes between the hours of 9:00 A.M. and 5:00 P.M. of any day except Sundays and holidays upon the following:

The street adjacent to:

Lot 13, Block 11, original plat of the city, post office, all. (Ord. No. 866, § 1; Ord. No. 883, § 1; Ord. No. 1031, § 2.)

Section 23.56.320 City parking lots

The following described land and premises within the city owned or leased by the city shall be operated, regulated and maintained by the city as public parking lots for motor vehicles used in the city:

(a) Lot 1, (PIN-0010-0200-2001) West 90 feet Lots 20, 21, 22, 23, 24, Block 2, Original Plat; west of Dickinson Press;

(b) Lot 2 (PIN-0010-1300-....) Lots 18, 19, 20 and 21, Block 13, Original Plat; north of City Hall;

(c) Lot 3 (PIN-0010-1600-0900) Lots 11 and 12, Block 16, Original Plat; south of Kirkwood National Bank;

(d) Lot 4 (PIN-0010-1100-0100) Lots 1, 2, 3, 4, 5, 6, 7, Block 11, Original Plat; north of L-Air Apartment Building;

(e) Lot 5 (PIN-7000-0000-1210) and (PIN-7000-0000-0030) West of Burlington Northern Depot;

(f) Lot 6 (PIN 0010-0100-0100) Lots 1, 2, and part of 3, Block 1, Original Plat; north of downtown Fire Hall;

(g) Lot 7 (PIN-0010-1100-2100) Lots 21, 22, 23, 24, Block 11, Original Plat; north of Post Office;

(h) Lot 8 (PIN-1190-0100-0100) Lot 9, Block 1, South Dickinson; behind Pizza Patrol;

(i) Lot 9 (PIN-0010-1400-0300) Lots 3, 4, 5, and South 2 feet of Lot 2, Block 14, Original Plat; north of KDIX Radio Station;

(j) Lot 10 (PIN-0010-0800-1300) Lots 13, 14, and West 12.5 feet of Lot 15, Block 8, original Plat; east of Excel Cleaners Building; and

(k) Lot 11 (PIN-0010-0900-9000) Lots 9 and 10, Block 9, Original Plat; west of Excel Cleaners Building;

(l) Such other lots as are designated by resolution by the Board of City Commissioners.

It shall be unlawful for any person to cause, allow or suffer any vehicle registered in his name or operated or controlled by him to be upon any space within parking lot herein unless an appropriate parking rental, as provided by resolution of the city, has been paid or unless such vehicle is parked on a specific parking area which is posted and designated as a free and appropriate public parking area. Any person found in violation of this provision may be punished as provided in section 23.56.350. (Ord. No. 866, § 1; Ord. No. 883, § 2; Ord. No. 960, § 2; Ord. No. 1031, § 2; Ord. No. 1141 § 2; Ord. No. 1169 § 1; Ord. No. 1213, § 3; Ord. No. 1318 § 2.)

Section 23.56.330 Marking of parking spaces; parking within spaces

Suitable spaces for the parking of motor vehicles in each of the lots provided for in this article shall be indicated by lines or markings, and each vehicle parked within such area shall park within such lines or markings. (Ord. No. 866, § 1.)

Section 23.56.340 Parking across lines or in driveway

It shall be unlawful for any person to park any vehicle across the lines or markings provided for in section 23.56.330 in the driveway leading into or out of any of the city parking lots. (Ord. No. 866, § 1.)

Section 23.56.345 Penalty for parking violations.

The fees required for a non-criminal disposition pursuant to either section 23.80.040 or section 23.80.050 shall be a fee of fifteen dollars for a violation of sections 23.56.050, 23.56.060, 23.56.070, 23.56.080, 23.56.090, 23.56.100, 23.56.110, 23.56.120, 23.56.130, 23.56.140, 23.56.150, 23.56.180, 23.56.300, or 23.56.310. (Ord. No. 1202, § 10; Ord. No. 1292 § 1.)

Section 23.56.346 Temporary occupation permit.

A temporary occupation permit is required to use any portion of public right-of-way for display, sales, signs, parking or any other use.

Temporary occupancy permits shall not be issued on the public right of way of 3rd Avenue West from 10th Street West to 29th Street West or Main Avenue from the Heart River Bridge to 8th Street South. (Ord. No. 1196, § 2.)

Section 23.56.347 Permit process.

A temporary occupation permit applicant shall file an application with the City Administrator containing the following:

1. Name and address of the applicant.
2. Name and address of the person or organization the applicant represents.
3. The exact time and date of commencement and termination of each act or activity desired.
4. The purpose and location of each activity.
5. Such other relevant information as the City Administrator may require for the investigation of the activity and the applicant.

Upon completion and filing of the application, the City Administrator may issue the temporary occupation permit. (Ord. No. 1196, § 3.)

Section 23.56.348 Permit fees.

The applicant, prior to issuance of the permit, shall pay the amount as set forth in the City of Dickinson fee schedule. (Ord. No. 1196, § 4.)

Section 23.56.350 Penalty

Every person violating the provisions of this article shall, upon conviction, be punished by a fine of not to exceed five hundred dollars or imprisonment not to exceed thirty days, or by both fine and imprisonment in the discretion of the court, and the court shall have the power to suspend such sentence and to revoke the suspension thereof. (Ord. No. 866, § 1; Ord. No. 882, § 1.)

Article 23.60 Reserved Parking Areas

Sections:

23.60.010 Generally

Section 23.60.010 Generally

No person 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 city engineer or authorized person shall establish from time to time areas for loading and unloading, bus parking, guest parking, taxi parking, emergency parking, no parking, police and fire use on such public streets in such places and in such number as he shall determine or as the governing body may specifically designate to be of greatest benefit and convenience to the public and to promote the best use of the streets for traffic and pedestrians and designate the same by appropriate signs. (Ord. No. 866, § 1.)

Article 23.64 Time Limit Parking Zones

Sections:

23.64.010 Generally.

Section 23.64.010 Generally.

When signs are erected giving notice thereof, no person shall park or leave standing, either attended or unattended, any motor vehicle for more than five consecutive minutes on street areas so posted, or for more than ten consecutive minutes on street areas so posted, or more than thirty consecutive minutes on street areas so posted, or more than sixty consecutive minutes on street areas so posted, or for more than one hundred twenty consecutive minutes on street areas so posted, when such areas have been made available for parking.

The city engineer or authorized person shall establish from time to time in such places and in such manner time parking zones as he shall determine, or as the governing body shall specifically designate to promote the greatest benefit and convenience to the public and the best use of the street areas. (Ord. No. 866, § 1.)

Article 23.68 Equipment of Vehicles

Sections:

23.68.010 Vehicles other than motorcycles
23.68.015 Safety belts required
23.68.020 Child restraint devices
23.68.030 Equipment requirements--Penalty
23.68.040 Motorcycle equipment
23.68.050 When lighted lamps are required; penalty

Section 23.68.010 Vehicles other than motorcycles

The provisions of North Dakota Century Code, chapter 39-21, and all subsequent amendments, shall be and are hereby incorporated by reference in this section. (Ord. No. 866, § 1.)

Section 23.68.015 Safety belts required

A driver may not operate upon a highway a motor vehicle designed for carrying fewer than eleven passengers, which was originally manufactured with safety belts unless each front seat occupant is wearing a properly adjusted and fastened safety belt subject to the limitations at NDCC 39-21-41.4. A peace officer may not issue a citation for a violation of this section unless the officer lawfully stopped or detained the driver for another violation. Violation of this section is punishable by a fine as set forth in NDCC 39-06.1-06(2). (Ord. No. 1104, § 1; Ord. No. 1202, § 3; Ord. No. 1590, § 5.)

Section 23.68.020 Child restraint devices

(a) If a child, under three 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. The child restraint system must meet the standards adopted by the United States Department of Transportation for these systems (49 CFR 571.213). While the motor vehicle is in motion, each such child must be properly secured in the child restraint system in accordance with the manufacturer's instructions. While the motor vehicle is moving, each child of three through ten years of age who is in the motor vehicle, must be in an approved child restraint system or buckled in a seatbelt. Use of child restraint systems and seatbelts is not required in motor vehicles that were not equipped with seatbelts when manufactured. If all of the seatbelts are used by other family members in the vehicle, this section does not apply.

(b) Violation of this section is punishable by a fine as set forth in NDCC 39-06.1-06(2)(c).

(c) 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. (Ord. No. 917, § 1; Ord. No. 1054, § 1; Ord. No. 1202, § 4.)

Section 23.68.030 Equipment requirements--Penalty

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

(a) 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/roadway/street 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 and North Dakota Century Code chapter 39-21, or which the actor knows is equipped in any manner in violation of this chapter and North Dakota Century Code chapter 39-21, or for any person to do any act forbidden or fail to perform any act required under this chapter and North Dakota Century Code

chapter 39-21. Unless otherwise specifically provided in this chapter or in section 23.80.090 or 23.80.100, any person who, in violation of this chapter, drives, or any owner who causes or knowingly permits to be driven upon a highway/roadway/street any vehicle or combination of vehicles which that person knows is unsafe or improperly equipped is guilty of an infraction.

(b) Nothing contained in this chapter and North Dakota Century Code chapter 39-21 may be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter and North Dakota Century Code chapter 39-21.

(c) The provisions of this chapter and North Dakota Century Code chapter 39-21 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.

(d) The provisions of this chapter and North Dakota Century Code chapter 39-21 with respect to equipment required on vehicles do not apply to motorcycles or motordriven cycles, except as specifically made applicable.

(e) The provisions of this chapter and North Dakota Century Code chapter 39-21 and regulations of the North Dakota Motor Vehicle Department do not apply to vehicles moved solely by human power, except as specifically made applicable. (Ord. No. 1027, § 1.)

Section 23.68.040 Motorcycle equipment

The provisions of North Dakota Century Code, chapter 39-27, and all subsequent amendments, shall be and are hereby incorporated by reference in this section. (Ord. No. 866, § 1.)

Section 23.68.050 When lighted lamps are required; penalty

Every vehicle upon a street within this city at any time from sunset to sunrise, and every farm tractor upon a highway within this city at any time from a half hour after sunset to a half hour before sunrise, and at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of one thousand feet (304.8 meters) ahead, shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles. Stoplights, turn signals, and other signaling devices shall be lighted as prescribed for the use of such devices. Any person who violates the provisions of this section shall be assessed a fee of forty dollars for each violation. (Ord. No. 866, § 1; Ord. No. 1035, § 1; Ord. No. 1202, § 5.)

Article 23.72 Regulation of Kinds and Classes of Traffic on Certain Roadways

Sections:

23.72.010 Weight and load restrictions
23.72.020 Commercial vehicles prohibited from using certain streets
23.72.030 Size restrictions
23.72.040 Restrictions upon use of streets by certain vehicles

Section 23.72.010 Weight and load restrictions

The city engineer or street superintendent may classify any street or part of a street so designated to be restricted from travel by trucks, truck-tractors, trailers, semitrailers, commercial buses, delivery vehicles or any other commercial vehicles, whether loaded or unloaded, except for the expressed use of making deliveries to locations within the restricted area, upon determination that conditions exist which would cause damage to the street should any person operate his/her vehicle on such street. Signs shall be erected giving notice of such restriction. The board of city commissioners shall approve or disapprove the restriction at their next regularly scheduled city commission meeting. This section shall not apply to vehicles and equipment of the city's public works department and fire department. For the purposes of this section, the word "street" shall mean any street, avenue, land, alley, drive or any other title that indicates a street. (Ord. No. 866, § 1; Ord. No. 956, § 1.)

Section 23.72.020 Commercial vehicles prohibited from using certain streets

When signs are erected giving notice thereof, no person shall operate any commercial vehicle exceeding the maximum indicated gross weight at any time upon any street or part of a street so designated; except, that such vehicles may be operated thereon for the purpose of delivering or picking up materials or merchandise and then only by entering such street at the intersection nearest the destination of the vehicle and proceeding thereon no further than the nearest intersection thereafter. (Ord. No. 866, § 1.)

Section 23.72.030 Size restrictions

When signs are erected giving notice thereof, no person shall operate any vehicle exceeding the dimensions specified by such sign or signs at any time upon any street or part of a street so designated. (Ord. No. 866, § 1.)

Section 23.72.040 Restrictions upon use of streets by certain vehicles

(a) The city traffic engineer or authorized person may determine and designate those heavily traveled streets upon which shall be prohibited the use of the roadway by motordriven cycles, bicycles, horse drawn vehicles or other nonmotorized traffic and shall erect appropriate signs giving notice thereof.

(b) When signs are so erected giving notice thereof, no person shall disobey the restrictions stated on such signs. (Ord. No. 866, § 1.)

Article 23.76 Criminal Traffic Violations

Sections:

23.76.010 Persons under the influence of intoxicating liquor or any other drugs or substances not to operate vehicle--Penalty
23.76.020 Reckless driving
23.76.030 Accidents involving damage to vehicle
23.76.040 Duty upon striking fixtures or other property
23.76.050 Penalty for driving while license suspended or revoked
23.76.060 Violations involving operation of snowmobiles
23.76.070 Violations involving operation of off-highway vehicles
23.76.080 Harassment of domestic animals
23.76.090 Operation of motor vehicle, etc., prohibited on flood protective works
23.76.100 Operator's license--Driving without
23.76.110 Same--To be carried and exhibited on demand
23.76.120 Violations of motor vehicle registration provisions; penalties
23.76.130 Display of number plates and tabs
23.76.140 Driving without liability insurance--Penalty
23.76.150 Driving as permitted by class of license
23.76.160 Weighing

Section 23.76.010 Persons under the influence of intoxicating liquor or any other drugs or substances not to operate vehicle--Penalty

The provisions of the North Dakota Century Code, section 39-08-01, and all subsequent amendments thereto, shall be and are hereby adopted and incorporated by reference herein.

(a) 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 city if any of the following apply:

(1) 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.

(2) That person is under the influence of intoxicating liquor.

(3) 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.

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

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

(5) That individual refuses to submit to any of the following:

(1) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under NDCC section 39-06.2-10.2 if the individual is driving or is in actual physical control of a commercial motor vehicle; or

(2) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in

the individual's blood, breath, or urine, at the direction of a law enforcement officer under NDCC section 39-20-01; or

(3) An onsite screening test, or tests, of the individual's breath for the purpose of estimating the alcohol concentration in the individual's breath upon the request of a law enforcement officer under section 39-20-14.

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

(b) An individual who operates 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 who refuses to submit to a chemical test, or tests, required under NDCC 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an offense under this section.

(c) An individual violating this section is guilty of a Class B misdemeanor for the first or second offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection (e) hereof. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the Highway Department Commissioner or make a subsequent offense finding based on other evidence.

(d) Upon conviction of a second or subsequent offense within five years under this section, the court may order the motor vehicle number plates of all of the motor vehicles owned and operated by the offender at the time of the offense to be destroyed by the office of the police officer that made the arrest. The offender 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 office and notify the Department of Transportation of the order. An offender who does not provide the number plates to the court at the appropriate time is subject to revocation of probation.

(e) A person convicted of violating this section, must be sentenced in accordance with this subsection:

(1) For a first offense, the sentence must include both a fine of at least five hundred dollars ($500) and an order for addiction evaluation by an appropriate licensed addiction treatment program.

(2) In addition, for a first offense when the convicted person has an alcohol concentration of at least sixteen one-hundredths of one percent by weight, the offense is an aggravated first offense and the sentence must include a fine of at least seven hundred fifty dollars ($750) and at least two (2) days' imprisonment.

(3) For a second offense within seven (7) years, the sentence must include at least ten (10) days' imprisonment of which forty-eight hours must be served consecutively a fine of at least one thousand five hundred ($1,500) dollars; ~~and~~ an order for addiction evaluation by an appropriate licensed addiction treatment program; and at least twelve (12) months' participation in the twenty-four seven sobriety program described in NDCC Chapter 54-12 as a mandatory condition of probation.

(4) The execution or imposition of sentence under this section may not be deferred under subsection 4 of North Dakota Century Code section 12.1-32-02 for an offense for an offense subject to this section.

(5) If the offense is subject to this Section 23.76.010, the court may not suspend a sentence, but may convert each day of a term of imprisonment to ten hours of community service for an offense subject to subsection (d)(3). The court may require the defendant to complete alcohol and substance abuse treatment and rehabilitation under the direction of

the drug court program as a condition of probation in accordance with rules adopted by the supreme court. If the district court finds that a defendant has failed to undergo an evaluation or complete treatment or has violated any condition of probation, the court shall revoke the defendant's probation and shall sentence the defendant in accordance with this section.

(6) For purposes of this Section, conviction of an offense under a law or ordinance of another state which is equivalent to this Section shall be considered a prior offense if such offense was committed within the time limitations specified in this Section.

(7) If the penalty mandated by this Section includes imprisonment upon conviction of a violation of this section or equivalent 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 under NDCC 12.1-32-02(g)(1) 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. A court may not order the Department of Corrections and Rehabilitation to be responsible for the costs of treatment in a private treatment facility.

(8) As used in this Section, 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 and the defendant shall participate in the twenty-four seven sobriety program. The defendant shall defray all costs associated with the electronic home detention. For an offense under subsection (e)(3) of this Section, no more than ninety percent of the sentence may be house arrest.

(9) If the court sentences an individual to the legal and physical custody of the Department of Corrections and Rehabilitation, the Department may place the individual in an alcohol treatment program designated by the Department. Upon the individual's successful completion of the alcohol treatment program, the Department shall release the individual from imprisonment to serve the remainder of the sentence of imprisonment on probation, which may include placement in another facility or treatment program. If an individual is placed in another facility or treatment program after release from imprisonment, the remainder of the individual's sentence of imprisonment must be considered time spent in custody.

(f) As used in this Article, participation in the twenty-four seven sobriety program under NDCC Chapter 54-12 means compliance with NDCC NDCC sections 54-12-27 through 54-12-31, and requires sobriety breath testing twice per day seven days per week or electronic alcohol monitoring, urine testing, or drug patch testing. The offender is responsible for all twenty-four seven sobriety program fees and the court may not waive the fees.

(g) Notwithstanding any other provision of law, the municipal court or municipal judge has no jurisdiction to hear, try and determine an offense which could be a violation of North Dakota Century Code, section 39-08-01, or equivalent ordinance, if the person charged with the offense has twice previously been convicted of a violation of North Dakota Century Code, section 39-08-01, or equivalent ordinance, within the seven (7) years preceding the commission of the offense charged. If such an offense is charged in the municipal court and the municipal judge has notice of prior violations of North Dakota Century Code, section 39-08-01, or equivalent ordinance, twice within the seven (7) years preceding the commission of the offense charged, municipal judge shall dismiss the charge, without prejudice and direct that the charge be filed against the person in the county court. (Ord. No. 1516 § 1.)

Section 23.76.020 Reckless driving

The provisions of North Dakota Century Code, section 39-08-03, and all subsequent amendments; shall be and are hereby incorporated by reference in this section.

Any person shall be guilty of reckless driving if he drives a vehicle:

(a) Recklessly in disregard of the rights or safety of others; or

(b) Without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or the property of another.

Except as otherwise herein provided, any person violating the provisions of this section shall be guilty of an offense. (Ord. No. 866, § 1.)

Section 23.76.030 Accidents involving damage to vehicle

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 until he has given 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. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with such requirements under such circumstances is guilty of a class B misdemeanor. (Ord. No. 866, § 1; Ord. No. 993, § 2.)

Section 23.76.040 Duty upon striking fixtures or other property

The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and the registration number of the vehicle he is driving and shall, upon request and if available, exhibit his operator's or chauffeur's license and shall make report of such accident when and as required in section 23.12.150. Any person violating this section is guilty of a class B misdemeanor. (Ord. No. 866, § 1; Ord. No. 993, § 4; Ord. No. 1192, § 1.)

Section 23.76.050 Penalty for driving while license suspended or revoked

The provisions of North Dakota Century Code, section 39-06-42, and all subsequent amendments, shall be and hereby are incorporated by reference in this section.

(a) Except as provided in North Dakota Century Code, chapters 39-16 and 39-16.1 and section 39-06.1-11, any person who drives a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state while that person's license or privilege so to do is suspended or revoked is guilty of a class B misdemeanor.

(b) If the suspension or revocation was imposed for violation of North Dakota Century Code section 39-08-01 or equivalent ordinance, or was governed by North Dakota Century Code section 39-06-31 or chapter 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 a sentence deferred under subsection 3 or 4 of North Dakota Century Code section 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.

(c) In addition to any other punishment imposed, the court may order the number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded by the sheriff or chief law enforcement officer of the city 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 section 39-06-17, the court may order the number plates to be impounded in accordance with this subsection the impounded number plates may be released, upon order of the court, to a bona fide purchaser of the offender's motor vehicle, if that purchaser produces a new certificate of title to the motor vehicle issued by the registrar of motor vehicles.

(d) The city hereby authorizes its municipal judge to order impoundment of motor vehicle number plates in the manner provided by subsection (c). (Ord. No. 866, § 1; Ord. No. 873, § 2; Ord. No. 1027, § 3.)

Section 23.76.060 Violations involving operation of snowmobiles

(a) Definitions. For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them by this subsection:

Daylight Hours. Any time except from one-half hour after sunset to one-half hour before sunrise or at any other time when there is not sufficient light to render clearly discernible persons and vehicles at a distance of five hundred feet.

Operate. To ride in or on and control the operation of a snowmobile.

Operator. Every person who operates or is in actual physical control of a snowmobile.

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

Register. The act of assigning a registration number to a snowmobile by the registrar of motor vehicles of the state.

Registrar. The registrar of motor vehicles under North Dakota Century Code, chapter 39-02, acting directly or through his authorized agent.

Roadway. That portion of a highway improved, designed or ordinarily used for vehicular travel.

Snowmobile. A self-propelled vehicle designed for travel on snow or ice or a natural terrain steered by wheels, skis or runners.

Street or Highway. The entire width between the boundary lines of way or place when any part thereof is open to the use of the public in the city, as a matter of right, for the purposes of vehicular traffic.

(b) Prohibited Operation. It shall be unlawful for any person to drive or operate any snowmobile in the following ways or under the following circumstances, which are hereby declared to be unsafe and a public nuisance:

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

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

(3) While under the influence of intoxicating liquor or narcotics or habit-forming drugs.

(4) Without a lighted head lamp and tail lamp when required for safety.

(5) In any tree nursery or planting in a manner which damages or destroys growing stock.

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

(7) Under the age of fourteen years.

(8) On direct crossing of a street or highway unless:

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

(B) The snowmobile is brought to a complete stop before crossing the shoulder of main traveled way of the highway;

(C) The driver yields the right-of-way to all oncoming traffic which constitutes an immediate hazard; and

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

(9) In violation of any rule or regulation promulgated for regulating the use of snowmobiles by the state highway commissioner where applicable within the geographical limits of the city.

(10) At a speed in excess of ten miles per hour at any time upon any street, alley, highway or other public ground or place in the city.

(11) While towing a sled, skid or any other vehicle, unless the sled, skid or other vehicle is connected to the snowmobile by a hinged swivel and secure hitch.
(12) Passing another snowmobile while such snowmobile is in operation and underway on any street, alley, highway or other public ground or place in the city.
(13) If the operator does not hold a valid, current North Dakota driver's license or is not accompanied by a licensed driver who is actually occupying a seat in the snowmobile.
(14) Abreast of another snowmobile upon any street, alley, highway or other public ground or place.
(15) Between the hours of 10:30 P.M. and 7:30 A.M.; except, that on Friday and Saturday the beginning hour is changed from 10:30 P.M. to 11:00 P.M. with the further exception that snowmobiles entering the city are not limited by time as long as they meet with the provisions of this section.
(16) In any municipal park or recreation area except when posted as "open" to snowmobiles, and within the hours permitted.
(17) Upon private property, other than that of the snowmobile owner or operator, without express permission of the owner.
(18) While carrying a strung bow or loaded firearm.
(19) Leaving or allowing a snowmobile to be or remain unattended on public property, streets, highway or other public grounds or places while the motor is running or with keys to start the same in the ignition switch.
(20) At any time with more than two persons riding thereon in addition to the operator.
(21) Without observing all traffic signs, signals, rules and regulations applying to motor vehicles when also applicable to snowmobiles.

(c) Prohibition of Use on All Streets. No person shall operate a snowmobile upon any road, street or highway in this city kept open for vehicular traffic except:
(1) During a period of emergency when travel by other vehicles is not possible.
(2) For a special snowmobile event of limited duration when conducted on a prearranged schedule under permit from the governing body.
(3) In crossing a street as herein provided.
(4) On streets or roads not maintained for winter vehicular travel.
(5) In travelling from the operator's place of residence to the edge of the city limits, using the shortest route from such operator's residence to the edge of the city's limits.

(d) Permissible use on streets as regulated herein. No person shall operate a snowmobile upon the roadway, shoulder or inside bank or slope of any road, street or highway in this city except as provided in this section. No snowmobile shall be operated upon a public street or highway unless it is equipped with at least one head lamp, one tail lamp and brakes all in working order which conform to standards prescribed by rule of the highway commissioner. When snowmobiles are operated within the right-of-way of any road, street or highway of this city pursuant to this section during times or conditions that warrant the use of lights, such snowmobiles shall travel in the same direction as the direction of motor vehicles on the side of the roadway immediately adjacent to the side of the right-of-way traveled by the snowmobiles.

(e) Penalty. Any person who shall violate paragraph (2) or (3) of subsection (b) of this section shall be guilty of a class B misdemeanor. (Ord. No. 866, § 1.)

Section 23.76.070 Violations involving operation of off-highway vehicles

(a) Definitions. As used in this chapter, unless the context otherwise requires:
(1) "Dealer" means any person engaged in the business of buying, selling, or exchanging off-highway vehicles or who advertises, or holds out to the public as engaged in the buying, selling, or exchanging of off-highway vehicles, or who engages in the buying of off-highway vehicles for resale.

(2) "Off-highway vehicle" means any wheeled motorized vehicle not designed for use on a highway and capable of cross-country travel on land, snow, ice, marsh, swampland, or other natural terrain. An off-highway vehicle must be classified into one of the following categories:

(a) Class I off-highway vehicle is a vehicle that does not qualify as road capable under chapters 39-21 and 39-27, has a seat or a saddle designed to be straddled by the operator, and has handlebars for steering control of two wheels.

(b) Class II off-highway vehicle is less than fifty inches (1270.00 millimeters) in width, travels on three or more low-pressure tires, has a saddle designed to be straddled by the operator, and has handlebars for steering control.

(c) Class III off-highway vehicle weighs less than eight thousand pounds, travels on four or more tires, has a seat and a wheel for steering control, and is designated for or capable of cross-country on or over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.

(3) "Operate" means to ride in or on and control the operation of an off-highway vehicle.

(4) "Operator" means an individual who operates or is in actual physical control of an off-highway vehicle.

(5) "Owner" means a person, other than a lienholder, having the property in or title to an off-highway vehicle and entitled to its use or possession.

(6) "Register" means the act of assigning a registration number to an off-highway vehicle.

(7) "Emergency Circumstances" means emergency conditions (including snow emergency, natural disaster, man-made disaster, or public health emergency) that renders the use or operation of passenger vehicles impractical or impossible in the particular conditions at the time and location in question.

(b) Registration. Except as provided in this section, a person may not operate an off-highway vehicle unless it has been registered in accordance with North Dakota Century Code, sections 39-29-03, 39-29-04, 39-29-05 and 39-29-06.

(c) Permitted Operation. It shall be lawful for any person age sixteen (16) years or older and who is in possession of a valid driver's license to operate a Class III off-highway vehicle on any street or highway within the city limits of the City of Dickinson; provided, however, that the Class III off highway vehicle is equipped with such safety equipment, including head lights, tail lights, brake lights, and such other safety equipment, all in working order, which may be required by standards prescribed by rule of the North Dakota Highway Commissioner as may apply to passenger automobiles. At all times, Class III off highway vehicles within the city limits of the City of Dickinson shall comply with such standards and rules of operation governing passenger automobiles as may be otherwise provided by city ordinance or state statute.

(d) Restricted Operation on City Streets and Public Right of Way. It shall be unlawful for any person to drive or operate any Class I or Class II off-highway vehicle on any street or public right of way within the city limits of the City of Dickinson, except in the following circumstances:

(1) A Class I or Class II off highway vehicle may be operated on city streets and other public rights of way in the event of Emergency Circumstances, as defined in Section 23.76.070(a)(7).

(2) A Class I or Class II off highway vehicle may be operated on city streets and other public rights of way for a special off highway vehicle event of limited duration, when conducted on a prearranged schedule under permit from the governing body.

(3) A Class II off-highway vehicle may travel from the operator's place of residence to the edge of the city limits, using the shortest route from such operator's residence to the edge of the city's limits; provided, however, that the Class II off highway vehicle shall not be operated on any street or public right of way having more than two lanes or with a speed limit in excess of twenty five miles per hour.

(4) Class II off-highway vehicles may be used for snow removal, provided that the off-highway vehicle has a mounted blade and an amber flashing light visible from all directions. The off-

highway vehicle may go from one job site to another job site on city streets provided the operator obeys all other sections of the off-highway vehicle ordinance.

(e) Prohibited Operation within City Limits not on City Streets or Public Right of Way. It shall be unlawful for any person to drive or operate any Class I or Class II off-highway vehicle within the city limits of the City of Dickinson in the following ways or under the following circumstances, which are hereby declared to be unsafe and a public nuisance:

(1) On a roadway, shoulder or inside bank or slope of any road, street or highway, except as provided in this section. Except in the event of Emergency Circumstances as defined in 23.76.070(a) (7), a person may not operate an off-highway vehicle within the right-of-way of any controlled access highway.

(2) On direct crossing of a street or highway, unless:

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

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

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

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

(3) Without being equipped with at least one headlamp, one tail lamp and brakes, all in working order, which conform to standards prescribed by rule of the highway commissioner.

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

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

(6) While under the influence of intoxicating liquor or a controlled substance.

(7) In any tree nursery or planting in a manner which damages growing stock.

(8) Without a manufacturer-installed or equivalent muffler in good working order and connected to the off-highway vehicle's exhaust system.

(9) Without having in possession a valid driver's license or permit.

(10) In a direction other than the same direction as the direction of other motor vehicles traveling on the side of the roadway immediately adjacent to the side of the right-of-way travelled by the off-highway vehicle, when such off-highway vehicle is operated within the right-of-way of any road, street or highway during times or conditions that warrant the use of lights by other motor vehicles.

(11) In violation of any rule or regulation promulgated for regulating the use of off-highway vehicles by the state highway commissioner where applicable within the geographical limits of the city.

(12) In any municipal park or recreation area, except when posted as "open" to off-highway vehicles, and only along established paths and trails and within the hours permitted.

(13) Upon private property, other than that of the off-highway vehicle owner or operator, without express permission of the owner.

(14) While carrying a loaded firearm.

(15) Without observing all traffic signs, signals, rules and regulations applying to motor vehicles when also applicable to off-highway vehicles.

(f) Operation by Person Under Age Sixteen. Except as otherwise provided in this section, a person under sixteen years of age who is not in possession of a valid operator's license or permit to operate an off-highway vehicle may not, except upon the lands of the person's parent or guardian, operate an off-highway vehicle. A person at least twelve years of age may operate an off-highway vehicle if the person has completed an off-highway vehicle safety training course prescribed by the director of the state parks and recreation department and has received the appropriate off-highway vehicle safety certificate issued by the commissioner. The failure of an operator to exhibit an off-highway vehicle safety certificate on

demand to any official authorized to enforce this section is presumptive evidence that that person does not hold such a certificate.

(g) Liability Insurance. Any operator of an off-highway vehicle operated in the city under this section is required to have liability insurance on the off-highway vehicle and present proof when it is requested by any law enforcement officer.

(h) Enforcement. Only peace officers of the state and their respective duly authorized representatives may enforce this section.

(i) Penalties. Violation of any provision of subsection (d) or (e) of this Section is an infraction, for which a fee of forty dollars must be assessed. Violation of subsection (b) is an infraction, for which a fee of fifty dollars must be assessed. Violation of any other provisions of this section is an infraction, for which a fee of twenty dollars must be assessed. (Ord. No. 931, § 1; Ord. No. 974, § 1; Ord. No. 1202, §6; Ord. No. 1316 §1; Ord No. 1354 § 1.)

Section 23.76.080 Harassment of domestic animals

The provisions of North Dakota Century Code, section 39-08-19, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

Any person operating a motorcycle, snowmobile or other motor vehicle, as defined in Section 23.04.010, 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, section 36-21-13. (Ord. No. 866, § 1.)

Section 23.76.090 Operation of motor vehicle, etc., prohibited on flood protective works

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

(a) 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.

(b) 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. (Ord. No. 866, § 1.)

Section 23.76.100 Operator's license--Driving without

No person shall drive any motor vehicle upon a highway in this city unless such person has a valid license as an operator or is expressly exempted from licensing requirements by the laws of this state. (Ord. No. 866, § 1.)

Section 23.76.110 Same--To be carried and exhibited on demand

The provisions of North Dakota Century Code, section 39-06-16, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

Every license shall have his operator's license or permit in his immediate possession at all times when operating a motor vehicle and shall display the same upon demand of any district court, municipal court, county court, patrolman, peace officer or field deputy or inspector of the highway department. However, no person charged with violating this section shall be convicted or assessed any court costs if he produces in court, to the chief of police or in the office of the arresting officer, an operator's license or permit theretofore issued to him and valid and not under suspension, revocation or cancellation at the time of his arrest. (Ord. No. 866, § 1.)

Section 23.76.120 Violations of motor vehicle registration provisions; penalties

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

(a) To operate, or for the owner thereof knowingly to permit anyone to operate, upon a highway any motor vehicle the registration of which has been canceled or revoked, or which is not registered, or which does not have attached thereto and displayed thereon a number plate, plates or validation tabs assigned thereto by the registrar of motor vehicles for the current registration period, subject to the exemptions allowed by the laws of the state. Any person, upon conviction for the violation of this provision, shall be subject to a fine as set forth in NDCC 39-06.1-06(1).

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

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

(d) To fail or refuse to surrender to the department, upon demand, any registration card, registration number plate or validation tab which has been suspended, canceled or revoked as is provided in chapter 39-04 of the North Dakota Century Code.

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

(f) To operate a passenger motor vehicle without payment of the registration fees as required pursuant to chapter 39-04 of the North Dakota Century Code.

With the exception of subsection (a) of this section, any person, upon conviction for the violation of any such provisions, shall be guilty of a class B misdemeanor. (Ord. No. 988 § 1; Ord. No. 996, § 1.)

Section 23.76.125 Failure o register upon gainful employment.

The provisions of North Dakota Century Code, section 39-04-18, and all subsequent amendments, shall and are hereby incorporated by reference in this section.

The following motor vehicles may be operated upon highways, roads, and streets of this state without being registered, under such limitations as are herein specified:

(a) Motor vehicles registered in any other state or territory when coming into this state a distance not exceeding twenty miles [32.19 kilometers]; provided, however, that such motor vehicles have displayed thereon the current license plates issued by the state territory in which they are registered and provided further that the owners or operators thereof are not residents of this state.

(b) Passenger motor vehicles registered in any other state or territory; provided, however, that such motor vehicles have displayed thereon the current license plates issued by the state or territory in which they are registered and provided further that the owners or operators thereof are not residents of this state

Any individual is a resident of this state if the individual is gainfully employed or engages in any trade, profession, or occupation within this state and owns, leases, or rents a place of residence or otherwise lives within this state for the purposes of employment, or regardless of domicile or any other circumstance, remains in this state for a period of at least ninety consecutive days. For purpose of this subsection, a resident does not include a student at a university, college, or technical school in this state or a daily commuter from another jurisdiction exempts the vehicle of a daily commuter from this state from registration in that jurisdiction under reciprocity agreement.

A person operating a motor vehicle in violation of this subsection shall purchase an annual registration for that motor vehicle for a fee that is not discounted from the appropriate amount listed in a table in section 39-04-19 of the North Dakota Century Code. Any person, upon conviction for the violation of this provision, shall be subject to a fine as set forth in NDCC 39-06.1-06(2)(f).

Section 23.76.130 Display of number plates and tabs

Except as otherwise specifically provided, no person may operate or drive a vehicle on the public highways of the state, unless the vehicle has a distinctive number assigned to it by the department, and two number plates, bearing the distinctive number conspicuously displayed, horizontally and in an upright position, one on the front and one on the rear of the vehicle, each securely fastened; except, that number plates assigned to a motorcycle, trailer or housetrailer must be attached to the rear thereof. When only one number plates is furnished for an apportioned vehicle licensed under the international registration plan as authorized in North Dakota Century Code, section 39-19-04, truck tractor or semitrailer, the plate must be attached to the front of the apportioned vehicle or truck tractor and the rear of the semitrailer. The bottom of each number plate must be a height of not less than twelve inches (30.48 centimeters) above the level surface upon which the vehicle stands. As far as is reasonably possible, the plates must at all times be kept free and clear of mud, ice or snow, so as to be clearly visible, and all number plates, markers or evidence of registration or licensing except for the current year must be removed from the vehicle. All vehicle license plates issued by the department continue to be the property of the state for the period for which the plates are valid. An annual registration tab or sticker for the current registration year must be displayed on each number plate in those years for which tabs or stickers are issued in lieu of number plates.

Any person, upon the conviction for the violation of the provisions of this section, shall be subject to a fine of twenty dollars. (Ord. No. 996, § 2; Ord. No. 1202, § 7.)

Section 23.76.140 Driving without liability insurance--Penalty

A person may not drive, or the owner may not cause or knowingly permit to be driven, a motor vehicle in this City 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 NDCC Chapter 39-16.1, as may be amended from time to time.

Upon being stopped by a law enforcement ~~police~~ 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, including written or electronic proof of insurance, 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 produces satisfactory evidence, including written or electronic proof of insurance, of a valid policy of liability insurance in effect at the time of the alleged violation of this section to the office of the court under which the matter will be heard, that person may not be convicted or assessed any administration fee for violation of subsection 1.

Upon conviction for a violation of this Section, sentence shall be imposed as provided in NDCC §39-08-20 as may be amended from time to time.

(Ord. No. 993, § 5; Ord. No. 1026, § 1; Ord. No. 1079, § 1; Ord. No. 1117 § 2;
Ord. No. 1157 § 4. Ord. No. 1543, § 1)

Section 23.76.150 Driving as permitted by class of license

A person issued a valid North Dakota operator's license pursuant to North Dakota Century Code Chapter 39-06 shall be deemed authorized to drive the type of motor vehicle or combination of vehicles as permitted by the class of license issued to him, such classes of license as more specifically set forth in North Dakota Century

Code 39-06-14 or other applicable provision under Title 39 of the state law which provisions are incorporated by reference as though set forth in full.

Any person as a holder of a classified license who drives a motor vehicle otherwise than as permitted by the class of license issued to him must be deemed to be driving a motor vehicle without being duly licensed and shall be assessed a fee of twenty dollars. (Ord. No. 1045, § 1.)

Section 23.76.160 Weighing

The provisions of North Dakota Century Code, section 39-12-21, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

Any driver of a vehicle who refuses to stop and submit the vehicle and load to a weighing when directed to do so by the police officer or any agent of this state having police powers relating to motor vehicles, shall be guilty of an offense. (Ord. No. 866, § 1.)

Article 23.80 Disposition of Traffic Offenses

Sections:

23.80.010 Authority of officer halting person for violating traffic regulations
23.80.020 Hearing; time; promise of defendant to appear; failure to appear
23.80.030 Offenses under which person halted may not be entitled to release upon promise to appear
23.80.040 Noncriminal traffic violations-- Generally
23.80.050 Same--Administrative hearing; prepaid costs; procedures; appeals; stay orders
23.80.060 Same--Failure to appear, pay statutory fee or post bond
23.80.070 Offenses excepted from procedures of sections 23.80.040 and 23.80.050
23.80.080 Amounts of statutory fees
23.80.090 "Nonmoving violation" defined
23.80.100 "Moving violation" defined
23.80.110 General penalty for violation of chapter
23.80.120 Notification of parents or guardians of juvenile traffic offenders

Section 23.80.010 Authority of officer halting person for violating traffic regulations

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

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 such person, except as otherwise provided in section 23.80.030, may:

(a) Take the name and address of such person;
(b) Take the license number of his motor vehicle; and
(c) Issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice.

A halting officer employed by any political subdivision of the state may not take a person into custody or require that person to proceed with the officer to any other location for the purpose of posting bond, where the traffic violation was a noncriminal offense under North Dakota Century Code, section 39-06.1-02. The officer shall provide the person with an envelope for use by that person to mail the bond. (Ord. No. 866, § 1.)

Section 23.80.020 Hearing; time; promise of defendant to appear; failure to appear

The provisions of North Dakota Century Code, section 39-07-08, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

The time to be specified in the summons or notice provided for in section 23.80.010 shall be within ten days after the issuance of such summons or notice. Such hearing shall be before the municipal court. Upon the receipt from the person halted of a written promise to appear at the time and place mentioned in the summons or notice, such officer shall release him from custody. Any person refusing to give written promise to appear shall be taken immediately by the halting officer before the nearest or most accessible magistrate, or to such other place or before such other person as may be provided by a statute or ordinance authorizing the giving of bail. Any person willfully violating his written promise to appear shall be guilty of an offense, regardless of the disposition of the charge upon which he originally was halted. (Ord. No. 866, § 1.)

Section 23.80.030 Offenses under which person halted may not be entitled to release upon promise to appear

The provisions of North Dakota Century Code, section 39-07-09, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

The provisions of section 23.80.010 shall not apply to a person if:

(a) The halting officer shall have good reason to believe such person guilty of any felony or when such person is halted and charged with any of the offenses listed in section 23.80.070, except reckless driving; or

(b) The halting officer, acting within his discretion, deems it inadvisable to release such person upon his promise to appear when halted and charged with either of the following offenses:

(1) Reckless driving; or

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

The halting officer forthwith shall take any person not released upon his promise to appear before the nearest or most accessible magistrate. (Ord. No. 866, § 1.)

Section 23.80.040 Noncriminal traffic violations-- Generally

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

Any person cited, in accordance with the provisions of North Dakota Century Code, sections 39-07-07 and 39-07-08, for a traffic violation under state law or municipal ordinance, other than an offense listed in North Dakota Century Code, section 39-06.1-05, shall be deemed to be charged with a noncriminal offense and may appear before the designated official and pay the statutory fee for the violation charged at or prior to the time scheduled for a hearing, or, if he has posted bond in person, as provided by North Dakota Century Code, section 39-07-07, or by mail, he may forfeit bond by not appearing at the designated time. If the person appears at the time scheduled in the citation, he may take a statement in the explanation of this action and the official may at that time, in his discretion, waive, reduce or suspend the statutory fee or bond, or both. If the person cited follows the foregoing procedures, he shall be deemed to have admitted the violation and to have waived his right to a hearing on the issue of commission of the violation. The bond required to secure appearing before the official designated in the citation shall be identical to the statutory fee established by North Dakota Century Code, section 39-06.1-06. Within ten days after forfeiture of bond or payment of the statutory fee, the official having jurisdiction over the violation shall certify to the licensing authority:

(a) Admission of the violation; and

(b) In speeding violations, whether the speed charged was in excess of the lawful speed limit by more than nine miles 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. (Ord. No. 866, § 1.)

Section 23.80.050 Same--Administrative hearing; prepaid costs; procedures; appeals; stay orders

The provisions of North Dakota Century Code, section 39-06.1-03, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

(a) If a person cited for a traffic violation, other than an offense listed in section 23.80.070, does not choose to follow one of the procedures set forth in section 23.80.040, he may request a hearing on the issue of his commission of the violation charged, the hearing to be held at the time scheduled in the citation or at some future time, not to exceed ninety days later, set at the first appearance.

(b) 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.

(c) If a person cited for a traffic violation, other than an offense listed in section 23.80.070, who has requested a hearing on the issue of the commission of the violation charged, appears at the time scheduled for the hearing and the state or city, as the case may be, does not appear or is not ready to prove the commission of a charged violation at the hearing, the official shall dismiss the charge.

(d) If the official finds that the person had committed the traffic violation, he shall notify the licensing authority of that fact, and whether the person was driving more than nine miles (14.48 kilometers) per hour in excess of the lawful limit, stating specifically the miles (kilometers) per hour in excess of the lawful limit, if charged with a speeding violation, within ten days of the date of the hearing. The fact that a person has admitted a violation, or has, in any proceeding, been found to have committed a violation, shall not be referred to in any way, nor be admissible as evidence in any court, civil, equity or criminal, except in an action or proceeding involving that person's driving license or privilege.

(e) (1) If a person is aggrieved by a finding that he committed the violation, he may, without payment of a filing fee, appeal that finding to the district court or county court for trial anew. If, after trial in the appellate court, the person is again found to have committed the violation, there may 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 must 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 (d) hereof, nor to stay appropriate action by the licensing authority upon receipt of that report.

(2) 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 one hundred twenty 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 one hundred twenty days; or

(C) Deny the application.

An application for a stay or temporary certificate under this subparagraph must be accompanied by a certified copy of the appellant's driving record, for the furnishing of which the licensing authority may charge a fee of two dollars. 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 subparagraph 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 subparagraph is guilty of a traffic violation and must be assessed a fee of twenty dollars.

(3) If a 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 for the city wherein the alleged violation occurred shall prosecute the appeal. In all other cases, the appropriate state's attorney shall prosecute the appeal.

(f) 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 (e) hereof, the court and parties shall follow, to the extent applicable, the North Dakota Rules of Civil

Procedure. If, on the appeal from the finding of the official the finding is affirmed, costs may be assessed at the discretion of the trial judge.

(g) As used in sections 23.80.040 and 23.80.050, the word "official" means a district judge, a judge of a county court, a municipal judge, or, when provided by statute, a person appointed by a district judge to serve as such official for all or a specified part of a judicial district. (Ord. No. 866, § 1; Ord. No. 1027, § 4.)

Section 23.80.060 Same--Failure to appear, pay statutory fee or post bond

The provisions of North Dakota Century Code, section 39-06.1-04, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

If a person fails to choose one of the methods of proceeding set forth in section 23.80.040 or section 23.80.050, he shall be deemed to have admitted to commission of the violation charged, and the municipal court shall report such fact to the licensing authority within ten 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 shall also be deemed an admission of commission of the violation charged. (Ord. No. 866, § 1.)

Section 23.80.070 Offenses excepted from procedures of sections 23.80.040 and 23.80.050

The provisions of North Dakota Century Code, sections 39-06.1-05, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

The procedures authorized under sections 23.80.040 and 23.80.050 may not be utilized by a person charged with one of the following offenses:

(a) Driving or being in actual physical control of a vehicle in violation of section 23.76.010.
(b) Reckless driving in violation of section 23.76.020.
(c) A violation of North Dakota Century Code chapter 12.1-16 resulting from the operation of a motor vehicle.
(d) Leaving the scene of an accident in violation of sections 20.76.030 and 20.76.040.
(e) Driving while license or driving privilege is suspended or revoked in violation of section 20.76.050.
(f) Violating paragraph (2) or (3) of subsection (b) of section 23.76.060.
(g) Driving without liability insurance in violation of section 23.76.140.
(h) Operating an unsafe vehicle in violation of section 23.68.030. (Ord. No. 866, § 1; Ord. No. 1027, § 5.)

Section 23.80.080 Amounts of statutory fees

The fees required for a noncriminal disposition pursuant to either section 23.80.040 or section 23.80.050 shall be as follows:

1. For a nonmoving violation as defined in North Dakota Century Code, section 39-06.1-08, a fee of any amount not to exceed twenty dollars.
2. For a moving violation as defined in North Dakota Century Code, section § 39-06.1-09, a fee of twenty dollars, except for:
    a. A violation of North Dakota Century Code § 39-10-26, 39-10-26.2, 39-10-41, 39-10-42, 39-10-46, or 39-10-46.1, a fee of fifty dollars.
    b. A violation of North Dakota Century Code § 39-10-05 involving failure to yield to a pedestrian or subsection 1 of North Dakota Century Code § 39-10-28, a fee of fifty dollars.
    c. A violation of North Dakota Century Code § 39-21-41-2, a fee of twenty-five dollars.

d. A violation of subsection 1 of North Dakota Century Code § 39-12-02 or § 39-08-23, a fee of one hundred dollars.
e. A violation of subdivision d of subsections 1 of North Dakota Century Code § 39-12-04, a fee of one hundred dollars.
f. A violation of subsection 1 of North Dakota Century Code § 39-04-37 by an individual by becoming a resident of the state, a fee of one hundred dollars.
g. A violation of subsection 2 of North Dakota Century Code § 39-10-21.1, a fee of two hundred fifty dollars.
h. A violation of North Dakota Century Code § 39-10-59, a fee of one hundred dollars.
i. A violation of North Dakota Century Code § 39-09-01, a fee of thirty dollars.
j. A violation of North Dakota Century Code § 39-09-01.1, a fee of thirty dollars.
k. A violation of North Dakota Century Code § 39-10-46 or 39-10-456.1, a fee of one hundred dollars.
l. a violation of subsection 1 of North Dakota Century Code § 39-08-20, a hundred fifty dollars for the first violation and three hundred dollars for a second or subsequent violation in three years.

3. Except as provided in subsection 7 and 11 of North Dakota Century Code § 39-06.1-06, for a violation of North Dakota Century Code § 39-09-02, or an equivalent ordinance, 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 North Dakota Century Code § 39-09-01, or an ordinance defining careless driving, a fee of thirty dollars.
5. For a violation of North Dakota Century Code § 39-09-01.1, or an ordinance defining care required in driving, a fee of not less than ten dollars nor more than thirty dollars.
6. For a violation of North Dakota Century Code § 39-09-02(1)(b), or an ordinance defining a school zone speed, a fee of forty dollars for one through ten miles per hour over the posted speed; and forty dollars, plus one dollar for each additional mile per hour over ten miles per hour over the limit unless a greater fee would be applicable3 under this section.
7. For a violation of North Dakota Century Code § 39-09-02(2), or an ordinance defining a highway construction zone speed, a fee of eighty dollars for one through ten miles per hour over the posted speed; and eighty dollars plus two dollars for each mile per hour over ten miles per hour over the limit, unless a greater fee would be applicable under this section. The fee in this subsection does not apply to a highway construction zone unless individuals engaged in construction are present at the time and place of the violation and the posted speed limit sign states “Minimum Fee $80”.

(Ord. No. 866, § 1; Ord. No. 1202, § 8; Ord. No. 1352 § 1.)

Section 23.80.090 "Nonmoving violation" defined

The provisions of North Dakota Century Code, section 3-06.1-08, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

For the purpose of section 23.80.070, a "nonmoving violation" shall mean sections 23.36.240, 23.36.330, 23.36.340, or the provisions of article 23.60. (Ord. No. 866, § 1.)

Section 23.80.100 "Moving violation" defined

The provisions of North Dakota Century Code, section 39-06.1-09, and all subsequent amendments, shall be and are hereby incorporated by reference in this section.

For the purpose of section 23.80.070, a "nonmoving violation" means sections 23.76.110, 23.36.310, 23.20.050, 23.44.020, 23.44.030, 23.44.040, 23.44.050, 23.44.060, 23.12.150(a) or 23.76.060(b) except paragraphs (2) and (3); or a violation of the provisions of article 23.36 or article 23.68 except section 23.68.050 and those sections which are specifically listed in section 23.80.080. (Ord. No. 866, § 1.)

Section 23.80.110 General penalty for violation of chapter

Unless another criminal penalty is specifically provided in any of the provisions of this chapter, any person who is convicted of violating or of failing to comply with any of the provisions of this chapter may be punished by a fine of not more than one thousand dollars or by imprisonment not to exceed thirty days, or both, and, upon conviction of any person of a violation of section 23.76.010 or section 23.76.050, the court may order the number plate of the motor vehicle owned and operated by the offender at the time of the offense to be impounded by the sheriff or chief law enforcement officer of the city, as is appropriate, for the duration of the period of suspension of the offender's driver's license or driving privilege by the licensing authority. (Ord. No. 866, § 1; Ord. No. 940, § 1; Ord. No. 933, § 6; Ord. No. 1157 § 4.)

Section 23.80.120 Notification of parents or guardians of juvenile traffic offenders

The municipal judge or his clerk shall notify the parent or guardian of any juvenile appearing before the court on a traffic offense of the charge as contained in the citation, the penalty attached to the offense and the time and place of any court hearing on the matter. (Ord. No. 866, § 1.)

Article 23.84 Equipment of Vehicle Size, Weight, and Load Restrictions

Sections:

23.84.010 Size, weight, and load restrictions of vehicles operated within the City
23.84.020 Regulating movement of engines, tractors, and heavy vehicles on pavement
23.84.030 Permits for excessive size and weight
23.84.040 Trucks Prohibited on certain streets - Truck routes established - Maps and signs required
23.84.050 Restricted use of streets and highways
23.84.060 Peace officers or other agents may weigh vehicle and require removal of excess load
23.84.070 Impounding overweight vehicle
23.84.080 Impounding receipt - Information
23.84.090 Impounding Notice - Perishables
23.84.100 Civil Complaint
23.84.110 Voluntary settlement of extraordinary road use fee charges
23.84.120 Mailing complaint
23.84.130 Cash bond-Holding
23.84.140 Trial-Charges
23.84.150 Payment of charges - Confiscation - Sale
23.84.160 Payment - Effect
23.84.170 Proceeds of Sale
23.84.180 Load Restrictions upon Vehicles using certain roads

Section 23.84.010 Size, weight, and load restrictions of vehicles operated within the City

No person, partnership, corporation, or other entity shall drive or permit to be driven through any agent or employee on any street or alley within the City any vehicle in violation of the restrictions on size, weight, and load established by North Dakota state law. (Ord. No.1401 §1)

Section 23.84.020 Regulating movement of engines, tractors, and heavy vehicles on pavement

No person, firm, corporation, or other entity shall move, or cause to be moved, over the paved streets, sidewalks, crosswalks, culverts, bridges, and viaducts within the City any motor vehicle, tractor, wagon, truck or other commercial vehicle, or other vehicle, object, or thing which will tend to injure the paving, sidewalks, crosswalks, culverts, bridges, or viaducts over which the same are transported or which exceeds the weight or weights as established pursuant to the preceding Section 23.84.010, or any vehicle to the wheels of which are attached spurs, bars, angle irons, or cleats which will tend to mar or deface the paving, sidewalk, crosswalks, culverts, bridges, or viaducts, except as authorized by a permit granted under Section 23.84.030.

Any person, firm, or corporation moving, or causing to be moved, any such engines, tractors, or vehicles shall pay or cause to be paid to the City, upon demand, any and all damages done to the paving, sidewalks, crosswalks, culverts, bridges, and viaducts. (Ord. No. 1401 §1)

Section 23.84.030 Permits for excessive size and weight

The city engineer may, under such policies as the city may establish, upon application in writing and good cause being shown therefore, issue a special permit in writing authorizing the applicant to operate or move a vehicle of a size and weight exceeding the maximum specified in this chapter upon any street or highway under the jurisdiction of and for the maintenance of which the city is responsible. Every such permit shall be

issued for a single trip and may designate the route to be traversed and contain other restrictions or conditions deemed necessary by the city engineer. Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer or other agent of the city, and it shall be unlawful for any person to violate any of the terms and conditions of such special permit. The fee for such special permit shall be established by resolution of the board of city commissioners. (Ord. No. 1401 §1)

Section 23.84.040 Trucks Prohibited on certain streets - Truck routes established - Maps and signs required

(a) No truck or commercial vehicle exceeding a gross vehicle weight rating of 26,001 pounds shall be operated in the City of Dickinson except upon truck routes designated as hereinafter provided in subsection (b) of this section; provided, that this ordinance shall not prohibit:

(1) Such vehicles from operating upon other city streets when delivering or picking up materials or merchandise, provided entrance or exit to or from such street is made at the nearest intersection; through streets as established elsewhere in the Dickinson city ordinances shall be considered as secondary truck routes and must be used in preference to other streets whenever possible.

(2) The operation of trucks owned or operated by the City of Dickinson.

(3) The operation of emergency vehicles, as defined in the traffic ordinances of the City of Dickinson, upon any street in the city.

(4) Trucks making more than one delivery on any one trip may take the most direct route between one delivery and the next.

(5) Commercial passenger buses, school buses, and other fleet passenger vehicles.

(6) Properly authorized snow removal equipment.

(b) Truck routes shall be established by resolution of the board of city commissioners, after notice and hearing. The notice shall be by one publication in the official newspaper of the City at least 15 days prior to the date of the hearing. The truck routes, as established by the board of city commissioners, shall be stated in the resolution and on an official map which shall be kept and maintained in the office of the city engineer and shall be available for public inspection.

(c) On each street or avenue designated as a truck route in accordance with subsection (b) above, such street or avenue may, but need not be, posted with appropriate signs.

(d) A person operating a motor vehicle in violation of this Section, or the owner of the motor vehicle being operated in violation of this Section, must be assessed a One Hundred Dollars and No Cents ($100.00). (Ord. No. 1401 §1; Ord. No. 1410§1; Ord. No. 1414 §1)

Section 23.84.045 Trucks prohibited on certain streets

Section 23.84.045 of the City Code of the City of Dickinson is hereby repealed.

Section 23.84.050 Restricted use of streets and highways

The board of city commissioners, by resolution, may prohibit the operation of vehicles or impose restrictions as to the weight of vehicles upon any street or highway under their jurisdiction or for the maintenance of which they are responsible whenever any of said streets or highways, by reason of deterioration, rain, snow, or other climatic conditions, will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weights thereof reduced. The board when enacting any such resolution shall erect, or cause to be erected and maintained, signs designating the provisions of the resolution at each end of that portion of any street or highway affected thereby, and the resolution shall not be effective until or unless such signs are erected and maintained. The board may also, by resolution, prohibit the operation of trucks or other commercial vehicles, or impose limitations as to the weight thereof, on designated streets and highways, which prohibitions and limitations shall be designated by appropriate signs placed on such streets or highways. (Ord. No. 1401 §1)

Section 23.84.060 Peace officers or other agents may weigh vehicle and require removal of excess load

Any peace officer, designated agent of city, or city-designated personnel, having reason to believe that the weight of a vehicle and load is unlawful is authorized to weigh the same, either by means of portable or stationary scales, and may require that such vehicle be driven to the nearest scales. The peace officer, or other designated individual as aforesaid, may then require the driver to unload immediately such portion of the load as may be necessary to decrease the gross weight of such vehicle to the maximum allowed therefor. Any person violating this Section shall be guilty of a Class B misdemeanor as provided by NDCC §39-12-21. (Ord. No. 1401 §1; Ord. No. 1410 §2)

Section 23.84.070 Impounding overweight vehicle

Any vehicle found to have been moved or used upon any highway, street, alley or other public way within the city at a weight exceeding the limitations as specified in any ordinance or resolution established hereunder, may be impounded by any peace officer, designated agent of city, or city-designated personnel and taken to a warehouse, garage or other facility for storage. (Ord. No. 1401 §1)

Section 23.84.080 Impounding receipt - Information

A receipt must be given by the peace officer or other person impounding the vehicle, to the driver or person in charge of such vehicle. Such receipt must identify as nearly as possible the owner of the vehicle and cargo, the driver or person in charge of such vehicle, the cargo, the place vehicle is to be stored during impoundment, the weight of the loaded vehicle and the name and address of the impounding officer. Information as to the owner of the vehicle and cargo must be obtained from the driver or person in charge of the vehicle. (Ord. No. 1401 §1)

Section 23.84.090 Impounding Notice - Perishables

The impounding officer shall notify the owner or owners, if they can be found, by wire or telephone, of the impoundment and the charges involved. If the cargo consists of perishables, the impounding officer shall use reasonable diligence in assisting the operator or owner in finding suitable storage facilities for such perishables, but all risk of loss or damage to such perishables must be upon the owner, operator, or lessee of such vehicle. (Ord. No. 1401 §1)

Section 23.84.100 Civil Complaint

The city attorney of the city shall, if no settlement is made under the next succeeding section, immediately prepare and file a civil complaint on behalf of the city for the purpose of recovering charges for the extraordinary use of the highways, streets, alleys or other public roadways of the city. (Ord. No. 1401 §1)

Section 23.84.110 Voluntary settlement of extraordinary road use fee charges

Before the complaint is issued pursuant to the preceding section, the owner, or the owner's driver or agent, may voluntarily pay the amount of the extraordinary road use fee, or may provide proof of surety coverage to ensure payment of the extraordinary road use fee, provided under Section 23.84.140, plus any towing or storage costs. Any settlement, whether made by the owner, or the owner's driver or agent, must be presumed to be of a voluntary nature. A peace officer or a peace officer's designee is authorized to receive the

settlement payment on behalf of the city. The extraordinary road use fees must be remitted to the city administrator's office. (Ord. No.1401 §1)

Section 23.84.120 Mailing complaint

A copy of the complaint must be served upon the driver or person in charge of the vehicle and a copy must be sent by registered or certified mail to the owner of the vehicle, if the address of such owner is known. (Ord. No. 1401 §1)

Section 23.84.130 Cash bond-Holding

Unless a cash bond is furnished in an amount sufficient to cover the charge for extraordinary use of highways, streets, alleys or other public roadway, as provided in the next succeeding section, together with the costs which may be collectible under any subsequent settlement made pursuant to this article, said vehicle must be held until a trial of the case can be held before the district court. (Ord. No. 1401 §1)

Section 23.84.140 Trial-Charges

At the trial of the action, the court shall hear testimony concerning the facts and if it is found that such vehicle or vehicles were moved upon the highways, streets, alleys or other public roadways of the city at a weight in excess of the limitations imposed under the provisions of this article, charges for the extraordinary use of the highways, streets, alleys, or roadways must be assessed as follows:

1. The storage charges and costs of the action must be assessed; and
2. An additional charge must be assessed as follows: (39-12-17, NDCC)

Pounds	Fee
1 to 1,000	$20
1,001 to 2,000	$40
2,001 to 3,000	$60
3,001 to 4,000	$140
4,001 to 5,000	$220
5,001 to 6,000	$305
6,001 to 7,000	$380
7,001 to 8,000	$495
8,001 to 9,000	$575
9,001 to 10,000	$655
10,001 to 11,000	$1,100
11,001 to 12,000	$1,200
12,001 to 13,000	$1,300
13,001 to 14,000	$1,680
14,001 to 15,000	$1,800
15,001 to 16,000	$1,920
16,001 to 17,000	$2,550
17,001 to 18,000	$2,700
18,001 to 19,000	$2,850
19,001 to 20,000	$3,000
20,001 to 21,000	$4,200
21,001 to 22,000	$4,400
22,001 to 23,000	$4,600
23,001 to 24,000	$4,800
24,001 to 25,000	$5,000
25,001 to 26,000	$5,200

26,001 to 27,000	$5,400
27,001 to 28,000	$5,600

An additional charge of $200 for every 1,000 pound increase over 30,000 pounds consistent with the above formula. (Ord. No. 1401 §1)

Section 23.84.150 Payment of charges - Confiscation - Sale

If the charges and costs as provided in the preceding section are not paid immediately from a cash bond previously posted or other cash payment, the judge shall order the vehicle confiscated and sold by the sheriff of the county at a public sale to the highest bidder and the proceeds applied to the payment of the charges and costs assessed under the provisions of this article. (Ord. No. 1401 §1)

Section 23.84.160 Payment - Effect

The payment of charges may not be construed as a payment for the future use of highways, streets, alleys and other public roadways of the city by vehicles carrying excess loads. (Ord. No. 1401 §1)

Section 23.84.170 Proceeds of Sale

The proceeds of sale must be applied first to the payment of the costs of the proceeding, including any allowable attorney's and witness fees and costs, and next to the payment of the charges assessed. Such charges must be remitted to the city administrator to be credited to the city general fund. The balance of the proceeds of any sale after the payment of costs and charges must be paid over by the sheriff to the person entitled thereto as determined by the court, or must be deposited with the clerk of the court for such payment. (Ord. No. 1401 §1)

Section 23.84.180 Load Restrictions upon Vehicles using certain roads

When signs are erected giving notice thereof, no person shall operate any vehicle with a gross weight in excess of the amounts specified on said sign at any time upon any of the streets or parts of streets so posted. (Ord. No. 1401 §1)

Chapter 24 NUISANCES

Last updated October 2007

Articles:

24.ED Editor's note to Chapter 24
24.04 In General
24.08 Storage of Junk, Maintenance of Blighted Structures, etc.
24.12 Noises
24.16 Standing Water

Article 24.ED Editor's note to Chapter 24

Sections:

24.ED.010 Editor's note to Chapter 24

Section 24.ED.010 Editor's note to Chapter 24

As to keeping of fowl, see §§ 5.04.040, 5.04.050 of this Code. As to certain dogs, see § 5.08.04.020. As to garbage and refuse generally, see Ch. 18. As to abatement of nuisances by public health officer, see § 20.04.070. As to uninvited calls by peddlers, hawkers, and transient merchants, see § 28.04.010. As to excavation in streets or sidewalks as attractive nuisance, see § 33.12.110.

Article 24.04 In General

Sections:

24.04.010 Abandoned property; property in violation of ordinances, etc.--Generally
24.04.020 Same--Removal and impoundment by police
24.04.030 Same--Creation, continuance or maintenance
24.04.040 Same--Sale
24.04.050 Dry cleaning establishments--"Dry cleaning" defined
24.04.060 Same--Declared nuisances in certain locations
24.04.070 Same--Inspection by fire chief; abatement of nuisance by fire chief

Section 24.04.010 Abandoned property; property in violation of ordinances, etc.--Generally

Any article of personal property located within the city, the use, condition or status of which is in violation of any provision of this Code or other ordinance of the city or any law of the state or which constitutes any obstruction, hazard or detriment to public traffic, public safety or public health or morals or which may be damaged, disabled or otherwise involved in an accident or in the commission of any violation of any ordinance of the city or any law of the state or any vehicle or other article or personal property abandoned or unclaimed within the city for a period of ten days or more, is hereby declared to be a nuisance and shall be abated in the manner provided by section 24.04.020. (Code 1958, § 21-1.)

For power of city as to abandoned property, see NDCC, § 40-05-02 (20).

Section 24.04.020 Same--Removal and impoundment by police

The police department of the city may remove or cause to be removed to the city hall or any other place within the city selected for the purpose any personal property described in section 24.04.010 and may impound and retain such property 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. (Code 1958, § 21-1.)

Section 24.04.030 Same--Creation, continuance or maintenance

Any person who may create, continue, maintain or suffer to exist a nuisance, as defined in section 24.04.010 shall be guilty of a misdemeanor. (Code 1958, § 21-1.)

Section 24.04.040 Same--Sale

If not reclaimed and redeemed by the true owner or the person lawfully entitled to the possession thereof within a period of sixty days after impounding, any article of personal property described in section 24.04.010 may be sold and disposed of by the police department of the city.

Notice that such property will be sold shall be published once at least ten days prior to the sale in a newspaper published in the city. Such notice shall specify a description of the property to be sold, the time and place of sale and shall be signed by the chief of police of the city.

Such sale shall be held between the hours of 9:00 a.m. and 5:00 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 when there are no bidders, when the amount offered is grossly inadequate or for other reasonable cause. The city may become purchaser of any or all property at such sale.

The chief of police shall give the purchaser at such sale a bill of sale of such property.

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

Any time within six months after such sale, the owner of the property shall be entitled to receive from the city the proceeds of such sale, less all expenses incurred by the city in relation thereto. (Code 1958, § 21-2.)

Section 24.04.050 Dry cleaning establishments--"Dry cleaning" defined

Dry cleaning is defined as the method of cleaning or renovating clothing, rugs, furs, fabrics and textiles with an inflammable fluid. (Code 1958, § 21-9.)

Section 24.04.060 Same--Declared nuisances in certain locations

All dry cleaning places or establishments within the fire limits of the city using inflammable fluids are declared a nuisance and unlawful. (Code 1958, §§ 21-10.)

Section 24.04.070 Same--Inspection by fire chief; abatement of nuisance by fire chief

It shall be the duty of the chief of the fire department to enter and inspect all buildings or places where he believes dry cleaning is being done, and if he finds that the preceding section is being violated, it shall be his duty to immediately abate such nuisance by removing and destroying all such liquids and preparations used in such dry cleaning. (Code 1958, § 21-11.)

Article 24.08 Storage of Junk, Maintenance of Blighted Structures, etc.

Sections:

24.08.010 Definitions
24.08.020 Certain practices declared nuisances
24.08.030 Liability of owners, occupants, lessees, etc., generally
24.08.040 Removal of junked automobile from private property by general inspector or police

Section 24.08.010 Definitions

For the purposes of this article, the following words and phrases shall have the meanings ascribed to them by this section:

Abandoned Vehicle. Without limitation, any vehicle which has remained on private property for a period of forty-eight continuous hours or more without consent of the owner or occupant of the property or for a period of forty-eight continuous hours or more after the consent of the owner or occupant has been revoked.

Blighted Structure. Without limitation, any dwelling, garage or outbuilding; 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.

Building Materials. 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.

Junk. Without limitation, parts of machinery or motor vehicles, unused furniture, stoves, refrigerators or other appliances, remnants of wood, metal or any other cast off material of any kind whether or not such material could be put to any reasonable use.

Junk Automobiles. Without limitation, any motor vehicle which is not licensed or use upon the highways of the state for a period in excess of sixty days and also includes, whether licensed or not, any motor vehicle which is inoperative for any reason for a period in excess of sixty days; provided, that there is excepted from this definition unlicensed but operative vehicles which are kept as the stock in trade of a regularly licensed and established new or used automobile dealer.

Trash and Rubbish. Any and all forms of debris not herein otherwise classified. (Ord. No. 525.)

Section 24.08.020 Certain practices declared nuisances

It is hereby determined that the following conditions tend to result in blighted and deteriorated neighborhoods, increase in criminal activity, spread of vermin and disease and are contrary to the public peace, health, safety, and general welfare of the community:

(a) Storing or permitting the storage or accumulation of trash or rubbish.

(b) Storing or permitting the storage of or accumulation of junk, junk automobiles or abandoned vehicles on any private property within the city, except within a completely enclosed building and in compliance with the provisions of this Code and other city ordinances; provided, that this shall not be construed to preclude the storage or accumulation of junk, junk automobiles or abandoned vehicles upon the business premises of a duly licensed junk dealer, junk buyer in used auto parts, or dealer in second hand goods or junk gatherer so long as such premises are operated and maintained in compliance with the provisions of this Code and other city ordinances.

(c) Dismantling, cutting up, removing parts from or otherwise disassembling any automobile, whether it is a junk automobile, abandoned vehicle 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 second hand goods or junk gatherer.

(d) Keeping or maintaining any blighted or vacant structure, dwelling, garage, outbuilding, factory, shop, store or warehouse, unless such structure is kept securely locked, the windows kept glazed or neatly boarded up and otherwise protected to prevent entrance thereto by unauthorized persons or such structure is in the course of construction in accordance with a valid building permit issued by the city and such construction is completed within a reasonable time.

(e) Storing or permitting the storage or accumulation of building materials on any private property, except in a completely enclosed building or where such building materials are part of the stock in trade of a business located on such property or when such materials are being used in the construction of a structure on the property in accordance with a valid building permit issued by the city and such construction is completed within a reasonable time.

Such conditions are hereby declared to be nuisances. (Ord. No. 525; Ord. No. 585.)

Section 24.08.030 Liability of owners, occupants, lessees, etc., generally

All persons maintaining or permitting the maintenance of any condition declared to be a nuisance by section 24.08.020, whether as owner, occupant, lessee, agent, servant or employee shall, except as herein otherwise provided, be equally liable as principals. (Ord. No. 525.)

Section 24.08.040 Removal of junked automobile from private property by general inspector or police

The general inspector or the police department may remove or cause to be removed any junk automobile 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 forty-eight hours prior to such removal. 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 vehicles or parts of either shall be removed to the automobile pound and disposed of in accordance with law. Such removal by the police department or general inspector shall not excuse or relieve any person of the obligation imposed by this article to keep his property free from storage or accumulation of junk automobiles or abandoned vehicles, parts of junk automobiles or abandoned vehicles or parts of either nor from the penalties for violation thereof. (Ord. No. 525.)

Article 24.12 Noises

Sections:

24.12.02000 Division 24.12.02 Generally
24.12.02010 Legislative findings
24.12.02020 Unnecessary noise prohibited
24.12.04000 Division 24.12.04 Noise Level Regulations
24.12.04010 Definitions
24.12.04020 Tests for unlawful noise
24.12.04030 Noise levels--Zoning districts
24.12.04040 Same--Motor vehicles
24.12.04050 Same--Aircraft
24.12.04060 Exemptions
24.12.04070 Application for special permit
24.12.04080 Penalty for violation of article
24.12.04090 Additional remedy

Section 24.12.02000 Division 24.12.02 Generally

Section 24.12.02010 Legislative findings

(a) The making, creation or maintenance of such loud, unnecessary, unnatural or unusual noises which are prolonged, unusual and unnatural in their time, place and use, affect and are detrimental to public health, comfort, convenience, safety, welfare and prosperity of the residents of the city.

(b) The necessity, in the public interest, for the provisions and prohibitions contained in this article, is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions of this article are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the city and its inhabitants. (Ord. No. 717, § 1.)

Section 24.12.02020 Unnecessary noise prohibited

It shall be unlawful for any person to make any loud, unnecessary or unusual noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city. (Ord. No. 717, § 1.)

Section 24.12.04000 Division 24.12.04 Noise Level Regulations

Section 24.12.04010 Definitions

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

"A" Band Level. Total sound level of all noise as measured with a sound level meter using the "A" weighing network. The unit of measurement is the dB(A).

Ambient Noise. All-encompassing noise associated with a given environment, being usually composite of sounds from many sources, near and far.

Bel. Common logarithmic value of any sound intensity as related to the standard threshold of audibility (minimum detectible sound or 10-12 watts per square meter).

Cycle. Complete sequence of value of a periodic quantity that occur during a period.

Decibel. One-tenth of a bel as measured on the "A" scale of a standard sound meter using procedures recommended by the American Standard Association.

Emergency Vehicles. Those vehicles such as ambulance, fire, police and other city vehicles operating in time of emergency.

Emergency Work. Work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger.

Frequency of a Function Periodic In Time. Reciprocal of the primitive period. The unit is the cycle per unit time and must be specified.

Sound-Level Meter. An instrument including a microphone, an amplifier, an output meter and frequency weighing networks for the measurement of noise and sound levels in a specified manner. (Ord. No. 717, § 1.)

Section 24.12.04020 Tests for unlawful noise

The standards which shall be considered in determining whether a violation of section 24.12.02.020 exists shall include, but shall not be limited to, the following:

(a) The volume of the noise.
(b) The intensity of the noise.
(c) Whether the nature of the noise is usual or unusual.
(d) Whether the origin of the noise is natural or unnatural.
(e) The volume and intensity of the background noise, if any.
(f) The proximity of the noise to residential sleeping facilities.
(g) The nature and zoning of the area within which the noise emanates.
(h) The density of inhabitation of the area within which the noise emanates.
(i) The time of the day or night the noise occurs.
(j) The duration of the noise.
(k) Whether the noise is recurrent, intermittent or constant.
(l) Whether the noise is produced by a commercial or noncommercial activity. (Ord. No. 717, § 1.)

Section 24.12.04030 Noise levels--Zoning districts

It shall be unlawful to project a sound or noise, excluding noise emanating from a motor vehicle, from one property into another or within the boundary of a use district, which exceeds the limiting noise criteria set forth in Table I 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 I 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.

TABLE I. LIMITING NOISE LEVELS FOR ZONING DISTRICTS

	Zoning District		
	Residential (R1, R2, R3, R4, PUD)	Commercial (C1, C2, C3, C4)	Industrial (C-M, M-11 M-2, M-3)
Maximum number of decibels permit-ed from 7:00 a.m.			

until 11:00 p.m. daily	53	65	80
Maximum number of decibels permitted from 11:00 p.m. until 7:00 a.m. of the following day	50	60	75

(Ord. No. 717, §§ 1.)

Section 24.12.04040 Same--Motor vehicles

It shall be unlawful to operate a motorized vehicle within the city limits which creates a noise or sound which exceeds the noise level limits set out in Table II, as follows:

TABLE II. LIMITING NOISE LEVELS FOR MOTOR VEHICLES

(a) Trucks, buses, construction equipment, or any motor vehicle with a gross weight rating of ten thousand (10,000) pounds or more: Maximum allowable limit: 88 dB measured at 25 feet.

(b) Passenger cars, pickups, vans, motorcycles, snowmobiles, or any motor vehicle with a gross weight rating less than ten thousand (10,000) pounds: Maximum allowable limit: 80 dB measured at 25 feet. (Ord. No. 717, § 1.)

Section 24.12.04050 Same--Aircraft

It shall be unlawful for any person to operate or cause to be operated any type of aircraft over the city which produces noise levels exceeding eighty-eight dB(A) within the city. (Ord. No. 717, § 1.)

Section 24.12.04060 Exemptions

The following uses and activities shall be exempt from the noise level regulations:

(a) Noises of safety signals, warning devices and emergency relief valves.

(b) Noises resulting from any authorized emergency vehicles, when responding to an emergency call or acting in time of an emergency.

(c) Noises resulting from emergency work as defined in section 24.12.04.010.

(d) Any construction or maintenance activities.

(e) Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the city in accordance with section 21.12.04.070.

(f) Any aircraft operated in conformity with, or pursuant to federal law, federal air regulations and air traffic control instruction used pursuant to and within the duly adopted federal air regulations shall be exempt from the provisions of section 21.12.04.050 as well as other regulations of this division. Any aircraft operating under technical difficulties, in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations shall also be exempt from the provisions of section 21.12.04.050 as well as the other regulations of this division. (Ord. No. 717, § 1.)

Section 24.12.04070 Application for special permit

Applications for a permit for relief from the noise level designated in this division on the basis of undue hardship may be made to the city engineer or his duly authorized representative. Any permit granted by the city engineer hereunder shall contain all conditions upon which such permit has been granted and shall specify a reasonable time that the permit shall be effective. The city engineer, or his duly authorized representative, may grant the relief as applied for if he finds:

(a) That additional time is necessary for the applicant to alter or modify his activity or operation to comply with this division; or

(b) The activity, operation or noise source will be of temporary duration, and cannot be done in manner that would comply with other sections of this division; and

(c) That no other reasonable alternative is available to the applicant; and

(d) The city engineer may prescribe any conditions or requirements he deems necessary to minimize adverse effects upon the community or the surrounding neighborhood. (Ord. No. 717, § 1.)

Section 24.12.04080 Penalty for violation of article

The penalty for violation of any of the provisions of this article shall be in accordance with section 11.12.010 of the Dickinson City Code. (Ord. No. 717, § 1.)

Section 24.12.04090 Additional remedy

As an additional remedy, the operation or maintenance of any device, instrument, vehicle or machinery in violation of any provisions hereof and which cause discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health or peace of residents in the area shall be deemed, and is declared to be, a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction. (Ord. No. 717, § 1.)

Article 24.16 Standing Water

Sections:

24.16.010 Standing Water

Section 24.16.010 Standing Water

(a) Standing Stagnant Water as Public Nuisance: All stagnant water in which mosquitoes can multiply is hereby declared to be a public nuisance. All items containing stagnant water which can serve as a breeding ground for mosquitoes are hereby declared to be a public nuisance. This includes, but is not limited to, bottles, cans, buckets, clogged gutters or any other places containing stagnant water. The outdoor storage of tires for more than seven (7) consecutive days is declared a public nuisance. The foregoing declarations of public nuisances shall not apply to ditches, drainage ways, detention basins, lakes, streams and natural land formations where water may collect.

It shall be unlawful for any property owner, lessee, tenant or other person otherwise in control of property to allow a public nuisance as set forth in this article to exist on any property owned, leased, used, occupied or in which such person otherwise has an interest to remain on such property.

(b) Nuisance Abatement: In the event of a violation of this article, the City Administrator or his designee, shall notify, in writing, such owner, occupant, person in control, or agent to remove such public nuisance. In the event such owner, occupant, person in control, or agent cannot be located after reasonable inquiry, posting shall be sufficient notice. The notice shall state that unless such nuisance is so abated or removed by a specified date, the City will cause it to be abated or removed. Such notice shall also state that the failure of such owner, occupant, person in control, or agent to abate the nuisance as required by such notice shall be deemed an implied consent for the City to abate or remove such nuisance. Such implied consent shall be deemed to form a contract between such owner, occupant, person in control, or agent and the City. If such owner, occupant, person in control, or agent fails to abate any nuisance within the time limit specified in such notice, the City may proceed to abate such nuisance, keeping an account of the expense of the abatement as to each particular lot or tract, and such expense shall be charged and paid by such owner, occupant, person in control, or agent.

(c) Administrative Expense: In addition to the charges and fees set forth in this article the City may charge an administrative fee to cover a portion of the administrative costs incurred for removal of the nuisance, which will be listed in the City' s fee schedule. Where the City causes the removal of public nuisances from more than one lot in the same subdivision and said lots are owned by the same person(s), then the City may charge an administrative fee for the first such lot and an additional fee for each additional lot as listed in the City' s fee schedule.

(d) Special Assessment of Fees: If the costs of abating or removing the nuisance remains unpaid on September 15 of any year, the City at its option, may place a special assessment against the real property where the nuisance was abated or removed. (Ord. No. 1271 §1.)

Chapter 25 OFFENSES—MISCELLANEOUS

Last updated January 2016

Articles:

25.ED Editor's note to Chapter 25
25.04 In General
25.06 Sale of Tobacco Products
25.08 Offenses Against Persons
25.12 Offenses Against Property
25.16 Offenses Against Public Order, Health, Safety and Sensibilities
25.20 Sentencing

Article 25.ED Editor's note to Chapter 25

Sections:

25.ED.010 Editor's note to Chapter 25

Section 25.ED.010 Editor's note to Chapter 25

For state law authorizing the city to keep and preserve public peace, see NDCC, § 40-05-01(33).

Article 25.04 In General

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25.04.06020 Preventing exercise of civil rights; hindering or preventing another aiding third person to exercise civil rights

Section 25.04.01 Definitions.

Any word not specifically defined in this Chapter, but which is defined in Title 12.1 of the North Dakota Century Code, shall have the meaning set forth in the said Title 12.1. (Ord. No. 1191, § 1.)

Section 25.04.02000 Division 25.04.02 Offenses of General Applicability

Section 25.04.02010 Criminal attempt

(a) 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.

(b) 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, section 12.1-03-01, were 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.

(c) 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. (Source: North Dakota Century Code, section 12.1-06-01.) (Ord. No. 867, § 1.)

Section 25.04.02020 Criminal conspiracy

(a) 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 the city, and any one or more of such persons does an overt act to effect an objective of the conspiracy. The agreement or the overt act must occur within the city. The agreement need not be explicit, but may be implicit in the fact of collaboration or existence of other circumstances.

(b) 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.

(c) 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.

(d) 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, if immune from prosecution, or is otherwise not subject to justice.

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

(f) Conspiracy shall be subject to the penalties provided for attempt in subsection 3 of section 25.04.02.010. (Source: North Dakota Century Code, section 12.1-06-04.) (Ord. No. 867, § 1.)

Section 25.04.04000 Division 25.04.04 Integrity and Effectiveness of Government Operation

Section 25.04.04010 Aiding consummation of crime

A person is guilty of the offense of aiding consummation of an offense against the ordinances of the city if he intentionally aids another to secrete, disguise or convert the proceeds of the offense against the ordinances or otherwise profits from the offense. (Source: North Dakota Century Code, section 12.1-08-04.) (Ord. No. 867, § 1.)

Section 25.04.04020 Public servants permitting escape

A public servant concerned in official detention, as defined by North Dakota Century Code, § 12.1-08-06(3), pursuant to process issued by a court, judge or magistrate is guilty of an offense against the ordinances of the city if he negligently permits an escape. (Source: North Dakota Century Code, section 12.1-08-07.) (Ord. No. 867, § 1.)

Section 25.04.04030 Criminal contempt

(a) The municipal court has power to punish for contempt of its authority only for the following offenses:
   (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
   (2) Misbehavior of any of its officers in their official transactions; or
   (3) Disobedience or resistance to its lawful writ, process, order, rule or command; or
   (4) As otherwise provided in 40-18-14, NDCC.

(b) Except as otherwise provided, a criminal contempt proceeding under this section shall be deemed a prosecution for an offense for the purposes of North Dakota Century Code, chapters 12.1-01 through 12.1-05, North Dakota Century Code, chapter 12.1-32, and article 25.20 of this chapter.

(c) 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 of dismissal, that a summary criminal contempt proceeding was necessary to prevent repetition of misbehavior disruptive of an ongoing proceeding and the 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.

(d) This section shall not be construed to deprive a court of its power, by civil contempt proceedings, to compel compliance with its lawful writ, process, order, rule, decree or command or to compensate a complainant for losses sustained by reason of disobedience or resistance thereto, in accordance with the prevailing usages of law and equity, including the power of detention. (Ord. No. 867, § 1; Ord. No. 1157 § 5.)

Section 25.04.04040 Hindering proceedings by disorderly conduct

A person is guilty of an offense if he recklessly hinders an official city proceeding by noise or violent or tumultuous behavior or disturbance.

Comment: Intentional hinderings by disorderly conduct must be prosecuted in state court since the punishment authorized is higher than that authorized for municipal courts. However, the conduct might also fall within the scope of criminal contempt under section 25.04.04.030.

The proceedings intended to be covered under this offense are official proceedings as defined in North Dakota Century Code, section 12.1-01-04(23), involving agencies or branches of the municipal government. (Ord. No. 867, § 1.)

Section 25.04.04050 Impersonating official

(a) A person is guilty of an offense if he falsely pretends to be a public servant of the city and acts as if to exercise the authority of such public servant.

(b) It is no defense to prosecution under this section that the pretended capacity did not exist or the pretended authority could not legally or otherwise have been exercised or conferred. If the offender "obtains a thing of value" as a result of his pretension, he is guilty of the greater offense prohibited by North Dakota Century Code, section 12.1-13-04(1) (b) which is classified as a class A misdemeanor and thus must be prosecuted in state court. It is also the intention of this section to cover only impersonation of city officials rather than state officials. (Ord. No. 867, § 1.)

Section 25.04.04060 Refusing to halt.

Any person, other than the driver of a motor vehicle under section 23.12.050, who willfully fails or refuses to stop or who otherwise flees or attempts to elude, in any manner, a pursuing peace officer, when given a visual or audible signal to stop, is guilty of a class B misdemeanor. A signal to stop complies with this section if the signal is perceptible to the person and:

1. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the vehicle is appropriately marked showing it to be an official law enforcement vehicle; or
2. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office.

Section 25.04.06000 Division 25.04.06 Civil Rights

Section 25.04.06010 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:

(a) 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.

(b) 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. (Source: North Dakota Century Code, section 12.1-14-04.) (Ord. No. 867, § 1.)

Section 25.04.06020 Preventing exercise of civil rights; hindering or preventing another aiding third person to exercise civil rights

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

(a) Injures, intimidates or interferes with another who is exercising or is about to exercise his civil rights, or because he has exercised his civil rights.

(b) Intimidates or prevents another from aiding a third person to exercise his civil rights. (Source: North Dakota Century Code, section 12. 114-05.) (Ord. No. 867, § 1.)

Article 25.06 Sale of Tobacco Products

Sections:

25.06.010 Definitions
25.06.020 Possession, Purchase, or Use of tobacco products by minors prohibited
25.06.030 Sale of tobacco products to minors prohibited
25.06.040 Penalties – Sale to Minors; Use, Possession by Minors
25.06.050 Smoking Restrictions – Exceptions – Retaliation - Application
25.06.060 Responsibility of Proprietors
25.06.070 Penalties – Smoking Restrictions

Section 25.06.010 Definitions

Unless the context or subject matter otherwise requires:

1) *City* shall mean the City of Dickinson, North Dakota.
2) *Person* shall mean any individual, partnership, corporation or other business or other legal entity.
3) *Minor* shall mean any person, regardless of sex, who has not yet reached the age of eighteen (18).
4) *Retail tobacco dealer* shall mean any individual, partnership, corporation or other business or other legal entity selling, offering for sale, exposing for sale, or having in possession for sale, at retail, tobacco products.
5) *Tobacco products* includes any product that contains tobacco, is derived from tobacco, or contains nicotine or other similar substances that is intended for human consumption or is likely to be consumed, whether smoked, heated, inhaled, chewed, absorbed, dissolved, or ingested by any other means. *Tobacco product* includes E-cigarettes and other electronic smoking devices, pipes and rolling papers, but does not include any product approved by the United States Food and Drug administration for legal sale as a tobacco cessation product and is being marketed solely for the approved purpose.
6) *Vending machine* shall mean any kind of device or mechanical machine which, upon insertion of coins, tokens or other objects will release tobacco products in packages or otherwise. (Ord. 1234 § 2)
7) *Bar* means a retail alcoholic beverage establishment licensed under Article 4 that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages. The term includes a bar located within a hotel, bowling center, restaurant, or other establishment that is not licensed primarily or exclusively to sell alcoholic beverages.
8) *Business* means a sole proprietorship, partnership, association, joint venture, corporation, or other business entity, either for profit or not for profit, including retail establishments where goods or services are sold and professional corporations and other entities where professional services are delivered.
9) *E-cigarette* means any electronic oral device, such as one composed of a heating element and battery or electronic circuit, or both, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, and e-pipe or under any other product, name or descriptor. *E-cigarette* also includes any component part of such product whether or not sold separately. *E-cigarette* does not include any product approved by the United States Food and Drug Administration for legal sale as a tobacco cessation product and is being marketed and sold solely for the approved purpose.

10) *Employee* means an individual who is employed by an employer in consideration for direct or indirect monetary wages or profit, or an individual who volunteers services for an employer.
11) *Employer* means an individual, business, or private club, including a municipal corporation or trust, or the state and its agencies and political subdivisions that employs the services of one or more individuals.
12) *Enclosed area* means all space between a floor and ceiling that has thirty-three percent or more of the surface area of its perimeter bounded by opened or closed walls, windows, or doorways. A wall includes any physical barrier regardless of whether it is opened or closed, temporary or permanent, or contains openings of any kind, and includes retractable dividers and garage doors.
13) *Health care facility* means any office or institution providing health care services or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions. Some examples of health care facilities include hospitals; clinics; ambulatory surgery centers; outpatient care facilities; weight control clinics; nursing homes; homes for the aging or chronically ill; nursing, basic, long-term, or assisted living facilities; laboratories; and offices of any medical professional licensed, including all specialties and subspecialties in those fields. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, wards within health care facilities, and any mobile or temporary health care facilities.
14) *Health care services* means services provided by any health care facility. Some examples of health care services are medical, surgical, dental, vision, chiropractic, psychological, and pharmaceutical services.
15) *Place of employment* means an area under the control of a public or private employer, including, work areas, auditoriums, classrooms, conference rooms, elevators, employee cafeterias, employee lounges, hallways, meeting rooms, private offices, restrooms, temporary offices, vehicles, and stairs. A private residence is not a place of employment unless it is used as a licensed child care, adult day care, or health care facility.
16) *Public place* means an area which the public enters. Some examples of public places are publicly owned buildings, vehicles, or offices; bars; bingo facilities; gambling and gaming facilities; child care and adult day care facilities subject to licensure by the department of human services, including those operated in private homes; convention facilities; educational facilities, both public and private; facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; financial institutions; health care facilities; hotels and motels including all rooms that are rented to guests; laundromats; any common areas in apartment buildings, condominiums, mobile home parks, retirement facilities, nursing homes, and other multiple-unit residential facilities; private and semi-private nursing home rooms; museums, libraries, galleries, and aquariums; polling places; professional offices; public transportation facilities, including buses, trains, airplanes and similar aircraft, taxicabs and similar vehicles such as town cars and limousines when used for public transportation, and ticket, boarding, and waiting areas of public transit facilities, including bus and train stations and airports; reception areas; restaurants; retail food production and marketing establishments; retail service establishments; retail stores including tobacco and hookah establishments; rooms, chambers, places of meeting or public assembly, including school buildings; shopping malls; sports arenas; theaters; and waiting rooms.
17) *Publicly owned building, vehicle, or office* means a place or vehicle owned, leased, or rented by any state or political subdivision, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of taxes.
18) *Restaurant* includes every building or other structure, or any part thereof, and all buildings in connection therewith that are kept, used, maintained, advertised, or held out to the public as a

place where food is served. Some examples of restaurants include coffee shops, cafeterias, Sandwich stands, private and public school cafeterias, kitchens, and catering facilities in which food is prepared on the premises for serving elsewhere, and a bar area within a restaurant.

19) *Shopping mall* means an enclosed public walkway or hall area that serves to connect retail or professional businesses.
20) *Smoking* means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. Smoking also includes the use of an e-cigarette which creates a vapor, in any manner or any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking.
21) *Sports arena* means an indoor or outdoor place where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events. Some examples of sports arenas include sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling centers. (Ord. 1234 § 2, Ord. 1495 § 1. Ord. 1601 § 1)

Section 25.06.020 Possession, Purchase, or Use of tobacco products by minors prohibited

(a) It shall be a noncriminal offense for a minor to possess, sell, purchase, attempt to purchase, smoke, or use tobacco products. This section shall not apply to a person under the age of eighteen (18) years who purchases or attempts to purchase tobacco or tobacco products while under the direct supervision of the police department or an entity authorized by the City or the State of North Dakota for training, education, or research purposes, nor to a person under the age of eighteen (18) years who purchases or attempts to purchase tobacco products while under the direct supervision of the police department for enforcement purposes.

(b) Any minor fourteen years of age or older who has been cited for a violation of subsection (a) may appear before the Dickinson Municipal Court and pay the fee by the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual' s action and the judge may waive, reduce, or suspend the fee or bond, or both. If the individual cited follows the procedures of this subdivision, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the court must be identical to the fee. This subdivision does not allow a citing officer to receive the fee or bond.

(c) If a minor fourteen years of age or older cited for a violation of subsection (a) does not choose to follow the procedures provided under subdivision (b), that individual may request a hearing on the issue of the commission of the violation cited. The hearing must be held at the time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance. At the time of a request for a hearing on the issue on commission of the violation, the individual cited shall deposit with the court an appearance bond equal to the fee for the violation cited.

(d) The failure to post bond or to pay an assessed fee is punishable as a contempt of court, except a minor may not be imprisoned for the contempt.

(e) The prosecution must prove the commission of a cited violation under subsection (a) by a preponderance of the evidence. (Ord. 1234 § 2, Ord. 1495 § 1)

Section 25.06.030 Sale of tobacco products to minors prohibited

(a) It shall be an offense for any person to sell, furnish to a minor, or to procure for a minor, tobacco products. As used in this subsection, "sell" includes dispensing from a vending machine under the control of the actor.

(b) Retailers are hereby obligated to check a state-issued photographic identification of purchasers twenty-six (26) years and younger for proof of age.
(c) Sale of tobacco products through vending machines is restricted. It shall be unlawful for any person to sell or dispense any tobacco products from a vending machine, except that tobacco products may be offered for sale or sold from a vending machine on the premises of a licensed on-sale or off-sale alcoholic beverage establishment, in any area of the premises where persons under the age of twenty-one (21) years of age are prohibited and where the vending machine is located within the immediate vicinity, plain view and control of a responsible adult employee, so that all tobacco purchases will be readily observable by the employee. The vending machine may not be located in the coat room, restroom, unmonitored hallway, outer waiting area, or similar unmonitored area; nor shall the vending machine be accessible to the public when the establishment is closed.
(d) Except on licensed alcohol premises, no tobacco products may be stored or displayed in a retail outlet in any area or in a manner which allows for self-service access by customers.
(e) Every act or omission of whatever nature, constituting a violation of the provisions of this Section 25.06.030 by any officer, director, manager or other agent or employee of any licensee shall be deemed and held to be the act of such licensee; and such licensee shall be punishable in the same manner as if such act or omission had been done or omitted by the licensee personally. (Ord. 1234 § 2, Ord. 1495 § 1)

Section 25.06.040 Penalties – Sale to Minors, Use, Possession by Minors

Any person violating the provisions of Section 25.06.030 shall, upon conviction, be guilty of an infraction. Any person violating the provisions of Section 25.06.020 by a minor shall be a noncriminal offense, as provided therein. Each day that a violation is permitted to exist shall constitute a separate punishable offense.

The minimum fee required for violating the provisions of the foregoing sections of this Article shall be as follows:

(a) For a violation of Section 25.06.020 by a minor~~:~~ a fine of $100.
(b) For a violation of Section 25.06.030 by a Retail tobacco dealer:
First offense, a fine of $100.00
Second offense within two years a fine of $250.00 and suspension of license of 7 days
Third and subsequent offenses within two years a fine of $500.00 and revocation of license
(c) For procuring tobacco products for a minor in violation of Section 25.06.030(a):
First offense, a fine of $100.00
Second offense within two years, a fine of $250.00
Third and subsequent offenses within two years, fine of $500.00

A portion of all fees collected may be contributed to an established smoking cessation program approved by the Board of City Commissioners.

Affirmative Defense~~s~~: A retail tobacco dealer may participate in a City Commission approved compliance training program, including maintaining a valid log book to identify all persons to whom tobacco products were sold, whether such person's identity and age was confirmed by checking a valid state-issued identification card, and the name and age of all such purchasers, together with verification of training for all employees. In the event that a Retail tobacco dealer is later charged with a violation of Section 25.06.030, the Retail tobacco dealer may assert participation in the City Commission approved compliance training program as an affirmative defense to the charge. Upon proof of program participation, the Retail tobacco dealer shall be entitled to a dismissal of the complaint. This affirmative defense may be asserted only one time in any three-year period by any one Retail tobacco dealer. (Ord. 1234 § 2, Ord. 1495 § 1)

Section 25.06.050 Smoking restrictions--Exceptions--Retaliation—Application

1. In order to protect the public health and welfare and to recognize the need for individuals to breathe smoke free air, smoking is prohibited in all enclosed areas of:
   a. Public places; and
   b. Places of employment.
2. Smoking is prohibited within twenty feet [6.10 meters] of entrances, exits, operable windows, air intakes, and ventilation systems of enclosed areas in which smoking is prohibited. Owners, operators, managers, employers, or other persons who own or control a public place or place of employment may seek to rebut the presumption that twenty feet [6.10 meters] is a reasonable minimum distance by making application to the director of the local health department or district in which the public place or place of employment is located. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes, or other factors, smoke will not infiltrate or reach the entrances, exits, open windows, or ventilation intakes or enter into such public place or place of employment and, therefore, the public health and safety will be adequately protected by a lesser distance.
3. The following areas are exempt from subsections 1 and 2:
   a. Private residences, except those residences used as a child care, adult day care, or health care facility subject to licensure by the department of human services.
   b. Outdoor areas of places of employment, except those listed in subsection 2.
   c. Any area that is not commonly accessible to the public and which is part of an owner operated business having no employee other than the owner operator.
4. Smoking as part of a traditional American Indian spiritual or cultural ceremony is not prohibited.
5. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or other person because that person asserts or exercises any rights afforded by this section or reports or attempts to prosecute a violation of this section. An employee who works in a setting where an employer allows smoking does not waive or surrender any legal rights the employee may have against the employer or any other party. Violations of this subsection shall be a class B misdemeanor.
6. This section may not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.
7. Notwithstanding any other provision of this chapter, an owner, operator, manager or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. (Ord. 1495 § 1)

Section 25.06.060 Responsibility of proprietors

The owner, operator, manager or other person in control of a public place or place of employment where smoking is prohibited by the provisions of Section 25.06.050 shall:

1. Clearly and conspicuously post no smoking signs or the international no smoking symbol in that place.
2. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.
3. Clearly and conspicuously post on every vehicle that constitutes a place of employment at least one sign, visible from the vehicle's exterior, stating that smoking is prohibited.
4. Remove all ashtrays from any area where smoking is prohibited, except for ashtrays displayed for sale and not for use on the premises.
5. Communicate to all existing employees and to all prospective employees upon their application for employment that smoking is prohibited in that place.
6. For places under his or her control, direct a person who is smoking in violation of provisions of Section 25.06.050 to extinguish the product being smoked. If the person does not stop smoking, the owner, operator, manager or employee shall refuse service and shall immediately ask the person to leave the premises. If the

person in violation refuses to leave the premises, the owner, operator, manager, or employee shall immediately report the violation to law enforcement or to the Tobacco Prevention and Control Division of the Southwestern District Health Unit. The refusal of the person to stop smoking or leave the premises in response to requests made under this section by an owner, operator, manager, or employee shall not constitute a violation of the provisions of Sections 25.06.050 or 25.06.060 by the owner, operator, manager, or employee. (Ord. 1495 § 1)

Section 25.06.070 Penalties – Smoking Restrictions

1. An individual who smokes in an area in which smoking is prohibited under Section 25.06.050 is guilty of an infraction punishable by a fine not exceeding fifty dollars.
2. Except as otherwise provided in subsection 5 of Section 25.06.050, an owner or other person with general supervisory responsibility over a public place or place of employment who willfully fails to comply with Section 25.06.050 is guilty of an infraction, subject to: a fine not to exceed one hundred dollars ($100.00) for the first violation; a fine not to exceed two hundred dollars ($200.00) for a second violation within one year; and to a fine not to exceed five hundred dollars ($500.00) for each additional violation within one year of the preceding violation.
3. In addition to the fines established by this section, violation of any provision of Sections 25.06.050 or 25.06.060 by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
4. Violations of any provision of Sections 25.06.050 and 25.06.060 are declared to be a public nuisance that may be abated by restraining order, preliminary or permanent injunction, or other means provided by law.
5. Each day on which a violation of any provision of Sections 25.06.050 and 25.06.060 occurs shall be considered a separate and distinct violation.

Section 25.06.080 Child-resistant packaging for liquid nicotine containers

1. Any nicotine liquid container that is sold at retail in this state must satisfy the child-resistant effectiveness standards set forth in title 16, CFR, part 1700, section 15(b)(1), when tested in accordance with the method described in title 16, CFR, part 1700, section 20.
2. As used in this section, “nicotine liquid container” means a bottle or other container of a liquid or other substance containing nicotine in which the liquid or substance is sold, marketed, or intended for use in an electronic smoking device. The term does not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed, or intended for use in an electronic smoking device, provide that the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer.
3. Any person that engages in retail sales of liquid nicotine containers in violation of this section is subject to a civil penalty of not more than five hundred dollars for each separate violation of this section. (Ord. 1601 § 2)

Article 25.08 Offenses Against Persons

Sections:

25.08.010 Simple assault
25.08.020 Harassment.

Section 25.08.010 Simple assault

(a) A person is guilty of an offense if he:

(1) Willfully causes bodily injury to another human being; or

(2) Negligently causes bodily injury to another human being by means of a firearm, destructive device or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.

(b) Consent to the conduct causing bodily injury by all persons injured by the conduct is a defense if:

(1) Neither the injury inflicted nor the injury threatened is such as to jeopardize life or seriously impair health;

(2) The conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or

(3) The conduct and the injury are reasonably foreseeable hazards of an occupation or profession or of medical or scientific experimentation conducted by recognized methods and the persons subjected to such conduct or injury, having been made aware of the risks involved, consent to the performance of the conduct or the infliction of the injury.

(c) Assent does not constitute consent, within the meaning of this section, if:

(1) 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;

(2) It is given by a person who by reason of youth, mental disease or defect, or intoxication, is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

(3) It is induced by force, duress or deception.

Comment: This section parallels the simple assault offense in North Dakota Century Code, section 12.1-17-01, and the consent provisions in North Dakota Century Code, section 12.1-17-08. It essentially follows lay usage in covering what was under common law more technically a battery. Common law assault is now covered more descriptively as terrorizing, North Dakota Century Code, section 12.1-17-04; menacing, North Dakota Century Code, section 12.1-17-05; criminal coercion, North Dakota Century Code, section 12.1-17-06; or harassment, North Dakota Century Code, section 12.1-17-07.

More serious assault (battery) is covered by state law under aggravated assault, North Dakota Century Code, section 12.1-17-02 or, as simple assault upon a peace officer or correctional institution employee acting in an official capacity, as a class C felony under North Dakota Century Code, section 12.1-17-01. (Ord. No. 867, § 1.)

Section 25.08.020 Harassment.

(1) A person is guilty of a class B misdemeanor 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 in writing or by telephone and causes mental anguish.

(2) Any offense defined herein and committed by use of a telephone may be deemed to have been committed at either the place at which the telephone call or calls were made or at the place where the telephone call or calls were received. (Ord. No. 1190, § 1.)

Article 25.12 Offenses Against Property

Sections:

25.12.02000 Division 25.12.02 Property Destruction and Criminal Intrusion
25.12.02010 Criminal mischief
25.12.02020 Tampering with or damaging public service
25.12.02030 Consent as defense; definition of "of another" for purposes of sections 25.12.02.010 and 25.12.02.020
25.12.02040 Criminal trespass
25.12.04000 Division 25.12.04 Theft and Related Offenses
25.12.04010 Consolidated theft offenses
25.12.04020 Theft of property generally
25.12.04030 Theft of services
25.12.04040 Theft of property lost, mislaid or delivered by mistake
25.12.04050 Thefts punishable under city ordinance
25.12.04060 Defrauding secured creditors
25.12.04070 Retail theft; shoplifting
25.12.04080 Defenses and proof as to theft and related offenses
25.12.04090 Definitions
25.12.04100 Making or uttering slugs

Section 25.12.02000 Division 25.12.02 Property Destruction and Criminal Intrusion

Section 25.12.02010 Criminal mischief

A person is guilty of an offense if he:

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

(b) Willfully damages tangible property of another. Conduct is punishable as criminal mischief under this section when any pecuniary loss, if intentionally caused, is not in excess of one hundred dollars; if recklessly caused, is not in excess of two thousand dollars; and if the damages to tangible property of another are not by means of an explosive or a destructive device.

(c) The penalty for the offense of criminal mischief may not exceed a fine of one thousand dollars, imprisonment for thirty days, or both such fine and imprisonment. (Source: North Dakota Century Code, section 12.1-21-05 and North Dakota Century Code, section 40-05-06 as amended by S.B. 2217 in 1975 and S.B. 2534 in 1977.) (Ord. No. 867, 1.)

Section 25.12.02020 Tampering with or damaging public service

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

(a) Tampering with or damaging the tangible property of another;

(b) Incapacitating an operator of such service; or

(c) Negligently damaging the tangible property of another by fire, explosive or other dangerous means. (Source: North Dakota Century Code, section 12.1-21-06.) (Ord. No. 867, § 1.)

Section 25.12.02030 Consent as defense; definition of "of another" for purposes of sections 25.12.02.010 and 25.12.02.020

For prosecutions of criminal mischief under section 25.12.02.010 or tampering with or damaging a public service under section 25.12.02.020:

(a) 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.

(b) Property is that "of another" if anyone other than the actor has a possessory or proprietary interest therein. (Source: North Dakota Century Code, section 12.1-21-07 and 08(2).) (Ord. No. 867, § 1.)

Section 25.12.02040 Criminal trespass

(a) A person is guilty of an infraction if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by actual communication to the actor by the person in charge of the premises or other authorized person or by posting in a manner reasonably likely to come to the attention of intruders.

(b) A person is guilty of an infraction if that person remains upon the property of another after being requested to leave the property by a duly authorized person. (Ord. No. 867, § 1; Ord. No. 1023, § 1; Ord. No. 1176, § 3.)

Section 25.12.04000 Division 25.12.04 Theft and Related Offenses

Section 25.12.04010 Consolidated theft offenses

(a) Conduct denominated theft in sections 25.12.04.020 to 25.12.04.040 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, misrepresentation of public funds, swindling and the like.

(b) A charge of theft under sections 25.12.04.020 to 25.12.04.040 which fairly apprises the defendant of the nature of the charges against him shall not be deemed insufficient because it fails to specify a particular category of theft. The defendant may be found guilty of theft under such a charge if his conduct falls under sections 25.12.04.020 and 25.12.04.040, so long as the conduct proved is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case he must meet. (Source: North Dakota Century Code, section 12.1-23.01.) (Ord. No. 867, § 1.)

Section 25.12.04020 Theft of property generally

A person is guilty of theft if he:

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

(b) Knowingly obtains the property of another by deception or by threat with intent to deprive the owner thereof, or intentionally deprives another of this property by deception or by threat; or

(c) Knowingly receives, retains or disposes of property of another which has been stolen, with intent to deprive the owner thereof. (Source: North Dakota Century Code, section 12.1-23-02.) (Ord. No. 867, § 1.)

Section 25.12.04030 Theft of services

A person is guilty of theft if:

(a) He intentionally obtains services, known by him to be available only for compensation, by deception, threat, false token or other means to avoid payment for the services: or

(b) Having control over the disposition of services of another to which he is not entitled, he knowingly diverts those services to his own benefit or to the benefit of another not entitled thereto.

Where compensation for services is ordinarily paid immediately upon their rendition, as in the case of hotels, restaurants and comparable establishments, absconding without payment or making provision to pay is prima facie evidence that the services were obtained by deception. (Source: North Dakota Century Code, section 12.1-23-03.) (Ord. No. 867, § 1.)

Section 25.12.04040 Theft of property lost, mislaid or delivered by mistake

A person is guilty of theft if he:

(a) Retains or disposes of property of another when he knows it has been lost or mislaid; or

(b) Retains or disposes of property of another when he knows it has been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property; and with intent to deprive the owner of it, he fails to take readily available and reasonable measures to restore the property to a person entitled to have it. (Source: North Dakota Century Code, section 12.1-23-04.) (Ord. No. 867, § 1.)

Section 25.12.04050 Thefts punishable under city ordinance

Theft under sections 25.12.04.020 to 25.12.04.040 may be punished as an offense against the city ordinances if the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that he was stealing, or which the actor could reasonably have anticipated to have been the property or services involved, does not exceed two hundred fifty dollars, and if:

(a) The theft was not committed by threat;

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

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

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

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

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

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

(h) The property stolen does not consist of livestock taken from the premises of the owner; and

(i) The property stolen does not consist of a key or other implement uniquely suited to provide access to property the theft of which would be a felony or was not stolen to gain such access. (Source: North Dakota Century Code, section 12. 1-23-05.) (Ord. No. 867, § 1.)

Section 25.12.04060 Defrauding secured creditors

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 five hundred dollars determined as in the

preamble of section 25.12.04.050. (Source: North Dakota Century Code, section 12.1-23-08.) (Ord. No. 867, § 1.)

Section 25.12.04070 Retail theft; shoplifting

(a) Presumption. Any person concealing upon his person or among his belongings, or causing to be concealed upon the person or among the belongings of another, unpurchased merchandise displayed, held, offered or stored for sale in a retail mercantile establishment and removing it to a point beyond the last station for receiving payments in that retail mercantile establishment shall be prima facie presumed to have so concealed such merchandise with the intention of permanently depriving the merchant of possession or of the full retail value of such merchandise.

(b) Procedure for Detention of Suspect. 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:

(1) To require the person to identify himself.
(2) To verify such identification.
(3) To determine whether such person has in his possession unpurchased merchandise and, if so, to recover such merchandise.
(4) To inform a peace officer of the detention of the person and surrender custody of that person to a peace officer.
(5) 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 such minor to the person informed.

(c) Definitions. For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them by this subsection:

Concealed. An item which, even though there is some notice of its presence, is itself not visible through ordinary observation.

Full Retail Value. The merchant's stated or advertised price of the merchandise.

Merchandise. Any item of tangible personal property, and specifically includes shopping carts.

Merchant. An owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, franchisee or independent contractor of such owner or operator.

Person. Any natural person or individual.

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 such retail mercantile establishment.

Retail Mercantile Establishment. Any place where merchandise is displayed, held, offered or stored for sale to the public.

Shopping Cart. Those pushcarts of the type or types which are commonly provided by grocery stores, drug stores 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.

(d) "Shoplifting" defined; penalty. Theft of unpurchased merchandise displayed, held, offered or stored for sale in a mercantile establishment from that establishment when open for business is "shoplifting". A person who violates this section shall be guilty of an infraction for a first offense, and for any subsequent offenses shall be guilty of an offense and assessed a penalty upon conviction not exceeding one thousand dollars, imprisonment for thirty days, or both such fine and imprisonment. (Source: North Dakota Century Code, sections 51-21-01, 51-21-02, 51-21-03 and 40-05-06.) (Ord. No. 867, § 1; Ord. No. 1176, § 4.)

Section 25.12.04080 Defenses and proof as to theft and related offenses

(a) It is a defense to a prosecution under sections 22.12.04.010 to 25.12.04.090 that:

(1) 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

(2) 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.

(b) It does not constitute a defense to a prosecution for conduct constituting an offense in violation of sections 22.12.04.010 to 25.12.04.090 that:

(1) Stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed;

(2) 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

(3) 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.

(c) (1) It shall be a prima facie case of theft under sections 22.12.04.010 to 25.12.04.090 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.

(2) Proof of the purchase or sale of stolen property at a price substantially below its fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.

(3) Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business, or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen. (Source: North Dakota Century Code, section 12.1-23-09.) (Ord. No. 867, § 1.)

Section 25.12.04090 Definitions

For the purposes of sections 25.12.04.010 to 25.12.04.080, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Dealer in Property. A person who buys or sells property as a business.

Deception.

(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;

(b) Preventing another from acquiring information which would affect his judgment of a transaction;

(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;

(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;

(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;

(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 (1) Where such instrument has been stolen, forged, revoked or canceled, or where for any other reason its use by the actor is unauthorized, and (2) 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 statement 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.

Deprive.

(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;

(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.

Fiduciary. 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.

Financial Institution. 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.

Obtain.

(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.

Property. 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.

Property of Another. Property in which a person other than the actor or in which a government has an interest which the actor is not privileged to infringe without consent, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person or government might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement. "Owner" means any person or a government with an interest in property such that it is "property of another" as far as the actor is concerned.

Receiving. Acquiring possession, control or title, or lending on the security of the property.

Services. 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.

Stolen. Property which has been the subject of theft or robbery or a vehicle which is received from a person who is then in violation of North Dakota Century Code, section 12.1-23-06.

Threat. An expressed purpose, however communicated, to:

(a) Cause bodily injury in the future to the person threatened or to any other person;
(b) Cause damage to property;
(c) Subject the person threatened or any other person to physical confinement or restraint;
(d) Engage in other conduct constituting a crime;
(e) Accuse anyone of a crime;
(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;
(g) Reveal any information sought to be concealed by the person threatened;
(h) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
(i) Take or withhold official action as a public servant, or cause a public servant to take or withhold official action;
(j) Bring about or continue a 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;
(k) Cause anyone to be dismissed from his employment, unless the property is demanded or obtained for lawful union purposes; or
(l) Do any other act which would not in itself substantially benefit the actor or a group he represents but which is calculated to harm another person in a substantial manner with respect to his health, safety, business, employment, calling, career, financial condition, reputation or personal relationship. Upon a charge of theft, the receipt of property in consideration for taking or withholding official action shall be deemed to be theft by threat regardless of whether the owner voluntarily parted with his property or himself initiated the scheme.

Traffic.

(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.) (Ord. No. 867, § 1.)

Section 25.12.04100 Making or uttering slugs

(a) A person is guilty of an offense if he makes or utters a slug or slugs which do not exceed fifty dollars 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.

(b) In this section:

(1) "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.
(2) "Coin machine" means a coin box, turnstile, vending machine or other mechanical or electrical device or receptacle designed (a) to receive a coin or bill of a certain denomination or a token made for the purpose; and (b) 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.
(3) Value of the slugs means the value of the coins, bills or tokens for which they are capable of being substituted. (Source: North Dakota Century Code, section 12.1-24-05.) (Ord. No. 867, § 1.)

Article 25.16 Offenses Against Public Order, Health, Safety and Sensibilities

Sections:

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Section 25.16.02000 Division 25.16.02 Riot

Section 25.16.02010 Engaging in

(a) A person is guilty of an offense if he engages in a riot.

(b) "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.
(c) A person shall be convicted under section 25.04.02.010 or 25.04.02.020 of attempt or conspiracy to commit an offense under this section only if he engages in the prohibited conduct under circumstances in which there is a substantial likelihood that his conduct will imminently produce a violation of this section. Mere presence at a riot is not an offense under this section. (Source: North Dakota Century Code, sections 12.1-25-01(2) & (03).) (Ord. No. 867, § 1.)

Section 25.16.02020 Disobedience of public safety orders under riot conditions

A person is guilty of an offense if, during a riot as defined in subsection (b) of section 25.16.02.010, or when one is immediately impending, he disobeys a reasonable public safety order to move, disperse or refrain from specified activities in the immediate vicinity of the riot. A public safety order is an order designed to prevent or control disorder, or promote the safety of persons or property, issued by the senior law-enforcement official on the scene. (Source: North Dakota Century Code, section 12.1-25-04.) (Ord. No. 867, § 1.)

Section 25.16.04000 Division 25.16.04 Disorderly Conduct; Loitering; Gambling; Prostitution

Section 25.16.04010 Disorderly conduct--Generally

(a) A person 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 his behavior, he:

(1) Engages in fighting, or in violent, tumultuous or threatening behavior;
(2) In a public place, uses abusive, insulting or offensive language, or an abusive, insulting or offensive gesture, under circumstances in which such language by its very utterance, or gesture, is likely to cause or provoke a disturbance or breach of the peace;
(3) Makes, countenances, assists or permits unreasonable noise, disturbance or improper diversion;
(4) Obstructs vehicular or pedestrian traffic, or the use of a public facility;
(5) Persistently follows a person in or about a public place or places;
(6) While loitering in a public place for the purpose of soliciting sexual contact, he solicits such contact;
(7) Creates a hazardous or seriously alarming condition by any act which he is not licensed or privileged to do;
(8) 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;
(9) Not being a peace officer, discharges a firearm or displays a deadly weapon in a public place;
(10) Exposes his genitals under circumstances in which, in fact, his conduct is likely to be observed by a person who would be offended or alarmed, and with intent to arouse or gratify the sexual desire of any person, including the actor;
(11) Throws any missile in a public place or in any place where there is any person to be endangered thereby, although no injury to any person ensues;
(12) Creates, by chemical means, a noxious and unreasonable odor in a public place; or
(13) Damages, befouls or disturbs public property or the property of another so as to create a hazardous, unhealthy or physically offensive condition.

(b) A person whose conduct violates paragraphs (1) through (10) of subsection (a) is guilty of an offense. A person whose conduct violates paragraphs (11) through (13) of subsection (a) is guilty of an infraction.
(c) Prosecutions under paragraphs (5) and (6) of subsection (a) shall be instituted only upon complaint to a law-enforcement officer by someone other than a law-enforcement officer.

(Sources: In general, see North Dakota Century Code, section 12.1-31-01;
Subsection (a):
Paragraph (2): North Dakota Century Code, section 12.1-31-01 (3); Wis. Stat. Ann. § SO 47.01; Minn. Stat. Ann. § 609.715; La. Rev. Stat. § 14.103
Paragraph (7): North Dakota Century Code, section 12.1-31-01 (7); Ore. Rev. Stat. § 166.025(1) (h)
Paragraph (8): Tex. Penal Code § 42.01(a) (7); Ill. Ann. Stat. Crim. Code § 26-1(a) (6)
Paragraph (9): Tex. Penal Code § 42.01(a) (8) and (9); Colo. Rev. Stat. Ann. § 18-9-106(e) and (f)
Paragraph (10): North Dakota Century Code, section 12.1-2704, repealed by S.L. 1975, Ch. 119, § 13
Paragraph (11): North Dakota Century Code, section 62-04-02, repealed by S. L. 1975, Ch. 106, § 673
Paragraph (12): Tex. Penal Code § 42.01(a) (3)
Subsection (b) is derived from the Proposed New Federal Criminal Code § 1861(2)
Subsection (c) is derived from the Proposed New Federal Criminal Code § 1861(4).)
(Ord. No. 867, § 1.)

Section 25.16.04020 Same--Defense when conduct consists of speech or other expression

(a) If conduct that would otherwise violate section 25.16.04.010(a)(3) (unreasonable noise) or section 25.16.04.010(a)(4) (obstructing traffic or public facility) 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.

(b) 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.

(c) It is a defense to prosecution under section 25.16.04.010(a) (3) or (4):

(1) That in circumstances in which this section requires an order no order was given;

(2) That an order, if given, was manifestly unreasonable in scope; or

(3) That an order, if given, was promptly obeyed. (Source: Tex. Penal Code § 42.04.) (Ord. No. 867, § 1.)

Section 25.16.04030 Loitering

(a) A person commits an infraction if he:

(1) 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 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.

(2) 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 here, and not having written permission from a school administrator or other person authorized to grant such permission.

(b) The word "loiter" means to delay or to stand idly around.

(c) Unless flight by the actor or other circumstances 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.

(d) No person shall be convicted of an offense under this section if the peace officer did not comply with subsection (c) hereof, 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.

(e) It shall be an affirmative defense that the defendant's acts were lawful and he was exercising his right of lawful assembly as a part of peaceful and orderly petition for the redress of grievances, either in the course of labor disputes or otherwise. (Ord. No. 867, § 1.)

Section 25.16.04040 Gambling

(a) It shall be an infraction to engage in gambling except those forms of gambling allowed by state statute.

(b) "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:

(1) Lawful contests of skill, speed, strength or endurance in which awards are made only to entrants or to the owners of entries; or

(2) Lawful business transactions or other acts or transactions now or hereafter expressly authorized by law.

(c) "Gambling apparatus" means any device, machine, paraphernalia or equipment that is used or usable in playing phases or any gambling activity whether that activity consists of gambling between persons, or gambling by 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, or an antique "slot" machine twenty-five years old or older which is collected and possessed by a person as a hobby and is not maintained for the business of gambling. (Ord. No. 867, § 1.)

Section 25.16.04050 Prostitution

(a) A person is guilty of the offense of prostitution if he:

(1) Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business; or

(2) Solicits another person with the intention of being hired to engage in sexual activity.

(b) Testimony of a person against his or her spouse shall be admissible to prove offenses under this section involving the spouse's prostitution.

(c) In this section:

(1) "Sexual activity" means sexual act or sexual conduct as those terms are defined in North Dakota Century Code, section 12.1-20-02.

(2) A "house of prostitution" is any place where prostitution is regularly carried on by a person under the control, management or supervision of another.

(3) An "inmate" is a prostitute who acts as such in or through the agency of a house of prostitution.

Comment: The ordinance proscribing prostitution is derived from North Dakota Century Code, sections 12.1-29-03.04 and 05. Definitions pertaining to the more serious offenses of promoting prostitution and facilitating prostitution have been omitted. Those two offenses are prohibited as class C felonies or class A misdemeanors, depending on the circumstances, by North Dakota Century Code, sections 12.1-29-01 and 02, respectively. (Ord. No. 867, § 1.)

Section 25.16.06010 Sunday Business or Labor - This Section was repealed with Ordinance No. 1312 (March 6, 2006)

This Section was repealed with Ordinance No. 1312 §5, dated March 6, 2006.

Section 25.16.08000 Division 25.16.08 Alcohol-Related Offenses

Section 25.16.08010 Purchase, possession, etc., of alcoholic beverages by persons less than twenty-one years of age prohibited; exceptions

(a) Any person under twenty-one years of age purchasing, consuming or having consumed, attempting to purchase or having in his or her possession any alcoholic beverage, or furnishing money to any person for such purchase, or entering any licensed premises where such beverages are being sold or displayed, except as provided by subsection (b) hereof, is guilty of an infraction for a first offense, and of an offense for any subsequent offense. The court may, under this section, refer the person to an outpatient addiction facility licensed by the department of health for evaluation and appropriate counseling or treatment.

(b) Any person under twenty-one 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) accompanied by a parent or legal guardian, (2) employed by the restaurant as a food waiter, food waitress, busboy or busgirl under the direct supervision of a person twenty-one or more years of age, and not engaged in the sale, dispensing, delivery or consumption of alcoholic beverages, or (3) if the person is a law-enforcement officer entering the premises in the performance of official duty. Any establishment where alcoholic beverages are sold may employ persons from eighteen to twenty-one years of age to work in the capacity of musicians under the direct supervision of a person over twenty-one years of age. (Source: North Dakota Century Code, sections 5-01-08 and 5-02-06.) (Ord. No. 867, § 1; Ord. No. 1047, § 1; Ord. No. 1176, § 5.)

Section 25.16.08020 Misrepresentation of age; obligations of licensee

Any person who shall misrepresent or misstate his age or the age of any other person, or shall misrepresent his age through presentation of any document purporting to show such person to be of legal age to purchase alcoholic beverages shall be guilty of an infraction. Every licensee shall be required to keep a book which such licensee and his employees shall require anyone who has shown documentary proof of his age, which substantiates his age to allow the purchase of alcoholic beverages, to sign if the age of such person is in question. Such book shall 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 his signature. (Source: North Dakota Century Code, section 5-01-08.1.) (Ord. No. 867, § 1; Ord. No. 1176, § 6.)

Section 25.16.08030 Bottle clubs prohibited

Any person operating an establishment whereby persons are allowed to bring their own alcoholic beverages on the premises where the proprietor sells soft drinks, mix, ice or charges for bringing such beverages on the premises, is guilty of an offense. (Source: North Dakota Century Code, section 5-01-10.) (Ord. No. 867, § 1.)

Section 25.16.08040 Public intoxication; assistance and/or medical care to be rendered

A peace officer shall have authority to take any apparently intoxicated person to his home, to a local hospital or, whenever such person constitutes a danger to himself or others, to a jail for the purposes of detoxification. A duly licensed physician of such local hospital shall have authority to hold such person for treatment up to seventy-two hours. Such intoxicated person shall not be held in jail because of intoxication more than twenty-four hours. An intoxicated person shall not be placed in a jail unless a jailer is constantly present within hearing distance and medical services are provided when the need is indicated. Upon placing such person in a hospital or jail, such peace officer shall notify the intoxicated person's family as soon as possible. Any additional costs incurred by the city on account of an intoxicated person shall be recoverable from such person. (Source: North Dakota Century Code, section 5-01-05.1.) (Ord. No. 867, § 1.)

Section 25.16.08050 No prosecution solely for intoxication

No person shall be prosecuted solely for public intoxication. Law-enforcement officers may utilize standard identification procedures on all persons given assistance because of apparent intoxication. (Source: North Dakota Century Code, section 5-01-05.2.) (Ord. No. 867, § 1.)

Section 25.16.10000 Division 25.16.10 Protection of Minors

Section 25.16.10010 Display of objectionable materials or performance to minors; definitions; penalty

(a) A person is guilty of an offense if he willfully displays at a newsstand or any other business establishment frequented by minors, or where minors are or may be invited as a part of the general public, any photograph, paperback book, pamphlet or magazine, the exposed cover or available content of which exploits, is devoted to or is principally made up of depictions of nude or partially denuded human figures posed or presented in a manner to exploit sex, lust or perversion for commercial gain.

(b) As used in this section:

(1) "Nude or partially denuded human figures" means less than completely and opaquely covered human genitals, pubic regions, female breasts or a female breast, if the breast or breasts are exposed below a point immediately above the top of the areola, or human buttocks; and includes human male genitals in a discernibly turgid state even if completely and opaquely covered.

(2) "Where minors are or may be invited as a part of the general public" includes any public roadway or public walkway.

(3) The above shall not be construed to include a bona fide school, college, university, museum, public library or art gallery. (Ord. No. 867, § 1.)

Section 25.16.12000 Division 25.16.12 Miscellaneous Offenses

Section 25.16.12010 Discharging or using air guns, spring guns, sling shots, etc.

It shall be unlawful for any person to discharge or use any air guns, spring gun, sling shot or bow and arrow in the city when such activity may create an injury, danger or hazard to person or property. (Ord. No. 867, § 1.)

Section 25.16.12020 Erection, construction or maintenance of barbed wire fences or enclosures

No person shall, within the city, erect, construct or maintain any fence or enclosure of any premises, piece or parcel of ground with what is known as barbed wire, unless such barbed wire on such fence shall be at least six feet above the surface of the ground. (Ord. No. 867, § 1.)

Section 25.16.12030 Bomb threats, etc.

It shall be unlawful for any person, without any good reason and justification, to furnish or release any information to any individual or group intended to cause such individual or group to believe that an explosion or other occurrence likely to be damaging to person or property is going to happen. This section shall be

considered violated regardless of whether or not anyone is actually deceived by such information as long as such report is calculated to create such deception. (Ord. No. 867, § 1.)

Section 25.16.12040 Curfew for minors

(a) It shall be unlawful for any minor under the age of eighteen years to loiter, idle, wander, stroll or play or drive or ride in cars idly or aimlessly in or upon the public streets, avenues, highways, roads, alleys, parks, playgrounds and other public grounds, public places and public buildings, places of amusement or entertainment, and vacant lots or other undersupervised places in the city between the hours of 11:00 P.M. and 5:00 A.M. of the following day for the days of Sunday through Thursday; 1:00 A.M. and 5:00 A.M. of the following day for the days of Friday and Saturday. This section do not apply to a minor while attending or while en route to or from employment or activities supervised by a school, church, civic or fraternal organization or governmental agency, nor shall such provisions apply to a minor accompanied by his or her parents, guardian or other adult person having care and custody of such minor. If it is claimed that such minor is upon an emergency errand, such minor must carry a written permit signed by the parent or legal guardian of the child, stating the nature of the errand, time of departure and the place where the errand is being performed. The curfew as set forth herein shall be 1:00 a.m. for all days of the week for minors attending public dances or other events approved by the City in the summer months from the day after the Dickinson Public School system dismisses classes through the day before classes reconvene each year, provided however, that this exception only applies while said minor is en route to or from said public dance and while attending said dance.

(b) It shall be unlawful for the parent, guardian or other adult person having the lawful care, custody or control of any minor person to willfully and recklessly allow or permit such minor person to violate the provisions of this section, or to aid or abet such violation.

(c) It shall be unlawful for any person operating or in charge of any place of amusement, entertainment or refreshment or other place of business, to knowingly permit any minor to loiter, loaf or idle in such place during the hours prohibited by this section.

(d) Whenever the owner or person in charge of any place of amusement, entertainment or refreshment or other place of business shall find a minor, during the hours prohibited, loitering, loafing or idling in such place of business, he shall immediately order the minor to leave, and if the minor refuses to leave the premises the owner or person in charge shall immediately notify the police department and inform the department of such refusal.

(e) This section shall not be construed so as to permit the presence of any minor in any place where his presence is now prohibited by law.

(f) Any police officer is hereby authorized to arrest without warrant any person or persons observed by him to be violating the provisions of this section.

(g) A person who violates this section shall be guilty of an infraction and sentenced accordingly. (Ord. No. 867, § 1; Ord. No. 1099, § 1; Ord. No. 1114, § 1; Ord. No. 1176, § 7; Ord. No. 1250 § 1.)

Section 25.16.12050 Discharging firearms, explosives, etc.

No person shall fire or discharge within the city limits any gun, cracker, cannon cracker, fowling piece, pistol or firearm of any description containing powder or combustible material or do any blasting of rock or other substance, unless a written permit granting permission so to do, which shall prescribe the time at which such firing is permitted, shall first be issued by the president of the board of city commissioners. Any permit so issued shall be subject to revocation by the president at any time after it is granted. (Ord. No. 867, § 1.)

Section 25.16.12060 Electrical interference with radio reception--Generally

It shall be unlawful for any person knowingly to maintain, use, operate or cause to be operated within the city any machine, device, appliance, equipment or apparatus of any kind whatsoever, the operation of which shall cause reasonably preventable electrical interference with radio reception within the city. The maintenance,

use or operation within the city of any machine, device, appliance, equipment or apparatus of any kind so as to interfere with radio reception in violation hereof is hereby declared to be a common nuisance.

This section shall not be held or construed to embrace or cover the regulation of any transmitting, broadcasting or receiving instrument, apparatus or device used in interstate commerce or the operation of which is licensed or authorized by or under the provisions of any act of Congress. (Ord. No. 867, § 1.)

Section 25.16.12070 Same--Operation of X-ray equipment

A person duly licensed to practice medicine, osteopathy, chiropractic or dentistry by the state may, in the course of the practice of his profession, operate or cause to be operated under his direct supervision at any time any machine or apparatus necessary to make X-ray pictures or examinations or to give treatments if the machines or apparatus used therefor are properly equipped to avoid all unnecessary or reasonably preventable interference with radio reception and are not negligently operated. (Ord. No. 867, § 1.)

Section 25.16.12080 Same--Enforcement of restrictions generally; right of city engineer to enter for inspection

It shall be the duty of the city engineer and his duly authorized deputies and assistants to administer and enforce the provisions of this section, to inspect the installation, working and operation of all apparatus, devices, appliances or equipment causing or likely to cause radio interference, to investigate complaints of such interference, to locate the sources thereof and to advise and make recommendations and orders as to its elimination.

The city engineer and his duly authorized deputies and assistants shall have the right to enter upon any premises at all reasonable hours for the purpose of inspecting the installation and working of all machines, devices, appliances, equipment or apparatus coming within the terms of sections 25.16.12.060 to 25.16.12.100. It shall be unlawful for any person to interfere with any such officer in making the inspection, to refuse to permit him to enter the premises for any such purpose or to hinder him in the discharge of his duties. Any inspector entering any premises to make any such inspection, upon request, shall exhibit to any person there in charge a certificate of the city auditor showing his authority as an inspector. (Ord. No. 867, § 1.)

Section 25.16.12090 Same--Notification of violation

When an official inspection and test shall have been made and it is found that any machine, device, appliance, equipment or apparatus is being operated within the city in violation of sections 25.16.12.060, 25.16.12.070, 25.16.12.080 and 25.16.12.090, the city engineer shall notify the owner or operator thereof in writing to discontinue the use of such device, etc. or to make such additions, repairs, adjustments or alterations so that such device, etc., may be lawfully operated. This notice shall be personally served on the owner or operator and, in the event that such owner or operator does not within seventy-two hours after such service either entirely discontinue the use of such device etc., or repair, adjust or alter it or attach proper silencing devices so that it conforms to this section, the further maintenance, use or operation thereof shall be deemed a violation. (Ord. No. 867, § 1.)

Section 25.16.12100 Same--Prosecution

When any person has been notified in writing by any peace officer that he is violating sections 25.16.12.060 to 25.16.12.090 and the written notice has specified the time within which the interfering apparatus shall be corrected, each day's maintenance or operation of the same without correction after the expiration of the time stated in the notice shall be considered a separate offense hereunder. The giving of such notice shall not be prerequisite to prosecution for a single offense, but one arrested for such a violation shall be discharged upon submission to the police magistrate of satisfactory evidence that he has within seventy-two

hours caused the apparatus, device, appliance or equipment, the operation of which has caused radio interference, to conform to the requirements. (Ord. No. 867, § 1.)

Section 25.16.12110 Manufacture, sale, use, etc., of explosives

No person shall manufacture, keep, store or have in his possession for the purpose of storing, keeping or selling any nitroglycerine, dynamite, dynamite caps, fulminate of mercury, blasting powder, guncotton or any other dangerous explosive within the city.

Any person desiring to use any nitroglycerine, dynamite, dynamite caps, fulminate of mercury, blasting powder, guncotton or other dangerous explosive within the city shall first make application in writing to the chief of the fire department and it shall be illegal to proceed with such use of such explosive until a permit is issued by the chief of the fire department.

No person shall weigh, sell or handle by candle, lamp, gas light or any other open light any gunpowder or other explosive, and no person shall bring or have any such light or any fire or any burning substance within fifteen feet of any such explosive at any time. (Ord. No. 867, § 1.)

Section 25.16.12120 Installation of loudspeakers and musical instruments

It shall be unlawful for any person to place upon any street or sidewalk of the city or the entrance of any building in the city any radio or radio loudspeaker, or other musical instrument the sound of which is transmitted through the air, or to place or install any radio or radio loudspeaker or other musical instrument in an opening so as to cause the sound thereof to be transmitted outside of the building; provided, however, that this section shall not apply in any manner to any type of sound equipment utilized on, in or in conjunction with church buildings or otherwise permitted by the city commission. (Ord. No. 867, § 1.)

Section 25.16.12130 Use, possession, etc., of controlled substances

It shall be unlawful for any person to possess the controlled substance marijuana, and any person who violates this section regarding possession of one ounce, (28.35 grams) or less of marijuana shall be guilty of a class B misdemeanor.

Whenever a person pleads guilty or is found guilty of a first offense regarding possession of marijuana aforesaid and the judgment of guilt is entered, the court, upon motion, shall seal the court record of that conviction if the person is not subsequently convicted within two years of a further violation of this section or chapter 19-03.1 of the North Dakota Century Code, and has not been convicted of any other criminal offense. Once sealed, the court record may not be opened even by order of the court.

Whenever any person who has not previously been convicted of any offense under this section or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant or hallucinogenic drugs, pleads guilty to or is found guilty of possession of marijuana as aforesaid, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceeding against him. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications for disabilities imposed by law upon conviction of a crime. There may be only one discharge and dismissal under this section with respect to any person. (Ord. No. 867, § 1.)

Section 25.16.12135 Unlawful Possession of Marijuana Paraphernalia

A person may not use or possess with the intent to use drug paraphernalia to ingest, inhale, or otherwise introduce into the human body marijuana in violation of North Dakota Century Code 19-03.1. A person violating this subsection is guilty of a class B misdemeanor.

Section 25.16.12140 Posting, etc., of bills, posters, etc.; distribution of handbills, etc.

Without having first obtained consent of the owner or occupants, no person shall paste-up, stick-up, nail or post handbills, placards or posters or make, print or mark any work, character or advertisement of any kind upon any private house, railing, fence, telegraph, telephone, electric light or other pole or post, any automobile or other vehicle, whether upon the streets of the city or elsewhere, or other private property; nor shall he post, print, mark or nail any handbill, poster or advertisement of any kind upon any public building, bridge, fence, street or sidewalk within the city, except in compliance with the requirements of law in the posting of legal notices.

No person, whether licensed or not, shall scatter or throw upon the streets, avenues, sidewalks or alleys of the city, or into any vehicles thereon any handbill, poster, advertisement or paper. (Ord. No. 867, § 1.)

Section 25.16.12150 Spitting, throwing litter, etc., in public places

It shall be unlawful for any person to spit, expectorate or throw fruit, fruit parings or skins, nuts or nut shells upon the sidewalks or crossing of any of the streets, avenues, alley or driveways within the corporate limits of the city or upon the floors, stairs or hallways within or sidewalls leading to or from any public building, theatre, public hall or office or store or any railway depot or platform connected therewith or connected thereto, whether such premises are publicly or privately owned.

No person shall throw or deposit upon any street or highway within the limits of the city any glass bottle, glass, nails, tacks, wires or cans likely to injure any person, animal or vehicle, or throw or deposit rubbish of any kind upon the street. A person who violates this section shall be guilty of an infraction and sentenced accordingly. (Ord. No. 867, § 1.)

Section 25.16.12160 Unlawful Deposit of Materials at Recycling Sites

The Board of City Commissioners hereby finds that designated recycling sites operated and maintained by the City of Dickinson are intended for the sole purpose of collection of recyclable materials therein designated at the site; and further finds that persons depositing materials at recycling sites other than those materials specifically designated therefore impose a significant harm upon the City and its citizens in the form of, among other things, increased costs of collection and potential of fire and other hazards.

Therefore, it shall be unlawful for any person to deposit any materials at any designated recycling site operated and maintained by the City of Dickinson except for those specific materials designated for collection of recyclables as provided in signs placed by the City upon the recycling site.

Any person who violates this section shall be guilty of an infraction, which may be punishable by a fine of up to $500. (Ord. No.1441 § 1.)

Section 25.16.12170 Soliciting and Panhandling.

1. Statement of Purpose. The intent and purpose of this section is to promote and protect the public health, welfare and safety of the City, its residents and visitors. The City finds that that the activity of begging, panhandling or soliciting the occupants or operators of vehicles from any roadway, highway, street, ally, driveway, median strip within or between a public roadway distracts drivers and creates a potential safety hazard or pedestrians and motorists. The activity of soliciting from occupants of vehicles distracts drivers from their primary duty to watch traffic and pedestrians and be alert for potential hazards and to observe all traffic control signals, signs or warnings. Distracted drivers are more prone to be involved in accidents, and accidents on the streets constitute a substantial traffic safety problem.

Solicitation near school and churches presents a potentially threatening environment and

raises concerns regarding public health, welfare and safety of the City, its residents and visitors. Soliciting in a manner that is confrontational and involves conduct that is perceived by the person being solicited as harassing, coercing, or intimidating or which obstructs the free passage of that individual is detrimental to the quality of life and economic vitality of the community.

This section is not intended to limit any person from exercising his or her constitutional right to solicit, picket, protest or engage in other constitutionally protected activity, but rather to protect citizens from the fear and intimidation accompanying certain kinds of solicitations and to eliminate a source of traffic hazards and delays.

2. Definitions. Whenever the following words and phrases are used in this section, they shall have the following meanings:

(a) Aggressive Panhandling. Shall mean engaging in any conduct with the intention of intimidating another person, or in reckless disregard of the fact that another person is intimidated by his/her conduct, into giving away money or goods, including but not limited to, approaching, speaking to or following a person in a manner that would cause a reasonable person to fear imminent physical injury or the imminent commission of a criminal act upon the person or upon property in the person's immediate possession; touching another person without consent, continuing to solicit after the person gives a negative response to the request; using violent or threatening gestures or language in conjunction with the solicitation; or engaging in any conduct intended to or likely to intimidate a person into responding affirmatively to the solicitation.

(b) Panhandling or Soliciting. For purposes of this section, panhandling, solicit, soliciting and solicitation are interchangeable and mean employment of the spoken, written or printed word or other acts as are conducted in the furtherance of the purpose of collecting money or any item of value for the use of one's self or other's; or attempting to sell or obtain compensation for items or services under circumstances that would leave a reasonable person to conclude that the payment is in substance donation.

(c) Public Area. Shall mean an area to which the public or a substantial group of persons has access, and includes, but is not limited to, any street, highway, sidewalk, parking lot, plaza, transportation facility, school or school grounds, place of amusement, park, playground, and any doorway, entrance, hallway, lobby and other portion of any business establishment, an apartment, house or hotel not constituting a room or apartment designed for actual residence.

(d) Highway 22 Corridor shall mean that area in the City of Dickinson described as follows: Starting within five hundred feet in any direction from the center of the intersection of 12th Street and Highway 22 then north with a setback of one-hundred feet to the east and west of Highway 22 to the intersection of 23rd Street and Highway 22. This area shall include the five hundred feet in any direction from the center of the intersection of 23rd Street and Highway 22. 3. Prohibition. It shall be unlawful for any person to:

(a) Engage in any aggressive panhandling in a public area;

(b) Solicit on private property if the owner, tenant or lawful occupant has asked the person not to solicit on their property, or has posted a sign clearly indicating that soliciting is not welcome on the property;

(c) Solicit any operator of a motor vehicle within the Highway 22 Corridor;

(d) Solicit any operator of a motor vehicle within five hundred feet from the centerline of any I-94 exit ramp into the City of Dickinson. This shall include any and all exit ramps currently in operation and any and all exit ramps subsequently constructed;

(e) Solicit within 100 feet of any school building or school playground when children are present. For purposes of this subsection, a school shall not include a college, university or other institution of higher learning.

(f) Solicit within 100 feet of any church or other religious establishment

3. This section does not apply to solicitations made on private property with the prior consent of the owner or other person in legal possession of the property. The section also does not apply to solicitations made by any person or entity that has obtained a special use permit or a temporary use permit from the City of Dickinson.

4. Penalty. A person who violates this Section by engaging in any of the conduct outlined in subsection 3(a)-(f) is guilty of an infraction. A motorist that stops the free flow of traffic at the intersections and exit ramps identified above for the purpose of engaging a person who is panhandling shall be cited under Chapter 23 of the Dickinson Municipal Code. (Ord. No. 1588, § 1.)

Article 25.20 Sentencing

Sections:

25.20.010 Classification of offenses
25.20.020 Sentencing alternatives
25.20.030 Procedure for trial of infraction
25.20.040 Special sanction for organizations
25.20.050 Factors to be considered in sentencing
25.20.060 Imposition of fine; response to nonpayment
25.20.070 Probation--Generally
25.20.080 Same--Conditions; revocation
25.20.090 Restitution or reparation
25.20.100 Merger of sentences; sentencing for multiple offenses

Section 25.20.010 Classification of offenses

Offenses against the ordinances of the city are divided into two classes, as follows:

(a) Offense, for which a maximum penalty of thirty days imprisonment, a fine of one thousand dollars, or both, may be imposed.

(b) Infraction, for which a maximum fine of five hundred dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which he was convicted, been previously convicted of an offense classified as an infraction of state statutes or the ordinances of this or any other North Dakota municipality may be sentenced as though convicted of an offense. If the prosecution contends that the infraction is punishable as an offense, the complaint shall so specify unless the prosecution is unable with reasonable effort to learn of the prior conviction prior to execution of the complaint.

(c) All violations of the provisions of the ordinances of the city are offenses unless specifically labeled infractions or unless a different classification or punishment is specifically authorized. (Source: North Dakota Century Code, section 12.1-32-01.)

(d) North Dakota Century Code, section 40-05-06, shall not be construed to prohibit the utilization of the sentencing alternatives, other than a fine or imprisonment, provided by North Dakota Century Code, sections 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 subsections 3 and 4 of North Dakota Century Code, section 12.1-32-02. (Ord. No. 867, § 1; Ord. No. 1025, § 1; Ord. No. 1157 § 6.)

Section 25.20.020 Sentencing alternatives

(a) Every person convicted of an offense who is sentenced by the court shall 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:

(1) Payment of the reasonable costs of his prosecution.
(2) Probation.
(3) A term of imprisonment, including intermittent imprisonment.
(4) A fine.
(5) Restitution for damages resulting from the commission of the offense.
(6) Restoration of damaged property, or other appropriate work detail.
(7) Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction or mental disease or defect.
(8) Commitment to any other facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.

Sentences imposed under this subsection shall not exceed in duration the maximum sentences provided in section 25.20.010, or as provided specifically in an ordinance defining an offense.

This subsection shall not be construed as not permitting the unconditional discharge of an offender following conviction. Sentences under paragraphs (5) or (6) shall be imposed in the manner provided in section 25.20.090. This subsection shall not be construed to prohibit utilization of North Dakota Century Code, section 40-18-13, relating to suspension of sentence, nor shall this subsection limit the conditions which can be imposed on a probationer under section 25.20.070.

(b) Credit against any sentence to a term of imprisonment shall be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence is imposed, or as a result of the conduct on which such charge was based. "Time spent in custody" shall include time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence or pending appeal.

(c) A court may refer a person convicted of driving while under the influence of an intoxicating liquor or a narcotic drug, prior to sentencing, to an approved treatment facility for diagnosis. Upon receipt of the results of this diagnosis, the court may impose a sentence as prescribed in section 23.76.010 or it may sentence the person to treatment in a facility approved by the state department of human services.

(d) All sentences imposed shall be accompanied by a written statement by the court setting forth the reasons for imposing the particular sentence. The statement shall become part of the record of the case.

(e) If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of the sentencing unless, upon motion of the defendant, the court orders the term to commence at some other time. (Source: North Dakota Century Code, section 12.1-32-02.) (Ord, No. 867, § 1.)

Section 25.20.030 Procedure for trial of infraction

(a) 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 unless he may be subject to a sentence of imprisonment under subsection (b) of section 25.20.010.

(b) Except as provided in North Dakota Century Code, title 12.1, or the ordinances of the 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.

(c) Following conviction of an infraction, the offender may be sentenced in accordance with subsection (a) of section 25.20.020, except that a term of imprisonment may not be imposed except in accordance with subsection (c) of section 25.20.060 or subsection (b) of section 25.20.010.

(d) If an ordinance provides that conduct is an infraction without specifically including a requirement of culpability, no culpability is required.

(e) Except as provided in this section, section 25.20.010 or section 25.20.020, or as the context may otherwise indicate a differentiation between the infraction classification and the offense classification, the term "offense" refers to all violations of the ordinances of the city including infractions. (Source: North Dakota Century Code, section 12.1-32-03.1.) (Ord. No. 867, § 1.)

Section 25.20.040 Special sanction for organizations

When an organization is convicted of an offense, the court may, in addition to any other sentence which may be imposed, require the organization to give notice of its conviction to the persons or class of persons ostensibly harmed by the offense, by mail or by advertising in designated areas or by designated media or otherwise. (Source: North Dakota Century Code, section 12.1-32-03.) (Ord. No. 867, § 1.)

Section 25.20.050 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:

(a) The defendant's criminal conduct neither caused nor threatened serious harm to another person or his property.

(b) The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property.

(c) The defendant acted under strong provocation.

(d) There were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant's conduct.

(e) The victim of the defendant's conduct induced or facilitated its commission.

(f) The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury which was sustained.

(g) 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.

(h) The defendant's conduct was the result of circumstances unlikely to recur.

(i) The character, history and attitudes of the defendant indicate that he is unlikely to commit another crime.

(j) The defendant is particularly likely to respond affirmatively to probationary treatment.

(k) The imprisonment of the defendant would entail undue hardship to himself or his dependents.

(l) The defendant is elderly or in poor health.

(m) The defendant did not abuse a public position of responsibility or trust.

(n) 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 as sentencing. (Source: North Dakota Century Code, section 12.1-32-04.) (Ord. No. 867, § 1.)

Section 25.20.060 Imposition of fine; response to nonpayment

(a) The court, in making a determination of the propriety of imposing a sentence to pay a fine, shall consider the following factors:

(1) The ability of the defendant to pay without undue hardship.

(2) Whether the defendant, other than a defendant organization, gained money or property as a result of commission.

(3) Whether the sentence to pay a fine will interfere with the defendant's capacity to make restitution.

(4) Whether a sentence to pay a fine will serve a valid rehabilitative purpose.

(b) 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.

(c) If the defendant does not pay any fine or costs imposed, or make any required partial payment, the court, upon motion of the prosecuting attorney or on its own motion, may issue an order to show cause why the defendant should not be imprisoned for nonpayment. Unless the defendant shows that this 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 indigency. An order or commitment under this subsection shall not be for a period in excess of thirty days. As used in this subsection, "fine" does not include a fee established pursuant to subsection (b) of section 23.80.080. (Source: North Dakota Century Code, section 12.1-32-05 and section 40-11-12.) (Ord. No. 867, § 1.)

Section 25.20.070 Probation--Generally

(a) Unless terminated as provided in subsection (b) hereof, the period during which a sentence to probation shall remain conditional and be subject to revocation is two years.
(b) The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection (a) above if warranted by the conduct of the defendant and the ends of justice.
(c) Notwithstanding the fact that a sentence to probation can subsequently be modified or revoked, a judgment which includes such a sentence shall constitute a final judgment for all other purposes. (Source: North Dakota Century Code, section 12.1-32-06.) (Ord. No. 867, § 1.)

Section 25.20.080 Same--Conditions; revocation

(a) The conditions of probation shall be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation that the defendant not commit another offense during the period for which the sentence remains subject to revocation.
(b) 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:

(1) Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip him for suitable employment.
(2) Undergo available medical or psychiatric treatment and remain in a specified institution as required for that purpose.
(3) Attend or reside in a facility established for the instruction, recreation or residence of persons on probation.
(4) Support his dependents and meet other family responsibilities.
(5) Make restitution or reparation to the victim of his conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation or assigned work is a condition of the sentence, the court shall proceed as provided in section 25.20.090.
(6) Pay a fine imposed after consideration of the provisions of section 25.20.060.
(7) Refrain from possessing a firearm, destructive device or other dangerous weapon unless granted written permission by the court.
(8) Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription.
(9) Promptly notify the court of any change of address or employment.
(10) Remain within the jurisdiction of the court, unless granted permission to leave by the court.
(11) Refrain from associating with known users or traffickers in narcotics, marijuana or other controlled substances.

(c) When a defendant is sentenced to probation, he shall be given a certificate explicitly setting forth the conditions on which he is being released.
(d) The court may, upon notice of the probationer, modify or enlarge the conditions of a sentence to probation at any time prior to the expiration or termination of the period for which the sentence remains conditional. If the defendant violates a condition at any time prior to the expiration or termination of the period, the court may, pursuant to the procedure specified in North Dakota Rules of Criminal Procedure, 32(f), continue him on the existing sentence, without modifying or enlarging the conditions or, if such continuation, modification or enlargement is not appropriate, may impose any other sentence that was available under section 25.20.020 at the time of the initial sentencing.
(e) Jurisdiction over a probationer may be transferred from the court which imposed the sentence to another court of this state, with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection shall be authorized to

exercise all powers permissible under this chapter over the defendant. (Source: North Dakota Century Code, section 12.1-32-07.) (Ord. No. 867, § 1.)

Section 25.20.090 Restitution or reparation

(a) 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:

(1) The reasonable damages sustained by the victim or victims of the criminal offense, which damages shall be limited to fruits of the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action.

(2) 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.

(3) The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which shall not exceed an amount the defendant can or will be able to pay, or shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. Any payments made pursuant to such order shall be deducted from 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, if the court so directs, be filed, transcribed and enforced by the person entitled to the restitution or reparation in the same manner as civil judgments rendered by the courts of this state may be enforced.

(b) 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 the private individual other than the victim. (Source: North Dakota Century Code, section 12.1-32-08.) (Ord. No. 867, § 1.)

Section 25.20.100 Merger of sentences; sentencing for multiple offenses

(a) 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.

(b) A defendant may not be consecutively sentenced to more than one year. (Source: North Dakota Century Code, section 12.1-32-11.) (Ord. No. 867, § 1.)

Chapter 26 PARKS

Last updated October 2007

Sections:

26.00E Editor's note to Chapter 26
26.010 Park district--Created; named
26.020 Same--Boundaries
26.030 Same--Acceptance of state law

Section 26.00E Editor's note to Chapter 26

As to cutting, etc., flowers, etc., see § 22-36 of this Code.

Section 26.010 Park district--Created; named

There is hereby created a park district in the city, and the name of such dark district shall be the "Park District of the City of Dickinson." (Code 1958, § 1-11.)

For state law as to parks and park districts, see NDCC, § 40-49-01 et seq.

Section 26.020 Same--Boundaries

The park district created by the preceding section shall embrace the whole of the territory within the limits of the city and such other areas as may from time to time be permitted by the laws of the state. (Code 1958, § 1-12.)

Section 26.030 Same--Acceptance of state law

It is the intention of the board of city commissioners hereby to accept and to create a park district within the city under the provisions of chapter 40-49 of the North Dakota Century Code, and all acts or amendments which may be hereafter enacted or made. (Code 1958, § 1-13.)

Chapter 27 PAWNBROKERS AND JUNK DEALERS

Last updated October 2007

Articles:

27.04 Pawnbrokers
27.08 Junk Dealers

Article 27.04 Pawnbrokers

Sections:

27.04.00E Editor's note to Article 27.04
27.04.005 Declaration of purpose and intent
27.04.010 Definitions
27.04.020 License--Required
27.04.030 Application; fee
27.04.040 Bonding of applicant; issuance
27.04.050 Record of goods
27.04.055 Purchase from minors prohibited
27.04.060 Inspection of registration books; aiding police; exhibition of goods
27.04.065 Police department to maintain list of stolen goods
27.04.070 Authorized inspections
27.04.080 Revocation of Licenses

Section 27.04.00E Editor's note to Article 27.04

For state law as to pledges, see NDCC, § 35-06-01 et seq. As to authority of city to regulate pawnbrokers, see NDCC, § 40-05-01 (26).

Section 27.04.005 Declaration of purpose and intent

The board of city commissioners finds that pawn shops or businesses that deal in second-hand goods or valuables provide a convenient means by which thieves or those who deal in stolen goods may dispose of such property. In order to discourage transactions in stolen goods and other unauthorized transactions, and to assist in the recovery of stolen goods and identification of those who sell stolen goods or engage in other unauthorized transactions, the board finds that it is necessary to license such businesses, and to require that certain records be kept, and that police officers be authorized to inspect such records. (Ord. No. 1283 § 1)

Section 27.04.010 Definitions

1. "Pawnbroker" means any person who:

a. Loans money on deposit or pledge of personal property, or other valuable things;

b. Deals in the purchase of personal property or other valuable thing, on condition of selling the same back again at a stipulated price;

c. Loans money, secured by personal property, taking possession of the property or any part thereof. (Code 1958, § 22-1; Ord. No. 1283 § 1.)

Section 27.04.020 License--Required

No person, firm, partnership, corporation or other entity shall carry on or conduct the business of pawnbroker within the city without first having obtained a license to do so. (Code 1958, §§ 22-2; Ord. No. 1283 § 1.)

For state law as to power of city to license pawnbrokers, see NDCC, § 40-05-01 (26).

Section 27.04.030 Application; fee

Any person who shall desire to conduct the business of a pawnbroker within the city shall first make application for a license to the city administrator. Such application shall give the location at which business is to be carried on together with three personal references of the applicant. Such applicant shall deposit with the city administrator a license fee in such amount as determined from time to time by the board of city commissioners

and shall be on file in the office of the city administrator in the city fee schedule. (Code 1958, § 22-3; Ord. No. 1086, § 15; Ord. No. 1283 § 1.)

Section 27.04.040 Bonding of applicant; issuance

Accompanying the application for the license required by section 27.04.020, the applicant shall include a bond executed to the city in the sum of five thousand dollars, with sufficient surety, to be approved by the city administrator conditioned that the applicant will return to the person entitled thereto all property upon payment of the legal charges against such property and will in every particular conform with the requirements of this article and of any law or ordinance which may hereafter be passed concerning pawnbrokers, and thereupon the city administrator shall issue a license to conduct the business of a pawnbroker. (Code 1958, § 22-4; Ord. No. 1083, § 4; Ord. No. 1283 § 1.)

Section 27.04.050 Record of goods

Any person who operates a business defined in this chapter in the city must keep a written record on a form approved or designed by the City, in such form as required by the Chief of Police, of each and every purchase or loan made by the business, containing the following:

(1) name and address of seller or pledger;
(2) date of birth of the seller or pledger;
(3) written consent of a parent or guardian if the seller or pledger is less than eighteen years of age;
(4) the date, description of the article sold or pledged, including the make, model, serial number and color;
(5) amount for which pledged or purchased;
(6) date of forfeiture and sale; and
(7) drivers license number or other identifying information of the person by whom sold or left in pledge. (If identifying information other than a driver's license number is used, the type of identifying information must be specified.)
(8) signature of the person selling or pledging the pawned item.

The records must be contained in a bound book, must be legible and no record may be destroyed or rendered illegible by any alteration or correction. Records must be retained for two years and freely exhibited to any city police officer conducting an inspection authorized by this chapter upon demand during usual business hours. (Ord. No. 1283 § 1,)

Section 27.04.055 Purchase from minors prohibited

A person who engages in a business defined in this chapter or agent or employee may not loan money to any person under the age of eighteen or purchase any merchandise, goods or property from a minor without the written consent of the parents or guardian of that person. (Ord. No. 1283 § 1.)

Section 27.04.060 Inspection of registration books; aiding police; exhibition of goods

The register book required by section 27.04.050 shall be subject to the inspection of any member of the police department at any time. It shall be the duty of all pawnbrokers to aid the police department in arresting and convicting any person who shall have sold or attempted to sell them any stolen property. They shall also submit and exhibit to any officer of the police department any goods, personal property or choses in action that may be left, deposited, pledged or purchased with or by them. (Code 1958, § 22-6.; Ord. No. 1283 § 1.)

Section 27.04.065 Police department to maintain list of stolen goods

The police department will maintain a list of stolen goods and will respond to inquiries of persons licensed under this chapter. This list will be kept current insofar as is practicable. (Ordinance No. 1283 § 1.)

Section 27.04.070 Authorized inspections

The police department is authorized to conduct inspections of the records and premises of businesses licensed under this chapter during normal business hours. (Ord. No. 1283 § 1.)

Section 27.04.080 Revocation of Licenses

1. Licenses issued under the provisions of this chapter may be revoked by the board of city commissioners after notice and hearing, for any of the following causes:
    a. Fraud, misrepresentation or false statement contained in the application for a license.
    b. Fraud, misrepresentation or false statement made in the course of carrying on business.
    c. Any violation of this article.
    d. Failing to cooperate with any officer of the police department, as required in this chapter.
    e. Conviction of any crime involving theft or dishonesty.
    f. Conducting business in an unlawful manner or in such a manner to constitute a breach of the peace.
2. Notice of the hearing for revocation must be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice must be mailed, registered mail, to the licensee at least five days prior to the date set for the hearing. (Ord. No. 1283 § 1.)

Article 27.08 Junk Dealers

Sections:

27.08.00E Editor's note to Article 27.08
27.08.010 Definitions
27.08.020 License--Required
27.08.030 Application; investigation; issuance or denial; restrictions on storage in city
27.08.040 Same--Fees
27.08.050 Same--Revocation
27.08.060 Same--Premises covered
27.08.070 Purchase of articles from minor
27.08.080 Presence of obnoxious materials on premises; cleanliness of premises; installation of water and sewer lines
27.08.090 Registration of property purchased; exhibition of registration book to police

Section 27.08.00E Editor's note to Article 27.08

For state law as to authority of city to regulate junk dealers, see NDCC, § 40-05-01 (53).

Section 27.08.010 Definitions

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

Junk. Without limitation, parts of machinery or motor vehicles, unused furniture, stoves, refrigerators, other appliances, remnants of wood, metal or any other cast-off material of any kind whether or not such material could be put to any reasonable use.

Junk Automobile. Without limitation, any motor vehicle which is not licensed for use upon the highways of the state for a period in excess of sixty days and shall also include, whether licensed or not, any motor vehicle which is inoperative for any reason for a period in excess of sixty days; provided, that there is excepted from this definition unlicensed but operative vehicles which are kept as the stock-in-trade of a regularly licensed and established new or used automobile dealer.

Junk Dealer. Any person who shall, within the city, engage in any one or more of the following occupations: The buying or processing of hides, wools, scrap iron, metal or scrap batteries or dealing in junk automobiles or parts thereof. (Code 1958, § 22-7; Ord. No. 524.)

Section 27.08.020 License--Required

No person shall engage in the business of buying or selling junk, unless he shall apply for and receive a license as hereinafter provided for. (Code 1958, § 22-8; Ord. No. 524.)

Section 27.08.030 Application; investigation; issuance or denial; restrictions on storage in city

The annual license for junk dealers covering the period from January 1 to December 31shall be applied for at the office of the city administrator, and the license fee hereinafter provided for shall be deposited at the time of filing the application. The city administrator shall investigate as to the propriety of carrying on such business in the proposed location under the city zoning laws. The city administrator shall report with his recommendations to the city administrator. If the application meets the requirements of this section, the city administrator shall grant the license.

If a license is granted to any person having an established place of business in the city, that person shall not store or keep any of the articles mentioned in section 27.08.010 in and around a building and enclosure,

unless such established place of business shall have a solid, nonvisual fence of not less than six feet in height enclosing such area where any of the articles mentioned in section 27.08.010 are to be stored in the city, unless the license shall have been amended by order of the city commission to permit such storage at such locations; nor shall any such articles be permitted to remain in a vehicle or exposed at any place in the city for a longer time than is necessary to gather and remove them from the city. (Code 1958, § 22-9; Ord. No. 524; Ord. No. 844, § 1; Ord. No. 1083, § 10; Ord. No. 1320 §2.)

Section 27.08.040 Same--Fees

The annual fee for junk dealers shall be payable in advance in such amount as determined from time to time by the board of city commissioners and shall be on file in the office of the city auditor in the city fee schedule, except, that if a license is applied for by a new business organized or coming into the city for the first time during any license year, such fee may be prorated to the nearest quarter just past. (Code 1958, § 22-10; Ord. No. 524; Ord. No. 776, § 1; Ord. No. 1086, § 16.)

Section 27.08.050 Same--Revocation

Such license may be revoked at any time by the city commission for cause upon notice to the license holder. (Code 1958, § 22-11; Ord. No. 524.)

Section 27.08.060 Same--Premises covered

No license issued shall be considered as valid as to any premises other than those described in the license. Upon application the city commission may permit an amendment of the license to cover other premises if it be for the best interests of the city. (Code 1958, § 22-12; Ord. No. 524.)

Section 27.08.070 Purchase of articles from minor

It shall be unlawful for any dealer in junk or secondhand goods to purchase any article whatever from any minor without the consent of the parents or lawful guardians of such minors. (Code 1958, § 22-13; Ord. No. 524.)

Section 27.08.080 Presence of obnoxious materials on premises; cleanliness of premises; installation of water and sewer lines

Every licensee shall keep the premises used free of any junk or property which might create obnoxious odors or smoke. Such premises shall at all times be kept neat and clean and vermin free. Water and sewer lines shall be installed in any premises for which a license is issued. (Code 1958, § 22-14; Ord. No. 524.)

Section 27.08.090 Registration of property purchased; exhibition of registration book to police

Every person obtaining a license required by this article shall keep in his place of business a book or register in which he shall enter in writing an accurate description of all property or choses in action purchased by him, the time when they were received and the name and the residence of the person from whom they were purchased. Such register shall be displayed to any police officer, so requesting, of the city during the ordinary hours of business. (Code 1958, § 22-15; Ord. No. 524.)

For state law as to exhibition of stolen goods to owner, see NDCC, § 12-42-07.

Chapter 28 PEDDLERS, HAWKERS AND TRANSIENT MERCHANTS

Last updated February 2009

Articles:

28.04 In General - Repealed with Ordinance No. 1363 (October 2008)
28.08 Peddlers and Hawkers - Repealed with Ordinance No. 1363 (October 2008)
28.12 Transient Merchants - Repealed with Ordinance No. 1363 (October 2008)
28.16 Door-to-Door Solicitations

Article 28.04 In General - Repealed with Ordinance No. 1363 (October 2008)

Article 28.08 Peddlers and Hawkers - Repealed with Ordinance No. 1363 (October 2008)

Sections:

28.08.28.16.020 No License or Permit Issued

Section 28.08.28.16.020 No License or Permit Issued

Article 28.12 Transient Merchants - Repealed with Ordinance No. 1363 (October 2008)

Article 28.16 Door-to-Door Solicitations

Sections:

28.16.020 No License or Permit Issued
28.16.030 Door-to-Door Sales and Solicitations Prohibited Except as Permitted in this Article
28.16.040 Conditions upon which Door-to-Door Sales or Solicitations are Permissible
28.16.050 Location Where Solicitation Prohibited
28.16.060 Hours of Solicitation
28.16.070 Deceptive Practices Prohibited
28.16.080 Identification of Persons Engaging in Door-to-Door Sales or Solicitations
28.16.090 Enforcement of Chapter
28.16.100 Penalty

Section 28.16.020 No License or Permit Issued

The City of Dickinson shall not issue permits, licenses, or other certifications to persons or organizations engaging in door-to-door solicitations or sales, nor shall any action of the City of Dickinson constitute an endorsement, recommendation, or approval of the products, services, organizations, or personnel of the person or organization registered for door-to-door solicitations or sales. (Ord. No. 1363 § 2.)

Section 28.16.030 Door-to-Door Sales and Solicitations Prohibited Except as Permitted in this Article

The practice of going door-to-door at private residences without being requested or invited to do so by the owner or occupant thereof for the purpose of selling or soliciting orders for sale of goods, wares, merchandise, magazines, periodicals, books, or personal services is prohibited except as permitted pursuant to this Article. (Ord. No. 1363 § 3.)

Section 28.16.040 Conditions upon which Door-to-Door Sales or Solicitations are Permissible

Any person or organization desiring to engage in door-to-door sales or solicitation in residential areas within the City of Dickinson may do so only upon the invitation, consent, or acquiescence of the owner or occupant of the residence so solicited.

The owner or occupant of any residence solicited pursuant to this chapter shall have the right and authority to exclude any person engaging in door-to-door sales or solicitation from his or her residence or property. Any person engaging in door-to-door sales or solicitation who fails or refuses immediately to vacate the residence and property upon request of the owner or occupant thereof shall be guilty of an offense. (Ord. No. 1363 § 4.)

Section 28.16.050 Location Where Solicitation Prohibited

Notwithstanding the provisions of Section 28.16.040, no person may solicit at any private residence if there is placed on the premises a sign bearing the words "No Soliciting," "No Trespassing," or similar notice. (Ord. No. 1363 § 5.)

Section 28.16.060 Hours of Solicitation

It is a violation of this Ordinance for any person, whether or not registered to engage in door-to-door solicitations and sales, to solicit any occupant of any residence within the City of Dickinson before 9:00 a.m., or

after sunset, local time, unless the owner or adult occupant of the residence has granted individual permission to do so. (Ord. No. 1363 § 6.)

Section 28.16.070 Deceptive Practices Prohibited

No person engaging in door-to-door solicitations or sales shall intentionally make any false or fraudulent statement in the course of selling or soliciting within the City of Dickinson.

No person engaging in door-to-door sales or solicitations shall represent, directly or indirectly or by implication, that the City of Dickinson or any of its subdivisions endorse, recommend or approve of the products, services, organizations, or personnel of the person or organization registered for door-to-door solicitations or sales. (Ord. No. 1363 § 7.)

Section 28.16.080 Identification of Persons Engaging in Door-to-Door Sales or Solicitations

Any person engaging in door-to-door sales or solicitations shall, upon request, provide to each person solicited the following information:

1. The solicitor's name, current residence address, current business address, and current telephone number;
2. The solicitor's residence addresses and business addresses for the prior two year period;
3. The name and address of the organization the solicitor represents or is employed by;
4. Valid proof of identification of the solicitor, including at least one of the following: a valid driver's license, a valid visa or passport, or other valid identification issued by any state agency for the purpose of identification of the holder.
5. Such other information as may be reasonably required by the City. (Ord. No. 1363 § 8.)

Section 28.16.090 Enforcement of Chapter

Any person who is aware of a violation of this Article or who believes a violation of this Article may exist is hereby authorized and directed to file a complaint with the Dickinson Police Department, setting forth the factual basis for believing a violation of this Article exists.

The chief of police and all police officers of the City are hereby authorized and directed to investigate any such complaint filed, and are further authorized and directed to enforce the provisions of this Article. (Ord. No. 1363 § 9.)

Section 28.16.100 Penalty

Any person who engages in door-to-door solicitations or sales who fails to comply with the provisions of this Ordinance, is guilty of an offense, and shall, upon conviction thereof, be fined an amount not to exceed Fifty Dollars and No Cents ($50.00) per violation plus costs. (Ord. No. 1363 § 10.)

Chapter 29 PERSONNEL

Last updated January 2016

Articles:

29.ED Editor's note to Chapter 29
29.04 In General
29.08 Civil Service System

Article 29.ED Editor's note to Chapter 29

Sections:

29.ED.010 Editor's note to Chapter 29

Section 29.ED.010 Editor's note to Chapter 29

As to retirement, see Ch. 32 of this Code.

Article 29.04 In General

Sections:

29.04.010 Longevity pay plan--Created
29.04.020 Same--Qualification; rate; time of payment; withholding of payment

Section 29.04.010 Longevity pay plan--Created

This section was repealed in 1998. (Ord. No. 1163 § 1)

Section 29.04.020 Same--Qualification; rate; time of payment; withholding of payment

This section was repealed in 1998. (Ord. No. 1163 § 1)

Article 29.08 Civil Service System

Sections:

29.08.00E Editor's note to Article 29.08
29.08.02000 Division 29.08.02 Generally
29.08.02010 Adoption
29.08.02020 Purpose
29.08.02030 Civil service commission--Created
29.08.02040 Same--Composition; appointment terms of office
29.08.02050 Same--Qualifications of members
29.08.02060 Same--Removal of members
29.08.02070 Same--Compensation of members
29.08.02080 Same--Ex officio clerk
29.08.02090 Same--Chairman
29.08.02100 Same--Meetings; quorum; order of business
29.08.02105 Rules and Regulations
29.08.02110 Amendments to rules and regulations
29.08.02120 Officers and employees covered-- Generally
29.08.02130 Fire department personnel and employees - Repealed with Ord. No. 1315 (May 1, 2006)
29.08.02140 Status of persons holding positions at time of adoption
29.08.02150 Violation of article by officer or employee
29.08.04000 Division 29.08.04 Rules and Regulations
29.08.04010 Definitions
29.08.04020 Human Resource Committee
29.08.04030 Human Resource Manual
29.08.04040 General Provisions
29.08.04050 Employee Status and Classification Plan
29.08.04060 Recruitment and Selection
29.08.04070 Hours of Work
29.08.04080 Compensation
29.08.04090 Leaves of Absence
29.08.04100 Separation From Municipal Service
29.08.04110 Disciplinary Process
29.08.04120 Grievance and Appeal Procedure
29.08.04130 Drug and Alcohol Policy
29.08.04140 Americans With Disabilities Act Employment Grievance Procedure
29.08.04150 Specific Exceptions from Certain Sections
29.08.04160 Penalty
29.08.04170 Nepotism

Section 29.08.00E Editor's note to Article 29.08

For provisions of state law as to civil service systems in cities, see NDCC, § 40-44-01 et seq.

Section 29.08.02000 Division 29.08.02 Generally

Section 29.08.02010 Adoption

Pursuant to the authority granted to the board of city commissioners under the provisions of state law a civil service system to conform to the provisions of this chapter is hereby adopted. (Code 1958, § 9-1.)

Section 29.08.02020 Purpose

The purpose of the civil service system is to increase the efficiency of city government and to promote the fair treatment of municipal employees by providing a personnel system to govern the appointment, promotion, transfer, layoff, removal and discipline of employees in the city civil service system. (Code 1958, § 9-2; Ord. No. 1315 §1.)

Section 29.08.02030 Civil service commission--Created

There is hereby established a civil service commission for the city. (Code 1958, § 9-3.)

For state law as to authority of city to create a civil service commission, see NDCC, § 40-44.04.

Section 29.08.02040 Same--Composition; appointment terms of office

The civil service commission currently consists of three members. Commencing January 1, 2001, the Civil Service Commission shall be increased to five members, appointed by the Board of City Commissioners. The terms of office of the existing commissioners shall be for the remainder of the terms for which they were appointed. The terms for the two additional commissioners shall be for two years and three years, respectively; thereafter all appointments shall be for three-year terms. Commencing on January 1, 2000, all subsequent appointments shall expire on December 31 of the third year following the appointment, except that all members of the Civil Service Commission as of January 1, 2000 shall continue to serve the terms which they were appointed. Any person appointed to fill a vacancy occurring prior to the expiration of the term of a commissioner shall be appointed for the remainder of the term. (Code 1958, § 9-4; Ord. No. 1200 § 2; Ord. No. 1217, § 1.)

For similar state law, see NDCC, § 40-44-05.

Section 29.08.02050 Same--Qualifications of members

The members of the civil service commission shall be citizens of the United States. No person shall be eligible to be a member of the civil service commission who is a member of any local, state or national political party committee or is a candidate for or holds any political office. (Code 1958, § 9-5; Ord. No. 1315 §2.)

Section 29.08.02060 Same--Removal of members

Any member of the civil service commission may be removed by a majority of the board of city commissioners for any act contrary to the best interest of the city civil service system. Such member sought to be removed shall be first given a copy of the charges against him and he shall have ten days from the date of service of such charges within which to request an opportunity to be publicly heard. (Code 1958, § 9-6.)

Section 29.08.02070 Same--Compensation of members

Each member of the civil service commission shall receive such compensation as determined by the board of city commissioners. (Code 1958, § 9-7; Ord. No. 775, § 1; Ord. No. 1063, § 1; Ord. No. 1315 §3.)

For state law as to compensation of commission members, see NDCC, §40-44-06.

Section 29.08.02080 Same--Ex officio clerk

The city administrator shall be ex officio clerk of the civil service commission. (Code 1958, § 9-8; Ord. No. 1163 § 2.)

For similar state law, see NDCC, § 40-44-05.

Section 29.08.02090 Same--Chairman

The civil service commission shall elect its chairman from among its own members and shall determine the length of his term of office as such. (Code 1958, § 9-9.)

Section 29.08.02100 Same--Meetings; quorum; order of business

The civil service commission shall hold such meetings as are called by the chairman. Three members of the civil service commission shall constitute a quorum for the transaction of official business.

The civil service commission shall determine the order of business for the conduct of its meetings. (Code 1958, § 9-10; Ord. No. 1217, § 2.)

Section 29.08.02105 Rules and Regulations

The Rules and Regulations of the Civil Service Commission are comprised of sections 29.08.04030 (Classification Plan), 29.08.04050 (Employee Classifications), 29.08.04060 (Recruitment and Selection) and 29.08.04120 (Grievance and Appeal Procedure).

(Ord. No. 1315 §4.)

Section 29.08.02110 Amendments to rules and regulations

It shall be the duty of the civil service commission, from time to time, to recommend to the board of city commissioners desirable amendments to the rules and regulations. Such rules and regulations may be amended at any time by the board of city commissioners by ordinance; provided, however, that before any official action is taken by the board of city commissioners, the civil service commission shall first hold a public hearing on such proposed amendments after giving five days' notice of such hearing; such notice shall be given by publication one time in the official newspaper of the city. Such notice need not describe in detail the proposed amendments but need refer only briefly to the general subjects to be considered. The board of city commissioners shall have the authority to make any amendments or changes in such rules and regulations by ordinance, following such public hearing.

(Code 1958, § 9-11; Ord. No. 376; Ord. No. 1315 §5.)

For similar state law, see NDCC, § 40-44-04.

Section 29.08.02120 Officers and employees covered-- Generally

The provisions of this article shall apply to all departments, employees, and appointive officials thereof; except, that the provisions of this article shall not apply to the following: persons elected to office; persons elected to boards, commissions and committees; the city attorney and the public health officer; the city administrator, and part time employees hired outside the civil service system described as seasonal and limited hour schedule employees who are hired to work no more than six months in any 12 month period or average less than 20 hours per week on an hourly basis and are paid on an hourly rate. All classes of employees and appointive officials not excepted above shall constitute the civil service system of the city.

(Code 1958, § 9-12; Ord. No. 362, § 1; Ord. No. 1028, § 1; Ord. No. 1139 § 1; Ord. No. 1156 § 1; Ord. No. 1162 § 1.; Ord No. 1374 §1)

For state law as officers and employees covered by the system, see NDCC, § 40-44-08.

Section 29.08.02130 Fire department personnel and employees - Repealed with Ord. No. 1315 (May 1, 2006)

This section was repealed with Ordinance No. 1315 (May 1, 2006).

Section 29.08.02140 Status of persons holding positions at time of adoption

Any person who held a position subject to the civil service system when the provisions of this article became effective and who shall have served in such position for a period of one year shall be retained without preliminary or performance tests and shall thereafter be subject in all other respects to the provisions of this article. Any other person employed by the city and who by the terms of this article comes under the civil service system of the city shall be considered as having been given probationary appointment as defined by the rules and regulations relating to this subject. (Code 1958, § 9-14.)

Section 29.08.02150 Violation of article by officer or employee

Any willful violation of the provisions of this article or any violation of such provisions through culpable negligence shall be grounds for removal from office of a city official or for summary discharge of a city employee. (Code 1958, § 9-15.)

Section 29.08.04000 Division 29.08.04 Rules and Regulations

Section 29.08.04010 Definitions

This section was repealed in 1998. (Ord. No. 1163 § 3.)

Section 29.08.04020 Human Resource Committee

A Human Resources Committee is hereby established to review and offer input regarding any proposed changes, additions and amendments to the Human Resources Code, Section 29.08.04. The Human Resources Committee shall be comprised of the City Administrator or his designee, two exempt employees, and three hourly employees, one from each of the major divisions: public works, public safety, and finance and administration. The employee members will be selected by election of employees within their individual divisions. The terms of employee members of the committee shall be two years. (Code 1958, § 9-17; Ord. No. 376; Ord. No. 420, § 1; Ord. No. 1163 § 4; Ord. No. 1315 §7.)

Section 29.08.04030 Human Resource Manual

1. Purpose of this Manual

This manual, which provides for human resources administration is enacted by the City of Dickinson in order to further the following goals:

- 1.1 To provide a uniform and sound personnel administrative system throughout the City of Dickinson.
- 1.2 To inform employees of the general policies and procedures of the City and of the benefits and obligations of employment with the City.
- 1.3 To ensure that all personnel actions are based upon employee qualifications (knowledge, skills and abilities) and job performance and are in compliance with federal and state law.
- 1.4 To serve as written documentation of the City of Dickinson's commitment to fair employment practices and equal employment opportunity.
- 1.5 To assist city administration in carrying out sound, equitable and consistent human resources administration and in making effective use of human resources.
- 1.6 To promote and encourage communication between the city administration and the employee(s).
- 1.7 To protect the rights of the employee(s) and employer throughout the employment relationship and to ensure that the responsibilities of both parties are carried out.

2. Application

The Human Resource ordinance shall apply to all municipal employees except: employees as specified in Section 29.08.04.150 of this manual; elected officials; independent contractors; and excluded positions as

specified in Section 29.08.02.120. In the event of a conflict between this ordinance and manual and any state and federal law, the terms and conditions of such law shall prevail.

3. At-Will Status

The City of Dickinson recognizes that North Dakota is an employment at-will state and the intent of this municipality is to maintain that employment at-will status for employees who are probationary, seasonal and limited hour employees.

4. This Manual is Not a Contract

This manual, does not confer a contract of employment. The policies, procedures, rules and benefits contained herein are subject to change upon passage of an ordinance amendment by the City Commission following review and prior approval of the Civil Service Commission of the change(s). This manual is provided as a reference of present policies and not a guarantee of employment or specific employment benefits.

(Code 1958, § 9-19; Ord. No. 376; Ord. No. 967, §§ 1 to 3; Ord. No. 1163 § 5; Ord. No. 1307 § 1; Ord. No. 1331 §1.)

Section 29.08.04040 General Provisions

1. Equal Employment Opportunity

It is the policy of the City of Dickinson to recruit, hire, train, promote, discipline and discharge all applicants and employees equally and without regard to race, religion, creed, color, national origin, sex, age, disability, political affiliation, marital or veteran status, or any other basis prohibited by state or federal law. Violations of this policy by any municipal employee may be cause for immediate disciplinary action. Any employee who feels he/she has been discriminated against should bring this concern to his/her supervisor or higher authority according to the appeals procedure specified in Section 29.08.04.140 of this manual.

2 Sexual and Other Harassment

The City of Dickinson is committed to providing a work environment that is free from discrimination and harassment. To maintain this commitment, the municipality will not tolerate any form of harassment, including sexual harassment.

2.1 Statement of No Tolerance

Sexual or any other form of harassment in the work place is prohibited by Federal and State law, whether committed by supervisory or non-supervisory employees, and will not be tolerated. Retaliation or intimidation directed toward a complaining party is also prohibited by law and will not be tolerated by the City under any circumstances. The City will take prompt remedial measures to immediately end the offending action.

2.1.1 Harassment by Non-Employees

The City will attempt to eliminate sexual or any other form of harassment of or by any non-employees, such as customers, visitors, or others, including the referral of appropriate matters to the Police Department.

2.2 Employment Protections to Complaining Party

A true complaint of sexual or any other form of harassment will not have any bearing on the terms and conditions of employment of the complaining party, including but not limited to wages, advancement, evaluations, assigned duties, shift assignments, and career development.

2.3 Definition of Behavior Constituting Sexual Harassment

Under this policy, sexual harassment is defined as behavior of a sexual nature which is unwelcome and personally offensive to its recipient. It is a form of employee misconduct which is demeaning to another person and undermines the integrity of the employment relationship.

Sexual Harassment is specifically defined as unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:

2.3.1 By threat or insinuation, either explicitly or implicitly, an employee's refusal to submit to sexual advances or refusal to tolerate or participate in unwanted conduct or communication of a sexual

nature will adversely affect the employee's terms and conditions of employment, including but not limited to wages, advancement, evaluation, assigned duties, shift assignment, and career development.

2.3.2 Any conduct or communication of a sexual nature that has the purpose or effect of substantially interfering with work performance or of creating a hostile, intimidating, or offensive employment environment that may be considered offensive to another employee, including but not limited to:

-repeated sexual flirtations, advances, or propositions;
-continual or repeated verbal abuse of a sexual nature;
-foul language;
-unwanted physical contact;
-graphic verbal commentaries about an individual's body or manner;
-sexually degrading words used to describe the individual;
-the display of sexually explicit pictures, cartoons, or other materials.

2.4 Definition of Other Harassment

Under this policy, other harassment in defined as behavior of a nature, which is unwelcome and personally offensive to its recipient. It is a form of employee misconduct, which is demeaning to another person and undermines the integrity of the employment relationship. Other Harassment includes action(s) by another person which in the opinion of the employee violate his/her personal rights. This includes one person bullying another person or persons through actions which demean the other employee through repeated use of demands, language, threats to control the other person's behavior or attitude.

2.5 Method of Filing a Complaint

Any employee who feels he/she has been sexually harassed or that his/her personal rights have been violated through some other form of harassment, should immediately report the matter to the City Administrator or any exempt employee. Any exempt employee, who becomes aware directly or indirectly, of a potential harassment issue will immediately contact the City Administrator, who will initiate an investigation. The obligation to report the potential harassment issue is absolute and not discretionary. If the City Administrator is the offending party, the exempt employee should immediately notify the Police Chief, who will assign a qualified investigator(s) to perform an investigation.

2.6 Complaint Investigation Process

Upon becoming aware of a situation of possible sexual or any other form of harassment, the City Administrator will turn the issue over to the Chief of Police who will assign a qualified investigator(s) to perform an investigation. The person or persons tasked with investigating the complaint will make a thorough and impartial investigation of the complaint, which will include the following:

(1) Interview of Complaining Party
(2) Interview of Offending Party
(3) Interview of Other Employees

All employees must cooperate with any such investigation. If the person or persons tasked with investigating the complaint finds through investigation that the complaint has grounds, the City Administrator will decide the appropriate disciplinary action for the offending party, keeping in mind the serious nature of this type of offense and will detail the findings of the investigation and outcome in a written notice, which will include the investigator's report. If the City Administrator is the offending party, the Police Chief will turn his/her findings over to the President of the City Commission. It will be the City Commission's responsibility to decide appropriate discipline if the complaint is found to have grounds.

2.6.1 Referral of Investigative Process to City Administrator

This paragraph was appealed with Ordinance No. 1224, approved May 7, 2001

2.6.2 Investigation in Case of Criminal Harassment Case

If criminal charges may be applicable, the Police department will take the lead in the investigation.

2.7 Rights of Offending Party

The person about whom any sexual or any other harassment complaint has been filed will receive notice and an opportunity to appeal as described in Section 29.08.04.120 of this manual.

3 Seat Belt Policy

The City of Dickinson is committed to doing everything possible to prevent injury to employees, prevent damage to property and to protect the employees and the public from the results of accidents. The City realizes that safety belts are an important and efficient means to accomplish this goal. Thus, it is the policy that all City employees and their passengers shall be required to use seat belts when driving any city owned or leased vehicle (if equipped with seat belts) or while driving their personal vehicle on official municipal business. Failure to comply with this policy may result in disciplinary action.

EXCEPTION: Police Officers may follow seat belt regulations specifically set out for law enforcement needs in the departmental policy manual.

4 Use of Tobacco Products

Use of Tobacco Products is prohibited in/on City vehicles, equipment and properties including Police Department Controlled areas in the Law Enforcement Center, unless the area is clearly marked by the City as a tobacco use area.

5 Conflicts of Interest Considerations of Outside Employment and/or Business Dealings

Although the City does not forbid off hours employment by employees, employees are prohibited from having business dealings or seeking or maintaining employment, which conflicts with the responsibilities or performance of the employee's City position. Therefore any request for outside employment must be submitted and approved by the employee's Department Head prior to an employee engaging in such a relationship. Following a review of the request, the Department Head will determine whether such employment interferes or negatively impacts the performance of the employee's duties with the City or results in a conflict of interest. Based on his/her review of the facts, the Department Head will notify the employee in writing of his/her decision to approve of the outside employment/business dealings or not. If the Department Head refuses to approve of the outside employment/business dealing, the employee may file a grievance as described in section 29.08.04.120. If the Department Head refuses to approve of the outside employment/business dealing and the employee pursues the outside employment/business dealings, said employee may be subject to disciplinary action.

In the case of a Department Head seeking approval of outside employment, the request will be made to the City Administrator, who will decide the appropriateness of the request.

An employee performing outside employment or business on City time may be subject to disciplinary action.

Employees must report illness or injury due to secondary employment to their supervisor. The City's Workers' Compensation insurance coverage will not be extended to outside employment.

6 Performance Evaluations

Performance evaluations are designed to provide the employee with a record of his/her performance, to encourage professional growth and to promote communication between the supervisor and employee.

Performance evaluations are to be structured to each employee's position. The purpose of the evaluation is to commend strengths, address weaknesses, suggest ways to improve, discuss employee goals and objectives, and discuss any difficulties and positive aspects the employee may be experiencing on the job. Completed evaluations may also serve as the basis and justification for merit based raises and/or promotions awarded to employees.

6.1 Frequency of Performance Evaluations

Performance appraisals will be conducted a minimum of twice during the employee's probationary period (at the mid-point and at the conclusion of the probationary period) and once each year thereafter. Evaluations may be performed more often as need arises.

6.2 Completion of Evaluation Forms

The first step in the performance evaluation process is completion of evaluation forms. Evaluation forms will be completed by both the supervisor and the employee. Co-workers may also be asked for input regarding an employee's performance. Evaluations forms are to be based on performance standards set and agreed to by the employee and the supervisor at the most previous performance evaluation.

6.3 Performance Evaluation Conference

The purpose of the performance evaluation conference is to discuss the written evaluation forms completed by the supervisor, the employee, and others. The performance evaluation conference will be conducted by the employee's department head, lacking a department head, said conference will be conducted by the City Administrator or his designee. Evaluation conferences will be conducted in a private meeting between the employee and his/her department head or City Administrator or his designee whichever is applicable.

6.4 Establishment of New Performance Standards and Renewal of Existing Ones

As part of the performance evaluation, the supervisor and the employee will discuss and establish performance standards for the employee for the ensuing evaluation period. A copy of the performance standards will be attached to the performance evaluation documents.

6.5 Signing Requirement

Employees are required to sign their evaluations and will receive a copy. Signing does not imply agreement, but that the contents have been made known to and discussed with the employee.

6.6 Placement in Personnel File

Completed evaluation forms shall be submitted to the City Administrator or his designee for placement in the employee's personnel file.

7 Personnel Records

7.1 Personnel File

It is the policy of the City to maintain accurate and updated information on each municipal employee in its personnel files. The personnel file may include the following, but will not include any information contained in the employee's confidential medical file listing (see Section 29.08.04.040-8):

-The employee's application and/or resume
-References and/or background checks
-Benefit forms (retirement, health and life insurance, etc.)
-Letters of commendation
-Payroll deduction authorizations
-I-9 and W-4 form
-Leave and absence slips
-Formal Disciplinary actions
-Termination or discharge record
-Previous positions held with the City
-Rates of pay
-Work hour records
-Overtime records
-Performance appraisals
-Exit interviews

The City Administrator or his designee shall be responsible for maintaining personnel records for all current and former employees. Duplicate and other personnel records may also be maintained at the Department level.

The employee shall have reasonable access to his/her personnel records upon request to the City Administrator or his designee. The file will be made available to the employee's representative only upon express written authorization by the employee.

No written incident report or records of disciplinary action shall be placed in an employee's personnel file unless the City first advises the employee of its intent to enter such document into the file

and affords him/her an opportunity to read and sign such material. Signing does not imply agreement, only that the contents have been made known to or discussed with the employee.

The employee shall have the express right to submit a letter of rebuttal to his/her file regarding any information contained in his/her file that is in dispute.

7.2 Changes of Name, Address, Telephone and Withholding Status

It is the employee's responsibility to inform the City Administrator or his designee of any changes in name, address, telephone number or withholding status. An employee must immediately report any of the above or other pertinent changes. Intentional failure to report such information is grounds for disciplinary action.

7.3 Personnel Record Retention

Personnel records are maintained in accordance with the records retention and destruction manual for cities published by the North Dakota Division of Management and Budget. The City permanently keeps an employee's name, social security number, dates of employment, positions held and salary history, all of which are listed in the city's employment history index.

7.4 Confidential Personnel Information

7.4.1 Confidential Medical File and Records

The City of Dickinson maintains a separate confidential medical file on each employee, which is not considered part of the employee's personnel record and is confidential. Except as otherwise authorized by law, the information in this file may not be used or disclosed without written authorization of the employee.

Access to this file is limited to the employee and the City Administrator or his designee.

7.4.2 Personal Information

Personal information regarding a public employee contained in an employee's personnel record or given to the state or a political subdivision by the employee in the course of employment is exempt from open records laws. As used in this context, "personal information" means a person's home address; home telephone number; photograph; medical information; motor vehicle operator's identification number; social security number; payroll deduction information; the name, address, phone number, date of birth, and social security number of any dependent or emergency contact; any credit, debit, or electronic fund transfer card number; and any account number at a bank or other financial institution.

7.5 Dissemination of Employment Information - Limitations and Rules

In accordance with the North Dakota Open Records Laws employee records are open to public inspection, with the exception of the employee's personal information and confidential medical file, described in section 29.08.04.090-4. However the City's normal policy is to provide only the following information on both present and past employees unless additional information is requested:

- whether a person is or has been employed with the City in municipal government service;
- dates of employment
- current position or positions at the date of separation from employment and other positions held;
- verification of salary information.

Additional information may be released following a specific request, upon approval of the City Administrator or his designee. Only the City Administrator or his designee shall give out employee information. All requests for information on an employee's employment shall be immediately directed to the City Administrator or his designee.

8 B29.08.04140General Provisions of the Civil Service

8.1 Records of the Civil Service Commission

The city administrator is the custodian of the records of the civil service commission as well as the ex officio secretary thereto. He shall keep and maintain employees' employment records as well as such other records as may be necessary for the proper administration of the civil service.

8.2 Forms

The city administrator shall design all forms to be used in connection with the civil service program, which forms will become official when approved by resolution of the civil service commission.

8.3 Meetings of Civil Service Commission

The civil service commission shall hold meetings as may be necessary to establish employment registers, hear appeals or hold other hearings hereinbefore provided, which meetings shall be at the call of the chairman and open to the public. Two members of the civil service commission shall constitute a quorum for the transaction of any business including the conduct of hearings. The city administrator shall be present and shall keep the minutes of each meeting but shall have no vote.

8.4 General Prohibitions.

8.4.1 Prohibition of Consideration of Political Endorsements

In no event shall any political endorsement be considered in connection with the appointment to any position in the civil service of the city.

8.4.2 Prohibition of Providing Influence for Personal Gain

No person shall, for the purpose of influencing the vote or political action of any other person, promise or use, directly or indirectly, any official authority to secure or attempt to secure an appointment, promotion, increase in salary or any other preferment in the city civil service.

8.4.3 Prohibition of Violation of any Provisions

Any willful violation of the above provisions of this rule shall be grounds for summary discharge of a city employee.

9 Use of City Property by Employees

9.1 Introduction

The purpose of this section is to clarify and misunderstanding employees may have regarding the use of City owned or leased property, including tools, equipment, supplies, sites and facilities.

Managers in individual areas of the City may develop more specific policies that address their particular operations, within the bounds of this general policy.

9.2 Use of City Owned Tools, Equipment and Supplies

Employees of the city of Dickinson are prohibited from removing any City owned tools or supplies from City premises for personal use.

EXCEPTION: Employees may remove from the premises any tools, equipment or supplies that are assigned to them by their department head, division head, or the City Administrator or any tools, equipment or supplies made available to the general public. The removal of tools, equipment or supplies that are available to the general public will be permitted under the same terms and restrictions placed on the public.

9.2.1 Occupation of Unoccupied City Owned Properties, Facilities

Employees are prohibited from using or being in unoccupied, fenced City owned or leased properties or in unoccupied City leased or owned facilities or unoccupied portions closed to the public for non-work related reasons. This includes, but is not limited to using any of the above for storage, housing, repair or maintenance of vehicles or other property.

EXCEPTION: Employees may enter unoccupied City property or buildings during off-duty hours to obtain personal property or to occupy City buildings and facilities in the manner available to the general public.

10 Meet and Confer Committee

The City shall allow for establishment of a committee to provide a forum to promote open communication between City Commissioners, the City Administrator, and non-exempt employees.

10.1 This committee will not serve as a means to avoid the normal chain of command. Hence, issues that may be resolved through the normal chain of command should first be brought to the attention of the appropriate supervisor.

10.2 Employees are encouraged to seek Meet and Confer Committee members for information regarding discussions and recommendations of the committee.

10.3 The Committee shall be comprised of up to six non-exempt employee representatives, up to two City Commissioners and the City Administrator. From time to time, depending on need, additional hourly employees will be permitted to participate in the process.

10.4 Meetings will be scheduled at least monthly at a regular time and date established by the committee.

11 Safety Policy

The City of Dickinson is sincerely interested in the safety of each and every employee. For this reason, it has developed and will enforce a safety program designed to prevent accidents and thus reduce Worker's Compensation claims. Everything reasonably possible will be done to maintain safe working conditions. Each individual in a supervisory position will be responsible for enforcing the City's safety program. Each employee shall be familiar with the City's safety policy and will be expected to cooperate fully in helping to protect the employee and co-workers.

A city employee shall be designated as the City Safety Coordinator. The Safety Coordinator shall have such powers reasonably necessary to enforce this policy including the power to appoint such assistants and delegate responsibility as necessary.

12 Internet and E-mail Policy

This policy applies to employees, contractors, consultants, service providers and temporary workers (collectively, "users") on city of Dickinson ("City") premises or using the City system.

Users are granted access to the internet, intranet, World Wide Web, e-mail and other applications through use of the City system. This access is granted for the business use of the City. This access may be denied at any time, for any reason. Users are responsible at all times for using the system in a manner that is ethical, legal and consistent with the best interest and policies of the City. Any violation of this section is subject to disciplinary action.

All information created, accessed or stored using the City applications and systems is the property of the City. Users do not have a right to privacy to any activity conducted using the City system. The City can review, read, access or otherwise monitor all activities on the City system or on any other system accessed by the use of the City system.

Only users who are authorized by the City may use the system. A user may not allow any other person, including authorized users, to access any application through the user's account or system. Users may not impersonate another user by modifying e-mail header information, or otherwise hide the user's identity.

Users are responsible for any and all activity initiated from their accounts. Therefore, users should protect their passwords, change them regularly, not reveal them to others, except that all passwords will be filed with the City Administrator or his designee. Any changes to passwords will be reported to the City Administrator or his designee immediately. Users shall not leave their computers on and open for non-authorized users to access. Users are responsible for protecting their own files (e-mail, word processing, spreadsheets, etc.) from unauthorized persons.

If a user inadvertently access another user's files, the user must immediately discontinue access, and refrain from revealing any personal information discovered.

Users must not use e-mail to send confidential information to any unauthorized person. Such information may be sent to authorized persons in encrypted files if sent over publicly accessible media such as the internet or broadcast media such as wireless communication. Such information may be sent in unencrypted files only within the City system. Users are responsible for properly labeling such information.

Users may not make copies of computer software applications running on City systems for use at home, on laptops or for other reasons, without authorization. Users may not import, download, copy or store copyrighted material without permission from the author. Doing so may violate application licensing agreements or copyright law.

No software, games or other applications may be installed or downloaded without the authorization of the City Administrator or his designee. No e-mail attachments received from unknown persons shall be opened. Doing so leaves the City vulnerable to viruses, and also may violate application licensing agreements or copyright law.

Users shall never harass, intimidate, threaten others or engage in other illegal activity (including pornography, terrorism, espionage, theft or drugs) by e-mail or other postings. All such instances shall be reported to management for appropriate action. In addition to violating this policy, such behavior also may violate other City policies, or civil or criminal laws.

E-mail and internet access is intended for the business use. Non-business use includes, but is not limited to interfering with the City's business, interfering with the user's ability to perform his or her job, interfering with the ability of other users to perform their jobs, exposing the City to liability or embarrassment, using it for external political purposes or financial gain, violating the laws of the location information is transmitted to or from, or violating any other policies of the City. Users may never use the system for soliciting other employees for any reason including but not limited to soliciting funds for school fundraising drives or selling products or merchandise. It is specifically prohibited for employees to knowingly visit sites that feature pornography, terrorism, espionage, theft or drugs unless approved for business by the City Administrator or his designee.

The City reserves the right to access, review or otherwise monitor all such use. The City may monitor all web sites that are visited.

Users are hereby advised that there is material on the internet and World Wide Web that is offensive to people. The City does not have the ability to control this information and does not screen it out. Users must use good judgment and common sense to stay away from those sites. The City disavows any liability for harassment by any person who uses the City's system and is offended upon discovering such sites.

Users may not create or forward nuisance e-mail, including jokes and chain letters. If users receive unsolicited e-mail (SPAM) nuisance e-mail, including jokes, they shall immediately delete it without attempting to open any attachment.

Users are responsible for reporting to management any violation of this policy. Violations of this policy will be investigated and evaluated. Depending upon the nature of the offense, appropriate corrective action will be taken, up to and including immediate termination. Violators also may be subject to penalties imposed by U.S. state and federal laws, and/or the laws of jurisdictions outside of the U.S.

13. Privacy

There is no right to privacy for office spaces, lockers, work areas, vehicles or grounds owned, or leased by the City for its employee use.

14. Cell Phone and Cell Phone Equipment Policy

14.1 Policy

This policy outlines the use of personal cell phones at work, use of city provided cell phones and all cell phone equipment, safety issues, the issuance of cell phones and additional information.

14.2 Procedure

14.2.1 General

a. Each department director is responsible for determining whether an employee's job duties require the City provide a cell phone or stipend to an employee. Once a department director has made a determination a city issued cell phone is required for an employee to effectively carry out their assigned duties the City will cover any and all charges related to the City issued cell phone. If a department director determines that the issuance of a city cell phone is not essential for an employee but the use of a personal cell phone is desired they can authorize a monthly stipend which will be taxed as an income event on the employee's paycheck. The monthly stipend will be set annually during the budget process. When a stipend is provided it represents the total compensation an employee will receive regarding the use of a personal cell phone for business purposes.

b. Personal cell phones, when a stipend is provided, are subject to the provisions of this policy.

c. Cell phone records, including phone and data transmissions, can be subject to public disclosure under the State of North Dakota Open Records laws.

d. In situations where the use of a cell phone could be disruptive, courtesy is expected.

e. Cell phones cannot be used in an illegal, illicit or offensive manner.

f. Excessive personal calls (including text messaging) during the work day can interfere with employee productivity and be distracting to others. Employees are expected to make personal calls on non-work time when possible.

14.2.2 City Issued Cell Phones

a. Cell phones shall remain the sole property of the City and shall be subject to inspection or monitoring (including related records) at any time if requested by the employee's supervisor or City Administrator. Upon separation of employment or when an employee's supervisor deems it necessary, the employee will be required to return the city issued cell phone and related equipment. Employees unable to present the phone/equipment in good working condition within one (1) business day may be required to bear the cost of replacement.

b. Employees who separate from employment with outstanding debts for equipment loss or unauthorized charges may be considered to have left employment on unsatisfactory terms and may be subject to legal action for recovery of loss.

c. Only city issued cell phones or personal cell phones where a monthly stipend has been authorized may access the city's server.

14.2.3 Personal Cell Phones

a. The City is not responsible for loss or damage to personal cell phones while on or off duty. If an individual releases a personal cell phone number to conduct City business where a stipend is not provided, the City will NOT reimburse any expense occurred.

14.2.4 Safety Issues

a. Employees whose job responsibilities include regular or occasional driving are encouraged to refrain from using a cell phone while driving. Employees are strongly encouraged to pull off to a reasonably safe location and safely stop the vehicle before placing or accepting a call.

b. If acceptance of a call is unavoidable while driving and pulling over is not an option, employees are strongly encouraged to use hands-free devices. In situations where a City cell phone has been issued and the employee's job responsibilities include regular driving and accepting of business calls, hands-free equipment will be provided to facilitate the provisions of this policy.

c. Employees who are charged with traffic violations resulting from the use of a cell phone while driving on duty may be subject to disciplinary action and personal liability resulting from such traffic violations.

14.2.5 Additional Information

a. Violations of this policy may be subject to disciplinary action, up to and including dismissal.

b. The City Administrator will determine if the issuance of a city cell phone is required for department directors and may review the issuance of any and all city issued cell phones or stipends.

c. The cell phone policy will comply with all current IRS regulations.

(Code 1958, § 9-29; Ord. No. 376; Ord. No. 1163 § 5; Ord. No. 1201, § 1; Ord. No. 1224, § 1, 4 & 5; Ord. No. 1307 § 2, 3, 4 & 5; Ord. No. 1379 §1)

Section 29.08.04050 Employee Status and Classification Plan

1 Definitions

1.1 Municipal Employee

Anyone employed by the City who is not an independent contractor.

1.2 Probationary Employee

An employee who is newly hired by the city in a regular full or regular part-time position (see Section 29.08.04.060-12).

1.3 Regular Full-Time Employee

An Appointive Official or Municipal Employee who is employed by the city to work at least 40 hours per week.

1.4 Regular Part-time Employee

An employee who is employed by the city to work in a Civil Service approved position which requires the employee to work at least 20 hours and less than 40 hours per week on a regular basis. Holiday time is credited for time worked.

1.5 Limited Hour Schedule or Seasonal Employee

An employee who is employed by the municipality to work for less than 20 hours per week or less than 6 months in any 12 month period.

1.6 Employee Benefits

(1) Regular Full-Time:

Description	Location	Benefit	Eligible for Benefit
Vacation Leave:	Section 29.08.04.090-2	Full benefit	Upon Hire
Sick Leave:	Section 29.08.04.090-3	Full benefit	Upon Hire
Personal Leave:	Section 29.08.04.090-3.13	Full benefit	Upon Hire
Holiday Pay:	Section 29.08.04.090-10	Full benefit	Upon Hire
Health Insurance:	Section 29.08.04.080-7.1	Full benefit	According to insurance provider
Retirement:	Section 29.08.04.080-7.2	Full benefit	Upon Hire
Life Insurance:	Section 29.08.04.080-7.3	Full benefit	Upon Hire
Longevity Pay:	Section 29.08.04.080-11	Full benefit	Upon completion of five years
Employee Assistance Program:	Section 29.08.04.080-7.6	Full benefit	Upon Hire
Employee Paid Flexible Benefits:	Section29.08.04.080-7.4(1)-(4)	Full benefit	Upon Hire
Employer Paid Med. Spend Acct.:	Section 29.08.04.080-7.4 (5)	Full benefit	Upon Hire

(2) Regular Part-Time:

Description	% of Benefit	Eligible for Benefit
Vacation Leave:	Prorated to average weekly hours	Upon hire
Sick Leave:	Prorated to average weekly hours	Upon hire
Holiday Pay	Prorated to average weekly hours	Upon hire
Health Insurance:	Prorated to average weekly hours	According to insurance provider
Life Insurance	Full benefit	Upon Hire

Employee Assistance Program	Full benefit	Upon Hire
Employer Paid Medical Spending Acct.:	Full Benefit to Employees averages at least 30 hours per week in prior calendar year.	Upon Hire
Employee Paid Flexible Benefits:	Prorated to average weekly hours	Upon Hire

(3) No benefits available to limited hour schedule or seasonal employees.
(Ord. No. 1533 §1; Ord. No. 1603 §1)

2 Classification Plan

2.1 Preparation

The City Administrator, after consultation with the various department heads, shall prepare and submit to the Civil Service Commission a position classification plan which shall group all positions in the competitive Civil Service system into classes based on duties, authority and responsibilities. For each class the class specification shall be prepared.

2.2 Adoption

The Civil Service Commission shall consider the proposed classification plan, and shall hold a public hearing thereon after giving at least five days' public notice thereof by a publication in the official newspaper of the city. After the basic classification plan is adopted, any future changes or amendments thereto shall likewise be considered by the Civil Service Commission at a public hearing of which official notice shall be given as provided in this section. Before the plan or any changes or amendments thereto shall become effective, they shall be subject to the approval of the board of City Commissioners by resolution. It shall not be necessary for the board of City Commissioners to hold a public hearing thereon, unless they deem it advisable, inasmuch as adequate opportunity for hearing is otherwise afforded the public before the Civil Service Commission.

2.3 Original Allocation of Classifications

After adopting the classification plan, the Civil Service Commission shall allocate each position in the Civil Service System of the city to its appropriate class.

2.4 Interpretation of Class Descriptions

The class descriptions for any class of positions shall be considered as descriptive and explanatory of the kind of work required in positions of a particular class, but not necessarily inclusive of all duties to be performed.

2.5 Administration

Revision to class descriptions and reallocations within the approved classification plan will be made as follows:

(1) As a new class is created within the civil service system, the city administrator will study the duties and responsibilities thereof and on the basis thereof allocate the same to the appropriate grade. If a new position is to be created, the City Administrator, with the assistance of the appropriate department head and others as deemed necessary, is to prepare a class description, which is to be submitted to the Civil Service Commission for review and approval.

(2) The City Administrator will recommend reclassification to the Civil Service Commission for any existing class for which there is a significant permanent change in responsibility. All permanent changes or modifications of the responsibilities of a class, will be promptly reported to the City Administrator by the department head.

2.6 Review of Classifications

At least once every three years, the City Administrator will review all classifications and, if necessary, recommend to the Civil Service Commission that existing classes be combined, abolished or, if necessary, reclassified.

At least once every three years, each department must review and update class descriptions. Each department head shall submit verification of no change or changes to the City Administrator by March 1st of each year for consideration in the ensuing budget. The City Administrator shall review the class descriptions submitted by the department heads. The City Administrator shall submit recommendations to the Civil Service Commission for their review.

Review of a job classification shall be made anytime a separation from employment occurs and replacement is desired.

2.7 Amendments and Changes to Classification Plan and Class Descriptions

(1) Changes or amendments to the Classification Plan shall be considered by the Civil Service Commission at a public hearing for which official notice shall be provided by publication. Before the plan or any changes or amendments thereto shall become effective, they shall be subject to approval, by motion, of the board of City Commissioners. It shall not be necessary for the board of City Commissioners to hold a hearing thereon, unless they deem it advisable, inasmuch as adequate opportunity for hearing is otherwise afforded the public before the Civil Service Commission.

(2) Changes to the class description are not a change to the classification plan, but require Civil Service Commission approval.

2.8 Employee Requests for Reclassification

Any employee employed under Civil Service may at any time submit to the City Administrator a written request for a reclassification stating the reasons for said request. Any such request will become a part of the annual review or considered during the annual review process.

2.9 Effect of Reclassifications

A regular employee whose class description is reclassified to a different grade shall continue in that class if the qualifications meet or exceed those of the newly reclassified class.

2.10 Use of Class and Working Titles

Following the adoption of the classification plan and the allocation of class descriptions therein to grades in the competitive Civil Service System, the class titles as therein set forth shall, unless working titles are assigned to specific positions, be used to designate such positions in all official records, vouchers, payrolls and communications. (Code 1958, § 9-20; Ord. No. 376; Ord. No. 634 § 1; Ord. No. 1163 § 5; Ord. No. 1224 § 6; Ord. No. 1330 §1; Ord No. 1370 §1.)

Section 29.08.04060 Recruitment and Selection

1 Recruitment and Hiring Policy

It is the policy of the City of Dickinson to recruit and fill job vacancies with the most qualified individuals for the positions. The city has four methods of recruiting qualified applicants to fill job vacancies in city employment. These are: 1) promotion from within; 2) transfer from within; 3) public announcement and advertisement; or 4) recruitment agencies.

If it is in the best interest of the city, promotions or transfers of individuals already employed with the city shall be given first consideration. This consideration, however, does not entitle an individual employee to an automatic promotion or transfer to a higher level of employment.

All selections shall be based on merit and fitness to fill the job vacancy. All recruitment efforts are based upon state and federal equal employment opportunity (EEO) laws.

2 Job Announcement

If the City Administrator or his designee determines it is appropriate to fill a vacant regular full-time or regular part-time position, the City Administrator or his designee may initiate any of the hiring methods available. Exception: Full-time, non-civil service positions will be advertised as deemed appropriate by the City Commission.

2.1 Internal Announcements

Internal announcements, which include either promotion or transfer from within shall be advertised in all occupied City buildings.

2.2 Public Announcements

Public announcement of employment opportunities will be advertised in the official newspaper, other places and means deemed appropriate by the City Administrator or his designee, and posted in a visible location in each occupied city building.

2.3 Recruitment Agencies

If the City Administrator or his designee determines it is in the best interest of the city, recruitment agencies that charge a fee for service may be used to fill job vacancies for exempt positions. Public announcements shall also be made to ensure the public has the opportunity to know of and apply for the position.

3 Applications for Employment

Individuals interested in applying for a specific position with the City of Dickinson must submit a completed city application.

4 Eligibility for Employment

To be eligible for employment with the City of Dickinson in addition to other qualifications an individual must:

1) be legally eligible to be employed in the United States as proven by completion of a federal I-9 form, 2) if a male born after December 31, 1959, be registered for the selective service, and 3) be 18 years of age or older at the time of employment.

5 Qualifications for Employment

5.1 General Skills/Abilities Required, ADA Exception

All employees must be able to perform the essential functions of their job with or without reasonable accommodation. The city will make reasonable accommodations pursuant to ADA.

6 Veteran’s Preference

The City will follow applicable state law regarding the hiring of veterans. Veteran's Preference will not be used for promotions, transfer or internal hires. For the application of the North Dakota state law, the certified list of applicants given by the City Administrator to the department head for development of a final hiring recommendation will be considered the "certified list of eligible persons."

7 Disqualification for Employment

Applicants for employment may be disqualified if any of the following is proved to be true:

1) applicant does not meet the minimum qualifications for appointment;
2) applicant knowingly has made a false statement on the application form or resume;
3) applicant has committed fraud during the selection process;
4) applicant does not meet the eligibility for employment. See subsection 29.08.04060-4; or
5) an unsigned employment application.

8 Normal Selection Process

8.1 Selection Criteria

Selection to fill a job vacancy is made on the basis of knowledge, skills, education, experience, and ability to perform the duties of the specific position.

8.2 Examinations

Competitive examinations may be used in the selection process.

8.3 Standard Selection Procedures

8.3.1 Civil Service Positions

The Civil Service Hiring process as formally approved by the Civil Service Commission will be used to fill all publicly advertised positions under Civil Service Authority. No changes shall be made to the Civil Service Hiring Process without a hearing before the Civil Service Commission. Notification of the hearing shall be posted in all occupied City buildings.

8.3.2 Limited Hour Schedule and Seasonal Positions

The City will publicly advertise for these positions. Following advertisement, the city Administrator or his designee(s) will review the applications, set interviews and fill the positions as needed.

8.4 Exceptions to Standard Selection Process

8.4.1 Hiring of Full-Time Non-Civil Service Positions

The process for filling non-Civil Service positions will be established by the City Commission.

8.4.2 Temporary Appointments

The City Administrator may offer a temporary appointment for a position to a current full-time employee in order to prevent a stoppage of municipal services, public business, or inconvenience to the public. A period of employment under a temporary appointment may not be counted as part of the probationary period in case of a subsequent appointment to a regular position.

An employee accepting a temporary appointment shall be paid an amount which is not less than that employee's current regular pay. Compensation will be determined by the current pay scale for the appointed position.

8.4.3 Promotions/Transfers

It is the policy of the City of Dickinson to generally promote or transfer from within when such promotion or transfer is in the best interest of the city. The Civil Service Promotion/Transfer process as formally approved by the Civil Service Commission, will be used to fill all internally posted positions under Civil Service Authority. No changes shall be made to the Civil Service Promotion/Transfer process without a hearing before the Civil Service Commission. Notification of the hearing shall be posted in all occupied City buildings.

8.4.4 Re-employment of Persons Laid-off

Any person who is separated from service due to lay-off may within one year from the date of lay-off be rehired without loss of seniority and without a selection process if an opening occurs in the same or a similar position.

8.4.5 Recruitment Agencies

When recruitment agencies are used, following public advertisement, the City Administrator or his designee(s) will review the applications, set interviews and fill the positions as needed.

8.5 List of Eligible Persons

8.5.1 Composition

The list of eligible persons will contain seven names for all openings. The Civil Service Commission shall review and approve the Certified List of Eligible Persons (CLEP).

8.5.2 Duration

A new certified list of eligible persons shall be developed for every opening unless a hiring manager requests consideration of hiring an applicant on a list established within the proceeding twelve months for the same position. In that case, the City Administrator or his designee may authorize hiring without need to advertise an opening.

9 Pre-Offer/Hint of Employment Prohibited

There shall be no offer or hint of employment, promotion or transfer with the city conferred to a current employee, an applicant or potential applicant before or during a selection process.

10 Requirement to Report to Work

If the applicant fails to report to work on the date agreed, it shall be deemed that the applicant has declined the offer of employment.

11 Employment of Relatives

The employment of immediate family members is prohibited where one immediate family member would supervise the other. The employment of immediate family members of the City Commission members is prohibited. If a relationship change causes one employee to be supervised by an immediate family member, one

of the employees must resign or be laid-off. The resigning/laid-off employee may apply for any open position subject to section 29.08.04.060-8.4.4 Re-employment of Persons Laid-off.

11.1 Election of Immediate Family Member to City Commission Exception

In the case where a current employee is in a situation wherein an immediate family member is elected to the City Commission, that employee will not have his/her employment position challenged or placed in jeopardy under this rule.

11.2 Definition of Immediate Family Member

Immediate family is defined as: parents, spouse, children, siblings, grandparents and grandchildren through blood, marriage or adoption.

12 Probationary Period and Trial Period

12.1 Term of Probationary Period

Every employee hired by the City of Dickinson must complete a probationary period of not less than 90 days, for the purpose of assessing the individual's ability to perform the assigned duties. The probationary period may be extended past the six months limit upon approval of the City Administrator.

12.2 At-Will Employment Status

Probationary Employees are considered to have at-will employment status and therefore may be terminated if either the municipality or the employee feels this is the appropriate action. There is no notice required of either party for such termination.

12.3 Employee Benefits to Probationary Employees

Please refer to section 29.08.04.050 for probationary benefit information.

12.4 Trial Period

Transfers and promotions carry a trial period of up to 60 days. A trial period is not a probationary period.

During the trial period the supervisor or the employee receiving a transfer or promotion may choose to remove the employee from the new position. In this case, the employee will be permitted to return to his/her former position.

(Code 1958, § 9-21; Ord. No. 376; Ord. No. 1087 § 1; Ord. No. 1163 § 5; Ord. No. 1224 § 7; Ord. No. 1307 § 6; Ord. No. 1326 §1; Ord. No. 1330 §2; Ord. No. 1349 §1.)

Section 29.08.04070 Hours of Work

1 General Policy

It is the City Commission's intent to create a standard work week within which an employee is expected to perform municipal services. The City Commission also realizes that emergency and extenuating circumstances may arise in which an employee is required to work variable hours. Nothing within this policy is meant as a guarantee to the number of hours, either daily or weekly, that an employee may be required or allowed to work. However, it is the City Commission's policy that every employee be treated equally and fairly when expected to work odd or extended hours.

2 Standard Work Period

The standard work period for licensed police officers shall consist of 80 hours in any standard 14-day period. For all other employees, the standard work period shall consist of 40 hours during a seven day period between 12:00 a.m. Sunday and 11:59 p.m. Saturday.

The City has no established standard work day for all employees. Rather the standard work day for individual employees is set by departmental policy and procedure and may change from time to time depending on departmental need.

3 Emergency Call-Out and Special Schedule Time Pay

An employee called out to work or required to work according to a special schedule with less than 24 hours notice of the schedule change shall receive a minimum of one hour of pay at one and one-half times the employee’s normal hourly wage. Any call-out and special schedule time worked in addition to the initial hour will be also paid at one and one-half times the employee’ s normal hourly wage.

4 On-Call Time

Certain departments, depending on the duty needs of the department may require employees to accept assignment to On-Call duties.

4.1 Pay, Restrictions and Allowances of On-Call

(1) Employees on-call will be paid an on-call allowance as set by the City Commission for each week on-call.

(2) Employees on-call will be subject to on-duty employee discipline if determined to have consumed alcohol or taken illegal drugs while serving on-call.

(3) The on-call employee is responsible for making sure calls are covered.

(4) Employees accepting positions that are subject to on-call requirements must be able to report to work within one-half hour of call under normal conditions at legal speed limits.

5 Flex Time

The Department Head may authorize flexible work hours within the applicable work week in situations where it is appropriate or necessary. Full-time employees must still adhere to their standard work week unless flex time or overtime has been approved by the Department Head. In all cases, the needs of the City will take first priority in determining flex time applications.

6 Overtime Compensation

Overtime compensation at 1 1/2 times normal hourly pay will be paid to non-exempt employees for time actually worked in excess of hours in a normal work day; time paid in excess of 80 hours paid at normal hourly rate in any standard 14 day work period for licensed police officers; hours paid in excess of 40 hours paid at normal hourly rate in the standard seven day work period for all other eligible employees. Overtime work must be approved by the employee's supervisor.

7 Compensation Time

Compensation Time is eliminated as City employment benefit as of December 31, 2013. Previously accrued compensation time shall be paid out to employees as of December 31, 2013. (Ord. No. 1533 § 2)

8 Exemptions to Overtime (Exempt Employees)

Department of Labor (DOL) Standards for Classifying Exempt Positions will be followed by the City. The following employees are exempt from the overtime standards as mentioned in the above sections:

1) City Administrator, Public Works Director.

2) Department Heads, Assistant Department Heads and other employees if determined to be FLSA exempt.

All Other City employees are considered non-exempt for purposes of being eligible to earn overtime.

9 Attendance

All municipal employees are expected to be at work on time and during their regularly scheduled hours. Employees who are unable to report for work on time are required to notify the appropriate Department Head or his pre-established designee prior to their being late or absent, unless an emergency arises. In the case of an emergency situation, the employee is expected to notify the appropriate Department Head or his pre-established designee as soon as reasonably possible.

If an employee is absent more than three (3) consecutive days without proper notification, the employee will be considered to have voluntarily resigned their position.

Failure to observe the attendance regulations may result in disciplinary action.

10 Time Sheets

Each non-exempt employee's time sheet is a record of his/her regular hours worked, overtime worked, and vacation or sick leave used for the purpose of calculating and issuing pay checks. Every employee must sign his/her time sheet to verify that all entries are accurate. Intentional falsification of time sheets may result in disciplinary action.

11. Travel Pay

The City encourages employees to seek job related training that will improve their competency. For this reason, the City will pay straight time for hours spent at job related training requested by the employee and approved by the employee’s supervisor up to eight hours for any day of training. If training occurs on the

employee's normal day off, the employee may be provided the opportunity to rearrange time off that week, if possible.

The City will not pay for time spent traveling to or from job related training during non-scheduled work hours. When possible, supervisors may arrange for all or a portion of travel to occur during working hours. The supervisor may also reschedule work hours to accommodate time spent traveling, when the nature of the travel requires the employee to travel on a normal day off.

12 Pay Situations Not Covered in this Section

Pay Situations not addressed in this section of this policy will be addressed on a case by case basis. Such decisions will serve as the basis for changes to this policy in the future. (Code 1958 § 9-22; Ord. No. 376; Ord. No. 721 § 1; Ord. No. 967 §§ 4, 5; Ord. No. 1053 §1; Ord. No. 1077 § 1; Ord. No. 1087 § 2; Ord. No. 1163 § 5; Ord. No. 1201, § 2; Ord. No. 1224, § 8.; Ord. No. 1307 § 8; Ord. No. 1308 § 1; Ord. No. 1339 § 1, Ord. No. 1533 §2.)

Section 29.08.04080 Compensation

1 Pay Plan - Preparation; amendment

1.1 The board of city commissioners shall be responsible for the development of a uniform and equitable pay plan which shall consist of minimum and maximum rates of pay for each class of positions and such intermediate steps as may be necessary and equitable. After the adoption of such plan no class shall be assigned a higher than maximum or lower than the minimum wage or salary provided for that grade, unless the schedule for the whole grade be amended.

1.2 When changes in responsibilities or work of positions, living costs, recruiting experience, prevailing rates of pay, the City's financial condition and policies or other pertinent conditions warrant such action, the board of city commissioners shall consider changes to such a plan and shall adopt any such changes as they deem necessary and advisable. Such amendments of the pay plan may be done at any time by the board of city commissioners without consultation with the civil service commission, other provisions of this policy notwithstanding.

2 Pay Plan - Administration

2.1 Appointment Rate.

The minimum rate of pay for a class shall normally be paid upon appointment to the position. Appointment rate above the minimum rate, however, may be paid if in the opinion of the City Administrator it is justified on the basis of exceptional qualifications of an eligible or lack of eligible candidates at the minimum rate. If a former employee is re-employed in a class or similar class in which he was previously employed, the City Administrator may make an appointment at the same rate of pay which the employee had been receiving at the termination of his services. Additionally, the City Administrator may, with the advice and consent of the Board of City Commissioners, establish a uniform system of signing bonuses for selected staff position, by class and grade.

2.2 Pay Increases

Adjustments to the salary and wage schedules shall be reviewed by the board of city commissioners at least annually, at or prior to the time of adoption of the budget for the following calendar year of the city. Any change to the salary and wage schedules shall be effected only by affirmative action of the board of city commissioners and such board shall prescribe in its action the effective date of such change. The City Administrator, based on recommendation of the Department Head, may withhold a salary or wage adjustments, if any, of an employee. This action may be appealed to the Board of City Commissioners.

2.3 Total Remuneration

2.3.1 Remuneration - Non-Exempt Employees

Any wage rate established for a non-exempt employee shall represent his/her basic pay rate. In addition to that rate, the employee shall be eligible to receive additional pay for hours in excess of the individual full-time employee's standard work day. In addition, the full-time employee shall be eligible

to receive additional pay for hours worked in excess of 40 hours in any one week as described in Section 29.08.04.070-6.

EXCEPTION: Police employees working a 14 day pay period shall be eligible for overtime compensation to hours in excess of 80 in any one period.

2.3.2 Remuneration - Salaried Employees

Any salary rate established for exempt employees shall represent their total remuneration except for reimbursement of official travel, car allowances, and reimbursement for other allowable expenses, if applicable.

2.3.3 Prohibition on Remuneration From Outside Sources

Under no circumstances shall an employee of the City accept any reward, gift, or other form of remuneration in addition to allowable compensation as described in Sections 29.08.04.080-2.3.1 or 29.08.04.080-2.3.2 from any source other than the City for performance of their duties or based on the employee's position with the City.

2.4 Pay rates on Promotion

An employee will receive a pay increase upon promotion taking into account the pay they were receiving prior to promotion and the experience/education he/she brings to the classification into which he/she has been promoted.

2.5 Shift Differential Pay

Certain city departments are required to provide 24-hour service to the City. Accordingly, the City shall pay all non-exempt employees an additional "shift-differential" compensation of One Dollar ($1.00) per hour, as follows:

Non-exempt sworn Police Department Personnel: for all regularly scheduled hours worked between 6:00 PM and 6:00 AM

Communications Specialists: for all regularly scheduled hours worked between 7:00 P.M. and 7:00 A.M.

Non-exempt Fire Department Personnel: for all regularly scheduled hours worked between 6:00 P.M. and 6:00 A.M.

Shift differential pay shall not be available for overtime or call out compensation. (Ord. No. 1536§ 1.)

3 Pay Period and Pay Day

The City will pay employees at least twice each month. If, for some reason, the City anticipates the need to enact a change to pay schedules or pay day, that alters the timing of such payments, the City shall provide employees with at least 90 days notice before enacting the chance, except when such change is mandated by the State or Federal Government. In the event the payday falls on a Saturday, Sunday or holiday, checks will be distributed on the nearest workday preceding the payday.

4 Early Pay Checks

The City of Dickinson does not grant early pay checks to employees under any circumstances. If an employee is to be absent on pay day, and has chosen to not participate in the City's available direct deposit plan, it is his/her responsibility to ensure that his/her pay check is properly handled. Alternate arrangements must be made with the City Administrator, department head, or his/her designee prior to payday. Otherwise an employee's pay check shall be given to the employee at the earliest possible time upon his/her return.

5 Direct Deposit of Paychecks

Upon request of the employee, the City will make arrangements to direct deposit the employee's paychecks the bank account designated by the employee.

6 Payroll Deductions

The municipality is required to withhold Federal Income Tax, Social Security Taxes, Medicare Taxes, and North Dakota Income Tax from each employee's pay check.

Other deductions may include:

1) Employee designated deductions as permitted under the City's flexible benefits plan.
2) Deductions requested by the employee which have received prior approval for payroll deduction by the City Commission

7 Benefits

The following benefits are afforded according to individual employee classifications (see Section 29.08.04.050).

7.1 Health Insurance

This is a flex-plan benefit. Therefore if an employee chooses this benefit through submission of the annual flex plan election sheet, the City of Dickinson pays for 80% of Health Insurance costs for the coverage the employee requests, regardless whether said request is single, single parent with dependents, or family coverage. The extents and limitations of the policy are negotiated by the City and a private carrier and approved by the City Commission. The 20% portion of the coverage which the employee pays is deducted from the employee's paycheck as a pre-tax benefit.

Each member of the City's group health insurance plan will receive a copy of the health insurance policy.

7.2 Pension Plans

Upon hire, eligible employees will be enrolled in the appropriate pension plan. The City and the employee will contribute to a pension plan operated on the City's behalf by an administrator designated by the City or the City itself. Each regular full-time employee will receive a copy of their pension plan's Summary Plan Description (SPD).

7.3 Life Insurance

The City offers employees a $60,000 group term life insurance policy with the City paying 50% of the single person policy and the employee paying the remaining 50%. Of the total policy amount, the first $50,000 of coverage is pre-tax and the remaining premium is subject to payroll taxes. In addition to the single coverage, the employee may pick up dependent care coverage at the employee's cost. The dependent coverage has a face value of $5,000 on the spouse and $2,500 on each child.

7.4 Other Flexible Benefits

(1) Employee Paid Medical/Dental Expense Benefit Account

The City permits employees to have designated amounts of money deducted from each paycheck based on an employee designated annual amount on a pre-tax basis and placed in a medical/dental expense spending benefit account. The employee is permitted to withdraw money from this account on an as needed basis to pay medical/dental bills throughout the year up to the annual deduction amount. Each employee will receive a copy of this plan. For more detail, employees are encouraged to refer to the actual plan.

(2) Daycare Expenses Benefit Account

The City permits employees to have designated amounts of money deducted from each paycheck based on an employee designated annual amount on a pre-tax basis and placed in a daycare expense benefit account. The employee is permitted to withdraw money from this account on an as needed basis to pay daycare costs throughout the year up to the annual deduction amount.

(3) AFLAC Coverage

The City makes available to the employees coverage in plans of AFLAC insurance at the employee's cost. Employees indicating interest in participating in any of the AFLAC programs will have premium amounts deducted from their paychecks.

(4) U.S. Savings Bonds

The City permits the employees to have amounts deducted from their paychecks, which is then invested in U.S. Savings Bonds as designated by the employee.

(5) Employer Paid Medical Spending Account

Beginning January 1, 1997, the City makes available up to $450 annually per employee on permanent status, who average at least 30 hours per week on an annual basis, as a separate plan from that described in the paragraph above. For more detail, employees are encouraged to refer to the actual plan.

7.5 Extended Health Benefits

7.5.1 COBRA Allowances

In compliance with COBRA (Consolidated Omnibus Budget Reconciliation Act) requirements, the City of Dickinson will offer continuing health care coverage on a self-pay basis to employees or their qualified beneficiaries following termination of employment (for reasons other than other than for gross misconduct), a reduction in hours, retirement, death, or change in familial status. These health benefits will be identical to the coverage offered to full time employees.

For terminated or reduced-hour employees, the coverage may last up to 18 months, (29 months for disabled employees or qualified beneficiaries if under Federal COBRA requirements), or until they become eligible for other health insurance coverage, whichever is earlier. In the event of the employee's retirement, divorce, separation or death, the coverage may last up to 36 months for a qualified beneficiary. The full policy monthly premium plus a 2% administration fee will be paid by the employee or the beneficiary to the City of Dickinson. The 2% administration fee may be waived by the City Commission. The employee or beneficiary may waive all rights to continuation coverage. Notification procedures and time limits are outlined in the continuation coverage "Notification of Rights" letter.

7.5.2 Special Benefits for Retirees

Any full-time City employee, who is at least 62 years old or who is at least 55 years old and has completed 25 years of service and retires from City employment is eligible for a benefit consisting of a subsidy of their actual monthly health insurance cost based on the type of benefit plan, either a single or family, the retiree carried at the time of retirement from the date of retirement until the retiree is eligible for federal Medicare. The benefit will consist of a subsidy of 2% of the retiree's actual monthly health insurance cost for each full year of employment with the City to a maximum of 50% of the retiree's actual monthly health insurance cost. At no time will the monthly subsidy exceed the City's actual group premium cost for a comparable type of policy times the applicable percentage. If an employee covered by the City's group plan dies while employed by the City or a retiree covered by this subsection dies before attaining federal Medicare eligibility or becomes eligible for federal Medicare benefits, the person(s) covered under the employee's or retiree's health insurance benefit at the time of death or federal Medicare eligibility of the employee or retiree may continue to receive said benefit for the remainder of the employee's/retiree's benefit allowance period or three years or until that person(s) dies or becomes eligible for federal Medicare benefits whichever is less.

7.6 Employee Assistance Program (EAP)

7.6.1 Purpose

It is recognized that most people face personal difficulties at some point in their lives. Given this reality, the city of Dickinson EAP is committed to assisting employees with distress as a means of facilitating 1) a resolution of problems and 2) the maintenance of satisfactory job performance. For this reason, the City is offering all regular full-time employees access to an Employee Assistance Program, the use of which is described in this subsection.

In pursuing the above objective, the EAP can be used by employees to help prevent problems from hindering one's capacity to fulfill job requirements.

7.6.2 Use of the Program

Employees wishing to use this program may contact the EAP provider in accordance with the provisions of the program.

EAP may be used in one of two primary ways:

7.6.2.1 Confidential Use

An employee experiencing difficulties may, on his/her own initiative, seek information, guidance, or personal therapy. In this pursuit of assistance, the employee's confidentiality will be maintained.

The city of Dickinson EAP is a pre-paid benefit for regular Full-Time employees and their family members. If services are needed beyond the scope of the EAP, a

recommendation to a preferred provider will be made. If this occurs and the employee accepts the referral, the employee will be financially responsible and may be able to use their health insurance based on approval of the insurer.

7.6.2.2 Employer Involvement

When an employee's job performance is determined to be unsatisfactory as a result of personal difficulties caused by on or off the job circumstances, the employee' s supervisor has the option of encouraging the use of the EAP. In cases where there is a serious concern, as determined by the Department Head, about the employee' s performance, the Supervisor can require participation in the EAP as part of an action plan. When the EAP is used in this manner, the city of Dickinson has the right to require the provider to provide:

*Notification of the employee's follow through for initial and subsequent appointments to the employee's Supervisor.

*Treatment recommendations to the employee's Supervisor.

*Treatment follow-through/completion to the employee's Supervisor.

The city of Dickinson EAP is a pre-paid benefit for regular Full-Time employees and their family members. If services are needed beyond the scope of the EAP, a recommendation to a preferred provider will be made. If this occurs and the employee accepts the referral, the employee will be financially responsible and may be able to use their health insurance based on approval of the insurer.

Further, if such an employee refuses the referral to the EAP as part of an action plan, the employee may be subject to disciplinary action in accordance with Section 29.08.04.110 of this manual.

8 Changes of Employee Status & Address

It is the employee's responsibility to inform the City Administrator or his designee of any changes in the employee's name, address, telephone number or change of withholding status. Employees are required to report any of the above changes immediately following the change. Failure to report or the intentional withholding of such information may result in disciplinary action.

8.1 Seasonal Employees (Request to not Withhold Taxes)

Employees who indicate on their W-4 form that they should not have any income taxes withheld from their paychecks must file a new W-4 form each year.

9 Travel and Reimbursement of Expenses

9.1 General Policy

It is the policy of the City of Dickinson that employees be fully reimbursed for necessary and reasonable job related travel expenses. Every effort will be made to treat all employees fairly and equally when granting reimbursements for travel expenditures.

9.2 Travel Approval Required

All in-state travel must be approved by the appropriate Department Head prior to travel except in emergency instances. All out-of-state travel must be approved by the appropriate Department Head and the City Administrator prior to the date of travel except in emergency instances. Only original approval is required for re-occurring meetings.

9.3 In-State Travel Expenses

Per diem rates for approved in-state travel are as follows:

(1) The state of North Dakota lodging rate as listed in NDCC 44-08-04 and any subsequent amendments thereto. Unless the hotel/motel providing lodging is unwilling, the City of Dickinson will be billed directly by the establishment for lodging costs. In the case where the employee is required to pay for lodging, said employee will be reimbursed through the accounts payable process following submission of a signed travel voucher. Receipts are required. In the case of extenuating circumstances, wherein the employee is unable to obtain lodging at the state rate, the City Administrator may approve lodging costs higher than the state rate.

(2) Per diem payment for meals at the current State Rate as listed in NDCC 44-08-04 and any subsequent amendments thereto. The City Administrator may approve reimbursements above the state rate when necessary.

Meals purchased within the City are not reimbursable unless included as part of conference or convention registration or meetings set by the City Administrator or City Commission which require attendance.

(3) Commercial transportation will be reimbursed based on receipts submitted, with the exception of taxi fares of $10.00 or less.

9.4 Out-of-State Travel Expenses

Per diem rates for approved travel outside the state of North Dakota are as follows:

(1) Per diem lodging allowance shall consist of the actual cost of lodging expense.

(2) The per diem allowance for meals shall be:

Continental United States

The allowance for out-of-state meals, within the continental United States, is equal to the per diem meals rate in the city for which a claim is made on that day as established by rule for federal employees by the United States general services administration and must be allocated 20% to the first quarter, 30% to the second quarter, and 50% to the third quarter.

Canada, Alaska, and Hawaii

The allowance for meals in Canada, Alaska, and Hawaii may not exceed one and one-half time the current continental United States standard rate for federal employees established by the United States general services administration.

Outside Continental United States, Canada, Alaska, and Hawaii

The allowance for meals outside the continental United States, Canada, Alaska, and Hawaii may not exceed two time the current continental United States standard rate for federal employees established by the United States general services administration.

9.5 Meal Reimbursements - Schedule for Computation

The times for allowance of paid meals is as follows:

(1) First Quarter is from 6:00 a.m. to 12:00 noon. First quarter reimbursement may not be made if travel began after 7:00 a.m.

(2) Second Quarter is from 12:00 noon to 6:00 p.m. Second quarter reimbursement may not be made if travel began after 1:00 p.m.

(3) Third Quarter is from 6:00 p.m. to 12:00 midnight.

9.6 Receipts Required

Receipts shall be required for all non-per diem expenses which are to be reimbursed by the City of Dickinson. EXCEPTION: Necessary taxi fares under $10.00 do not require a receipt.

9.7 Mileage and Air Travel Reimbursement Rate

When employees must use their private vehicles for approved travel, mileage shall be paid at the current state rate or other rate approved by the City Commission.

If reimbursement is properly authorized, passenger reimbursement must be paid on a per-mile basis as provided in this subsection.

In order to be reimbursed for on the job mileage, the employee must submit a travel voucher showing date of travel, odometer readings at beginning and end of trip, miles driven, destination, and purpose of the travel.

Miles driven to and from the workplace are not eligible for reimbursement.

Those eligible to receive a car allowance, as described in Section 29.08.04.080-12 may choose instead to be reimbursed for actual miles driven rather than receive a car allowance or City vehicle. If the eligible employee chooses actual mileage reimbursement, miles driven during their normal work day will be considered business related. Therefore, these employees must complete mileage data forms which show, date, beginning odometer reading for day and ending odometer reading, actual miles driven, and general

description of travel for day. Miles driven out of the Dickinson area or during non-work hours for City business must have specific information per trip as described in this subsection.

9.8 Travel Cost Advances

When an employee is required to travel by plane or will be traveling for a period exceeding one day may receive, upon request, an advance of 80% of estimated travel costs plus per diem. Upon submission of travel reimbursement request, the actual reimbursement will be adjusted based on the amount that was advanced to the employee.

9.9 Timing of Reimbursements

Employees will be reimbursed for travel and other reimbursable expenses within two weeks of submission of receipts and reimbursement voucher.

10 Clothing Allowance

10.1 Uniformed Police Officers and Fire Department Personnel

Due to the fact that the City requires Uniformed Police Officers and Fire Department Personnel to wear Department designated uniforms while on duty, the City will pay the cost of cleaning and replacement of said uniforms as approved by the department head.

11 Longevity Pay

11.1 Description of Benefit

Each Regular Full-time employee, as defined in Section 29.08.04.050-1.2, who has been employed with the City for a period of five consecutive years or more shall be considered qualified and shall receive, in addition to his regular pay, a longevity payment. An employee who leaves his employment in good standing as determined by the governing body and who has completed fifteen years of service shall be entitled to percentage pay-out of his longevity pay based on the percentage of calendar year completed at the time of termination.

11.2 Rate

Each qualified employee shall receive a longevity payment each year, for each month's service completed, computed as follows:

One through ten years of service	$3.00/month
Eleven through twenty years of service	$3.50/month
Twenty-one years and over service	$4.00/month

11.3 Time of Payment

Payments shall be made on or about December 15 of each year. No early payment will be made except as authorized in Subsection 29.08.04.080-11.1.

11.4 Withholding of Payment

Upon a finding that an employee(s) is not in good standing, the board of City Commissioners may withhold or not authorize longevity payment to any one, several, or all employees. In this case the employee(s) affected will be notified of the reason for non-payment.

12 Car Allowance or City Vehicle

The City Administrator, department heads, and others so designated by the City Commission may elect to be paid a monthly allowance for operation of their private vehicles for official business within the City limits and jurisdiction, for normal day to day business mileage in the vicinity of Dickinson. The amount of the car allowance will be set by the City Commission and may be adjusted from time to time. The car allowance will be paid without need of the recipient to justify miles. Hence, if requested said allowance will be treated as regular wages of the recipient with appropriate payroll taxes deducted.

As an alternative to a car allowance, the City will consider requests by employees, who demonstrate need to receive a designated City vehicle supplied by the City.

13 Workers' Compensation

The City of Dickinson purchases Worker's Compensation covered from the state of North Dakota which is designed to protect employees against medical costs and salary loss as a result of injuries while on the job. The municipality pays the contribution cost for this coverage.

14 Special Benefit to Retiring Police Officers

Retiring, full time, sworn police officers, who meet the requirements listed in this subsection will receive their service weapon as part of the service award recognition process upon retirement.

In order to be eligible to receive their service weapon, the retiring officer must:

(1) have completed a minimum of 20 years of service with the Police Department, and

(2) be terminating employment with the Police Department under favorable conditions, and

(3) that the appropriate Federal Firearms paperwork identifying the owner of the weapon is completed prior to actually receiving the weapon.

For purposes of this subsection, leaving under unfavorable conditions means:

(1) that the City is terminating employment for cause for violation of policy, procedure or law, or

(2) termination is for medical reasons of a psychological nature.

15 Sick Leave Bank

15.1 Purpose

The purpose of the Sick Leave Bank (SLB) is to provide sick leave to participating employees who have suffered an unplanned, non-work-related personal illness, injury, disability or quarantine and whose accumulated leave is exhausted and, more specifically, to provide a last resort source of leave in cases of catastrophic illnesses.

15.2 Sick Leave Bank Committee (SLBC)

The Sick Leave Bank Committee (SLBC) will be a co-designation of the Human Resources Committee established by ordinance for the purpose of reviewing and recommending changes to the Human Resources Manual as described the Civil Service portion of the Dickinson Municipal Code.

15.3 Membership And Eligibility

15.3.1 Employees whose employment status is either Regular Full-time and Regular Part-time at the time the Human Resources Manual receives initial final approval will have a one-time opportunity during the initial enrollment period to become members of the city of Dickinson SLB.

15.3.2 New hires and employees on probation at the time the Human Resources Manual receives initial final approval will have thirty (30) calendar days in which to join the bank upon completion of their probationary period.

15.3.3 Donations of sick leave to the SLB are non-refundable, except in the event of the termination of the SLB. In the event the SLB is terminated, the total number of hours on deposit shall be returned proportionately to the then participating members and credited to their sick leave accumulation.

15.3.4 Employees participating in the SLB may cancel their participation in the SLB at any time, by submitting written notice of cancellation to the City Administrator or his designee. Membership withdrawal, as well as termination of employment, shall result in forfeiture of all hours contributed.

15.3.5 A member shall lose the right to obtain the benefits of the SLB by:

1. termination of employment, including resignation, involuntary termination, and retirement;
2. cancellation of participation;
3. refusal to honor such assessment as may be required by the SLB;
4. refusal to comply with the policies and procedures of the SLBC; or
5. determination of permanent disability by the Social Security Administration (SSA).

15.3.6 Employees who have an ongoing catastrophic or terminal illness prior to the date of initial adoption of the Human Resources Manual are eligible to apply to the SLBC for coverage under Section 29.08.04.080-15.4.4.

15.3.7 An SLB grant shall only be used by the individual member for his/her personal catastrophic or terminal illness or injury or, with prior review and approval of the SLBC, for absences due to illnesses of members of the individual member' s immediate family as defined in the Human Resource Manual.

15.3.8 Participation in the SLB is voluntary, but requires an initial contribution to the SLB and subsequent contributions as assessed in accordance with this policy. Only contributors will be allowed to receive grants from the SLB with the exception of specific grants of leave through the SLB as described in this policy.

15.3.9 Persons off work due to a normal pregnancy and delivery shall not be eligible to receive an SLB grant.

15.3.10 The SLB shall not be used by a SLB member disabled by an injury covered by Worker's Compensation.

15.3.11 The existence of the SLB and participation by an employee does not negate or eliminate any other sick leave policies of the City, nor does it in any way negate the rights of an individual who participates in the SLB to any other sick leave benefits.

15.4. Sick Leave Bank Contributions

15.4.1 A 16 hour (two day) sick leave assessment shall occur when a Regular Full-Time employee joins the SLB. The required initial sick leave assessment will be pro-rated for Regular Part-Time employees to the average number of hours that employee works, similar to the standards set for accrual benefits described in Section 29.08.04.080 of this manual. If an employee joins the SLB but for some reason has exhausted all sick leave and has no sick leave to contribute, the employee shall contribute the initial assessment and any following assessment as determined necessary by the SLBC as soon he/she has accrued the assessment amount. Continued use of accrued sick leave and thereby continued inability to contribute will be considered an action that must be reviewed by the SLBC to determine whether the employee' s actions constitute a cancellation of participation. Eligibility for benefits from the SLB shall be suspended until the employee has contributed required sick leave.

An employee drawing SLB benefits shall not be required to contribute any assessment or make back payments for assessments required while that person was drawing SLB benefits.

15.4.2 Upon initial adoption of the Human Resources Manual, the City shall contribute 800 hours (100 days) to the SLB. The Board of City Commissioners may be requested by the SLBC to contribute additional time as necessary at future dates to keep the plan solvent depending on the number of employees receiving benefits following adoption of the plan.

15.4.3 All members of the SLB, who are Regular Full-Time Employees shall be assessed eight hours of sick leave any time the SLBC determines it is necessary to require such assessment. This assessment will be pro-rated for members, who are Regular Part-time employees based on the average number of hours that employee worked per week for the year prior to the assessment.

15.4.4 Active employees (members or nonmembers of the SLB) may directly donate their accrued sick leave via the SLB in eight (8) hour increments to specific employee(s) who have used up all of their sick leave, annual leave, personal leave, holidays, and SLB benefits. Donated leave will be forwarded to the benefited employee based on the actual hours used each pay period. Any unused donated leave will remain in the SLB.

15.4.5 Any employee who is rehired within one year of being laid off, who was a member of the sick leave bank prior to lay-off, will not be required to again make an initial time donation to the SLB in order to be a member. Likewise, any employee who is laid off and rehired within one year, who was not a member of the SLB prior to the lay-off will be ineligible to become a member upon rehire.

15.5 Sick Leave Bank Usage

15.5.1 Prior to being eligible to draw any hours from the SLB, members shall be required to exhaust all accrued sick leave, vacation leave, personal leave, and holidays.

15.5.2 With the exception of specific grants of sick leave as described in Section 29.08.04.080-15.4.4, any employee requesting an SLB grant must be a member of the SLB.

15.5.3 SLB members shall not be eligible to receive SLB benefits until the employee has been off work for at least 20 working days, unless the employee or his/her representative provides adequate

evidence to the City Administrator or his designee that recent past major illness(es) have made it impossible to accumulate sufficient accruals to cover the 20 working day requirement.

15.5.4 Member employees may donate leave to specific employees with ongoing catastrophic or terminal illnesses when the employee, who will benefit from the specific donation has exhausted all accrued leave, holidays, and SLB benefits as determined by the SLBC.

15.5.5 Member employees may make general donations of leave to the SLB that is not directed to any specific employee whenever an employee so desires.

15.5.6 The SLBC reserves the right to set a limit on the amount of leave any individual employee may grant at any one time to a specific employee with ongoing catastrophic or terminal illnesses, in order to insure that no more than 160 donated sick leave hours are on the books for any one Regular Full-Time Employee at one time. Likewise, the maximum hours of donated sick leave carried on the books at any one time for a Regular Part-time Employee will not exceed the equivalent of four weeks at the average number of hours said employee worked for the year prior to receiving SLB or donated sick leave hours. There is no maximum number of donated hours that an employee may receive through successive donations. However, should donations of time fall below that needed to maintain the recipient employee on full-time status, said employee will lose that status.

15.5.7 While receiving SLB benefits or a specific donation of leave, an employee shall not accrue any sick leave or vacation leave, nor will the employee be eligible to receive compensation for an holidays.

15.5.8 Not more than 240 hours (30 working days) shall be granted in any one grant even though an individual may be eligible to receive multiple grants up to a total of 720 hours (90 working days). Applicants may submit requests for a SLB grant(s) or extensions of a SLB grant(s) before the prior grant(s) or other requirements of this policy have expired.

15.5.9 Regular Part-Time Employees will be eligible to receive SLB benefits pro-rated to the average number of hours they work, similar to accrual benefits described in Section 29.08.04.080 of this manual.

15.6 Procedures

15.6.1 Any employee desiring to may a specific donation of leave to another employee must indicate such interest on a completed, signed City Leave Donation Form.

15.6.2 Sick Leave Bank Committee Responsibilities

15.6.2.1 The SLBC shall be wholly responsible for the proper administration of the SLB, the maintenance of sick leave hours in the SLB, the promotion of enrollment in or donations to the SLB, and the submission to the SLB members of the annual report on the status of the SLB.

15.6.2.2 The SLBC shall approve all grants and specific donations before they are forwarded to the City for payment through payroll.

15.6.2.3 The SLBC will only consider whether an application for a SLB grant will be granted after applicant has provided all information necessary to determine whether member has been subjected to a catastrophic illness or injury.

15.6.2.4 All decisions of the SLBC may be reconsidered by the SLBC not less than 30 days following a decision. In addition, all decisions of the SLBC may be appealed in accordance with the procedure described in Section 29.08.04.120 of this manual.

15.7 SLB Grants

15.7.1 All requests for grants from the SLB shall be made on a City Sick Leave Bank Withdrawal Form.

15.7.2 All requests for grants from the SLB must be accompanied by a confirmation from the City attesting to the requester's disability status, based on a physician's statement of catastrophic illness or injury and the amount of available leave the employee has on the books at the time of the application for a grant.

15.7.3 Grants denied by the SLBC may be re-submitted thirty (30) days from the date of denial.

15.8 Maintenance and Reporting of Sick Leave Bank Records

15.8.1 The City Administrator or his designee shall maintain the records of all applications for donations, applications for withdrawal grants, and all cancellations.

15.8.2 The City Administrator or his designee shall maintain records of all SLB participants as well as their contributions and successful withdrawal grants, and the status of the SLB.

15.8.3 The City Administrator or his designee shall provide information to the SLBC about applications for grants at the time an application is being considered. All SLBC members shall submit upon election to the SLBC a written statement that all information obtained in regard to employees shall be kept confidential and shall be used only for the reason of making appropriate grant decisions as a member of the SLBC.

15.8.4 If a SLB grant recipient does not use all of the hours granted from the SLB, the unused hours shall remain in the SLB.

15.8.5 All appropriate SLB forms are available from the City Administrator or his designee. City Administrator or his designee will annually distribute an administrative report reflective of SLB activity.

(Ord. No. 376; Ord. No. 967, § 6; Ord. No. 1163, § 5; Ord. No. 1201, § 3; Ord. No. 1224, § 9; Ord. 1242 § 1; Ord. No. 1307 § 10; Ord. No. 1308 § 2 & 3 Ord. No. 1395 § 1, Ord. No. 1533 § 3-4)

Section 29.08.04090 Leaves of Absence

1 General Policy

Leaves of absence are considered a benefit and privilege offered by the City of Dickinson. Leaves are not granted automatically, but are to be requested by the employee. Every effort will be made to ensure that all employees are treated equally and fairly. In some instances it may not be possible to grant all leaves requested during busy times or emergency situations, however every effort will be made to grant requests.

Employees anticipating a leave of absence are encouraged to apply for such leave as early as possible prior to taking leave. Five days prior notice is required in the case of leaves extending more than one day.

2 Vacation Leave

2.1 Benefits for Regular Full Time Employees

Paid vacation leave will be granted to all qualified employees (Section 29.08.04.050). Vacation leave for Regular Full-Time Employees will accrue at a rate ac-cording to an employee's tenure with the City based on the following schedule:

Employment Year	Monthly Accrual (in hours)	Annual Accrual (in hours)	Annual Accrual in Days/Year
1 - 5	8.00	96.0	12
6 - 9	9.33	112.0	14
10 -13	12.00	144.0	18
14 -17	14.00	168.0	21
18 - 21	15.33	184.0	23
22 & over	16.00	192.0	24

Additionally, at the discretion of the City Administrator and with the concurrence of the Board of City Commissioners, the City may grant additional vacation days to certain executive level employees upon their hire to such executive level position. Such additional vacation days shall be granted irrespective of the vacation accrual schedule set forth in this section, and shall be granted only as an additional inducement to employment in such position.

2.2 Benefits for Regular Part Time Employees

For Regular Part-time Employees, vacation accruals during the initial year of employment will be based on the estimated weekly hours the employee was hired to work. The average hours worked in a week will be compared to the 40 hours worked by a full-time employee and a percentage of benefit will

be determined from that comparison. After the first year, the average annual hours will be based on average weekly hours based on the actual average weekly hours the employee worked in the previous year.

Allocation of Accruals and Benefits for Regular Part-time Employees:

Qualifying Hours	Percent of Benefit
Average Weekly Hours > 20	50% of Full Benefit
Average Weekly Hours > 24	60% of Full Benefit
Average Weekly Hours > 28	70% of Full Benefit
Average Weekly Hours > 32	80% of Full Benefit
Average Weekly Hours > 36	90% of Full Benefit

2.3 Suspension of Accrual for Employees on Leave of Absence without Pay

Employees on leaves of absence without pay or suspensions without pay who are absent for more than a full pay period do not accrue vacation leave benefits. EXCEPTION: Employees on Family Medical Leave Act (FMLA) leave.

2.4 Accrual and Availability of Vacation Leave

An employee's accrued vacation leave shall be available for the employee's use in the month following such accrual.

2.5 Rules and Allowances of Vacation Accrual Carry-over

Employees are permitted to accumulate unused vacation hours year to, however any hours on an employee's record in excess of 240 at year end in any given year are lost. It is the employee's responsibility to ensure that hours are used on a timely basis according to this Section.

EXCEPTION: If, due to operating limitations, a department head determines that it is in the City's best interest to deny a hourly employee(s) already requested leave or the ability to request vacation leave and by denying such it is understood that the hourly employee(s) will not have the opportunity to reschedule an alternative leave time and therefore lose vacation hours at year end, the department head may request in writing to the City Administrator that the hourly employee(s) should be permitted to carry-over the vacation leave, that would otherwise be lost, into the next year. If the City Administrator agrees with this recommendation, he/she will issue permission for the hourly employee to carry-over said vacation leave into the next year. If the City Administrator disagrees with the recommendation, the hourly employee will be permitted to take vacation leave as originally requested. This allowance does not pertain to leave requested or intended to be requested near the end of the year based on the limitation in Section 29.08.04.090-2.8.

2.6 Benefit Pay-out to Terminating Employees

Upon termination of employment, an employee will be paid for any accrued but unused vacation time at the time of separation. Reimbursement for vacation leave will be at the employee's rate of pay on their last day of employment.

2.7 Allowance for Employees on Vacation on a Recognized Holiday

When an employee's vacation time falls on a holiday, such time will not to be subtracted from an employee's vacation leave balance.

2.8 Rules for Submission of Vacation Leave Request

2.8.1 Prior Notice of Leave Required

Vacation leave must be scheduled with the appropriate Department Head at the earliest possible time prior to the vacation leave requested. All employees requesting vacation leave shall complete a Request for Leave form and submit same with their request. Unless the

employee can show extenuating circumstances, five days prior notice is required for vacation leave extending more than one day.

EXCEPTION TO FIVE DAY NOTICE REQUIREMENT: The City recognizes that extenuating circumstances may present themselves wherein the employee is not able to provide the normal notice. In this case, the Department Head may approve an exception to the five day notice requirement.

2.8.2 Right of City to Deny Request for Leave

The City of Dickinson reserves the right, to disapprove requested time for vacation leave for the purposes of maintaining the work force during heavy scheduled work periods. In the case where a denial of vacation leave would cause an employee to lose vacation leave at year end due to vacation accrual carry-over rules, refer to Section 29.08.04.090-2.5. In normal operating situations, the City of Dickinson will make every effort possible to accommodate employee requests for vacation time off.

2.8.3 Limitations on Ability to Have Leave Request Approved

Vacation leave will be granted on a first come first serve basis, based on operational needs. If the appropriate department head can anticipate the need to limit vacation leave to all but a certain number of employees during the last two months of the year, he/she is required to inform the employees of this situation and clearly establish and notify his/her employees in writing how many employees will be permitted to take said leave during those months by September 1 of the year. The exception to Section 29.08.04.090-2.5 will not apply to employees who are notified of a year end leave allowance limitation.

2.9 Minimum Charge to Vacation Leave

The minimum amount that may be charged to an employee's vacation leave is 15 minutes per leave period.

3 Sick Leave

3.1 Benefits for Regular Full Time Employees

Employees who are eligible for full benefits (see Section 29.08.04.050) shall accrue sick leave at a rate of eight (8) hours of sick leave per month.

3.2 Benefits for Regular Part Time Employees

For Regular Part-time Employees, sick leave accruals during the initial year of employment will be based on the estimated weekly hours the employee was hired to work. No sick leave will be accrued during the probationary period as described in Section 29.08.04.090-3.4. The average hours worked in a week will be compared to the 40 hours worked by a full-time employee and a percentage of benefit will be determined from that comparison. After the first year, the average annual hours will be based on average weekly hours based on the actual average weekly hours the employee worked in the previous year.

Allocation of Accruals and Benefits for Regular Part-time Employees:

Qualifying Hours	Percent of Full Benefit
Average Weekly Hours > 20	50% of Full Benefit
Average Weekly Hours > 24	60% of Full Benefit
Average Weekly Hours > 28	70% of Full Benefit
Average Weekly Hours > 32	80% of Full Benefit
Average Weekly Hours > 36	90% of Full Benefit

3.3 Suspension of Accrual for Employees on Leave of Absence Without Pay

Employees on leaves of absence without pay or suspensions without pay who are absent for a full pay period do not accrue sick leave benefits. EXCEPTION: Family Medical Leave Act (FMLA) leave.

3.4 Accrual and Availability of Sick Leave

An employee's accrued sick leave shall be available for the employee's use in the month following such accrual.

. 3.5 Rules and Allowances of Sick Leave Carry-over

Sick leave benefits not used during the calendar year in which they are earned may be carried over and used during the succeeding calendar years. There is no limit to the number of sick leave hours employees may accumulate.

3.6 Sick Leave Rate of Pay

Sick leave benefits shall be paid to non-terminating employees at the employee's regular rate of pay at the time the leave is taken. The minimum charge to sick leave is one hour per leave period. In the case of accumulated sick leave paid to a terminating employee, refer to Section 29.08.04.090-3.10.

3.7 Rules for Reporting Off Work Due to Sickness

An employee absent from work due to illness or disability shall notify their Department Head or his designee before scheduled to work, or as soon as reasonably possible if an emergency situation exists, and indicate the nature of the illness or disability and the expected length of absence. Failure to report an illness in a timely manner may be cause to consider the absence as unauthorized and without pay.

Use of Sick Leave is allowed only for:

1. Personal illness, injury or medical care appointments.
2. To care for an immediate family member when medical care is necessary. Immediate family members are those persons listed in Section 29.08.04090-3.13.
3. As Funeral or Personal Leave as described in Section 29.08.04090-3.13.

When abuse is suspected as defined in Section 29.08.04090-3.9, the City Administrator or appropriate Department head may require a medical doctor's written statement to verify that a legitimate illness exists. A medical doctor's written statement will be required for any absence lasting more than four consecutive days.

3.8 Minimum charge to Sick Leave

The minimum amount that may be charged to an employee's sick leave accrual is 15 minutes per leave period.

3.9 Rules Affecting Abuse of Sick Leave

Use of sick leave benefits is permitted for the reasons listed in 29.08.04090-3.7. Sick leave benefits are intended to protect an employee's earnings in the event of an illness, injury or authorized event. Abuse of sick leave benefits will not be tolerated and may prevent an employee from receiving pay increases or lead to disciplinary action.

3.10 Benefit Pay-Out to Terminating Employee

It is the policy of the City of Dickinson that upon termination of employment employees shall be eligible for the payment of accrued sick leave at the rate of 1/4 of the employee's hourly wage at the time of separation for each hour of accrued sick leave.

3.11 Benefits Available to Employee Claiming On-the-Job Injury

The ultimate goal for the City is a no lost time rule, which means when feasible as determined by the City, the City will make accommodations for workers injured on the job making it possible for them to work while injured. It is possible the work assignment will be different from the employee's normal job assignment. During such assignment, the employee will be compensated at his/her normal rate of pay. However, if a Workers Compensation claim is approved for an on the job injury, which includes time lost from work and the employee had any hours charged to their accrued sick leave balance for the period before the claim was approved, the leave charged will be credited back to the employee's sick

leave accrual balance for the time covered by the Workers Compensation benefits for the initial period. An employee off work due to a Workers Compensation claim may choose to turn all Workers Compensation payments over to the City. In this case sick leave will be charged to the employee's sick leave accrual balance to augment Workers Compensation payments to equal the employee's normal gross pay.

If an employee on Workers Compensation leave elects to keep any of their payments from Workforce Safety and Insurance, said employee will be required to retain all pay from Workers Compensation and pay to the City, in cash, employee paid benefits as requested by the City.

3.12 Advancement of Sick Leave Accrual for Illness or Temporary Disability.

REPEALED WITH ORDINANCE NO. 1339 § 6. (May 7, 2007)

3.13 Funeral / Personal Leave

A qualified municipal employee(s) may use accrued sick leave for funeral / allowable personal leave. Allowances and limitations on these use of sick leave are:

(1) Death in the immediate family.

Immediate family is defined as an employee's spouse, parents, step-parents, children, step-children, brothers, sisters, step-brothers, step-sisters, grandparents, grandchildren and great grandchildren. The term also includes a spouse's equivalent of the above.

(2) Personal Leave

Employees are permitted to take up to two (2) unexplained days of leave per calendar year and charge such time off against their sick leave accrual.

(Ord. No. 1533 § 4)

4 Natural or Man-made Events

Employees who are not needed to address or mitigate a natural or man-made event may be sent home or directed to not report to work. Employees directed not to work during such an event may request leave depending on their accrued balances.

5. Family and Medical Leave (FMLA) Benefits

The City complies with the U.S. Family and Medical Leave Act, and it's implementing regulations, as may be amended from time to time. This policy is intended to provide employees with a general description of rights and obligations under FMLA. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

A. General Provisions

The City shall grant to employees up to 12 weeks of leave (or up to 26 weeks of military caregiver leave for a covered service member with a serious injury or illness) during a 12-month period to eligible employees. The leave may be paid, unpaid, or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.

Employees who are on approved FMLA leave may not engage in any form of self-employment or perform work for any other employer during that leave, except when the leave is for military or public service or when the employment has been approved by the City Administrator, or his designee, under the City's policy regarding Conflicts of Interest – Considerations of Outside Employment and/or Business Dealings and the employee's reason for leave does not preclude the outside employment.

(Ord. No. 1557 § 1)

B. Eligibility

To qualify for FMLA leave, the employee must meet all of the following conditions:

(1) The employee must have worked for the City for 12 months. The 12 months need not have been consecutive. If the employee has a break in service that lasted seven years or more, the time worked prior to the break will not be counted unless the break in service is due to service covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA), or there is a written agreement outlining the City's intention to rehire the employee after the break in service;

(2) The employee must have worked for the City at least 1,250 hours during the 12-month period immediately before the date when the leave is requested. Time spent on paid or unpaid leave is not counted as hours worked.

C. Type of Leave Covered

To qualify for FMLA leave, the employee must be taking leave for one of the following reasons:

(1) The birth of a child and to care for that child, or placement of a child with the employee for adoption or foster care and to care for the newly placed child;

(2) To care for a spouse, son, daughter, or parent who has a serious health condition (as defined in FMLA and its implementing regulations);

(3) For a serious health condition (as defined in FMLA and its implementing regulations) that makes the employee unable to perform the essential functions of his or her job; or

(4) For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.

A serious health condition is defined by FMLA and its implementing regulations as:

(1) a condition that requires an overnight stay in a hospital, hospice, or other residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care;

(2) a condition that incapacitates the employee or a family member for more than three consecutive full calendar days and any subsequent treatment or a period of incapacity relating to the same condition that also involves: (a) treatment two or more times within 30 days of the first day of incapacity (unless extenuating circumstances exist) by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or (b) treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of the health care provider. The first (or only) treatment by a health care provider must be an in-person visit and take place within seven days of the first day of incapacity. A "regimen of continuing treatment" includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition.

(3) any period of incapacity due to pregnancy or prenatal care;

(4) any period of incapacity or treatment for such incapacity due to a chronic serious health condition that requires periodic visits at least twice per year to a health care provider, continues over an extended period of time, and may cause episodic rather an continuing period of incapacity;

(5) a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective, but requires continuing supervision of a health care provider;

(6) any period of absence to receive multiple treatments by a health care provider for (a) restorative surgery after an accident or other injury or (b) a condition that would likely result in a period of incapacity of more than three consecutive full calendar days without the treatments.

Employees with questions about what conditions are covered under this FMLA policy or under the City's sick leave policy are encouraged to consult with the City's Human Resources Coordinator.

If an employee takes paid sick leave for a condition that progresses into a serious health condition, and the employee requests unpaid leave as provided under this policy, the City may designate all or some portion of related leave

taken as leave under this FMLA policy, to the extent that the earlier leave meets the necessary qualifications.

D. FMLA Qualifying Leave for Families of Members of the National Guard or Reserves

The City shall follow the requirements of FMLA and the Uniformed Services Employment and Reemployment Rights Act (USERRA), and their respective implementing regulations, with respect to qualifying exigency leave for families of members of the National Guard or Reserves.

E. Amount of Leave

An eligible employee can take up to 12 weeks of FMLA qualifying leave under this policy (and up to 26 weeks of FMLA qualifying military care giver leave) during any 12-month period. The 12-month period is measured as a rolling 12-month period, measured backward from the date on which the employees uses any FMLA leave under this policy. Each time the employee takes qualifying FMLA, the City shall compute the amount of FMLA leave the employee has taken in the previous 12 months and subtract it from the 12 weeks of available
FMLA leave. The balance remaining is the amount of FMLA leave that the employee is entitled to take at that time.

If a husband and wife both work for the City, and each wishes to take FMLA leave for the birth of a child, adoption or placement of a child in foster care, or to care for any parent (but not a "parent-in-law") with a serious health condition, the husband and wife may only take a combined 12 weeks of FMLA leave (or a combined 26 weeks of qualifying FMLA leave to care for a covered injured or ill service member).

F. Employee Status and Benefits During Leave

While an employee is on qualifying FMLA leave, the City will continue the employee's health insurance benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

Under current City policy, the employee pays a portion of the health care premium. While on paid leave, the employer will continue to make payroll deductions to collect the employee's portion of the premium. While on unpaid leave, the employee must make this payment to the City, either in person or by mail. The payment must be received in the Finance Department by the 5th day of each month. If the payment is more than 30 days late, the employee's health care coverage may be discontinued for the duration of the leave. The City shall provide at least 15 days' notice prior to the employee's loss of coverage.

If the employee contributes to other employer-sponsored employment benefits (such as life insurance or supplemental insurance), the City will continue to make payroll deductions for such benefits while the employee is on paid leave. While on unpaid leave, the employee may elect to maintain such benefits and pay the employee's portion of the premiums. The payment must be received in the Finance Department by the 5th day of each month. If such payment is not received, the employee shall be deemed to have elected to terminate participation in such employer-sponsored employment benefits.

G. Employee Status After Leave

An employee who takes qualifying FMLA leave may be asked to provide a fitness for duty clearance from a health care provider prior to returning to work. The City may also require a fitness for duty certification up to once every 30 days for an employee taking intermittent or reduced schedule FMLA leave if reasonable safety concerns exist regarding the employee's ability to perform his or her duties based on the condition for which leave was taken.

Generally, an employee who takes qualifying FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits, or other employment terms. Pursuant to FMLA regulations, the City may choose to exempt certain key employees from this requirement and not return them to the same or a similar position.

H. Use of Paid and Unpaid Leave

An employee who is taking FMLA leave must use all accrued leave time (whether vacation leave, sick, leave, personal leave, or otherwise) prior to being eligible for unpaid leave. Use of such accrued leave time shall run concurrently with qualifying FMLA leave.

I. Intermittent Leave or a Reduced Work Schedule

An employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 work weeks (or 26 work weeks for qualifying military care giver leave) over a 12 month period.

In instances where the FMLA leave is foreseeable (including recovery from an employee's serious health condition, the serious health condition of a family member, or to care for a child after birth or placement for adoption or foster care) the City may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule.

For the birth, adoption or foster care placement of a child, the City and the employee must mutually agree to the intermittent or reduced schedule prior to the employee taking FMLA leave. Leave for the birth, adoption or foster care placement of a child, must be taken within one year of such birth, adoption, or foster care placement.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should attempt to reach agreement with the City prior to taking intermittent leave or a reduced hour schedule. If this is not possible, the employee must prove that such intermittent leave or reduced hour schedule is medically necessary.

J. Certification of Serious Health Condition

Pursuant to FMLA implementing regulations, the City will require certification of an employee's serious health condition or the serious health condition of an employee's family member. The employee must respond to such a request within 15 days or provide a reasonable explanation for the delay. Failure to provide certification may result in denial of continuation of leave. The City may ask for a second opinion or third opinion of a medical professional if the City has reason to doubt the certification given. The City may request recertification of a serious health condition, but no more frequently than once every 30 days Such certifications, recertifications, and additional opinions are governed by FMLA implementing regulations, and the City shall follow such implementing regulations.

K. Procedure for Requesting FMLA Leave

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the HR Coordinator. The HR Coordinator shall notify the employee of his or her eligibility to take leave, and inform the employee of his or her rights and responsibilities under the FMLA. Absent extenuating circumstances, the City shall notify the employee of whether the employee is eligible to take FMLA leave within five business days of the employee requesting leave or the employer learning that an employee's leave may be for a FMLA-qualifying reason. If the City determines that the employee is not eligible for FMLA leave, the City shall provide the employee with the reason why the employee is ineligible.

When the need for FMLA leave is foreseeable, the employee must provide the City with at least 30 days' notice. When the employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide the City with notice of a need for FMLA leave as soon as practicable (normally the same day or the next business day). If the need for FMLA leave is not foreseeable, the employee shall comply with the City's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

L. Intent to Return to Work from FMLA Leave

On a basis that does not discriminate against employees on FMLA leave, the City may require that an employee on FMLA leave report periodically on the employee's status and intent to return to work.

6 Voluntary Leave Without Pay

Any request for leave without pay must be submitted to the Department Head on a Request for Leave form. Requests for such leave not exceeding two (2) working days shall be permitted at the discretion of the appropriate Department Head. Requests for such leave exceeding two (2) working days, shall be at the discretion of the City Administrator. It is the policy of the City of Dickinson that in circumstances such as these, vacation will be used in full before leave without pay is granted. In no case shall the City permit leave without pay to continue longer than six months. During any such leave lasting more than one month, the employee will be ineligible for employer paid benefits and accruals of leave benefits will halt during the leave. In the case of health insurance, the employee will be permitted to stay on the City policy, but must pay the policy in full during the time of leave, with the choice to stay on the policy being made before commencement of the leave.

EXCEPTION: Family Medical Leave Act leave as described in Section 29.08.04.090-.5.

EXCEPTION: Employee(s) granted leave without pay by the City Commission in a lay-off situation as described in Section 29.08.04.100-3.1.

7 Jury Duty / Witness Duty

7.1 Benefit Available to Regular Full-Time Employees Only

Regular Full-time employees will be granted leave with pay for jury duty or if they are subpoenaed to testify in court at their regular rate of pay.

Regular full-time Employees shall be granted leave with pay for witness duty only if they are testifying in a job related situation or a non-related party relationship to the case being heard.

7.2 Policy Regarding Jury / Witness Pay

Any pay received by the employee from the court system for jury or witness pay during granted leave with pay shall be returned to the City. If the employee fails to return such pay, the amount of the pay shall be deducted from the employee's regular pay check.

Any payment for mileage, lodging, and other costs reimbursed by the court may be retained by the employee. Additional reimbursement may not be requested from the City.

7.3 Retention of Job Status While on Jury Duty

Employees who are absent from work due to jury duty will not be dismissed or suspended from employment and shall retain and be entitled to the same job status and pay as he/she had prior to performing jury duty. Persons who are to be absent due to jury duty must notify their Department Head in advance of Jury Duty service. If no prior notification is given the employee may be subject to disciplinary procedures.

7.4 Notification to Finance Department of Employee on Jury / Witness Duty

It is the Department Head’s responsibility to notify the Finance Department when an employee is on jury duty.

7.5 Accrual of Vacation, Sick Leave Benefits

Vacation and sick leave benefits shall accrue at the normal rate for eligible employees during jury / witness duty for which leave with pay has been granted.

7.6 Leave for Private Litigation

Employees involved in private litigation are required to use vacation leave or be granted leave without pay.

8 Voting Leave

Employees are allowed to vote during work hours.

9 Military Leave

The City follows and enforces allowances and restrictions described in NDCC Chapter 37 and the Uniformed Services Employment and Reemployment Rights Act of 1994 and subsequent amendments thereto.

10 Holidays

10.1 Holiday Pay

Eligible employees will be granted the holiday off work and will be paid eight (8) hours pay for each City recognized holiday. Holiday pay will be counted toward total hours in the week or overtime

period for the purposes of determining overtime eligibility. Employees required to work on a holiday will receive additional pay as per Section 29.08.04.090-10.5.

10.2 Recognized Holidays

The City of Dickinson recognizes and observes the following as paid holidays for eligible employees:

New Years Day	January 1
Martin Luther King Day	3rd Monday in January
President' s Day	3rd Monday in February
Good Friday	The Friday preceding Easter
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Veterans' Day	November 11
Thanksgiving Day	4th Thursday in November
Christmas Day	December 25

Eligible employees will be permitted one paid birthday holiday each year. This holiday must be taken within one year following the employee's birthday. A birthday holiday still on the employee's accrual record at the time of another birthday will be removed from the record.

10.3 Observance When Recognized Holiday Falls on a Weekend

When a holiday falls on a Saturday, the preceding Friday is observed as the paid holiday for eligible employees. If a holiday falls on a Sunday, it is observed on the following Monday.

10.4 Allowance for Employees Ineligible for Holiday Pay

Employees ineligible for paid holiday leave due to employee classification (Section 29.08.04.050) will be granted a day off without pay in observance of a holiday.

10.5 Work on a Holiday

An hourly employee, eligible to receive holiday pay, will receive overtime for actual hours worked on a holiday plus the standard holiday pay benefit paid to all eligible employees as described in Section 29.08.04090-10.

11 Request for Leave

Employees are required to submit a request for leave to their direct supervisor before taking said leave with the exception of sick leave where prior notice is not possible. In that case of sick leave, employees must notify their supervisor as soon as possible when said leave is needed.

12 Absence Without Leave

Any employee, who takes leave without proper prior notification and grant of permission, except in the cases of emergencies as described herein, shall be subject to disciplinary action.

13 Administrative Leave

The appropriate Department Head or his designee may place an employee on administrative leave with pay for up to three working days in accordance with written departmental policy or in other situations when the Department Head determines it is in the best interest of the City to remove an employee from a work situation. If three working days is not sufficient to meet the needs of the situation, the appropriate Department Head may increase the duration of administrative leave with pay for a period not to exceed 30 days with prior approval of the City Administrator.

(Code 1958 § 9-24; Ord. No. 376; Ord. No. 675 § 1; Ord. No. 967 §§ 7, 8; Ord. No. 1028 § 2; Ord. No. 1053 § 2; Ord. No. 1163 § 5; Ord. No. 1201, § 4; Ord. No. 1224, § 3 & 10; Ord. No. 1307 § 11 & 12; Ord. No. 1308 § 4; Ord. No. 1339 § 5-10, Ord. No. 1499 § 1-2, Ord. No. 11533§ 4)

Section 29.08.04100 Separation From Municipal Service

1 General Policies

1.1 Definitions

(a) Voluntary Separation: Written resignation, extended absence without proper notification, or retirement. Voluntary separation is initiated by the employee.

(b) Involuntary Separation: Layoff or discharge. Involuntary separation is initiated by the employer.

1.2 Return of City Property

City of Dickinson employees are expected to return all City property at the time of their departure from municipal service. The City of Dickinson reserves the right to withhold from the employee's final paycheck the amount for any property that is not returned or for which there is no explanation for the absence of the property. The City of Dickinson may take further action if necessary to recover municipal property.

2 Voluntary Separation

2.1 Resignation

A City of Dickinson employee, in order to resign in good-standing and be eligible for re-employment must resign from municipal service by giving their Department Head written notice of his/her resignation at least two weeks in advance of their leaving municipal service. In extenuating circumstances, the City Administrator or his designee may accept an employee's resignation with less than two weeks notice and retain their good standing status upon separation.

It is the Department Head's responsibility to forward the original letter of resignation to the City Administrator within two working days of submission by the employee.

2.2 Un-notified Absence

If an employee is absent for more than three (3) consecutive days without proper notification in accordance with the attendance policy, they shall be considered to have voluntarily resigned their position with the City. Re-instatement upon presentation of extenuating circumstances or reason for such absence shall be at the discretion of the City Administrator. Any un-notified absence may result in disciplinary action.

3 Involuntary Separation

3.1 Layoffs

Employees will be subject to layoff when it is deemed necessary by reason of shortage of work or funds, the abolition of the employee's position or other material changes in the duties or organization of his department. The duties performed by an employee so laid off may be reassigned to other employees already working in appropriate employment classes. No regular or probationary employee shall be laid off while another person in a competitive position is employed on a provisional or temporary basis in the same class in that department. At the discretion of the City Commission, any employee subject to such layoff may be granted a leave of absence without pay (see Section 29.08.04.090-6).

3.1.1 No temporary or permanent separation of an employee from employment as a penalty or disciplinary action shall be considered as a layoff.

3.1.2 Layoffs of employees shall be made in inverse order of the length of service in the class and in the department involved.

3.1.3 The City Administrator shall give written notice to the affected employee(s) of any proposed layoff with reasons therefor a reasonable time period prior to the effective date thereof.

3.1.4 At the discretion of the Civil Service Commission, an employee on lay-off may be offered positions that come open for which he/she is qualified to fill. The employee on lay-off, who is offered an open position, will have two weeks from the date of offer to accept the position. If the position offered to an employee on lay-off is equal in grade to the position which the employee lost and the employee fails to accept the position offered, said employee shall be removed from lay-off status. If the employee on lay-off accepts the position offered within the two week time frame, the employee will be permitted up to two additional weeks to report to work. Unless stated extenuating circumstances are agreed to by the City, if the employee fails to start the job within the two week time frame, the employee

will lose his/her opportunity to receive the position and will lose his/her lay-off status. Employees will be offered positions, based on availability and qualification in reverse order of the lay-off process.

3.2 Non-Layoff Involuntary Separation

The City Administrator or his designee may terminate the employment of an employee for disciplinary reasons, poor performance, failure or inability to perform the essential duties of his/her assigned classification.

4. Procedures following Involuntary Separation

In cases of involuntary separation for disciplinary reasons, the process set forth in Section 29.08.04.110 Disciplinary Process will be followed. In cases of involuntary separation for disciplinary reasons, poor performance, failure or inability to perform the essential duties of his/her assigned classification and the procedures in Section 29.08.04.120 Grievance and Appeal Procedures will be available.

5 Exit Interviews

It is a policy of the City of Dickinson, for the City Administrator or his designee, and a department head, usually the supervising department head to conduct an exit interview prior to an employee's separation from City employment. In the case of a terminating department head, the third party will be another department head or a City Commissioner. The exit interview is conducted for several purposes, including: 1) to resolve all outstanding matters between the City and the employee; 2) to advise the employee of the affect their separation will have upon all benefits and what benefits they have coming upon separation; and 3) to aid the City in gathering information to help improve the municipality's working environment and other employment relationships.

At the time or prior to the time of the exit interview, employees are expected to return all municipal property as specified in Section 29.08.04.100-1.2. (Code 1958 § 9-25; Ord. No. 376; Ord. No. 721 § 4; Ord. No. 918 § 1; Ord. No. 920 §§ 1, 2; Ord. No. 967 § 9; Ord. No. 1090 § 1; Ord. No. 1163 § 5; Ord. No. 1307 § 13)

Section 29.08.04110 Disciplinary Process

1 Misconduct Defined

Employee misconduct is defined as being any action or non-action of an employee deserving of disciplinary action, including but not limited to substandard performance, substandard attendance or violation of any ordinance or policy of the City.

2 Misconduct

Employee misconduct will not be tolerated and may result in immediate disciplinary action. A partial listing of employee misconduct offenses and recommended application of disciplinary action for each offense is listed in one of the appendices of this manual. This list is not intended to completely list all employee misconduct that may result in disciplinary action, but rather is provided as a guideline by which employees can judge actions.

3 Disciplinary Representation

At any point in the disciplinary process, an employee may select a personal representative at the employee's expense.

4 Disciplinary Action

Disciplinary actions shall be applied when the appropriate supervisory authority, as described in this subsection, determines such actions are necessary. A disciplinary action may be in the form of written reprimand, suspension, demotion or reassignment, or dismissal as defined below. The City of Dickinson may, but is not required to, apply these actions progressively.

4.1 Written Reprimand

The appropriate supervisor may discipline an employee by written reprimand as warning that behavior is considered misconduct. Signing requirements will apply. The employee may submit a written statement of response to the disciplinary action which shall be attached to and remain with the disciplinary action in his/her permanent personnel file. The employee may appeal this action to a City Grievance Board. The Grievance Board will hold a hearing and support, reverse or modify the

disciplinary action. The decision of a City Grievance Board may be appealed to the Civil Service Commission. The Civil Service Commission is the final decision making body in the case of discipline involving a written reprimand.

4.2 Suspension without Pay

The appropriate Department Manager, with approval of the City Administrator, may suspend an employee without pay for employee misconduct for a period not to exceed 30 days. The employee may submit a written statement of response to the disciplinary action which shall be attached to and remain with the disciplinary action in his/her permanent personnel file. The employee may appeal this action to the Civil Service Commission. The Civil Service Commission is the final decision making body in the case of discipline involving a suspension without pay.

4.3 Demotion or Disciplinary Reassignment

The City Administrator, may reduce an employee's wage or salary, assign the employee to a lower position, or change the employee's duties within his/her current position or use any combination of the above for employee misconduct. The employee may submit a written statement of response to the disciplinary action which shall be attached to and remain with the disciplinary action in the employee's permanent personnel file. The employee may appeal this action to the Civil Service Commission. The Civil Service Commission is the final decision making body in the case of discipline involving demotion or disciplinary reassignment.

4.4 Dismissal

The City Administrator may terminate an employee from municipal employment for employee misconduct. The employee may submit a written statement of response to the disciplinary action which shall be attached to and remain with the disciplinary action in his/her permanent personnel file. The employee may appeal this action to the Civil Service Commission. The decision of the Civil Service Commission may be appealed to the City Commission, which will review the papers and proceedings considered during the Civil Service Commission hearing and render a final decision.

5 Dismissal of Appeals of Disciplinary Action Upon Voluntary Separations

Appeals of disciplinary action will be immediately dismissed if the appealing employee(s) voluntarily terminates employment with the City during the appeal process.

6 Signing Requirements

In all cases of disciplinary action the employee will be required to sign the written notice of discipline and such notice shall be dated and placed in the employee's permanent personnel file. If the employee refuses to sign the notice, a notation to that effect shall be made by the supervisor, who notified the employee of the disciplinary action. If the affected employee refuses to sign a disciplinary action, another city employee may be asked to sign the notice as witness to the fact that the disciplined employee was informed of the disciplinary action. The disciplinary action shall be final unless appealed as provided in Section 29.08.04120.

In all instances in this policy where an employee is required to sign, signing does not imply agreement with the action, only that the contents have been made known to or discussed with the employee.

7 Maintenance of Disciplinary Records

7.1 Formal Disciplinary Records

Records of disciplinary actions are maintained in the employee’s personnel file at City Hall.

Three years after the date of a disciplinary action the employee may request the Department Manager to review the employee's personnel file to determine whether removal of the record of disciplinary action is warranted. If the supervisor deems removal is warranted, the Department Manager may recommend the City Administrator purge the related record.

(Code 1958 § 9-26; Ord. No. 376; Ord. No. 417 §§ 1 to 3; Ord. No. 445 § 1; Ord. No. 468 § 1; Ord. No. 565; Ord. No. 602 § 1; Ord. No. 617 § 1; Ord. No. 621; Ord. No. 721 §§ 2, 5; Ord. No. 733 § 1; Ord. No. 802 § 1; Ord. No. 815 § 1; Ord. No. 864 § 1; Ord. No. 875 § 1; Ord. No. 901 §§ 1 to 3; Ord. No. 912 § 1; Ord. No. 949 §§ 1, 2; Ord. No. 967 §§ 10, 11; Ord. No. 971 § 1; Ord. No. 980 § 1; Ord. No. 1163 § 5; Ord. No. 1224 § 11; Ord. 1331 §2; Ord. No. 1365 § 1).

Section 29.08.04120 Grievance and Appeal Procedure

1 Purpose

The purpose of this grievance procedure is to provide a just and equitable method for the resolution of disciplinary action appeals and/or employee disputes resulting from an action or inaction of one of their superiors or fellow employees without discrimination, coercion, restraint, or reprisal against any employee or group of employees who may submit to or be involved in an appeal. The term appeal shall be synonymous with that of grievance.

2 The City Grievance Board

2.1 Rules Governing Make-up of the Board

The City will maintain a City Grievance Board composed of the City Administrator, two exempt employees and two non-exempt full-time employees. Persons selected for the board must have at least two years tenure with the City. In addition, all selected board members must complete an orientation session regarding the grievance process before serving on the board. With the exception of the City Administrator, members of the City Grievance Board will be chosen by lot. A new Grievance Board will be chosen for each grievance filed.

2.2 Rules Governing Meetings of the City Grievance Board

Meetings of the City Grievance Board will be called on an as needed basis. Once a grievance is filed the Grievance Board must meet within five (5) business days. Members of the board must be willing to attend and participate in meetings of the board with as little as two days notice. The City Administrator or his designee will chair meetings of the board. The chairperson will not have a vote in decisions of the board. If the City Administrator is unavailable to attend a meeting or is disqualified from serving, his designee will serve in his place.

2.3 Rules Governing Disqualification From Serving

Any person who is a party to a grievance, a co-worker within the same department, an immediate family member of the grievant as defined in Section 29.08.04060-11.2, the domestic partner of the grievant(s), or a witness to the situation will be ineligible to serve on the City Grievance Board for that grievance.

3 Definition of a Grievance

A grievance is an action or decision of a supervisor or department head or other employee, other than suspension, demotion or termination, that may be in violation of any federal, state or city law, rule, regulation, ordinance or policy, relation to employment or personnel matters, sexual harassment or who alleges discrimination due to race, color, creed, sex, age, marital status, national origin or physical disability.

4 Employee Notice of Grievance or Disagreement

4.1 Procedure For Filing a Grievance

If an employee wishes to file a grievance, the employee must submit a written notice of grievance to the City Administrator or his designee stating the reasons for the disagreement on a grievance form. The employee may choose representation at any point during the grievance procedure.

4.2 Procedure For Filing a Grievance regarding Written Reprimand

If an employee disagrees with a written reprimand, the employee may, within five (5) business days, from the signing date of the written reprimand, submit a written notice of grievance with the City Administrator or his designee stating the reasons for disagreement and the action that the employee desires.

4.3 Procedure of City Grievance Board

The City Grievance Board will review the grievance and supporting documentation. Following their review, the board will either issue a decision based on the facts as presented, request additional information, or set a formal appeal hearing. The board will issue a decision within five (5) business days of the initial meeting or the formal hearing, unless they notify the grievant in writing of the need to extend the deadline. Any extension will be time certain.

5 Appeal to Civil Service Commission

Any regular employee receiving notice of demotion, disciplinary reassignment, suspension without pay, dismissal or learns that a written reprimand was upheld by the Grievance Board provided for in this chapter may appeal therefrom to the Civil Service Commission by filing with the city administrator a notice of appeal within five (5) business days after receiving such notice. If the employee fails to meet the filing deadline, the right to appeal shall be considered waived.

5.1 Appearance Before the Civil Service Commission

No less than ten (10) nor more than 20 business days after an appeal has been filed, the Civil Service Commission shall hold a hearing thereon. At such hearing, the employee must appear personally with or without representation. The employee, his/her representative and the City will then be heard publicly on the matter in issue. Firstly, each side will be provided the opportunity to make an opening statement. Each side may present evidence and call witnesses. Each side will also be provided the opportunity to cross examine the other side's witnesses. The technical rules of evidence shall not apply. The city attorney may be called upon to represent the City. If the employee(s) fails to appear before the Civil Service Commission on the employee's scheduled date of hearing, the employee shall be deemed to have waived any disagreement with the disciplinary action and shall waive all rights to appeal such decision.

Within ten (10) business days after the hearing, the Civil Service Commission shall file its findings of fact, conclusions, and order in writing serving a copy thereof upon the affected employee or the employee's representative. The order may consist of the following:

(1) Approve the disciplinary action;
(2) Reinstate the employee; or
(3) Such other action as the commission deems appropriate.

5.2 Other appeals to Civil Service Commission

Other appeals where permitted by these rules shall be heard by the civil service commission in the same manner as provided in this subsection.

6 Dismissal of Grievances Upon Voluntary Separations

Ongoing grievances will be immediately dismissed if the appealing employee(s) voluntarily terminates employment with the City during the appeal process.

EXCEPTION: If the Civil Service Commission so agrees, the appeal of any employee(s) who submitted a claim of extenuating circumstances at the time of resignation may be allowed to continue through the normal appeal process outlined in this section.

(Code 1958 § 9-27; Ord. No. 335 §§ 1, 2; Ord. No. 376; Ord. No. 417 §§ 4, 5; Ord. No. 454 § 1; Ord. No. 503 § 1; Ord. No. 815 § 2; Ord. No. 908 § 1; Ord. No. 967 § 12; Ord. No. 1087 § 3; Ord. No. 1163 § 5; Ord. No. 1224 § 12; Ord. No. 1307 § 14; Ord. No. 1331 §3.).

Section 29.08.04130 Drug and Alcohol Policy

1 City of Dickinson's Commitment to Drug and Alcohol Free Workplace

The City of Dickinson has a strong commitment to its employees to provide a safe, healthful, and productive work environment and to promote high standards of employee health. Consistent with the spirit and intent of this objective the City will act to eliminate any substance and alcohol abuse which could impair an employee's ability to safely and effectively perform a particular job and which increases the potential for accidents, absenteeism, sub-standard performance, and tends to undermine public confidence in the City's work force. The City's goals are to establish and maintain a work environment that is free from the effects of alcohol and drug abuse and to maintain the reputation and integrity of the City of Dickinson by preventing unacceptable behavior by its employees that discredits the City and its employees.

While the City has no intention of unreasonably intruding into the private lives of its employees, the City expects employees to report for work in a condition to perform their duties, make the work environment safe for other employees, and represent a proper image to the citizens. It is clear that employee off-the-job, as well as on-the-job, involvement with drugs and alcohol can have an impact on the City's goals.

2 Drug and Alcohol Abuse Policies

The following are the policies of the City regarding drug and alcohol abuse:

2.1 The unlawful manufacture, distribution, dispensing, possession or use of controlled drugs or substances, or the use of alcohol while on duty, on or off property owned or leased by the City is proper cause for disciplinary action.

2.2 Any illegal controlled drug or substance possessed while on duty by employees will be turned over to the appropriate criminal justice agencies and may result in criminal prosecution. This does not apply to public safety officers who are in possession of an illegal or controlled drug or substance while acting in the line of duty.

2.3 It is not permitted for an employee to be under the influence of controlled drugs or substances or alcohol on the job, except as provided for in Section 29.08.04.130-2.4.

2.4 The use of controlled drugs or substances prescribed by a licensed physician is not prohibited, but employees in positions where side effects of the prescribed medication could affect performance and safety on the job are required to make such use known to their immediate supervisor. Any employee misusing a prescription drug may be disciplined up to and including termination.

2.5 The illegal use, sale, and possession of alcohol, controlled drugs or substances while off duty and off City premises which results in a criminal conviction is unacceptable. They may affect the job performance and the confidence of the public in the City's ability to meet its responsibilities. Such off-the-job conduct may be proper cause for disciplinary action up to and including termination.

3 Testing for Drugs or Alcohol

3.1 Alcohol/Controlled Substance Testing Program for Employees with Commercial Driver's Licenses (CDL) in Safety Sensitive Positions

In an effort to prevent injuries and deaths due to drug or alcohol-impaired drivers operating commercial vehicles, the United State Congress enacted the Omnibus Transportation Employee Testing Act of 1991 (the Act). This federal law mandates drug and alcohol testing for certain classes of transportation employees.

Department of Transportation (DOT) defines the following as safety sensitive positions:

(a) A city employee who operates a vehicle that is designed to transport 15 passengers or more;

(b) A city employee who operates a vehicle that weighs 26,001 pounds or more singular or articulated (tractor trailer) and the trailer weight is in excess of 10,000 pounds or more;

(c) A city employee who operates a vehicle of any size vehicles requiring placards for hazardous materials (hazmat).

Any employees of the city of Dickinson, who, as a requirement of the job, operates a vehicle classified as commercial and has a commercial driver's license, is considered to be in a "safety-sensitive position" and is subject to the Department of Transportation 49CFR part 40 of the Federal Motor Carrier Safety Administration regulations (regulations). Provisions for disciplinary actions are based on the independent authority of the City.

This portion of the Human Resources Manual covers only employees subject to the regulations and describes City implementation of the regulations. Employees in the safety sensitive positions listed below are subject to the controlled substance requirements of the regulations and to this policy at all times when on duty, regardless of the task they are performing. Employees subject to alcohol testing requirements will be subject to testing while on duty or just prior to, just after, or when performing safety-sensitive functions are:

- Equipment Operators operating commercial vehicles
- Engineering Technicians operating commercial vehicles
- Other employees operating commercial vehicles
- Temporary and seasonal employees operating commercial vehicles.

All safety sensitive employees are subject to controlled substance testing while on or off duty.

Designated employer representative (DER) is an individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the City.

3.1.1 Alcohol Prohibition

Employees must:

1. Test when required.
2. Not use alcohol, in any form, on the job (including mouthwash or cough syrup containing alcohol).
3. Not have even one drink fewer than four hours before work duties begin.
4. Not work under the influence of alcohol
5. Not remain on duty with a confirmed breath-and/or saliva alcohol concentration of .02 or greater.
6. Not use alcohol within eight hours after an accident or until undergoing a post-accident alcohol test.

The regulations require that covered employees be available to be tested for alcohol while on duty just prior to, just after, or while performing a safety-sensitive function. Employees who refuse to be tested or to cooperate in testing, or who attempt to alter test results, are subject to disciplinary procedures, which may include termination.

3.1.2 Controlled-Substance Prohibition

Employees must:

1. Test when required.
2. Not use illegal controlled substances.
3. Not use prescription drugs containing controlled substances contrary to a physician's instructions.
4. Notify their supervisor if using a prescription containing a controlled substance. The safety sensitive employee must, upon request also provide documentation that use of the drug does not adversely affect the safety sensitive employee's ability to operate a commercial motor vehicle as described in the regulations.

Employees who refuse to be tested or to cooperate in testing, or who attempt to alter test results, are subject to immediate removal from safety sensitive function and are subject to disciplinary procedures which may include termination.

No employee shall report for duty or remain on duty requiring the performance of safety sensitive functions when the employee uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, who has advised the employee that the substance will not adversely affect the employee's ability to safely operate a motor vehicle.

3.1.3 Alcohol and Controlled-Substance Tests

All applicants and employees who undergo City mandated tests will be notified if the test result is positive by the testing contractor before the City's designated reporting person is notified.

The City or a contractor of the City performing the tests will follow specific procedures if an alcohol-test result is .02 or greater. The procedures are required by federal guidelines and are intended to make sure that the test result is .02 or greater.

Tests required by the City, except for pre-employment tests and return-to-duty tests, are considered a duty assignment. Time for travel and time spent in providing the specimen at the collection site will be with pay.

Any action which indicates a refusal to test will result in the employee being terminated.

3.1.4 Definition of Positive Alcohol or Controlled-Substance Test

Alcohol concentration is defined by the Federal Department of Transportation Regulations.

Alcohol tests will be considered positive if the breath and/or saliva test indicates an alcohol presence of .04 or greater. If the test results are positive, the employee and supervisor will be notified before the employee leaves the test site.

If an alcohol test indicates an alcohol concentration of at least .02, but less than .04, the test is considered negative, but the safety sensitive employee will be taken out of service for 24 hours.

A controlled substance drug test will be considered positive if a controlled substance for which no legitimate explanation is determined by the Medical Review Officer (MRO) is found in the test specimen.

3.1.5 Testing Responsibilities in Alcohol and Controlled-Substance Testing

If the initial alcohol test results are .02 or greater, the City or a contractor of the City performing the tests will wait 15 minutes and then issue a confirmation test. During the 15-minute waiting period before the confirmation test, the employee will be given a set of instructions (for example, no eating or drinking) that must be followed. If the employee does not follow these instructions, it may be considered an attempt to alter the test results. The confirmation test result is used for disciplinary purposes.

Controlled-substance tests must use proper laboratory procedures.

If a test is confirmed positive, it will be reviewed by the physician serving as the testing vendor's MRO. The MRO will follow specific procedures required by the federal guidelines. These procedures are intended to make sure that the test result is a true positive. The MRO will call the employee who has tested positive, discuss what might have caused the test result to be positive before calling the City's contact person, and make sure of the result before notifying the City. If the test remains positive, the employee may request, at his/her expense, that a second independent analysis be performed on the untested portion of the sample. This is considered a split test.

3.1.6 Post-accident Tests

Drivers are responsible for notifying the City of any vehicle accident while on duty.

1. In an accident resulting in a death, the City driver(s) involved must undergo post-accident testing.
2. In an accident which does not result in a death, but in which the City driver is cited for a moving traffic violation that either resulted in vehicles involved in the accident being towed from the scene or injuries as a result of the accident being treated away from the scene, the driver must undergo post-accident drug and alcohol testing.

Employees must be tested for controlled substances within 32 hours after all accidents resulting in a death or where the driver is cited for a moving violation if the accident resulted in injuries needing to be treated away from the scene or vehicles involved in the accident are required to be towed from the scene. If the controlled-substance test is not administered within 32 hours, no test will be given, and the manager must file and maintain records stating the reason for the delay and the lack of testing.

Employees must be tested for alcohol within two hours of the accident. If the alcohol test is not administered within two hours, the manager must file and maintain records stating why. Once documented, the City has six additional hours to perform the test. If an alcohol test is not administered within eight hours of the accident, no test will be given, and the manager must file and maintain records stating the reason for the delay and lack of testing. Employees must remain at work, but must not perform safety-sensitive functions, until the post-accident alcohol test is administered or eight hours since the accident have lapsed, or an unimpaired adult agrees to pick the employee up from work and transport that employee home.

3.1.7 Types of Required Drug Testing

3.1.7.1 Pre-Employment Tests

New employees will be hired for safety-sensitive positions on the condition of a negative controlled substances test (administered after being chosen but before being hired) and after obtaining a controlled substances and alcohol testing record from previous employers that shows the employee has been in a random drug and alcohol program for the past 12 months and/or has been selected over the last six months in the time period between the end of their work performance at the previous job and application for the city's position has not exceeded 30 days.

City job announcements will indicate if the position is safety-sensitive and requires pre-employment drug testing.

3.1.7.2 Random Testing

A minimum number of random alcohol tests, equal to 10 percent of the average number of City safety sensitive employees covered under the regulations will be conducted each year. The City or a contractor of the City performing the tests will select safety sensitive employees using a computerized random-selection program or other random selection method approved by the City. Safety sensitive employees selected will be tested prior to going on duty, while performing safety sensitive functions or just after.

A minimum number of random controlled-substance tests equal to 50 percent of the average number of safety sensitive employees, will be performed each year. Tests may be performed at any time the safety sensitive employee is on or off duty, regardless of the duties being performed at the time of testing.

Safety sensitive employees may potentially be tested at any time, even if there is a recent previous test. Once a safety sensitive employee is notified of the testing, he or she must report immediately to the testing site.

3.1.7.3 Reasonable Suspicion Tests

A safety sensitive employee must undergo alcohol or controlled-substance testing when any supervisor who has received the mandatory reasonable suspicion training has reason to believe that the safety sensitive employee has used alcohol or controlled substances in violation of the regulations. An alcohol test may be administered just prior, just after, or while the safety sensitive employee is performing a safety-sensitive function.

All supervisors will be given adequate training to make judgments about a reasonable suspicion of controlled substance or alcohol use. The supervisor's judgment must be based on specific observations relating to appearance, behavior, speech, or body odors, including indications of the chronic and withdrawal effects of alcohol and/or controlled substances. The supervisor must document the observations fully notifying the employee that testing is required. Supervisors will be trained regarding physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

All employees, including non-supervisory employees, may call their supervisor, the manager or the City Administrator to ask any questions about the program, or to state their suspicions about another employee, including a supervisor. The employee who calls must give his/her name, but the names will be kept confidential to the extent possible under the open records law of North Dakota.

3.1.7.4 Return-To-Duty Tests

If any test result is positive and the course of treatment recommended by a substance abuse professional (SAP) with the City EAP has been completed, the safety sensitive employee must submit to return-to-duty alcohol or controlled substance tests prior to resuming duties.

The return-to-duty alcohol test must indicate a breath-alcohol concentration of less than .02.

Controlled-substance test results must be negative.

The employee will be required to pay for the return-to-duty test.

3.1.7.5 Follow-up Tests

Unannounced follow-up tests are required for a minimum of six months or as high as 60 months for any safety sensitive employee who, after a positive test result, is determined by a SAP to need help with alcohol or controlled-substance abuse. The City shall pay for the SAP and follow up test(s).

3.1.8 Test Results-Required Action

ALCOHOL TEST

Results (Blood Alcohol Concentration)	Employee Status	Required Action
>0.00	applicant	not hired
0.02-0.039	any safety sensitive	Taken out of service for 24 hours without pay
0.04+	any safety sensitive	Remove from safety sensitive duty and notify employee of EAP program and employee is subject to discipline up to termination

CONTROLLED SUBSTANCE TEST

Results	Employee Status	Required Action
Positive	applicant	not hired
Positive	any safety sensitive employee	taken off duty; referred to SAP for evaluation and treatment; subject to City discipline, up to and including termination.

3.1.9 Other Prohibited Conduct - Required Action

Employee Status	Prohibited Conduct	Required Action
applicant	refusing to be tested	not hired
any safety sensitive employee	refusing to be tested	terminated
any safety sensitive employee	possessing or consuming alcohol on the job	taken off duty; referred to SAP for treatment; and be subject to City disciplinary action up to and including termination of employment

any safety sensitive employee	abusing cough syrup, mouthwash or any other substance containing alcohol while on the job	taken off duty; referred to SAP for evaluation and possible treatment and be subject to City disciplinary action up to and including termination of employment
any safety sensitive employee	possessing or using a controlled substance without a doctor's permission	termination
any employee	performing a safety-sensitive function while using a prescription containing a controlled substance when a physician has instructed the employee that the substance may adversely affect the employee's ability to safely operate a motor vehicle.	taken off duty; referred to SAP for evaluation and possible treatment and be subject to City disciplinary action up to and including termination of employment

3.1.10 Out-of-Service Request

All safety sensitive employees subject to call for emergency duties, who are not actually listed on-call, who have had one or more drink(s) in the four hours prior to an emergency call-out, or suspects that he/she may have a breath-alcohol concentration of 0.02 or above, must take him/herself out of service. No disciplinary measures will be taken when the safety sensitive employee, who is not listed as on-call requests to take him/herself out of service for an emergency call-out.

3.1.11 Required Records and Records Retention

The City, or a contractor of the City performing the tests under this section, will maintain necessary records as required by federal DOT regulations either at City Hall or the primary contractor's place of business. In all cases, information must be available at the City within 24 hours if requested by officials of the U.S. Department of Transportation responsible for the testing program.

3.1.12 City Requirements to Inquire With Previous Employers

The City must inquire with previous employers before hiring someone to fill a safety-sensitive position. Prior to being hired by the City, applicants must sign a release of information allowing the City to inquire with previous employers about the applicant's controlled substance and alcohol testing history during the previous three years. Information that may be requested includes:

1. Previous test dates.
2. Positive test results.
3. Refusals to test.
4. Evaluation and rehabilitation results.

3.1.13 Release of Information to Prospective Employers

All testing information about individual employees is confidential and is not in the public domain. Such information may not be released except as required by law or expressly authorized by 49 CFR 382.405.

If requested in writing and proper release of information is provided, the City will disclose the following information to any potential future employees.

1. Alcohol tests with a result of 0.04 or higher alcohol concentration;
2. Verified positive drug tests;
3. Refusals to be tested (including verified adulterated or substituted drug test results);
4. Other violation of DOT agency drug and alcohol testing regulations;
5. Documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests).

3.2 Non DOT Safety Sensitive Employees

The City may request that the employee undergo drug and alcohol testing if there is a "reasonable suspicion" that the employee is under the influence of drugs or alcohol during work hours. "Reasonable suspicion" means an articulated belief based on specific facts and reasonable inferences drawn from those facts that an employee is under the influence of controlled substances or alcohol. All possible indicators must be observed by a supervisor who has received reasonable suspicion training. Circumstances which constitute a basis for determining reasonable suspicion may include, but are not limited to:

- A pattern of abnormal or erratic behavior which is so unusual that it warrants summoning another employee, a supervisor, a police officer or other individual for assistance.
- Information provided by a reliable and credible source with personal knowledge.
- Direct observation of drug or alcohol use.
- Presence of the physical symptoms of drug or alcohol use; (i.e. glossy or blood-shot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes).

3.2.1 Pre-Employment Drug Testing

The City may at its discretion implement a pre-employment drug testing program for all classifications of employees. Upon implementation all employees will be required to pass a pre-employment drug test as a condition of employment.

3.2.2 Possession of substances in violation of the City's drug and alcohol policy.

The employee, where "reasonable suspicion" exists, may be asked to submit to a breath and/or saliva alcohol testing by the City's drug and alcohol contractor. Controlled substance urine and/or hair follicle testing will be conducted by the City's drug and alcohol contractor at the City's expense.

Any action which indicates a refusal to test will result in the employee being terminated.

A positive result from the controlled substance and/or alcohol test confirming the reasonable suspicion will result in disciplinary action up to termination.

The supervisor who has received reasonable suspicion training is required to document in writing, the specific facts, symptoms, or observations which led to the reasonable suspicion. The City Administrator or his/her designee shall place this documentation in the employee's medical personnel file only if confirmed by the controlled substance and/or alcohol test.

All information from an employee's controlled substance and/or alcohol test is confidential, and only the City's DER will be informed of the test results. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the employee.

3.2.3 Vehicle Accidents

Drivers are responsible for notifying their supervisor of any vehicle accident while on duty.

1. In an accident resulting in a death, all City drivers involved must undergo post-accident testing.
2. In an accident which does not result in a death, but in which the City driver is cited for a moving traffic violation that either resulted in vehicles involved in the accident being towed from the scene or injuries as a result of the accident being treated away from the scene, the driver must undergo post-accident drug and alcohol testing.

   Employees must be tested for controlled substances within 32 hours after all accidents resulting in a death or where the driver is cited for a moving violation if the accident resulted in injuries needing to be treated away from the scene or vehicles involved in the accident are required to be towed from the scene. If the controlled-substance test is not administered within 32 hours, no test will be given, and the manager must file and maintain records stating the reason for the delay and the lack of testing.

   Employees must be tested for alcohol within two hours of the accident. If the alcohol test is not administered within two hours, the manager must file and maintain records stating why. Once documented, the City has six additional hours to perform the test. If an alcohol test is not administered within eight hours of the accident, no test will be given, and the manager must file and maintain records stating the reason for the delay and lack of testing. Employees must remain at work, but must not perform safety-sensitive functions, unless the post-accident alcohol test is administered or eight hours since the accident has lapsed, or an unimpaired adult agrees to pick the employee up from work and transport that employee home.
3. Return to Duty Testing and Follow Up Tests

   If any test result is positive and the course of treatment recommended by a substance abuse professional (SAP) with the City EAP has been completed, the employee must submit to return-to-duty alcohol or controlled substance tests prior to resuming duties.

   The return-to-duty alcohol test must indicate a breath-alcohol concentration of less than .02.

   Controlled-substance test results must be negative.

   The employee will be required to pay for the return-to-duty test.

   Unannounced follow-up tests are required for a minimum of six months or as high as 60 months for any employee who, after a positive test result, is determined by a SAP to need help with alcohol or controlled-substance abuse. The City shall pay for the SAP and follow up test(s).

4 Controlled Substances to be Tested For

The following drug groups were selected based on the ability of each drug to adversely affect physical/mental performance. All are controlled substances under state and federal law.

- Alcohol
- Amphetamines, Methamphetamines
- Cocaine
- Opiates
- Marijuana

5 Employee Responsibilities

5.1 Reporting Off When Alcohol/Drug Impaired

An employee must not report to work while his/her ability to perform his/her job duties is impaired due to on or off duty alcohol or prescription drug use. Employees called in for emergency duty to work outside their work schedule who are impaired by off-duty alcohol or prescription drug use shall be required to decline the offer of work.

5.2 Possession of Controlled Substance

An employee must not possess or use alcohol or controlled substance without a prescription during working hours or while subject to duty.

5.3 Reporting Controlled Substance Use

An employee required to operate vehicles or equipment while on the job is required to notify his/her immediate supervisor, before beginning work, when taking any legal medication or controlled substance, prescription or non-prescription, which may interfere with the safe and effective performance of duties or operation of City equipment.

5.4 Reporting Alcohol/Controlled Substance Related Charges and Convictions

An employee, required to operate a motor vehicle as part of his/her job must notify his/her immediate supervisor of any controlled substance or alcohol related charge which has resulted in the employee losing his/her driving privileges prior to beginning the next regularly scheduled shift or call-out.

An employee must notify his/her immediate supervisor of any controlled substance or alcohol related criminal statute conviction no later than five (5) days after such conviction.

Any violations of the above stated may result in immediate disciplinary action.

6 Management Responsibilities and Guidelines

6.1 Searches

Any municipally owned property provided to or utilized by an employee during the course of employment with the City is subject to unannounced and unrestricted search to include items contained in and on the same property. These items include but are not limited to: City owned vehicles, offices, desks, lockers and their related contents.

Searches of persons and their personal possessions held on or about their person are prohibited.

6.2 Notification of Law Enforcement

Supervisors shall notify the police department when they have reasonable suspicion to believe that an employee may have illegal drugs in his or her possession or in an area jointly or fully controlled by the City.

6.3 City's Responsibility, Employee Rights

Nothing in this Section shall be interpreted as constituting any waiver of or limitation on the City's responsibility to maintain discipline, or the right to invoke disciplinary measures, nor the employee's right to due process and the processing of appeals concerning such disciplinary measures in accordance with the appeal procedure set forth in Section 29.08.04.120.

6.4 Forms of Discipline

Whenever disciplinary action is used in accordance with this Section, it may include but not be limited to any or all of the following: written reprimand, suspension, demotion or discharge as set forth in Section 29.08.04.110-3 and/or referral to SAP or EAP as described in Section 29.08.04.080-7.6.

6.5 Copies of This Section to be Given to All Employees

Each employee will be given a copy of the City's policy on Drug and Alcohol Substance Abuse.

(Code 1958 § 9-28; Ord. No. 454 § 2; Ord. No. 1090 § 2; Ord. No. 1163 § 5; Ord. No. 1347 §1.)

Section 29.08.04140 Americans With Disabilities Act Employment Grievance Procedure

1 ADA Employment Grievance Procedure

The Americans with Disabilities Act (ADA) provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services and programs, and telecommunications. Title II of the ADA states, in part, that "no otherwise qualified disabled employee or prospective employee shall, solely by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subject to discrimination" in programs or activities sponsored by a public entity.

The City of Dickinson has adopted this grievance procedure to provide prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the ADA. The language included here is drawn from the ADA policy adopted by the City in September, 1994.

Any employee or prospective employee who believes that (s)he or a specific class of individuals with disabilities has been subjected to unlawful discrimination on the basis of that disability by the City of Dickinson may, by himself or herself or by any authorized representative, file a complaint.

Complaints should be addressed to: ADA Coordinator, City of Dickinson, P.O. Box 1037, Dickinson, ND 58602, (701) 264-7744, who has been designated to coordinate ADA compliance efforts.

1.1 A complaint must be submitted in writing to the City ADA Coordinator and contain: the name and address of the individual or representative filing the complaint, a description of the alleged discriminatory action in sufficient detail to inform the entity of the nature and date of the alleged violation, and be signed by the complainant or authorized representative. Complaints filed on behalf of third parties must describe or identify the alleged victims of the discrimination.

A decision by the ADA Coordinator regarding the complaint will be made within ten (10) working days after its receipt. The ADA Coordinator will submit written notice of the decision to the complainant.

1.2 If the complaint is not resolved to the satisfaction of the complainant by the ADA Coordinator, the complainant may request the complaint be forwarded to the ADA Compliance Committee.

The Committee will hear the complaint at a public meeting, after adequate notice is given. The Committee will issue a written decision within thirty (30) after receiving the complaint.

1.3 If the complaint cannot be resolved to the complainant's satisfaction by the Committee, the complaint may be heard by the City Commission upon written request by the complainant.

The City Commission will consider the complaint at any regular or special meeting, after adequate public notice is given. A written determination by the City Commission will be rendered within thirty (30) days after receipt of the complaint. The decision of the City Commission is a final administrative decision.

1.4 As an alternative to Section 29.08.04.140-1.3, complaints regarding testing, selection, promotion, separation, and other employment policies or working conditions may be submitted to the Civil Service Commission in lieu of the Dickinson City Commission. In such an instance, the Commission shall consider the complaint during a regular or special meeting. A written decision by the Commission must be rendered within thirty (30) days after receipt of the complaint. The decision of the Civil Service Commission is a final administrative decision.

1.5 Files and records of all complaints filed shall be maintained regarding each level of the grievance process.

1.6 Nothing in this grievance procedure shall be construed as preventing an individual from pursuit of other remedies including filing the complaint with any federal agency (s)he believes is appropriate or with the U.S. Department of Justice. This procedure also does not preclude the individual's right to file a lawsuit in federal district court.

(Code 1958 § 9-29; Ord. No. 1163 § 5).

Section 29.08.04150 Specific Exceptions from Certain Sections

Applicability of Sections of this Policy to FLSA exempt employees:

29.08.04030:	All sub-sections
29.08.04040:	All sub-sections
29.08.04050:	All sub-sections
29.08.04060:	All sub-sections EXCEPTION: City Administrator's supervisor is the City Commission, hence all sub-sections referring to City Administrator shall be interpreted as City Commission for this employee.
29.08.04070:	Not applicable to the City Administrator, Public Works Director, Department Heads, the Finance Director, and the Assistant Police Chief if determined to be FLSA exempt.
29.08.04080:	All sub-sections
29.08.04090:	All sub-sections
29.08.04100:	All sub-sections
29.08.04110:	All sub-sections EXCEPTION: City Administrator's supervisor is the City Commission, hence all sub-sections referring to City Administrator shall be interpreted as City Commission for this employee.
29.08.04120:	All sub-sections EXCEPTION: City Administrator's supervisor is the City Commission, hence all sub-sections referring to City Administrator shall be interpreted as City Commission for this employee.
29.08.04130:	All sub-sections
29.08.04140:	All sub-sections

(Ord. No. 721 § 3; Ord. No. 1163 § 5)

Section 29.08.04160 Penalty

The penalty for any violation of this chapter shall be as set forth herein. (Ord. No. 1163 § 7)

Section 29.08.04170 Nepotism

This section was repealed in 1998. (Ord. No. 1163 § 6).

Chapter 30 PLUMBING

Last updated October 2007

Articles:

30.ED Editor's note to Chapter 30
30.04 In General
30.08 Plumber's License
30.12 Work Permit

Article 30.ED Editor's note to Chapter 30

Sections:

30.ED.010 Editor's note to Chapter 30

Section 30.ED.010 Editor's note to Chapter 30

As to buildings generally, see Ch. 7 of this Code.

Article 30.04 In General

Sections:

30.04.00E Editor's note to Article 30.04
30.04.010 Definitions
30.04.020 State Plumbing Code--Adoption
30.04.030 Same--Applicability
30.04.040 Sand and oil interceptors--Required for floor drains in commercial buildings
30.04.050 Same--Maintenance
30.04.060 Administration and enforcement of chapter
30.04.070 Authority of building inspector to order repair, removal, etc., of existing sanitary installations
30.04.080 Appeal from decisions of building inspector
30.04.090 Persons permitted to do plumbing work, etc.

Section 30.04.00E Editor's note to Article 30.04

For state law as to authority of city to regulate plumbing, see NDCC, § 40-05-01 (25).

Section 30.04.010 Definitions

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

Journeyman Plumber. A person skilled in the work of plumbing and holding himself out as able and willing to do the work of a plumber as an employee of a master plumber.

Master Plumber. An employing plumber and one who does not hold himself out as personally doing all of the plumbing work required to be done but as contracting to furnish the material and doing the work wholly or in part through others. (Code 1958, § 24-1.)

Section 30.04.020 State Plumbing Code--Adoption

The North Dakota State Plumbing Code (1986 Edition) is hereby adopted as a standard code and rules governing the practice of plumbing and the minimum standards of plumbing within the city.

A copy of such code shall be kept on file in the office of the city auditor for inspection and use of the public, and shall be marked with the words "City of Dickinson Official Copy." (Code 1958, § 24-2; Ord. No. 829, § 1; Ord. No. 966, § 1.)

For state law authorizing the city to adopt codes by reference generally, see NDCC, 1 40-0501 (1). As to adoption of state Plumbing Code by reference, see NDCC, § 40-05-01 (25).

Section 30.04.030 Same--Applicability

The provisions of the North Dakota State Plumbing Code shall apply to and govern plumbing as defined in such code including the practice, materials and fixtures is used in the installation, maintenance, extension and alteration of all piping, fixtures, appliances and appurtenances in connection with any of the following: Sanitary drainage or storm drainage facilities, the venting system and the public or private water supply systems within or adjacent to any building or other structure or conveyance; also, the practice and materials used in the installation, maintenance, extension or alteration of the storm water or sewerage system of any premises to their connection with any point of public disposal or other terminal. (Code 1958, § 24-3.)

Section 30.04.040 Sand and oil interceptors--Required for floor drains in commercial buildings

(a) Pursuant to the provisions of the North Dakota State Plumbing Code as adopted by section 30.04.020 of this Code and the BOCA Basic Building Code as adopted by section 7.020 of this Code, all commercial buildings which utilize and have installed floor drains shall have sand and oil interceptors constructed and maintained per the North Dakota State Plumbing Code.

(b) All existing commercial buildings with floor drains shall be required to change their floor drains to include sand and oil interceptors per the State Plumbing Code within three years from the date of the enactment and final passage of this section. (Ord. No. 835, § 1.)

Editor's Note. Ordinance No. 835, from which this section is derived, was adopted on August 3, 1981.

Section 30.04.050 Same--Maintenance

Sand, oil and grease interceptors must be maintained in a clean and sanitary condition so there is no discharge of sand, oil and grease into the city sanitary sewer system. Periodic inspections will be conducted by the building inspection department. Noncompliance with this section shall be an infraction in violation of this Code and punishable by a fine of not more than five hundred dollars. (Ord. No. 914, § 1.)

Section 30.04.060 Administration and enforcement of chapter

The administration and enforcement of this chapter shall be the duty of the building inspector and city engineer, who are hereby authorized to take such action as may be necessary to enforce the purposes of this chapter. (Code 1958, § 24-4.)

Section 30.04.070 Authority of building inspector to order repair, removal, etc., of existing sanitary installations

The building inspector is hereby given authority to order the repair, alteration or removal of any sanitary sewer connection of plumbing, any connection to storm water sewer or any private sanitary drain, cesspool or privy which, in his judgment, is so installed or is in such condition as to be unsanitary or to constitute a public nuisance or menace to health. In case such repair, alteration or removal is not promptly executed by the owner thereof in accordance with the directions of the building inspector, he may cause such installation to be disconnected from any source of water supply or, with the consent of the waterworks department, he may shut off the supply of water from the water mains of the city to the building or property in or on which such installation is situated. It shall thereafter be unlawful for any person in any manner to use any such installation or to supply water thereto until such installation shall have been put in safe and sanitary condition according to the directions of the building inspector.

In case it shall be impracticable for the building inspector to proceed as above described, he shall notify the public health officer of the city, whose duty it shall then be to proceed with the removal of such installation in accordance with the laws of the state. (Code 1958, § 24-5.)

Section 30.04.080 Appeal from decisions of building inspector

In case any difference should arise between the building inspector and the owner of any property subject to the regulations of this chapter or any person engaged in or desirous of doing any plumbing or sewer work regarding the interpretation or enforcement of any of the provisions of this chapter, appeal may be made to the board of appeals as established by section 127.1 et seq. of the Basic Building Code as adopted by section 7.020; whose decision thereon shall be final. (Code 1958, § 24-6.)

Section 30.04.090 Persons permitted to do plumbing work, etc.

All plumbing work, all excavations and cutting of pavement in the public streets or alleys, all laying of water and sewer connections and connections to storm sewers and all construction of private sanitary drains within the corporate limits of the city shall be undertaken and executed only by such plumbers or other persons as have obtained a license for such work together with a permit for each separate job. (Code 1958, § 24-7.)

Article 30.08 Plumber's License

Sections:

30.08.010 Required
30.08.020 Bond required of applicant for master's license
30.08.030 Fees
30.08.040 Issuance
30.08.050 Expiration and renewal
30.08.060 Revocation

Section 30.08.010 Required

No person shall engage in the occupation of installing or repairing the pipes, fixtures or other apparatus constituting the plumbing system of any building within the city without first procuring a license to do so, either as a master plumber or a journeyman plumber. (Code 1958, § 24-8.)

Section 30.08.020 Bond required of applicant for master's license

In addition to his license fee, an applicant for license as a master plumber must file in the office of the city auditor a surety company bond in the sum of one thousand dollars approved by the board of city commissioners and conditioned substantially that the principal will indemnify and save harmless the city from any and all loss, claim, suit or damage, direct or consequential, which the city may suffer or sustain by reason of any work done, any neglect or omission by the principal or his employees or the use of improper materials therein; that the work will be fully performed; and that the principal will comply with all ordinances and regulations of the city concerning plumbing, drain laying in water mains and sewers and will restore to the condition in which such installations were found, any paving, street, sidewalk, water pipe, sewer or other property disturbed by him or his agents in and about his employment. (Code 1958, § 24-9.)

Section 30.08.030 Fees

The fee for a master plumber's license and a journeyman plumber's license shall be in such amount as determined from time to time by the board of city commissioners and shall be on file in the office of the city auditor in the city fee schedule. (Code 1958, § 24-10; Ord. No. 705, § 4; Ord. No. 1086, § 18.)

Section 30.08.040 Issuance

A license to engage in the business of plumbing, whether as a master or a journeyman plumber, shall be issued by the city auditor to any person presenting to him a certificate of competency issued by the board of plumbing examiners, upon payment by such person to the city of the fee specified in section 30.08.030. (Code 1958, § 24-11.)

Section 30.08.050 Expiration and renewal

All licenses issued under this article shall be for one year or a fractional part thereof and shall expire on the thirty-first day of December of each year. They shall be renewed by the city auditor from year to year upon payment of the annual license fee specified in section 30.08.030. (Code 1958, § 24-12.)

Section 30.08.060 Revocation

The failure of any person licensed to engage in the work of plumbing or of any surety of such person to pay any damages sustained by the city by virtue of the breach by the licensee or any of his employees of the conditions of the indemnifying bond required by this article or the withdrawal of any surety from the contract of suretyship during the term of the license of any licensee shall be cause for revocation of the license by the board

of city commissioners. Any such license shall be revoked only after notice of hearing and after an opportunity on the part of the licensee to be heard before such board. (Code 1958, § 24-14.)

Article 30.12 Work Permit

Sections:

30.12.010 Required; exception
30.12.020 Application
30.12.030 Fees
30.12.040 Issuance--Generally
30.12.050 Same--Not to be issued in certain cases
30.12.060 Allowing others to use permit

Section 30.12.010 Required; exception

Whenever any plumber or other person licensed by the city to engage in plumbing work covered by this chapter shall desire to commence any such work, he shall first obtain a permit so to do from the building inspector; provided, however, that no permit shall be required for ordinary repairs to plumbing. (Code 1958, § 24-15.)

Section 30.12.020 Application

An application for a permit required by this article shall be in such form, shall contain such information regarding the proposed work as shall be required by the building inspector and, if he so requires, shall be accompanied by plans, specifications and estimates of the cost thereof. (Code 1958, § 24-16.)

Section 30.12.030 Fees

For each plumbing permit required under the terms of this article, the applicable fees shall be paid to the director of code enforcement. The permit fees for one or two family dwellings, apartments and commercial buildings shall be in such amount as determined from time to time by the board of city commissioners and shall be on file in the office of the city auditor in the city fee schedule. (Code 1958, § 24-17; Ord. No. 728, § 3; Ord. No. 789, § 3; Ord. No. 1086, § 19.)

Section 30.12.040 Issuance--Generally

When after due consideration and examination it shall appear to the building inspector that the provisions of this chapter are complied with, he shall issue a permit applied for under this article. (Code 1958, § 24-18.)

Section 30.12.050 Same--Not to be issued in certain cases

No permit shall be issued for the making of any connection between any sanitary sewer or storm water sewer or water mains of the city and any property which has not been assessed for the construction of such sanitary sewer, storm sewer or water main, except as authorized by the board of city commissioners. No permit shall be issued for the making of any connection to any sanitary sewer, storm sewer or water main of the city from any property on which any special assessment taxes for the foregoing improvements are delinquent.

No permit shall be issued by the building inspector for the connection of any storm water pipe or sewer or any pipe leading from any roof, gutter or downspout to any sanitary sewer or for the connection of any sanitary sewer or pipe to any storm water sewer, and it shall be unlawful for any person to make such connection or cause the same to be made. (Code 1958, § 24-19.)

Section 30.12.060 Allowing others to use permit

No licensed plumber or other person shall allow the use of any permit granted him under this article by any other person not in his employ. (Code 1958, § 24-20.)

Chapter 31 POLICE

Last updated October 2007

Sections:

31.00E Editor's note to Chapter 31
31.010 Department--Created
31.020 Same--Composition
31.030 Duties of chief generally
31.040 Powers and duties of policemen generally
31.050 Supervision; display of insignia; conduct
31.060 Adoption of peace officer's standards
31.070 Arrests without warrant
31.080 Resisting officer
31.090 Alarm systems
31.100 Same--Not monitored by police department - REPEALED
31.110 Dickinson police department asset forfeiture fund--Created--Purpose--Continuing appropriation

Section 31.00E Editor's note to Chapter 31

For authority of city to regulate the police of the city and to pass and enforce police ordinances, see NDCC, § 40-05-02 (9).

As to obedience to police relative to motor vehicles, see § 23.12.050 of this Code. As to powers and duties of police relative to motor vehicles, see § 23.12.010.

As to police employees' pension plan, see §§ 32.12.010.

Section 31.010 Department--Created

There is hereby established a police department in and for the city. (Code 1958, § 25-1.)

Section 31.020 Same--Composition

The police department shall consist of a chief of police and such number of policemen as from time to time may be deemed necessary by the board of city commissioners; provided, however, that the police commissioner may appoint extra policemen in case of emergency. (Code 1958, § 25-2.)

Section 31.030 Duties of chief generally

The chief of police shall see that the ordinances of the city are strictly enforced. He shall report to the board of city commissioners any violation of the ordinances or anything occurring within the city which, in his opinion, is detrimental to the health or safety or good order of the city. He shall at all times be subject to and obey the orders of the commissioner of police and perform such other additional duties and orders as the board of city commissioners may prescribe and shall have supervision over the other members of the police department. (Code 1958, § 25-3.)

Section 31.040 Powers and duties of policemen generally

All police officers of the city shall, within the city limits and for a distance of one and one-half miles in all directions within the state next outside the city limits, perform the duties and exercise the power of peace officers as defined and prescribed by the laws of the state and shall also have power and it shall be their duty to serve and execute any warrants, writs, process, order or notice issued to them by any court so authorized by state law within the city in any civil or criminal action or proceeding for or on account of a violation of any city ordinance, or in any action or proceeding in which the city is a party or beneficially considered, and, in addition

thereto, shall perform such duties as shall be prescribed by the ordinances of the city and shall also have power within such limits to serve and execute all writs and process whatsoever issued by such justices in civil actions. (Code 1958, § 25-4.)

Section 31.050 Supervision; display of insignia; conduct

The policemen shall be under the supervision of the chief of police and shall obey all orders, rules and regulations prescribed by the commissioner of police of the chief of police and shall, when on duty, wear the insignia of their office on their outer garment in a conspicuous place, except when occasion requires that it be not exposed. They shall be quiet, civil and orderly in their conduct and refrain from violent, profane, obscene and insolent language and abstain from intoxicating liquors, insubordination and dereliction of duty. Any violation of this section shall be reported to the commissioner of police and the board of commissioners by the chief of police immediately upon obtaining knowledge thereof. (Code 1958, § 25-5.)

Section 31.060 Adoption of peace officer's standards

Those certain Peace Officer's Standards for North Dakota as previously adopted and published by the North Dakota Combined Law Enforcement Council on May 30, 1974, copies of which are on file in the office of the city auditor, are hereby adopted as a part of this Code. (Ord. No. 640, § 1.)

Section 31.070 Arrests without warrant

Arrests of persons by a policeman without a warrant shall be done only in compliance with state law.

For state law as to arrest without warrant, see NDCC, §§ 29-06-15 to 29-06-26.

Section 31.080 Resisting officer

It shall be unlawful for any person to resist or oppose any police officer in the discharge of his duties. (Code 1958, § 21-7.)

Section 31.090 Alarm systems

(a) For the purposes of this section, the following definitions shall apply:

(1) "False alarm" shall mean any activation of an alarm system by purposeful or accidental tripping, which results in an emergency response. An activation of an alarm system shall not be considered a "false alarm" when due to an act of God or an occurrence beyond the alarm user's control.

(2) The term "alarm system" is defined as one intended for use in detection of unauthorized intrusion into a premises for commission of a crime or to detect a fire. The term "alarm system" does not include a system in buildings owned by governmental entities.

(3) The term "department" is defined as the city police department and city fire department, unless otherwise indicated.

(b) The department shall not monitor alarm systems, nor shall the department assume any responsibility for maintenance or care of such systems, nor shall the department make any guarantees or representations to suggest it has a duty to monitor any alarm system. The use of auto-dialers on alarm systems to dial directly to emergency or non-emergency numbers at the department is prohibited.

(c) The city administrator shall bill an alarm user immediately following each chargeable false alarm, and each shall be due and payable to the city administrator within thirty days after the bill is mailed.

(d) The false fire alarms as contemplated and defined under section 13.04.060 of this Code are not subject to this section and shall be prosecuted as therein stated.

(e) The fees referenced in this section shall be in such amount as is determined from time to time by the Board of City Commissioners in the City of Dickinson fee schedule. (Ord. No. 968, § 1; Ord. No. 1303 § 1; Ord. No. 1325 §1.)

Section 31.100 Same--Not monitored by police department - REPEALED

This section was repealed with Ordinance No. 1303 on October 3, 2005. (Ord. No. 976, § 1; Ord. No. 1303 § 2.)

Section 31.110 Dickinson police department asset forfeiture fund--Created--Purpose--Continuing appropriation

There is hereby created a fund to be known as the Dickinson police department asset forfeiture fund. The fund consists of funds appropriated by the board of city commissioners and additional funds obtained from moneys, assets, and proceeds seized and forfeited pursuant to North Dakota Century Code section 19-03.1-36, from restitution by defendants of official funds previously expended in an investigation, and amounts remaining from the forfeiture of property after the payment of expenses for the forfeiture and sale authorized by law. The total aggregate amount in the fund may not exceed thirty thousand dollars, and at the end of each fiscal year any moneys in excess of that amount must be deposited in the general fund. The funds are appropriated, as a standing and continuing appropriation, to the Dickinson police department for the following purposes:

(a) For obtaining evidence for enforcement of any state criminal law or law relating to the control of drug abuse or any other criminal investigation specifically determined by the chief of police.

(b) For paying, at the discretion of the chief of police, awards for information or assistance leading to a forfeiture under North Dakota Century Code section 19-03.1-36, or a federal forfeiture action.

(c) For paying, at the discretion of the chief of police, subject to approval by the board of city commissioners, any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to North Dakota Century Code section 19-03.1-36, or of any other expenses incident to the seizure, detention, or forfeiture of such property.

(d) For equipping for law enforcement function, forfeited aircraft, vehicles and vessels retained as provided by law for official use by the Dickinson police department.

(e) For paying, at the discretion of the chief of police, overtime, compensation to officers of the Dickinson police department, such overtime incurred as a result of investigations of violations of North Dakota Century Code chapter 19-03.1, or any other specialized investigation specifically determined by the chief of police.

(f) For paying matching funds required to be paid as a condition for receipt of funds from a federal or state government program awarding monetary grants or assistance for the investigation, apprehension, or prosecution of persons violating the provisions of North Dakota Century Code chapter 19-03.1.

(g) For equipping for law enforcement operations, specialized or necessary equipment which is needed in performing enforcement or investigative operations in and around the city of Dickinson, as determined by the chief of police.

(h) For "specialized" educational or training programs, within the city's school district, or specific drug-alcohol related topics as determined by the chief of police.

The chief of police shall, with the concurrence of the city auditor, establish the necessary accounting procedures for the use of such fund. The chief of police and police commissioner shall personally approve, in writing, all requests from the Dickinson police department for the use of such fund and shall be accountable to the board of city commissioners, for the expenditures thereof. (Ord. No. 1022, § 1.)

Chapter 32 RETIREMENT

Last updated December 2014

Articles:

32.ED Editor's note to Chapter 32
32.04 In General
32.08 City of Dickinson Pension Plan and Trust
32.12 City of Dickinson Police Employee's Pension Plan and Trust
32.16 Volunteer Fire Department Pension Plan
32.20 City of Dickinson Defined Contribution Plan

Article 32.ED Editor's note to Chapter 32

Sections:

32.ED.010 Editor's note to Chapter 32

Section 32.ED.010 Editor's note to Chapter 32

As to personnel generally, see Ch. 29 of this Code.

Article 32.04 In General

Sections:

32.04.010 Hospitalization insurance benefits for retirees

Section 32.04.010 Hospitalization insurance benefits for retirees

This section was repealed in 1998. (Ord. No. 1163 § 6)

Article 32.08 City of Dickinson Pension Plan and Trust

Sections:

32.08.00E Editor's note to Article 32.08
32.08.100 Definitions.
32.08.210 Participation.
32.08.220 Transfer.
32.08.230 Termination of Participation.
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32.08.940. Distribution Upon Termination of Trust.
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32.08.1020 Severability.
32.08.1030 Jurisdiction.
32.08.1040 Forum Selection.
32.08.1050 Expenses.

32.08.1060 Rules of Construction.

Section 32.08.00E Editor's note to Article 32.08

For state law as to authority of city to adopt employee pension system by ordinance, see NDCC, § 40-05-01 (70).

Section 32.08.100 Definitions.

When used in this Plan, the following words will have the following meanings, unless the context clearly indicates otherwise:

1.1 Actuarial Equivalent or Actuarially Equivalent means a payment or a series of payments that has the same present value computed on the basis of the following interest rate and mortality assumptions:

[i] Interest Rate: 8% pre-retirement and 6% post-retirement

[ii] Mortality Table: 1983 IAM with six year setback

[iii] Notwithstanding any other Plan provisions to the contrary, the applicable mortality table used for purposes of adjusting any benefit or limitation under Code Section 415(b)(2)(B), (C) or (D) and the applicable mortality table used for purposes of satisfying the requirements of Code Section 417(e) is the table described in Revenue Ruling 2001-62. For any distribution with an annuity starting date on or after the effective date of this Section and before the adoption date of this Section, if application of the amendment as of the annuity starting date would have caused a reduction in the amount of any distribution, such reduction is not reflected in any payment made before the adoption date of this section. However, the amount of any such reduction that is required under Code Section 415(b)(2) must be reflected actuarially over any remaining payments to the Participant.

1.2 Beneficiary means the person who, under this Plan becomes entitled to receive a Participant's interest upon the Participant's death.

1.3 Board of Trustees means the Board designated by the Plan in Article VII whose duties and responsibilities are specified in this Plan.

1.4 City means the City of Dickinson, North Dakota.

1.5 Code means the Internal Revenue Code of 1986, as it presently is constituted, as it may be amended, or any successor statute of similar purpose.

1.6 Compensation, for all pay received after December 31, 1999, means all pay received by an Employee during the calendar year, except special bonuses or severance upon separation, mileage or any other form of expense reimbursement. Compensation includes only compensation that is actually paid to the Participant during the calendar year.

Compensation, for all pay received on or before December 31, 1999, means the annual salary approved for each Employee in the city's annual budget for the calendar year. Compensation does not include longevity pay, overtime, mileage, or any other form of additional compensation. Compensation includes only compesnation that is actually paid to the Participant during the calendar year.

Pursuant to Code Section 401(a)(17), Compensation taken into account for all purposes under this Plan shall not exceed [A] $200,000 (as adjusted by the Secretary of the Treasury for cost of living increases each year) for any Plan Year ending prior to January 1, 1996, and [B] $150,000 (as adjusted by the Secretary of the Treasury for cost of living increases each year) for any Plan Year beginning on or after January 1, 1996. If Compensation is determined for any period of fewer than 12 months, the Code Section 401(a)(17) limitation will be multiplied by a fraction, the numerator of which is the number of calendar months in the determination period and the denominator of which is 12.

Increase in limit. The annual compensation of each Participant taken into account in determining benefit accruals for any Plan Year beginning after December 31, 2001, shall not exceed $200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). Annual Compensation means Compensation during the Plan Year or such other consecutive 12-month period over which

Compensation is otherwise determined under the Plan (the determination period). For purposes of determining benefit accruals in a Plan Year beginning after December 31, 2001, compensation for any prior determination period shall not exceed $200,000 (as adjusted) for any Plan Year ending before January 1, 1996; $150,000 for any determination period beginning in 1996; $160,000 for any determination period beginning in 1997, 1998, or 1999; and $170,000 for any determination period beginning in 2000 or 2001.

Cost-of-living adjustment. The $200,000 limit on annual compensation in the preceding paragraph shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

If Compensation for any prior determination period is taken into account in determining a Participant's benefits for the current Plan Year, the Compensation for such prior determination period is subject to the applicable Annual Compensation Limit in effect for that prior period. For this purpose, in determining benefits in Plan Years beginning on or after January 1, 1989 and before January 1, 1996, the Annual Compensation Limit in effect for determination periods beginning before that date is $200,000. For this purpose, in determining benefits in Plan Years beginning after January 1, 1996, the Annual Compensation Limit in effect for determination periods beginning before that date is $150,000 as adjusted by the Secretary of the Treasury for increases in the cost of living in accordance with Code Section 401(a)(17)(B).

Unless otherwise provided under the Plan, the Accrued Benefit of each Section 401(a)(17) Employee under the Plan will be the sum of:

[a] the Participant's Accrued Benefit as of December 31, 1995, frozen in accordance with Reg. ' 1.401(a)(4)-13, and

[b] the Participant's Accrued Benefit determined under the benefit formula applicable for the Plan Year beginning on or after January 1, 1996, as applied to the Participant's Years of Benefit Service credited for Plan Years beginning on or after January 1, 1996, for purposes of benefit accruals.

A Section 401(a)(17) employee means an employee whose current accrued benefit as of a date on or after the first day of the first Plan Year beginning on or after January 1, 1996, is based on compensation for a year beginning prior to the first day of the first Plan Year beginning on or after January 1, 1996 that exceeded $150,000.

For limitation years beginning after December 31, 1997, Compensation paid or made available during such limitation year shall include any elective deferral (as defined in Code section 402(g)(3)), and any amount which is contributed or deferred by the employer at the election of the employee and which is not includable in the gross income of the employee by reason of Code sections 125 or 457.

1.7 Earnings means for Employee contributions, [A] interest credited at the rate of 5% compounded annually from the date contributions are made to January 1, 2000 or, if earlier, to the date payment of benefits begins; and [B] interest compounded annually and credited at a rate that reflects the annualized net earnings realized on investments of the Plan assets from the later of January 1, 2000 or the date contributions are made to the date payment of benefits begin.

1.8 Effective Date means April 1, 1969. The effective date of this amended and restated Plan is January 1, 1989 for provisions required by law to be effective as of that date or as of the date required if an earlier effective date is required or as of the date specified for any provision for which a different effective date is specified.

1.9 Employee means every permanent and probationary regular full-time Employee of the City who is not a police department employee.

"Leased Employee" means any person (other than an Employee of the City) who has performed services of the City (or for the City and related persons as determined under Code Section 414(n)(6)) under an agreement between the City and the leasing organization on a substantially full-time basis for a period of at least one year, and, prior to 1997, such services were of a type historically performed by the Employees

in the business field of the City, or, if after 1996, such services are performed under the primary direction or control by the City.

1.10 Final Average Compensation means the average of a Participant's Total Basic Compensation for the five years that will result in the highest average.

1.11 Normal Retirement Age means the date a Participant attains age 62 and has completed fifteen (15) years of Service or has completed thirty (30) years of service.

1.12 Plan Year means the 12-consecutive-month period commencing on January 1 and ending on December 31 of each year. The Plan Year will also be the fiscal (taxable) years of the Trust.

1.13 Retirement means the last day of the month in which a Participant attains either his Normal Retirement Age or Early Retirement Age and benefits under the Plan are immediately payable.

1.14 Surviving Children means the surviving issue of a Participant or a child or children legally adopted by a Participant.

1.15 Surviving Spouse means the Spouse to whom the Participant was married on the date of the Participant's termination of employment.

1.16 Total Basic Compensation means the annual salary approved for each Employee in the City's annual budget for the calendar year. Total Basic Compensation does not include longevity pay, overtime, mileage or any other form of additional compensation.

1.17 Total Disability means to become, while in the service of the city, mentally or physically, totally and permanently disabled from discharging his duties.

The question of Total and Permanent Disability shall be determined by the Trustees upon the concurring report of at least two out of three physicians designated by the Board of Trustees to make a complete physical examination of the Employee. The Trustees shall have the power at any time to cause an Employee of the City, retired by reason of physical or mental Disability, to be brought before it and again examined by three physicians appointed by the Board of Trustees to discover whether such retired Employees shall be continued on the disability pension roll. Such Employees shall be entitled to reasonable notice that such examination will be made and to be present at the time of the taking of any testimony pertinent thereto.

Thereafter the City Employee shall submit to the Trustees annual notice of employment status and medical examination not later than October 1 of each year. Such annual notice shall include the employment status and medical status of Employee in such form as the Trustees shall determine.

Failure to comply with the requirements set forth shall result in suspension of any disability retirement benefit payments until such time as this section is complied with, or shall result in the termination of disability retirement benefits.

1.18 Trustee means the individuals or institution appointed by the Board of Trustees as Trustee(s).

1.19 Year of Service means each Plan Year and fractional year of employment with the City for which a Participant receives credit under the terms of this Plan.

(Ord. No. 1265 §1.; Ord. No. 1289 § 1.)

Section 32.08.210 Participation.

Except as otherwise provided in the special rules below, an Employee will become a Participant as of the date the Employee becomes an Employee. The following special rules apply:

[a] If a Plan is amended, any Employee who is already a Participant on the date the amended and restated Plan is adopted will continue to participate.

[b] If an Employee who is not a member of an eligible class of Employees becomes a member of an eligible class, the Employee will participate immediately.

[c] Upon reemployment, or upon returning to employment in a category of Employees that is eligible to participate, a former Participant or former Employee will become a Participant immediately.

No individual who has not become a Participant prior to April 18, 2006, shall become a Participant after April 17, 2006. Notwithstanding the foregoing if an individual was a Participant in the City of Dickinson Police Employee's Pension Plan, such individual shall be eligible to become a Participant under this Plan if the individual meets the eligibility requirements of this Plan.
(Ord. No. 1265 §1; Ord. No. 1313 §1.)

Section 32.08.220 Transfer.

If an individual who has been employed by the City of Dickinson as a police department employee becomes an Employee and a Participant in this Plan, the benefit accrued by the Participant under the City of Dickinson Police Employees' Pension Plan will be transferred to this Plan. If a Participant in this Plan becomes a police department employee and a Participant in the City of Dickinson Police Employees' Pension Plan, the Participant's benefit accrued under this Plan shall be transferred to the City of Dickinson Police Employees' Pension Plan.

The employee shall be subject to the terms of the Pension Plan, including its obligations and benefits, in which the employee was enrolled at the time of retirement.

(Ord. No. 1265 §1; Ord. No. 1382 §1)

Section 32.08.230 Termination of Participation.

Participation will cease upon complete distribution of a Participant's vested Accrued Benefit and forfeiture of the Participant's non-vested Accrued Benefit. (Ord. No. 1265 §1.)

Section 32.08.240 City's Obligation.

Neither participation in the Plan nor the City's adoption and continuance of the Plan will be deemed to constitute a contract between the City and any Employee or Participant, nor to be a consideration for, or an inducement or condition of, the employment of any person. Nothing in this Plan will be deemed to give any Employee or Participant the right to be retained in the employ of the City, or to interfere with the right of the City to discharge any Employee or Participant at any time, nor will it be deemed to give the City the right to require the Employee or Participant to remain in its employ, nor will it interfere with the right of any Employee or Participant to terminate his employment at any time. In adopting this Plan, the City does not make any representation as to the amount of the contribution that it will make for any year other than as recommended by the actuary employed by the Plan. Except insofar as the City fails to make contributions to this Plan adequate to fund the Plan on a sound actuarial basis, the City assumes no liability or responsibility for direct payment of benefits. All benefits payable under this Plan will be paid or provided solely from the Trust Fund. (Ord. No. 1265 §1.)

Section 32.08.250 Uniformed Services Employment and Reemployment Rights Act, and Family Medical Leave Act.

Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u). Years of Service will be credited in accordance with the Family and Medical Leave Act of 1993. (Ord. No. 1265 §1.)

Section 32.08.310 City Contributions.

For each Plan Year, the City will pay to the Trustee the contribution determined by the City.

[a] Cash: City Contributions must be paid in cash.

[b] Employee Contributions: Each Employee shall be required to contribute to the Plan monthly by payroll deduction an amount equal to 5% of the Employee's monthly salary. The required

Employee Contributions shall be paid by the city in lieu of payment by the Employee and therefore shall be picked up by the City and within the meaning of Code Section 414(h)(2) shall be treated as City Contributions. No Employee shall have the option of having Employee Contributions paid to the Employee instead of having the required Employee Contribution paid by the City to the Plan.

[c] Forfeitures: City Contributions will be offset by any amounts forfeited under Section 6.5. Forfeitures will not be applied to increase benefits provided by the Plan unless benefits are increased by appropriate amendments. Forfeitures arising under this Plan will only be applied to reduce the contributions of the City.

[d] Actuarial Determination: For each Plan Year, the City will make contributions to the Plan in an amount adequate to fund the benefits provided in this Plan on a sound actuarial basis. The amount of contributions to the Plan will be recommended by the actuary employed by the Plan and determined by the City.

[e] Time and Form of Payment: City and Employee Contributions for any Plan Year may be paid to the Trustee in one sum or in several installments on any date or dates the City elects.

[f] Exclusive Benefit: This Plan and Trust has been established for the exclusive benefit of the Participants' and their Beneficiaries. The corpus or income of the Trust may not be diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries. All contributions by the City to the Plan are conditional upon the qualification of the Plan.

At the City's written request to the Trustee specifying the assets to be liquidated to make the payment, any contribution made by the City because of a mistake of fact may be returned to the City within one year of the contribution.

In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, then at the City's written request to the Trustee specifying the assets to be liquidated to make the payment, any contribution made incident to that initial qualification by the City must be returned to the city within one year after the date the initial qualification is denied. (Ord. No. 1265 §1.)

Section 32.08.410 Years of Service.

Years of service will be credited as follows:

[a] Years of Service will be credited for the period beginning on the date the Employee becomes an Employee and ending on the date the Employee terminates employment. Fractional Years of Service will be credited by counting 1/12 of a Year of Service for each complete calendar month of the fractional year.

[b] Years of Service will be credited for period of military duty for participants covered by and who have complied with the Uniformed Services Employment and Reemployment Rights Act of 1994, as set forth in Chapter 43 of Title 38 United States Code, as currently set forth and as may hereafter be amended.

[c] Except as otherwise provided in subsection [b], Service will not be credited for any period during which an Employee is on leave of absence. Service will be credited for periods of vacation or sick leave duly granted.

[d] For purposes of vesting under Section 4.2, but not for purposes of benefit accrual under Section 6.1, Years of Service will be credited for any period during which an Employee or former Employer is employed by the City of Dickinson Police Department.

[e] Service will not be credited for any period of employment for which the Employee received a distribution under Section 6.5.

[f] For purposes of vesting and for purposes of determining eligibility for retirement but not for purposes of benefit accrual years of employment in an ineligible class of employees will be counted as Years of Service. (Ord. No. 1265 §1.)

Section 32.08.420 Vesting of Participants' Benefits.

A Participant's Accrued Benefit will become fully vested and non-forfeitable if he attains Normal Retirement Age while employed by the City. A Participant's Employee contributions plus interest will be fully vested at all times. A Participant shall be vested in his Accrued Benefit attributable to Employer contributions in accordance with the following schedule:

Completed Years of Service	Percentage of Benefit That is Vested
Fewer than 4	0
4 or more but fewer than 5	25%
5 or more but fewer than 6	50%
6 or more but fewer than 7	75%
7 or more	100%

(Ord. No. 1265 §1.)

Section 32.08.430 Plan Termination.

Upon the termination or partial termination of this Plan, the rights of all affected Participants to the benefits accrued as of the date the termination or partial termination (to the extent funded as of such date) will be fully vested. (Ord. No. 1265 §1.)

Section 32.08.510 Limitations on Allocations Definitions.

For purposes of this section 5.1, the following terms will be defined as follows:

[a] Annual Benefit: A retirement benefit under the Plan that is payable annually in the form of a straight life annuity. Except as provided below, a benefit payable in a form other than a straight life annuity must be adjusted to an Actuarially Equivalent straight life annuity before applying the limitations of this Article. The interest rate assumption used to determine Actuarial Equivalence will be the greater of the interest rate specified in the Plan for purposes of computing Actuarially Equivalent benefits or 5 percent. The Annual Benefit does not include any benefits attributable to Employee contributions or rollover contributions, or the assets transferred from a qualified plan that was not maintained by the City.

[b] Compensation: Compensation shall mean all of a Participant's Wages paid by the City as defined in section 3401(a) for the purposes of income tax withholding at the source.

For purposes of applying the limitations in this Article V, Compensation for the Limitation Year is Compensation actually paid or includible in gross income during the Limitation Year.

[c] Defined Benefit Dollar Limitation: Defined benefit dollar limitation. The "defined benefit dollar limitation" is $160,000, as adjusted, effective January 1 of each year, under section 415(d) of the code in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies.

[d] Limitation Year: The Plan Year.

[e] Maximum Permissible Amount: : The "maximum permissible benefit" is the lesser of the defined benefit dollar limitation or the defined benefit compensation limitation (both adjusted where required, as provided in [1], and, if applicable, in [2] or [3] below.

[1] The Defined Benefit Dollar Limitation.

[2] If the Participant has fewer than 10 years of participation in the Plan, the defined benefit dollar limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of participation in the Plan and (ii) the denominator of which is 10. In the case of a Participant who has fewer than 10 years of service with the Company, the defined

benefit compensation limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of service with the Company and (ii) the denominator of which is 10.

[3] If the benefit of a Participant begins prior to age 62, the defined benefit dollar limitation applicable to the Participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the Participant at age 62 (adjusted under [2] above, if required). The defined benefit dollar limitation applicable at an age prior to age 62 is determined as the lesser of (i) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in section 1.1 of the Plan and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate and the applicable mortality table as defined in section 1.1 of the Plan. Any decrease in the defined benefit dollar limitation determined in accordance with this paragraph [3] shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.

[4] If the benefit of a Participant begins after the Participant attains age 65, the defined benefit dollar limitation applicable to the Participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the Participant at age 65 adjusted under [2] above, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age 65 is determined as (i) the lesser of the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in section 1.1 of the Plan and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate assumption and the applicable mortality table as defined in section 1.1 of the Plan. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored. Benefit increases resulting from the increase in the limitations of section 415(b) of the Code shall be provided to all employees participating in the Plan who have one hour of service on or after the first day of the first limitation year ending after December 31, 2001.

[5] Sections 5.1[e][3] and 5.1[e][4] shall not apply in the case of a "qualified participant" as defined in Section 415(b)(2)(H). For purposes of this Section 5.1[e] only, "qualified participant" means a participant in the Plan with respect to when the Years of Service used to determine the amount of benefit under the Plan includes at least 15 years of service of the Participant as either [x] a full-time employee of a police or fire department or [y] as a member of the United States Armed Forces.

[f] Year of Participation: The Participant shall be credited with a Year of Participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met: (1) The Participant is credited with a Year of Service, and (2) the Participant is included as a Participant under the eligibility provisions of the Plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a Year of Participation credited to the Participant shall equal the amount of benefit accrual service credited to the Participant for that accrual computation period. A Participant who is permanently and totally disabled within the meaning of Code Section 415 (c) (3) (C) (i) for an accrual computation period shall receive a Year of Participation with respect to that period. In addition, for a Participant to receive a Year of Participation (or part thereof) for an accrual computation period, the Plan must be established no later than the last day of such accrual computation period. In no event will more than one Year of Participation be credited for any 12-month period.

[g] Effect on Participants: Benefit increases resulting from the increase in the limitations of section 415(b) of the Code will be provided only to active Participants who are credited with an hour of service on or after the first day of the first limitation year ending after December 31, 2001. (Ord. No. 1265 §1.)

Section 32.08.520 Limitations of Benefits.

This section applies regardless of whether any Participant is or has ever been a Participant in another qualified plan maintained by the City. The Annual Benefit otherwise payable to a Participant at any time will not exceed the maximum Permissible Amount. If the benefit of the Participant would otherwise accrue in a Limitation year would produce an Annual Benefit in excess of the Maximum Permissible Amount, the rate of accrual will be reduced so that the Annual Benefit will equal the Maximum Permissible Amount. If a Participant has made nondeductible Participant contributions under the Plan, the amount of those contributions is treated as an Annual Addition to a qualified defined contribution plan, for purposes of this Article. The limitation in this section is deemed satisfied if the Annual Benefit payable to a Participant is not more than $1,000 multiplied by the Participant' s number of Years of Service or parts of Years of Service (not to exceed 10) with the City. (Ord. No. 1265 §1.)

Section 32.08.530 Combined Limitations.

This section applies if any Participant is covered, or has been covered, by another qualified plan, which provides an Annual Addition and which is maintained by the City. For purposes of this Section, Allocated Earnings and Employee Contributions to this Plan are deemed to be contributions to a defined contribution plan which provides an Annual Addition.

[a] Defined Benefit Plan. If a Participant is, or ever has been, covered under more than one defined benefit plan maintained by the City, the sum of the Participant' s Annual Benefits from all plans may not exceed the Maximum Permissible Amount.

[b] Defined Contribution Plan. The sum of the Participant' s Defined Contribution Fraction and Defined Benefit Fraction will not exceed 1.0 in any Limitation Year, and the Annual Benefit otherwise payable to the Participant under this Plan will be limited as required to comply with this limitation.

[c] Protection of Prior Benefits. In the case of an individual who was a Participant in one or more defined benefit plans of the City as of the first day of the first Limitation Year beginning after December 31, 1986, the application of the limitations of this Article shall not cause the maximum permissible amount for such individual under all such defined benefit plans to be less than the individual' s current accrued benefit . The preceding sentence applies only if such defined benefit plans met the requirements of Code Section 415, for all Limitation Years beginning before January 1, 1987. (Ord. No. 1265 §1.)

Section 32.08.610 Accrued Benefit.

[a] Accrued Benefit of a Participant Retiring On Or After January 1, 2000. The Accrued Benefit of a Participant retiring on or after January 1, 2000 will be an annual benefit payable in monthly payments and commencing at Normal Retirement Age and payable for the life of the Participant that is computed as follows, or if greater, the Accrued Benefit calculated under [b] below:

[1] [2.3] percent of Final Average Compensation multiplied by the number of full and remaining fractional Years of Service completed by the Participant; plus

[2] Any Benefit Accrued by the Participant under and transferred to the Plan from the City of Dickinson Police Employees' Pension Plan and Trust.

[b] Accrued Benefit of a Participant Retiring On Or After November 1, 1992 and before January 1, 2000: The Accrued Benefit of a Participant retiring on or after November 1, 1992 and before January 1, 2000, will be a monthly benefit commencing at Normal Retirement Age and payable for the life of the Participant that is computed as follows:

[1] For each full Year and completed month of Service a Participant will be credited with a monthly benefit equal to one-twelfth of three and seven-tenths percent of his Total Basic Compensation applicable to the period; plus

[2] Any Benefit Accrued by the Participant under and transferred to the Plan from the City of Dickinson Police Employees' Pension Plan and Trust.

[c] Accrued Benefit of A Participant Retiring Before November 1, 1992: The accrued benefit of a Participant who retired before November 1, 1992 will be increased as of November 1, 1992 to a monthly benefit commencing at the later of November 1, 1992 or Normal Retirement Age and payable for the life of the Participant that is computed as follows:

[1] For each full Year and completed month of Service before April 1, 1969 a Participant will be credited with a monthly benefit equal to one-twelfth of one and eighty-five one hundredths percent of his basic salary rate effective January 1, 1986 or, if earlier, the date the Participant terminated employment; plus

[2] For each full Year and completed month of Service after April 1, 1969 a Participant will be credited with a monthly benefit equal to one-twelfth of three and three-tenths percent of his Total Basic Compensation applicable to the period. (Ord. No. 1265 §1.)

Section 32.08.620 Retirement Benefits.

[a] General Rules: A Participant's Accrued Benefit will be distributable upon death, Total Disability, Retirement, Termination of Employment, or at the Required Beginning Date.

[b] Normal Retirement: On the last day of the month in which a Participant attains his Normal Retirement Age, he may retire voluntarily or continue working subject to any mandatory retirement policy of the City otherwise permitted by law. Any Termination of Employment on or after the Participant attains Normal Retirement Age will be deemed to be a retirement. Until actual retirement a Participant may continue to participate in the Plan. Normal Retirement Benefit payments will begin as of the later of the Participant's Normal Retirement Age or the date the Employee retires but not later than the Required Beginning Date. There will be no actuarial adjustment for late commencement of payment for benefits commencing later than Normal Retirement Age.

[c] Early Retirement: An Employee who terminates employment with the City after completing at least 15 Years of Service may elect Early Retirement benefits. Payment of the Actuarial Equivalent of the Participant's Accrued Benefit payable at Normal Retirement Age may commence as of the date of the Participant's Early Retirement. Alternatively, the Participant may elect in writing filed with the Board of Trustees not later than the Participant's Early Retirement Date, to defer the commencement of Actuarially Equivalent benefit payments to a date later than the date of the Participant's retirement but not later than the Participant's Normal Retirement Date.

[d] Disability: An Employee who terminates employment with the City because of Total and Permanent Disability before attaining Early or Normal Retirement Age shall be paid Disability Retirement Benefits commencing as of the date of termination of employment. Disability Retirement Benefits shall be equal to the benefit accrued as of the date of disability retirement payable at Normal Retirement Age without actuarial reduction for the commencement of payment before Normal Retirement Age and without accrual of any additional benefit or Years of Service after the date of disability retirement but shall not be less than $50 per month. Any Disability Retirement Benefit payable under this Plan shall be reduced by the amount of any payment from the Workmen's Compensation Bureau made to the Employee because of the Total and Permanent Disability.

If the benefits received from the Workmen's Compensation Bureau exceed the Benefit the Employee would be entitled to under the Plan, no pension shall be paid from the Plan to the Employee during the time the Workmen's Compensation payments are being made. If settlement of State Workmen's Compensation payment shall be in a lump sum, such sum shall be apportioned in accordance

with the determination of the State Workmen's Compensation Bureau over a period of years for purposes of the offset against Plan benefits.

Payment of Disability Retirement Benefits will cease upon determination by the Board of Trustees that the Total and Permanent Disability has terminated. Any Normal or Early Retirement benefits that subsequently become payable will be reduced by the actuarial value of the Disability Retirement Benefit actually paid.

[e] Required Beginning Date: The Required Beginning Date is the April 1 of the calendar year following the calendar year in which occurs the later of [1] the date the Participant attains age 70 ½, or [2] the date the Participant retires from employment with the Employer.

[f] Minimum Benefit. The benefits paid under this Section 6.2 will not in any event be less than the total amount of the Participant's Employee contributions plus Earnings. (Ord. No. 1265 §1.)

Section 32.08.630 Form of Benefit.

The normal form of benefit under this Plan is a single life annuity for the life of the Participant. Effective for all Participants who commence benefits prior to August 1, 2010, the optional forms of benefit under this Plan are [a] a single sum cash payment that is the Actuarial Equivalent of the normal form of benefit; [b] the Actuarial Equivalent 100 percent benefit for both the Participant and surviving spouse; and [c] single life annuity for the life of the participant with 120 payments guaranteed. Effective for all Participants who commence benefits on or after August 1, 2010, the optional forms of benefit under this Plan are [a] the Actuarial Equivalent of the normal form of benefit, paid in 9 equal annual installments; [b] the Actuarial Equivalent 100 percent benefit for both the Participant and the surviving spouse; and [c] a single life annuity for the life of the Participant with 120 payments guaranteed. The value of the amounts payable to the Participant and all beneficiaries in the ten-year certain form shall be the actuarial equivalent of the amounts payable to the Participant in the normal form. A Participant's Allocated Earnings Account balance shall be distributable as of the valuation date next following termination of employment in a single sum cash payment. (Ord. No. 1265 §1; Ord. No. 1279 § 1; Ord No. 1384 §5)

Section 32.08.640 Required Distributions.

[a] All distributions required under this section will be determined and made in accordance with the proposed Regulations under Code Section 401 (a) (9), including the minimum distribution incidental benefit requirement of Section 1.401 (a) (9)-2 of the proposed regulations.

[b] The vested Accrued Benefits of a Participant must be distributed or begin to be distributed no later than the Participant's Required Beginning Date.

[c] As of the first Distribution Calendar Year, distributions shall be made in the form of an annuity for the life of the Participant.

[d] Payments under the annuity must satisfy the following requirements:

[1] the annuity distributions must be paid in periodic payments made at intervals not longer than one year:

[2] the distribution period must be over a Life described in Section 401(a) (9) (A) (ii);

[3] the Life Expectancy for purposes of determining the period certain shall be determined without recalculation of Life Expectancy; and

[4] payments must either be non-increasing or increase only to provide cash refunds of employee contributions upon the Participant's death; or because of an increase in benefits under the Plan.

[e] The "Life Expectancy" is calculated using the attained age of the Participant (or Designated Beneficiary) as of the Participant's (or Designated Beneficiary's) birthday in the applicable calendar year. The applicable calendar year will be the first distribution calendar year. If annuity payments commence before the Required Beginning Date, the applicable calendar year is the year such payments commence. Life Expectancy and Joint and Last Survivor Expectancy are computed by use of the

expected return multiples in Tables V and VI of Section 1.72-9 of the Income Tax Regulations. (Ord. No. 1265 §1.)

Section 32.08.650 Termination of Employment.

A Participant with no vested interest in Accrued Benefits attributable to City Contributions who terminates employment for any reason other than death or Total Disability before qualifying for immediate Early or Normal Retirement Benefits will receive a refund of Employee Contributions made and not previously distributed plus Earnings. Payment shall be made in a single sum within 90 days after the date the Participant terminates employment.

A Participant with a vested interest in Accrued Benefits attributable to City Contributions who terminates employment for any reason other than death or Total Disability before qualifying for immediate Early or Normal Retirement Benefits will receive payment of benefits as follows:

[a] If the present value of the Participant's vested Accrued Benefit attributable to Employee Contributions and city Contributions is $10,000 or less, the present value of the vested Accrued Benefit will be paid in a single sum cash payment as soon as administratively feasible after the Participant's termination of employment.

[b] If the present value of the Participant's vested Accrued Benefit attributable to Employee Contributions and City Contributions exceeds $10,000 and the Participant terminates employment prior to August 1, 2010, the Accrued Benefit will be paid under section 6.2 commencing as of the last day of the month in which the Participant attains age 62, or if the Participant so elects in writing within 30 days after the Participant's termination of employment, the present value of the Participant's vested Accrued Benefit will be paid in a single sum cash payment as soon as administratively feasible after the Participant's termination of employment.

[c] If the present value of the Participant's vested Accrued Benefit attributable to Employee Contributions and City Contributions exceeds $10,000 and the Participant terminates employment on or after August 1, 2010, the Accrued Benefit will be paid under Section 620 commencing as of the last day of the month in which the Participant attains age 55.

The present value of the Participant's vested Accrued Benefits payable under this paragraph shall not be less than the Employee Contributions made by the Participant plus Earnings.

The Participant's non-vested Accrued Benefit will be forfeitable upon the distribution of the Participant's vested Accrued Benefit or upon refund of the Participant's Employee Contributions plus interest if the Participant has no vested Accrued Benefit attributable to City Contributions or, if there is no distribution before Early or Normal Retirement Age, then upon the Participant's termination of employment. (Ord. No. 1265 §1; Ord. No. 1309 § 1. Ord. No. 1384 §6)

Section 32.08.660 Death Benefits.

[a] Surviving Spouse and Children: Upon the death of an active Employee or of a retired Participant benefits shall be paid to the Surviving Spouse or surviving children, if any, as follows:

[i] If a retired Participant has elected the normal form of benefit upon retirement, a monthly benefit shall be paid to the Surviving Spouse for life in an amount equal to 2/3 of the Participant's accrued benefit as of the date of death but such benefit shall not be less than $50 per month.

[ii] If a retired Participant has elected the optional form of benefit of the Actuarial Equivalent 100 percent for both Participant and Surviving Spouse at retirement, a monthly benefit will be paid to the Surviving Spouse of 100% of the benefit payable continuing for the remaining life of the survivor.

[iii] A monthly benefit will be paid to the Surviving Spouse of an active Employee for life in an amount equal to the monthly benefit that would have been paid to the Surviving Spouse if the Participant had retired the day before his death with actuarially equivalent

benefits payable in the form of an annuity for the joint life expectancy of the Participant and the Participant's spouse with 100% of the benefit payable during their joint lives continuing for the remaining life of the survivor. Alternatively, a Surviving Spouse of an active Employee who dies prior to August 1, 2010 may elect in writing within 90 days after the Participant's death to have the benefit payable under this subsection [iii] payable in an actuarially equivalent single sum payment. Any benefit payable under this subsection [iii] shall be reduced by the actuarially equivalent value of any benefits paid to the Participant before death under Section 6.2, 6.3, or 6.5.

[iv] The Surviving Spouse of a retired Participant shall receive the form of benefit as selected by the Participant upon Retirement. If the retired Participant elected at retirement the single sum cash payment, no benefit will be due the Surviving Spouse.

[v] A benefit of $10 per month shall be paid on behalf of each surviving child until he child attains the age of 18 to the parent of the surviving child or if no parent is surviving then to the guardian of the surviving child.

[vi] If a retired participant has elected the optional form of benefit of the single life annuity with 120 payments guaranteed, the guaranteed monthly benefit will be paid to the participant's beneficiary for the remainder of the 120 month payment term.

[vii] If a retired participant has elected to receive 9 equal annual installments, and such participant dies before receiving all 9 payments, any remaining annual installment payments will be paid to the participant's beneficiary.

[b] Minimum Benefit: The benefits paid under this Section 6.6 to a Participant's Surviving Spouse and Children will not be less than the total amount of the Participant's Employee Contributions plus Earnings, reduced by any benefits paid to the Participant under Section 6.2 or Section 6.5. Any remainder payable under this subsection will be paid to the estate of the Participant. (Ord. No. 1265 §1; Ord. No. 1279 § ; Ord. No. 1384 §3 & 7 & 8)

Section 32.08.670 Designation of Beneficiary.

Each Participant will designate a Beneficiary to receive any aggregate minimum benefits payable under section 6.8 upon his death on the form prescribed by and delivered to the Board of Trustees. The Participant will have the right to change or revoke a designation at any time by filing a new designation or notice of revocation with the Board of Trustees.

If a Participant fails to designate a Beneficiary before his death, or if no Designated Beneficiary survives the Participant, the Board of Trustees will direct the Trustee to pay any benefit first to his Surviving Spouse, if any, or if none, then to his personal representative. If no personal representative has been appointed, and if the benefit does not exceed the minimum amount for which an estate or inheritance tax release or appointment of a personal representative is required under applicable state law the Board of Trustees may direct the Trustee to pay the benefit to such person as may be entitled to it under the laws of the state in which the Participant was domiciled at the date of his death. The Board of Trustees may require such proof of right or identity as he may deem necessary. If the benefit exceeds the minimum amount for which an estate or inheritance tax release or appointment of a personal representative is required under applicable state law, the Board of Trustees may direct the Trustee to hold the benefits in a segregated account until such time as the Trustee is notified that a personnel representative has been appointed. (Ord. No. 1265 §1.)

Section 32.08.680 Minimum Aggregate Benefits.

In no event shall the total benefits payable under this Plan in respect to a given Participant be less than the total contributions made by such Participant plus Earnings. If the total aggregate benefit paid to the Participant and to his eligible Surviving Spouse and/or Children would otherwise be less than the total contributions made by the Participant, the difference shall be paid to the Participant's named beneficiary or if none then to the Participant's estate. (Ord. No. 1265 §1.)

Section 32.08.690 Other Distribution Rules.

[a] Spendthrift Trust Provisions: Except for benefits payable under Section 7.5 in accordance with the applicable requirements of a Qualified Domestic Relations Order, all amounts payable by the Plan will be paid only to the person entitled to them, all such payments will be paid directly to such person and not to any other person or corporation and no benefit or interest under this Plan will be subject to assignment or alienation, either voluntarily or involuntarily. Payments will not be subject to the claim of any creditor of a Participant, nor may payments be taken in execution by attachment or garnishment or by any other legal or equitable proceedings. No person will have any right to alienate, anticipate, commute, pledge, encumber, or assign any payments or benefits that he may expect to receive, contingently or otherwise, under this Plan, except the right to designate a Beneficiary or Beneficiaries.

[b] Participant Or Beneficiary Whose Whereabouts Are Unknown: In the case of any Participant or Beneficiary whose whereabouts are unknown, the Board of Trustees will notify the Participant or Beneficiary at his last known address by certified mail with return receipt requested advising him of his right to a pending distribution. If the Participant or Beneficiary cannot be located in this manner, the Board of Trustees may direct the Trustee to forfeit the Accrued Benefit. If a claim for forfeited Accrued Benefits is subsequently made by the Participant or Beneficiary, the amount forfeited, unadjusted for earnings or interest, will be restored.

[c] Minors or Persons of Unsound Mind. If the person designated to receive payments is a minor or a person of unsound mind, whether formally so adjudicated or not, the Trustee, upon receipt of instructions from the Board of Trustees, may make payment to the person's legal representative or legal guardian, and the receipt by any such person will be a full and complete discharge of the Plan for any sums paid.

[d] Suspension of Benefit Payments: If a retired Participant is re-employed by the City for the performance of light duty, payment of benefits under this Plan will be suspended until the Participant terminates employment provided, however, that the President of the Board of City Commissioners may assign any Employee of the City, other than policemen, retired under the provisions of this Article, to the performance of light duties in the City. The salary received by any such person so assigned for light duty plus the pension received under the terms and provisions of this Article shall not exceed the regular pay for such duties.

[e] Withdrawals: No Participant may withdraw any part of his Accrued Benefit while employed. (Ord. No. 1265 §1.)

Section 32.08.692 Eligible Rollover Distributions.

This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

[a] Eligible Rollover Distribution: An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:

[1] any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more; or

[2] any distribution to the extent such distributions is required under Code Section 401(a)(9); and

[3] the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities).

[4] Modification of definition of eligible rollover distribution to include after-tax employee contributions. For purposes of the direct rollover provisions in section 6.10 of the Plan, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

[b] Eligible Retirement Plan: An Eligible Retirement Plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a) that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the Surviving Spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

[1] Modification of definition of eligible retirement plan: For purposes of the direct rollover provisions in section 6.10 of the Plan, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.

[c] Distributee: A Distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's Surviving Spouse and the Employee's of former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are Distributees with regard to the interest of the spouse or former spouse.

[d] Direct Rollover: A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee. (Ord. No. 1265 §1.)

Section 32.08.694 Retiree Benefits.

As of January 1, 2000, the monthly retirement benefit payable to each Eligible Retiree will be increased by 6%. For purposes of this paragraph only, an Eligible Retiree is a Participant or the surviving spouse of a Participant who is receiving as of January 1, 2000 monthly retirement benefits from this Plan. (Ord. No. 1265 §1.)

Section 32.08.710 Appointment of Board Trustees.

The Board of Trustees for management of the City Employees' Pension Plan shall consist of the President of the Board of City Commissioners, the City Administrator, two persons elected by and from the City Employees who are currently participating and one person elected by and from the Park District Employees who are currently participating. No Employee shall be eligible for election until he or she has

completed eight Years of Service. The election shall be held on the second Tuesday in September . Each elected member shall serve for a term of four years; with one member being elected at each biennial election The term of elected members shall commence on January 1 of the year following the election of said member. The President of the Board of City Commissioners shall be the President and the City Administrator shall be the Treasurer of the Board. The faithful performance of the duties of the Treasurer shall be secured by his official bond as the City Administrator. Such trustees shall receive no compensation for the services as members of the Board. Such Board shall have such powers and perform such duties as may now or hereafter be provided by law and by the Plan. (Ord. No. 1265 §1.)

Section 32.08.720 Information to be made available to Board of Trustees.

The City will provide the Board of Trustees with access to information the Board of Trustees requires. If required information is not available from the City's records, the Board of Trustees may obtain the information from the Participants. The Board of Trustees and the City may rely on and will not be liable for any information that an Employee provides either directly or indirectly. (Ord. No. 1265 §1.)

Section 32.08.730 Duties and Powers of Board of Trustees.

[a] General: The Board of Trustees will have full discretionary authority to decide all questions arising in the administration, interpretation, and application of the Plan and Trust, including all questions relating to eligibility and distributions, except as may be reserved under this Plan to the City. The Board of Trustees from time to time will direct the Trustee concerning the payments to be made out of the Plan assets pursuant to this Plan.

[b] Employment of Advisers and Persons To Carry Out Responsibilities: The Board of Trustees may employ one or more persons to render advice with regard to any responsibility the Board of Trustees has under the Plan and may employ one or more persons (including the Trustee) to carry out any of its responsibilities under the Plan.

[c] Keeping of Records: The Board of Trustees will keep such records as may be necessary or advisable in his judgment for the administration of this Plan and Trust. (Ord. No. 1265 §1.)

Section 32.08.740 Notices from Participants.

Whenever provision is made in the Plan that a Participant may exercise any option or election or designate any Beneficiary, the action of the Participant will be evidenced in writing on the forms provided by the Board of Trustees, if a form is provided, signed by the Participant and delivered to the Board of Trustees in person or by mail. Written notice will not be effective until received by the Board of Trustees. (Ord. No. 1265 §1.)

Section 32.08.750 Qualified Domestic Relations Orders.

[a] Definitions:

[1] Alternate Payee means any Spouse, former Spouse, child, or other dependent of a Participant who is recognized by a Qualified Domestic Relations Order as having a right to receive all, or a portion of, the benefits payable under a Plan with respect to the Participant.

[2] Earliest Retirement Age means, for purposes of this section only, the earlier of [i] the date the Participant is entitled to a distribution under the Plan or [ii] the later of the date the Participant attains age 50 or the earliest date on which the Participant could begin receiving benefits under the Plan if the Participant separated from service.

[3] Qualified Domestic Relations Order means an order that creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits otherwise payable to a Participant under the Plan. A Qualified

Domestic Relations Order includes any judgment, decree, or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or marital property rights to a Spouse, Former Spouse, child, or other dependent of a Participant, and is made pursuant to a State domestic relations law (including a community property law). To qualify, the domestic relations order must:

[A] clearly state the name and last known mailing address of the Participant and the name and mailing address of each Alternative Payee covered by the order;

[B] clearly state the amount or percentage of the Participant's benefits to be paid by the Plan to each Alternate Payee, or the manner in which the amount or percentage is to be determined;

[C] clearly state the number of payments or period to which the order applies;

[D] identify each Plan to which the order applies;

[E] not require the Plan to provide any type or form of benefits, or any option, not otherwise provided under the Plan;

[F] not require the Plan to provide increased benefits (determined on the basis of actuarial value); and

[G] not require the payment of benefits to an Alternate Payee that are required to be paid to another Alternate Payee under another order previously determined to be a Qualified Domestic Relations Order.

[b] Payment of Benefits Under A Qualified Domestic Relations Order: Section 6.10[a] will not apply to prevent payment of benefits to an Alternate Payee under the terms of a Qualified Domestic Relations Order. In the case of any distribution before a Participant has separated from service, a Qualified Domestic Relations Order will not fail to meet the requirements of subparagraph [E] above solely because the Order requires that payment of benefits be made to an alternate payee [A] on or after the date the Participant attains the Earliest Retirement Age, [B] as if the Participant had retired on the date on which such payment is to begin under the Order, and [C] in any form in which benefits may be paid under the Plan to the Participant (other than in the form of a Qualified Joint and survivor Annuity with respect to the Alternate Payee and his subsequent spouse. A person who is an Alternate Payee under a Qualified Domestic Relations Order will be considered a Beneficiary under the Plan.

[c] Procedures: The Board of Trustees will establish reasonable procedures for determining the qualified status of a domestic relations order. The procedures:

[1] will be in writing;

[2] will provide that each person specified in a Domestic Relations Order as entitled to payment of Plan benefits will be notified of the procedures promptly upon receipt of the Order by the Plan; and

[3] will permit an Alternate Payee to designate a representative for receipt of copies of notices that are sent to the Alternate Payee. Within a reasonable period of time after receipt of an order, the Board of Trustees will determine whether the order is a Qualified Domestic Relations Order and notify the Participant and each Alternate Payee of the determination. During any period in which the issue of whether a domestic relations order is a Qualified Domestic Relations Order is being determined, the Board of Trustees will segregate, in a separate account, any otherwise distributable amounts that would have been payable to the Alternate Payee during the period if the order had been determined to be a Qualified Domestic Relations Order. If, within 18 months the order is determined not to be a Qualified Domestic Relations Order or the issue as to whether the order is a Qualified Domestic Relations Order is not resolved, then the Board of Trustees may pay the segregated amounts to the person or persons who would have been entitled to those amounts if there had been no order. If a plan fiduciary acts in accordance with the fiduciary responsibility provisions of the Plan, then the Plan's obligation to the Participant and each Alternate Payee is discharged to the extent of any payment made. (Ord. No. 1265 §1.)

Section 32.08.810 Investment of Plan Assets.

The duty of the Trustee is to hold in trust the funds it receives. The Trustee in accordance with the instructions of the Board of Trustees, will have exclusive authority and discretion to manage and control the assets of the Plan and to manage, invest, and reinvest the Trust Fund and the income from it under this Article, without distinction between principal and income. The Trustee will make payments and distributions from the Trust Fund in accordance with the terms of this Plan and instructions of the Board of Trustees. The Trustee will be responsible only for sums that it actually receives as Trustee plus net gains on such amounts. The Trustee will have no duty to collect any sums from the Board of Trustees, City, or from a Participant. (Ord. No. 1265 §1.)

Section 32.08.820 Records.

The Trustee will keep full records of its administration of the Plan assets. (Ord. No. 1265 §1.)

Section 32.08.830 Administrative Powers of the Trustee.

Subject to the requirements imposed by law, the Trustee will have all powers necessary or advisable to carry out the provisions of this Plan and Trust and all inherent, implied, and statutory powers now or subsequently provided by law, including specifically the power to do any of the following:

[a] to invest or reinvest any and all money or property of any description at any time held by the Trustee and constituting assets of the Plan, without previous application to, or subsequent ratification of, any court, tribunal or commission, or any federal or state governmental agency, in real property and all interests in real property, in bonds, notes, debentures, mortgages, commercial paper, preferred stocks, common stocks, or other securities, rights, obligations, or property, real or personal, including shares or certificates of participation issued by regulated investment companies or regulated investment trusts, shares or units of participation in qualified common Trust Funds, in qualified pooled funds, including Common Trust Funds or pooled funds maintained by the Trustee, or in pooled investment funds of an insurance Company qualified to do business in the state, group annuity contracts and with any federally insured bank or savings and loan association, and if the Trustee is a bank or similar financial institution supervised by the United States or a state, in its own deposits, savings accounts, and certificates of deposit;

[b] to cause any securities or other property to be registered and held in its name as Trustee, or in the name of one or more of its nominees, without disclosing the fiduciary capacity, or to keep the same in unregistered form payable to bearer;

[c] to sell, grant options to sell, exchange, pledge, encumber, mortgage, deed in trust, or use any other form of hypothecation, or otherwise dispose of the whole or any part of the Trust Fund on such terms and for such property or cash, or part cash and credit, as it may deem best; to retain, hold, maintain, or continue any securities or investments that it may hold as part of the Trust Fund for as long as it deems advisable; and generally, in all respects, to do all things and exercise each and every right, power, and privilege in connection with and in relation to the Trust Fund as could be done, exercised, or executed by an individual holding and owning such property in absolute and unconditional ownership;

[d] to abandon, compromise, contest, and arbitrate claims and demands; to institute, compromise, and defend actions at law (but without obligation to do so); in connection with such powers, to employ counsel the Trustee deems advisable; and to exercise such powers all at the risk and expense of the Trust Fund;

[e] to borrow money for this Trust on the terms and conditions the Trustee deems advisable, and to secure repayment by the mortgage or pledge of any assets of the Trust Fund except insurance contracts;

[f] to vote in person or by proxy any shares of stock or rights held in the Trust Fund; to participate in and to exchange securities or other property in reorganization, liquidation, or dissolution of any corporation, the securities of which are held in the Trust Fund;

[g] to pay any amount due on any loan or advance made to the Trust Fund, to charge against and pay from the Trust Fund all taxes of any nature levied, assessed, or imposed upon the trust fund, and to pay all reasonable expenses and attorney fees necessarily incurred by the Trustee with respect to any of the foregoing matters; and

[h] to act pursuant to written blanket settlement authorization given by the City or the Participant on any transaction executed by the designated broker. The Trustee is authorized to honor all trade confirmations received according to the terms of the instructions relating to the conduct of business in the plan as previously provided to the designated broker. (Ord. No. 1265 §1.)

Section 32.08.840 Allocated Earnings Account.

A separate account shall be maintained by the Trustee for Allocated Earnings of each Participant to whom earnings were allocated under plan provisions in effect prior to January 1, 1992. The assets of the trust will be valued annually at fair market value as of the last day of the Plan Year and at any other dates determined by the Board of Trustees to be appropriate. On each valuation date, the earnings and losses of the trust attributable to the Allocated Earnings Accounts will be allocated to each Participant's Allocated Earnings Account in the ratio that each Participant's Allocated Earnings Account balance bears to all such Account balances. (Ord. No. 1265 §1.)

Section 32.08.850 Organization and Operation of Office of Trustee.

The Trustee(s) may adopt the procedures deemed desirable for the conduct of its affairs and may appoint agents any of whom may be an officer or Employee of the City. Any person dealing with the Trustee(s) may rely on a certificate or memorandum signed by the Trustee, or by any one Trustee if more than one Trustee is appointed, as evidence of any action taken by the Trustee(s). (Ord. No. 1265 §1.)

Section 32.08.860 Advice of Counsel.

The Trustee may consult with legal counsel, who may be counsel for the City or Trustee's own counsel, with respect to the meaning or construction of the Plan and Trust or Trustee's obligation or duties. The cost of any consultation will be an expense of the Plan and will be paid by the Plan unless paid by the City. The Trustee will be protected from any responsibility with respect to any action taken or omitted by it in good faith pursuant to the advice of counsel, to the extent permitted by law. (Ord. No. 1265 §1.)

Section 32.08.870 Appointment, resignation, removal and substitution of Trustee.

The City will appoint a Trustee or Trustees, each of which will hold office until resignation or removal by the City. The Trustee may resign at any time upon 30 days' written notice to the City. The Trustee may be removed at any time by the City upon 30 days' written notice to the Trustee with or without cause. Upon resignation or removal of the Trustee, the City will appoint a successor Trustee that will have the same powers and duties as are conferred upon the Trustee appointed under this Plan. The resigning or removed Trustee will deliver to its successor Trustee all property of the Trust Fund, less a reasonable amount necessary to provide for its compensation, expenses, and any taxes or advances chargeable or payable out of the Trust Fund. If the Trustee is an individual, death will be treated as a resignation, effective immediately. If any corporate Trustee at any time is merged, or consolidated with, or sells or transfers substantially all of its assets and business to another corporation, whether state or federal, or is reorganized or reincorporated in any manner, then the

resulting or acquiring corporation will be substituted for the corporate Trustee without the execution of any instrument and without any action on the part of the City, any Participant or Beneficiary, or any other person having or claiming to have an interest in the Trust Fund or under the Plan. (Ord. No. 1265 §1.)

Section 32.08.910 Amendments to Plan and Trust.

At any time the City may amend the Plan. An amendment will be effective as of the date specified by the City, or if no date is specified, then on the first day of the Plan Year during which it is adopted. Except as may be permitted by regulations, no amendment to the Plan (including a change in the actuarial basis for determining optional or early retirement benefits) will be effective to the extent that it has the effect of decreasing a Participant's Accrued Benefit. (Ord. No. 1265 §1.)

Section 32.08.920 Termination of Plan and Trust.

The City expects to continue this Plan and Trust indefinitely, but the continuance of the Plan and Trust is not assumed as a contractual obligation by the City and the right is reserved to the City to terminate this Plan and Trust in whole or part at any time. Termination of the Plan and Trust will take effect as of the date specified by the City's written notice of the termination which shall be given by the City to the Trustee and the Sponsor. At any time after termination of the Plan and Trust, but not before receipt of instructions from the Board of Trustees, the Trustee may distribute the interest of any Participant to him under Article VII. The Board of Trustees will file such terminal reports as are required. The Board of Trustees may request appropriate rulings as to qualification upon termination. Termination of this Plan and Trust by the City will not re-vest any part of the Trust Fund in the City; provided, however, that any assets that remain after the Plan is terminated and all Accrued Benefits have been paid will be returned to the City upon written notice by the City to the Trustee. (Ord. No. 1265 §1.)

Section 32.08.930 Merger, Consolidation, or Transfer of Assets or Liabilities of the Plan.

The City may merge or consolidate this Plan with any other plan and may transfer all or part of the assets or liabilities of the Plan to, or to this Plan from, any other plan. (Ord. No. 1265 §1.)

Section 32.08.940. Distribution Upon Termination of Trust.

If the Plan Trust is terminated Accrued Benefits to the extent funded will be distributed in accordance with the provisions of Article VI. (Ord. No. 1265 §1.)

Section 32.08.1010 Text to Control.

The headings of articles and sections are included solely for convenience of reference. If any conflict between any heading and the text of this Plan and Trust exists,, the text will control. (Ord. No. 1265 §1.)

Section 32.08.1020 Severability.

If any provision of this Plan and Trust is illegal or invalid for any reason, such illegality or invalidity will not affect the remaining provisions. On the contrary, the remaining provisions will be fully severable, and this Plan and Trust will be construed and enforced as if the illegal or invalid provisions never had been inserted in this agreement. (Ord. No. 1265 §1.)

Section 32.08.1030 Jurisdiction.

This Plan will be construed and administered under the laws of the State of North Dakota when the laws of that jurisdiction are not in conflict with federal substantive law. (Ord. No. 1265 §1.)

Section 32.08.1040 Forum Selection.

Any claims or disputes involving the Plan shall be litigated only in North Dakota and to the extent not preempted by federal law, North Dakota statutory and common law shall control during litigation. The litigants expressly waive any right they have to institute or conduct litigation in any other forum or location. (Ord. No. 1265 §1.)

Section 32.08.1050 Expenses.

The expenses of the Plan and Trust shall be paid from Plan assets unless, in its discretion the City elects to pay some or all of the Plan expenses. (Ord. No. 1265 §1.)

Section 32.08.1060 Rules of Construction.

The masculine gender will include the feminine, and the singular will include the plural. (Ord. No. 1265 §1.)

Article 32.12 City of Dickinson Police Employee's Pension Plan and Trust

Sections:

32.12.00E Editor's note to Article 32.12
32.12.100 Definitions.
32.12.210 Participation.
32.12.220 Transfers.
32.12.230 Termination of Participation.
32.12.240 City's Obligations.
32.12.250 Uniformed Services Employment and Reemployment Rights Act and Family Medical Leave Act.
32.12.310 City Contributions.
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32.12.430 Plan Termination.
32.12.510 Limitation on Allocations Definitions.
32.12.520 Limitations on Benefits.
32.12.610 Accrued Benefit.
32.12.620 Retirement Benefits.
32.12.630 Form of Benefit.
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32.12.650 Termination of Employment.
32.12.660 Death Benefits.
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32.12.680 Minimum Aggregate Benefits.
32.12.690 Other Distribution Rules.
32.12.692 Eligible Rollover Distributions.
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32.12.710 Appointment of Board of Trustees.
32.12.720 Information to be made available to Board of Trustees.
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32.12.740 Notices from Participants.
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32.12.830 Administrative Powers of the Trustee.
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32.12.850 Organization and Operation of Office of Office of Trustee.
32.12.860 Advice of Counsel.
32.12.870 Appointment, Resignation, Removal, and Substitution of Trustee.
32.12.910 Amendments to Plan and Trust.
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32.12.930 Merger, Consolidation or Transfer of Assets or Liabilities of the Plan.
32.12.940 Distribution Upon Termination of Trust.
32.12.1010 Test to Control.
32.12.1020 Severability.
32.12.1030 Jurisdiction.
32.12.1040 Forum Selection.

32.12.1050 Expenses.
32.12.1060 Rules of Construction.

Section 32.12.00E Editor's note to Article 32.12

For state law as to authority of city to adopt an employee pension system by ordinance, see NDCC, § 40-05-01 (70).

Section 32.12.100 Definitions

When used in this Plan, the following words will have the following meanings, unless the context clearly indicates otherwise:

1.1 Actuarial Equivalent or Actuarially Equivalent means a payment or a series of payments that has the same present value computed on the basis of the following interest rate and mortality assumptions:

[i] Interest Rate: 8% pre-retirement and 6% post-retirement

[ii] Mortality Table: 1983 IAM with six year setback

[iii] Notwithstanding any other Plan provisions to the contrary, the applicable mortality table used for purposes of adjusting any benefit or limitation under Code Section 415(b)(2)(B), (C) or (D) and the applicable mortality table used for purposes of satisfying the requirements of Code Section 417(e) is the table described in Revenue Ruling 2001-62. For any distribution with an annuity starting date on or after the effective date of this Section and before the adoption date of this Section, if application of the amendment as of the annuity starting date would have caused a reduction in the amount of any distribution, such reduction is not reflected in any payment made before the adoption date of this section. However, the amount of any such reduction that is required under Code Section 415(b)(2) must be reflected actuarially over any remaining payments to the Participant.

1.2 Beneficiary means the person who, under this Plan becomes entitled to receive a Participant's interest upon the Participant's death.

1.3 Board of Trustees means the Board designated by the Plan in Article VII whose duties and responsibilities are specified in this Plan.

1.4 City means the City of Dickinson, North Dakota.

1.5 Code means the Internal Revenue Code of 1986, as it presently is constituted, as it may be amended, or any successor statute of similar purpose.

1.6 Compensation, for all pay received after December 31, 1999, means all pay received by an Employee during the calendar year, except special bonuses or severance upon separation, mileage or any other form of expense reimbursement. Compensation includes only compensation that is actually paid to the Participant during the calendar year.

Compensation, for all pay received on or before December 31, 1999, means the annual salary approved for each Employee in the city's annual budget for the calendar year. Compensation does not include longevity pay, overtime, mileage, or any other form of additional compensation. Compensation includes only compensation that is actually paid to the Participant during the calendar year.

Pursuant to Code Section 401(a)(17), Compensation taken into account for all purposes under this Plan shall not exceed [A] $200,000 (as adjusted by the Secretary of the Treasury for cost of living increases each year) for any Plan Year ending prior to January 1, 1996, and [B] $150,000 (as adjusted by the Secretary of the Treasury for cost of living increases each year) for any Plan Year beginning on or after January 1, 1996. If Compensation is determined for any period of fewer than 12 months, the Code Section 401(a)(17) limitation will be multiplied by a fraction, the numerator of which is the number of calendar months in the determination period and the denominator of which is 12.

Increase in limit. The annual compensation of each Participant taken into account in determining benefit accruals for any Plan Year beginning after December 31, 2001, shall not exceed $200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). Annual Compensation means Compensation during the Plan Year or such other consecutive 12-month period over which Compensation is otherwise determined under the Plan (the determination period). For purposes of determining benefit accruals in a Plan Year beginning after December 31, 2001, compensation for any prior determination period shall not exceed $200,000 (as adjusted) for any Plan Year ending before January 1, 1996; $150,000 for any determination period beginning in 1996; $160,000 for any determination period beginning in 1997, 1998, or 1999; and $170,000 for any determination period beginning in 2000 or 2001.

Cost-of-living adjustment. The $200,000 limit on annual compensation in the preceding paragraph shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

If Compensation for any prior determination period is taken into account in determining a Participant's benefits for the current Plan Year, the Compensation for such prior determination period is subject to the applicable Annual Compensation Limit in effect for that prior period. For this purpose, in determining benefits in Plan Years beginning on or after January 1, 1989 and before January 1, 1996, the Annual Compensation Limit in effect for determination periods beginning before that date is $200,000. For this purpose, in determining benefits in Plan Years beginning after January 1, 1996, the Annual Compensation Limit in effect for determination periods beginning before that date is $150,000 as adjusted by the Secretary of the Treasury for increases in the cost of living in accordance with Code Section 401(a)(17)(B).

Unless otherwise provided under the Plan, the Accrued Benefit of each Section 401(a)(17) Employee under the Plan will be the sum of:

[a] the Participant's Accrued Benefit as of December 31, 1995, frozen in accordance with Reg. ' 1.401(a)(4)-13, and

[b] the Participant's Accrued Benefit determined under the benefit formula applicable for the Plan Year beginning on or after January 1, 1996, as applied to the Participant's Years of Benefit Service credited for Plan Years beginning on or after January 1, 1996, for purposes of benefit accruals.

A Section 401(a)(17) employee means an employee whose current accrued benefit as of a date on or after the first day of the first Plan Year beginning on or after January 1, 1996, is based on compensation for a year beginning prior to the first day of the first Plan Year beginning on or after January 1, 1996 that exceeded $150,000.

For limitation years beginning after December 31, 1997, Compensation paid or made available during such limitation year shall include any elective deferral (as defined in Code section 402(g) (3)), and any amount which is contributed or deferred by the employer at the election of the employee and which is not includable in the gross income of the employee by reason of Code sections 125 or 457.

For limitation years beginning on and after January 1, 2001, Compensation paid or made available during such limitation year shall include elective amounts that are not includable in the gross income of the employee by reason of Code Section 132(f)(4) (qualified transportation benefits).

1.7 Earnings means for Employee contributions, [A] interest credited at the rate of 5% compounded annually from the date contributions are made to January 1, 2000, or, if earlier, to the date payment of benefits begins; and [B] interest compounded annually and credited at a rate that reflects the annual net earnings amount realized on investment of the Plan assets from the later of January 1, 2000 or the date contributions are made to the date payment of benefits begin.

1.8 Effective Date means April 1, 1969. The effective date of this amended and restated Plan is January 1, 1989 for provisions required by law to be effective as of that date or as of the date required if an earlier effective date is required or as of the date specified for any provision for which a different effective date is specified.

1.9 Employee means every permanent and probationary regular full-time Employee who is a police department employee.

"Leased Employee" means any person (other than an Employee of the City) who has performed services of the City (or for the City and related persons as determined under Code Section 414(n)(6)) under an agreement between the City and the leasing organization on a substantially full-time basis for a period of at least one year, and, prior to 1997, such services were of a type historically performed by the Employees in the business field of the City, or, if after 1996, such services are performed under the primary direction or control by the City.

1.10 Final Average Compensation means the average of a Participant's Total Basic Compensation for five years that will result in the highest average.

1.11 Normal Retirement Age means the date a Participant attains age 55 and has completed fifteen (15) years of Service, or has completed thirty (30) years of service.

1.12 Plan Year means the 12-consecutive-month period commencing on January 1 and ending on December 31 of each year. The Plan Year will also be the fiscal (taxable) years of the Trust.

1.13 Retirement means the last day of the month in which a Participant attains either his Normal Retirement Age or Early Retirement Age and benefits under the Plan are immediately payable.

1.14 Surviving Children means the surviving issue of a Participant or a child or children legally adopted by a Participant.

1.15 Surviving Spouse means the Spouse to whom the Participant was married on the date of the participant's termination of employment.

1.16 Total Basic Compensation means the annual salary approved for each Employee in the City's annual budget for the Plan Year. Total Basic Compensation does not include longevity pay, overtime, mileage or any other form of additional compensation.

1.17 Total Disability means to become, while in the service of the City, mentally or physically, totally and permanently disabled from discharging his duties.

The question of Total and Permanent Disability shall be determined by the Trustees upon the concurring report of at least two out of three physicians designated by the Board of Trustees to make a complete physical examination of the Employee. The Trustees shall have the power at any time to cause an Employee of the police department, retired by reason of physical or mental Disability, to be brought before it and again examined by three physicians appointed by the Board of Trustees to discover whether such retired Employees shall be continued on the disability pension roll. Such Employees shall be entitled to reasonable notice that such examination will be made and to be present at the time of the taking of any testimony pertinent thereto.

Thereafter the police department shall submit to the Trustees annual notice of employment status and medical examination not later than October 1 of each year. Such annual notice shall include the employment status and medical status of Employee in such form as the Trustees shall determine.

Failure to comply with the requirements set forth shall result in suspension on any disability retirement benefit payments until such time as this section is complied with, or shall result in the termination of disability retirement benefits.

1.18 Trustee means the individual(s) or institution appointed by the Board of Trustees as Trustee(s).

1.19 Year of Service means each Plan Year and fractional year of employment with the City for which a Participant receives credit under the terms of this Plan. (Ord. No. 1266, § 1.; Ord. No. 1290 § 1.)

Section 32.12.210 Participation.

Except as otherwise provided in the special rules below, an Employee will become a Participant as of the date the Employee becomes an Employee. The following special rules apply:

[a] If a Plan is amended, any Employee who is already a Participant on the date this amended and restated Plan is adopted will continue to participate.

[b] If an Employee who is not a member of an eligible class of Employees becomes a member of an eligible class, the Employee will participate immediately.

[c] Upon reemployment, or upon returning to employment in a category of Employees that is eligible to participate, a former Participant or former Employee will become a Participant immediately.

No individual who has become a Participant prior to April 18, 2006, shall become a Participant after April 17, 2006. Notwithstanding the foregoing if an individual was a Participant in the City of Dickinson Pension Plan, such individual shall be eligible to become a Participant under this Plan if the individual meets the eligiblity requirements of this Plan.

(Ord. No. 1266, § 1; Ord. No. 1313 §2.)

Section 32.12.220 Transfers.

If an individual who has been employed by the City of Dickinson becomes an Employee of the police department and a Participant in this Plan, the benefit accrued by the Participant under the City of Dickinson Pension Plan will be transferred to this Plan. If a Participant in this Plan becomes a City of Dickinson employee and ceases to be a police department employee and becomes a Participant in the City of Dickinson Pension Plan, the Participant's benefit accrued under this Plan shall be transferred to the City of Dickinson Pension Plan.

The employee shall be subject to the terms of the Pension Plan, including its obligations and benefits, in which the employee was enrolled at the time of retirement. (Ord. No. 1266, § 1; Ord. No 1382 §2)

Section 32.12.230 Termination of Participation.

Participation will cease upon complete distribution of a Participant' s vested Accrued Benefit and forfeiture of the Participant' s non-vested Accrued Benefit. (Ord. No. 1266, § 1.)

Section 32.12.240 City's Obligations.

Neither participation in the Plan nor the City's adoption and continuance of the Plan will be deemed to constitute a contract between the City and any Employee or Participant, nor to be a consideration for, or an inducement or condition of, the employment of any person. Nothing in this Plan will be deemed to give any Employee or Participant the right to be retained in the employ of the City, or to interfere with the right of the City to discharge any Employee or Participant at any time, nor will it be deemed to give the City the right to require the Employee or Participant to remain in its employ, nor will it interfere with the right of any Employee or Participant to terminate his employment at any time. In adopting this Plan, the City does not make any representation as to the amount of the contribution that it will make for any year other than as recommended by the actuary employed by the Plan. Except insofar as the City fails to make contributions to this Plan adequate to fund the Plan on a sound actuarial basis, the City assumes no liability or responsibility for direct payment of benefits. All benefits payable under this Plan will be paid or provided solely from the Trust Fund. (Ord. No. 1266, § 1.)

Section 32.12.250 Uniformed Services Employment and Reemployment Rights Act and Family Medical Leave Act.

Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u). Years of Service will be credited in accordance with the Family and Medical Leave Act of 1993. (Ord. No. 1266, § 1.)

Section 32.12.310 City Contributions.

For each Plan Year, the City will pay to the Trustee the contribution determined by the City.

[a] Cash: City Contributions must be paid in cash.

[b] Employee Contributions: Each Employee shall be required to contribute to the Plan monthly by payroll deduction an amount equal to 5% of the Employee's monthly salary. The required Employee Contributions shall be paid by the City in lieu of payment by the Employee and therefore shall be picked up by the City and within the meaning of Code Section 414(h)(2) shall be treated as City Contributions. No Employee shall have the option of having Employee Contributions paid to the Employee instead of having the required Employee Contribution paid by the City to the Plan.

[c] Forfeitures: City Contributions will be offset by any amounts forfeited under Section 6.5. Forfeitures will not be applied to increase benefits provided by the Plan unless benefits are increased by appropriate amendments. Forfeitures arising under this Plan will only be applied to reduce the contributions of the City.

[d] Actuarial Determination: For each Plan Year, the City will make contributions to the Plan in an amount adequate to fund the benefits provided in this Plan on a sound actuarial basis. The amount of contributions to the Plan will be recommended by the actuary employed by the Plan and determined by the City.

[e] Time and Form of Payment: City and Employee Contributions for any Plan Year may be paid to the Trustee in one sum or in several installments on any date or dates the City elects.

[f] Exclusive Benefit: This Plan and Trust has been established for the exclusive benefit of the Participants and their Beneficiaries. The corpus or income of the Trust may not be diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries. All contributions by the City to the Plan are conditional upon the qualification of the Plan.

At the City's written request to the Trustee specifying the assets to be liquidated to make the payment, any contribution made by the City because of a mistake of fact may be returned to the City within one year of the contribution.

In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, then at the City's written request to the Trustee specifying the assets to be liquidated to make the payment, any contribution made incident to that initial qualification by the City must be returned to the City within one year after the date the initial qualification is denied. (Ord. No. 1266, § 1.)

Section 32.12.410 Years of Service.

Years of Service will be credited as follows:

[a] Years of Service will be credited for the period beginning on the date the Employee becomes an Employee and ending on the date the Employee terminates employment. Fractional Years of Service will be credited by counting 1/12 of a Year of Service for each complete calendar month of the fractional year.

[b] Years of Service will be credited for period of military duty for participants covered by and who have complied with the Uniformed Services Employment and Reemployment Rights Act of 1994, as set forth in Chapter 43 of Title 38 United States Code, as currently set forth and as may hereafter be amended.

[c] Except as otherwise provided in subsection [b], Service will not be credited for any period during which an Employee is on leave of absence. Service will be credited for periods of vacation or sick leave duly granted.

[d] For purposes of vesting under Section 4.2 but not for purposes of benefit accrual under Section 6.1 Years of Service will be credited for any period during which an Employee or former Employee is employed by the City of Dickinson but is not a police department employee.

[e] Service will not be credited for any period of employment for which the Employee received a distribution under Section 6.5.

[f] For purposes of vesting and for purposes of determining eligibility for retirement but not for purposes of benefit accrual years of employment in an eligible class of employees will be counted as Years of service. (Ord. No. 1266, § 1.)

Section 32.12.420 Vesting of Participants' Benefits.

A Participant' s Accrued Benefit will become fully vested and non-forfeitable if he attains Normal Retirement Age while employed by the City. A Participant' s Employee contributions plus interest will be fully vested at all times. A Participant shall be vested in his Accrued Benefit attributable to Employer contributions in accordance with the following schedule:

Completed	Percentage of Benefit
Years of Service	That is Vested
Fewer than 4	0%
4 or more but fewer than 5	25%
5 or more but fewer than 6	50%
6 or more but fewer than 7	75%
7 or more	100%

(Ord. No. 1266, § 1.)

Section 32.12.430 Plan Termination.

Upon the termination or partial termination of this Plan, the rights of all affected Participants to the benefits accrued as of the date the termination or partial termination (to the extent funded as of such date) will be fully vested. (Ord. No. 1266, § 1.)

Section 32.12.510 Limitation on Allocations Definitions.

For purposes of this section 5.1, the following terms will be defined as follows:

[a] Annual Benefit: A retirement benefit under the Plan that is payable annually in the form of a straight life annuity. Except as provided below, a benefit payable in a form other than a straight life annuity must be adjusted to an Actuarially Equivalent straight life annuity before applying the limitations of this Article. The interest rate assumption used to determine Actuarial Equivalence will be the greater of the interest rate specified in the Plan for purposes of computing Actuarially Equivalent benefits or five percent. The Annual Benefit does not include any benefits attributable to Employee contributions or rollover contributions, or the assets transferred from a qualified plan that was not maintained by the City.

[b] Compensation: Compensation shall mean all of a Participant's Wages paid by the City as defined in section 3401(a) for the purposes of income tax withholding at the source.

For purposes of applying the limitations in this Article V, Compensation for the Limitation Year is Compensation actually paid or includible in gross income during the Limitation Year.

[c] Defined Benefit Dollar Limitation: The "defined benefit dollar limitation" is $160,000, as adjusted, effective January 1 of each year, under section 415(d) of the code in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies.

[d] Limitation Year: The Plan Year.

[e] Maximum Permissible Amount: : The "maximum permissible benefit" is the lesser of the defined benefit dollar limitation or the defined benefit compensation limitation (both adjusted where required, as provided in [1], and, if applicable, in [2] or [3] below.

[1] The Defined Benefit Dollar Limitation.

[2] If the Participant has fewer than 10 years of participation in the Plan, the defined benefit dollar limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of participation in the Plan and (ii) the denominator of which is 10. In the case of a Participant who has fewer than 10 years of service with the Company, the defined benefit compensation limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of service with the Company and (ii) the denominator of which is 10.

[3] If the benefit of a Participant begins prior to age 62, the defined benefit dollar limitation applicable to the Participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the Participant at age 62 (adjusted under [2] above, if required). The defined benefit dollar limitation applicable at an age prior to age 62 is determined as the lesser of (i) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in section 1.1 of the Plan and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate and the applicable mortality table as defined in section 1.1 of the Plan. Any decrease in the defined benefit dollar limitation determined in accordance with this paragraph [3] shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.

[4] If the benefit of a Participant begins after the Participant attains age 65, the defined benefit dollar limitation applicable to the Participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the Participant at age 65 adjusted under [2] above, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age 65 is determined as (i) the lesser of the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in section 1.1 of the Plan and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate assumption and the applicable mortality table as defined in section 1.1 of the Plan. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored. Benefit increases resulting from the increase in the limitations of section 415(b) of the Code shall be provided to all employees participating in the Plan who have one hour of service on or after the first day of the first limitation year ending after December 31, 2001.

Sections 5.1[e][3] and 5.1[e][4] shall not apply in the case of a "qualified participant" as defined in Section 415(b)(2)(H). For purposes of this Section 5.1[e] only, "qualified participant" means a participant in the Plan with respect to when the Years of Service used to determine the amount of benefit under the Plan includes at least 15 years of service of the Participant as either [x] a full-time employee of a police or fire department or [y] as a member of the United States Armed Forces.

[f] Year of Participation: The Participant shall be credited with a Year of Participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met: (1) The Participant is credited with a Year of Service, and (2) the Participant is included as a Participant under the eligibility provisions of the Plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a Year of Participation credited to the Participant shall equal the amount of benefit accrual service credited to the Participant for that accrual computation period. A Participant who is permanently and totally disabled within the meaning of Code Section 415(c)(3)(C)(i) for an accrual computation period shall receive a Year of Participation with respect to that period. In addition, for a Participant to receive a Year of Participation (or part thereof) for an accrual computation period, the Plan must be established no later than the last day of such accrual computation period. In no event will more than one Year of Participation be credited for any 12-month period.

[g] Effect on Participants: Benefit increases resulting from the increase in the limitations of section 415(b) of the Code will be provided only to active Participants who are credited with an hour of service on or after the first day of the first limitation year ending after December 31, 2001. (Ord. No. 1266, § 1.)

Section 32.12.520 Limitations on Benefits.

This section applies regardless of whether any Participant is or has ever been a Participant in another qualified plan maintained by the City. The Annual Benefit otherwise payable to a Participant at any time will not exceed the Maximum Permissible Amount. If the benefit of the Participant would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Amount, the rate of accrual will be reduced so that the Annual Benefit will equal the Maximum Permissible Amount. If a Participant has made nondeductible Participant contributions under the Plan, the amount of those contributions is treated as an Annual Addition to a qualified defined contribution plan, for purposes of this Article. The limitation in this section is deemed satisfied if the Annual Benefit payable to a Participant is not more than $1,000 multiplied by the Participant' s number of Years of Service or parts of Years of Service (not to exceed 10) with the City. (Ord. No. 1266, § 1.)

Section 32.12.610 Accrued Benefit.

[a] Accrued Benefit of a Participant Retiring On Or After January 1, 2000. The Accrued Benefit of a Participant retiring on or after January 1, 2000 will be an annual benefit payable in monthly payments and commencing at Normal Retirement Age and payable for the life of the Participant that is computed as follows, or, if greater, the Accrued Benefit, calculated under (b) below:

[1] 2.3 percent of Final Average Compensation multiplied by the number of full and remaining fractional Years of Service completed by the Participant; plus

[2] Any Benefit Accrued by the Participant under and transferred to the Plan from the City of Dickinson Pension Plan and Trust.

[b] Accrued Benefit of a Participant Retiring On Or After November 1, 1992 and before January 1, 2000: The Accrued Benefit of a Participant retiring on or after November 1, 1992 and before January 1, 2000, will be a monthly benefit commencing at Normal Retirement Age and payable for the life of the Participant that is computed as follows:

[1] For each full Year and completed month of Service a Participant will be credited with a monthly benefit equal to one-twelfth of three and seven-tenths percent of his Total Basic Compensation applicable to the period; plus

[2] Any Benefit Accrued by the Participant under and transferred to the Plan from the City of Dickinson Pension Plan and Trust.

[c] Accrued Benefit of A Participant Retiring Before November 1, 1992: The accrued benefit of a Participant who retired before November 1, 1992 will be increased as of November 1, 1992 to a monthly benefit commencing at the later of November 1, 1992 or Normal Retirement Age and payable for the life of the Participant that is computed as follows:

[1] For each full Year and completed month of Service before April 1, 1969 a Participant will be credited with a monthly benefit equal to one-twelfth of one and eighty-five one hundredths percent of his basic salary rate effective January 1, 1986 or, if earlier, the date the Participant terminated employment; plus

[2] For each full Year and completed month of Service after April 1, 1969 a Participant will be credited with a monthly benefit equal to one-twelfth of three and three-tenths percent of his Total Basic Compensation applicable to the period. (Ord. No. 1266, § 1.)

Section 32.12.620 Retirement Benefits.

[a] General Rules: A Participant's Accrued Benefit will be distributable upon death, Total Disability, Retirement, Termination of Employment, or at the Required Beginning Date.

[b] Normal Retirement: On the last day of the month in which a Participant attains his Normal Retirement Age, he may retire voluntarily or continue working subject to any mandatory retirement policy of the City otherwise permitted by law. Any Termination of Employment on or after the Participant attains Normal Retirement Age will be deemed to be a retirement. Until actual retirement a Participant may continue to participate in the Plan. Normal Retirement Benefit payments will begin as of the later of the Participant's Normal Retirement Age or the date the Employee retires but not later than the Required Beginning Date. There will be no actuarial adjustment for late commencement of payment for benefits commencing later than Normal Retirement Age.

[c] Early Retirement: An Employee who terminates employment with the City after completing at least 15 Years of Service may elect Early Retirement benefits. Payment of the Actuarial Equivalent of the Participant's Accrued Benefit payable at Normal Retirement Age may commence as of the date of the Participant's Early Retirement. Alternatively, the Participant may elect in writing filed with the Board of Trustees not later than the Participant's Early Retirement Date, to defer the commencement of Actuarially Equivalent benefit payments to a date later than the date of the Participant's retirement but not later than the Participant's Normal Retirement Date.

[d] Disability: An Employee who terminates employment with the City because of Total and Permanent Disability before attaining Early or Normal Retirement Age shall be paid Disability Retirement Benefits commencing as of the date of termination of employment. Disability Retirement Benefits shall be equal to the benefit accrued as of the date of disability retirement payable at Normal Retirement Age without actuarial reduction for the commencement of payment before Normal Retirement Age and without accrual of any additional benefit or Years of Service after the date of disability retirement but shall not be less than $50 per month. Any Disability Retirement Benefit payable under this Plan shall be reduced by the amount of any payment from the Workers Compensation Bureau made to the Employee because of the Total and Permanent Disability.

If the benefits received from the Workers Compensation Bureau exceed the Benefit the Employee would be entitled to under the Plan, no pension shall be paid from the Plan to the Employee during the time the Workers Compensation payments are being made. If settlement of State Workers Compensation payment shall be in a lump sum, such sum shall be apportioned in accordance with the

determination of the State Workers Compensation Bureau over a period of years for purposes of the offset against Plan benefits.

Payment of Disability Retirement Benefits will cease upon determination by the Board of Trustees that the Total and Permanent Disability has terminated. Any Normal or Early Retirement benefits that subsequently become payable will be reduced by the actuarial value of the Disability Retirement Benefit actually paid.

[e] Required Beginning Date. The Required Beginning Date is the April 1 of the calendar year following the calendar year in which occurs the later of [1] the date the Participant attains age 70 1/2, or [2] the date the Participant retires from employment with the Employer.

[f] Minimum Benefit: The benefits paid under this Section 6.2 will not in any event be less than the total amount of the Participant's Employee contributions plus Earnings. (Ord. No. 1266, § 1.)

Section 32.12.630 Form of Benefit.

The normal form of benefit under this Plan is a single life annuity for the life of the Participant. Effective for all Participants who commence benefits prior to August 1, 2010, the optional forms of benefit under this Plan are [a] a single sum cash payment that is the Actuarial Equivalent of the normal form of benefit; [b] the Actuarial Equivalent 100 percent benefit for both the Participant and surviving spouse, and [c] single life annuity for the life of the participant with 120 payments guaranteed. Effective for all Participants who commence benefits on or after August 1, 2010, the optional forms of benefit under this Plan are [a] the Actuarial Equivalent of the normal form of benefit, paid in 9 equal annual installments: [b] the Actuarial Equivalent 100 percent benefit for both the Participant and surviving spouse, and [c] single life annuity for the life of the participant with 120 payments guaranteed. The value of the amounts payable to the Participant and all beneficiaries in the ten-year certain form shall be the actuarial equivalent of the amounts payable to the Participant in the normal form. A Participant's Allocated Earnings Account balance shall be distributable as of the valuation date next following termination of employment in a single sum cash payment. (Ord. No. 1266, § 1; Ord. No. 1280 § 1, Ord. No. 1384 § 5)

Section 32.12.640 Required Distributions.

[a] All distributions required under this section will be determined and made in accordance with the proposed Regulations under Code Section 401(a)(9), including the minimum distribution incidental benefit requirement of Section 1.401(a)(9)-2 of the proposed regulations.

[b] The vested Accrued Benefits of a Participant must be distributed or begin to be distributed no later than the Participant's Required Beginning Date.

[c] As of the first Distribution Calendar Year, distributions, shall be made in the form of an annuity for the life of the Participant.

[d] Payments under the annuity must satisfy the following requirements:

[1] the annuity distributions must be paid in periodic payments made at intervals not longer than one year:

[2] the distribution period must be over a Life described in Section 401(a)(9)(A)(ii);

[3] the Life Expectancy for purposes of determining the period certain shall be determined without recalculation of Life Expectancy; and

[4] payments must either be non-increasing or increase only to provide cash refunds of employee contributions upon the Participant's death; or because of an increase in benefits under the Plan.

[e] The "Life Expectancy" is calculated using the attained age of the Participant (or Designated Beneficiary) as of the Participant's (or Designated Beneficiary's) birthday in the applicable calendar year. The applicable calendar year will be the first distribution calendar year. If annuity payments commence before the Required Beginning Date, the applicable calendar year is the year such payments commence. Life Expectancy and Joint and Last Survivor Expectancy are computed by use of the

expected return multiples in Tables V and VI of Section 1.72-9 of the Income Tax Regulations. (Ord. No. 1266, § 1.)

Section 32.12.650 Termination of Employment.

A Participant with no vested interest in Accrued Benefits attributable to City Contributions who terminates employment for any reason other than death or Total Disability before qualifying for immediate Early or Normal Retirement Benefits will receive a refund of Employee Contributions made and not previously distributed plus Earnings. Payment shall be made in a single sum within 90 days after the date the Participant terminates employment.

A Participant with a vested interest in Accrued Benefits attributable to City Contributions who terminates employment for any reason other than death or Total Disability before qualifying for immediate Early or Normal Retirement Benefits will receive payment of benefits as follows:

[a] If the present value of the Participant's vested Accrued Benefit attributable to Employee Contributions and city Contributions is $10,000 or less, the present value of the vested Accrued Benefit will be paid in a single sum cash payment as soon as administratively feasible after the Participant's termination of employment.

[b] If the present value of the Participant's vested Accrued Benefit attributable to Employee Contributions and City Contributions exceeds $10,000 and the Participant terminates employment prior to August 1, 2010, the Accrued Benefit will be paid under section 6.2 commencing as of the last day of the month in which the Participant attains age 55, or if the Participant so elects in writing within 30 days after the Participant's termination of employment, the present value of the Participant's vested Accrued Benefit will be paid in a single sum cash payment as soon as administratively feasible after the Participant's termination of employment.

The present value of the Participant's vested Accrued Benefits payable under this paragraph shall not be less than the Employee Contributions made by the Participant plus Earnings.

The Participant's non-vested Accrued Benefit will be forfeitable upon the distribution of the Participant's vested Accrued Benefit or upon refund of the Participant's Employee Contributions plus interest if the Participant has no vested Accrued Benefit attributable to City Contributions or, if there is no distribution before Early or Normal Retirement Age, then upon the Participant's termination of employment.

[c] If the present value of the Participant’s vested Accrued Benefit attributable to Employee Contributions and City Contributions exceeds $10,000 and the Participant terminates employment on or after August 1, 2010, the Accrued Benefit will be paid under Section 620 commencing as of the last day of the month in which the Participant attains age 55. (Ord. No. 1266, § 1; Ord. No. 1309 § 2, Ord. No. 1384 § 6)

Section 32.12.660 Death Benefits.

[a] Surviving Spouse and Children: Upon the death of an active Employee or of a retired Participant benefits shall be paid to the Surviving Spouse or surviving children, if any, as follows:

[i] If a retired Participant has elected the normal form of benefit upon retirement, a monthly benefit shall be paid to the Surviving Spouse for life in an amount equal to 2/3 of the Participant's accrued benefit as of the date of death but such benefit shall not be less than $50 per month.

[ii] If a retired Participant has elected the optional form of benefit of the Actuarial Equivalent 100 percent for both Participant and Surviving Spouse at retirement, a monthly benefit will be paid to the Surviving Spouse of 100% of the benefit payable continuing for the remaining life of the survivor.

[iii] A monthly benefit will be paid to the Surviving Spouse of an active Employee for life in an amount equal to the monthly benefit that would have been paid to the Surviving Spouse if the

Participant had retired the day before his death with actuarially equivalent benefits payable in the form of an annuity for the joint life expectancy of the Participant and the Participant's spouse with 100% of the benefit payable during their joint lives continuing for the remaining life of the survivor. Alternatively, a Surviving Spouse of an active Employee who dies prior to August 1, 2010, may elect in writing within 90 days after the Participant's death to have the benefit payable under this subsection [iii] payable in an actuarially equivalent single sum payment. Any benefit payable under this subsection [iii] shall be reduced by the actuarially equivalent value of any benefits paid to the Participant before death under Section 6.2, 6.3, or 6.5.

[iv] The Surviving Spouse of a retired Participant shall receive the form of benefit as selected by the Participant upon Retirement. If the retired Participant elected at retirement the single sum cash payment, no benefit will be due the Surviving Spouse.

[v] A benefit of $10 per month shall be paid on behalf of each surviving child until the child attains the age of 18 to the parent of the surviving child or if no parent is surviving then to the guardian of the surviving child.

[vi] If a retired participant has elected the optional form of benefit of the single life annuity with 120 payments guaranteed, the guaranteed monthly benefit will be paid to the participant's beneficiary for the remainder of the 120 month payment term.

[vii] If a retired participant has elected to receive 9 equal annual installments, and such participant dies before receiving all 9 payments, any remaining annual installment payments will be paid to the participant’s beneficiary

[b] Minimum Benefit: The benefits paid under this Section 6.6 to a Participant's Surviving Spouse and Children will not be less than the total amount of the Participant's Employee Contributions plus Earnings, reduced by any benefits paid to the Participant under Section 6.2 or Section 6.5. Any remainder payable under this subsection will be paid to the estate of the Participant. (Ord. No. 1266, § 1; Ord. No. 1280 § 2, Ord. No. 1384 § 7.)

Section 32.12.670 Designation of Beneficiary.

Each Participant will designate a Beneficiary to receive any aggregate minimum benefits payable under section 6.8 upon his death on the form prescribed by and delivered to the Board of Trustees. The Participant will have the right to change or revoke a designation at any time by filing a new designation or notice of revocation with the Board of Trustees.

If a Participant fails to designate a Beneficiary before his death, or if no Designated Beneficiary survives the Participant, the Board of Trustees will direct the Trustee to pay any benefit first to his Surviving Spouse, if any, or if none, then to his personal representative. If no personal representative has been appointed, and if the benefit does not exceed the minimum amount for which an estate or inheritance tax release or appointment of a personal representative is required under applicable state law the Board of Trustees may direct the Trustee to pay the benefit to such person as may be entitled to it under the laws of the state in which the Participant was domiciled at the date of his death. The Board of Trustees may require such proof of right or identity as he may deem necessary. If the benefit exceeds the minimum amount for which an estate or inheritance tax release or appointment of a personal representative is required under applicable state law, the Board of Trustees may direct the Trustee to hold the benefits in a segregated account until such time as the Trustee is notified that a personnel representative has been appointed. (Ord. No. 1266, § 1.)

Section 32.12.680 Minimum Aggregate Benefits.

In no event shall the total benefits payable under this Plan in respect to a given Participant be less than the total contributions made by such Participant plus Earnings. If the total aggregate benefit paid to the Participant and to his eligible Surviving Spouse and/or Children would otherwise be less than the total

contributions made by the Participant, the difference shall be paid to the Participant's named beneficiary or if none then to the Participant's estate. (Ord. No. 1266, § 1.)

Section 32.12.690 Other Distribution Rules.

[a] Spendthrift Trust Provisions: Except for benefits payable under Section 7.5 in accordance with the applicable requirements of a Qualified Domestic Relations Order, all amounts payable by the Plan will be paid only to the person entitled to them, all such payments will be paid directly to such person and not to any other person or corporation and no benefit or interest under this Plan will be subject to assignment or alienation, either voluntarily or involuntarily. Payments will not be subject to the claim of any creditor of a Participant, nor may payments be taken in execution by attachment or garnishment or by any other legal or equitable proceedings. No person will have any right to alienate, anticipate, commute, pledge, encumber, or assign any payments or benefits that he may expect to receive, contingently or otherwise, under this Plan, except the right to designate a Beneficiary or Beneficiaries.

[b] Participant Or Beneficiary Whose Whereabouts Are Unknown: In the case of any Participant or Beneficiary whose whereabouts are unknown, the Board of Trustees will notify the Participant or Beneficiary at his last known address by certified mail with return receipt requested advising him of his right to a pending distribution. If the Participant or Beneficiary cannot be located in this manner, the Board of Trustees may direct the Trustee to forfeit the Accrued Benefit. If a claim for forfeited Accrued Benefits is subsequently made by the Participant or Beneficiary, the amount forfeited, unadjusted for earnings or interest, will be restored.

[c] Minors or Persons of Unsound Mind. If the person designated to receive payments is a minor or a person of unsound mind, whether formally so adjudicated or not, the Trustee, upon receipt of instructions from the Board of Trustees, may make payment to the person's legal representative or legal guardian, and the receipt by any such person will be a full and complete discharge of the Plan for any sums paid.

[d] Suspension of Benefit Payments: If a retired Participant is re-employed by the City for the performance of light duty, payment of benefits under this Plan will be suspended until the Participant terminates employment, provided, however, that the President of the Board of City Commissioners may assign any Employee of the Police Department, retired under the provisions of this Article, to the performance of light duties in the City. The salary received by any such person so assigned for light duty plus the pension received under the terms and provisions of this Article shall not exceed the regular pay for such duties.

[e] Withdrawals: No Participant may withdraw any part of his Accrued Benefit while employed. (Ord. No. 1266, § 1.)

Section 32.12.692 Eligible Rollover Distributions.

This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

[a] Eligible Rollover Distribution: An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:

[1] any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more; or

[2] any distribution to the extent such distributions is required under Code Section 401(a)(9); and

[3] the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities).

[4] Modification of definition of eligible rollover distribution to include after-tax employee contributions. For purposes of the direct rollover provisions in section 6.10 of the Plan, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

[b] Eligible Retirement Plan: An Eligible Retirement Plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a) that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the Surviving Spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

[1] Modification of definition of eligible retirement plan. For purposes of the direct rollover provisions in section 6.10 of the Plan, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.

[c] Distributee: A Distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's Surviving Spouse and the Employee's of former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are Distributees with regard to the interest of the spouse or former spouse.

[d] Direct Rollover: A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee. (Ord. No. 1266, § 1.)

Section 32.12.694 Retiree Benefits.

As of January 1, 2000, the monthly retirement benefit payable to each Eligible Retiree will be increased by 6%. For purposes of this paragraph only, an Eligible Retiree is a Participant or the surviving spouse of a Participant who is receiving as of January 1, 2000 monthly retirement benefits from this Plan. (Ord. No. 1266, § 1.)

Section 32.12.710 Appointment of Board of Trustees.

The Board of Trustees for management of the Police Employees' Pension Plan shall consist of the Chief of Police, the City Administrator, the President of the Board of City Commissioners and two persons elected by and from the Police Department Employees who are currently participating. No Employee shall be eligible for election until he or she has completed eight Years of Service. The election shall be held on the second Tuesday in September. Each elected member shall serve for a term of four years; with one member being elected at each biennial election. The term of elected members shall commence on January 1 of the year following the election of said member. The President of the Board of City Commissioners shall be the President and the City

Administrator shall be the Treasurer of the Board. The faithful performance of the duties of the Treasurer shall be secured by his official bond as the City Administrator. Such trustees shall receive no compensation for the services as members of the Board. Such Board shall have such powers and perform such duties as may now or hereafter be provided by law and by the Plan. (Ord. No. 1266, § 1.)

Section 32.12.720 Information to be made available to Board of Trustees.

The City will provide the Board of Trustees with access to information the Board of Trustees requires. If required information is not available from the City's records, the Board of Trustees may obtain the information from the Participants. The Board of Trustees and the City may rely on and will not be liable for any information that an Employee provides either directly or indirectly. (Ord. No. 1266, § 1.)

Section 32.12.730 Duties and Powers of Board of Trustees.

[a] General: The Board of Trustees will have full discretionary authority to decide all questions arising in the administration, interpretation, and application of the Plan and Trust, including all questions relating to eligibility and distributions, except as may be reserved under this Plan to the City. The Board of Trustees from time to time will direct the Trustee concerning the payments to be made out of the Plan assets pursuant to this Plan.

[b] Employment of Advisers and Persons To Carry Out Responsibilities: The Board of Trustees may employ one or more persons to render advice with regard to any responsibility the Board of Trustees has under the Plan and may employ one or more persons (including the Trustee) to carry out any of its responsibilities under the Plan.

[c] Keeping of Records: The Board of Trustees will keep such records as may be necessary or advisable in his judgment for the administration of this Plan and Trust. (Ord. No. 1266, § 1.)

Section 32.12.740 Notices from Participants.

Whenever provision is made in the Plan that a Participant may exercise any option or election or designate any Beneficiary, the action of the Participant will be evidenced in writing on the forms provided by the Board of Trustees, if a form is provided, signed by the Participant and delivered to the Board of Trustees in person or by mail. Written notice will not be effective until received by the Board of Trustees. (Ord. No. 1266, § 1.)

Section 32.12.750 Qualified Domestic Relations Orders.

[a] Definitions:

[1] Alternate Payee means any Spouse, former Spouse, child, or other dependent of a Participant who is recognized by a Qualified Domestic Relations Order as having a right to receive all, or a portion of, the benefits payable under a Plan with respect to the Participant.

[2] Earliest Retirement Age means, for purposes of this section only, the earlier of [i] the date the Participant is entitled to a distribution under the Plan or [ii] the later of the date the Participant attains age 50 or the earliest date on which the Participant could begin receiving benefits under the Plan if the Participant separated from service.

[3] Qualified Domestic Relations Order means an order that creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits otherwise payable to a Participant under the Plan. A Qualified Domestic Relations Order includes any judgement, decree, or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or marital property rights to a Spouse, Former Spouse, child, or other dependent of a Participant, and is made pursuant to a State domestic relations law (including a community property law). To qualify, the domestic relations order must:

[A] clearly state the name and last known mailing address of the Participant and the name and mailing address of each Alternative Payee covered by the order;

[B] clearly state the amount or percentage of the Participant's benefits to be paid by the Plan to each Alternate Payee, or the manner in which the amount or percentage is to be determined;

[C] clearly state the number of payments or period to which the order applies;

[D] identify each Plan to which the order applies;

[E] not require the Plan to provide any type or form of benefits, or any option, not otherwise provided under the Plan;

[F] not require the Plan to provide increased benefits (determined on the basis of actuarial value); and

[G] not require the payment of benefits to an Alternate Payee that are required to be paid to another Alternate Payee under another order previously determined to be a Qualified Domestic Relations Order.

[b] Payment of Benefits Under A Qualified Domestic Relations Order: Section 6.10[a] will not apply to prevent payment of benefits to an Alternate Payee under the terms of a Qualified Domestic Relations Order. In the case of any distribution before a Participant has separated from service, a Qualified Domestic Relations Order will not fail to meet the requirements of subparagraph [E] above solely because the Order requires that payment of benefits be made to an alternate payee [A] on or after the date the Participant attains the Earliest Retirement Age, [B] as if the Participant had retired on the date on which such payment is to begin under the order, and [C] in any form in which benefits may be paid under the Plan to the Participant (other than in the form of a Qualified Joint and Survivor Annuity with respect to the Alternate Payee and his subsequent spouse). A person who is an Alternate Payee under a Qualified Domestic Relations Order will be considered a Beneficiary under the Plan.

[c] Procedures: The Board of Trustees will establish reasonable procedures for determining the qualified status of a domestic relations order. The procedures:

[1] will be in writing;

[2] will provide that each person specified in a Domestic Relations Order as entitled to payment of Plan benefits will be notified of the procedures promptly upon receipt of the Order by the Plan; and

[3] will permit an Alternate Payee to designate a representative for receipt of copies of notices that are sent to the Alternate Payee. Within a reasonable period of time after receipt of an order, the Board of Trustees will determine whether the order is a Qualified Domestic Relations Order and notify the Participant and each Alternate Payee of the determination. During any period in which the issue of whether a domestic relations order is a Qualified Domestic Relations order is being determined, the Board of Trustees will segregate, in a separate account, any otherwise distributable amounts that would have been payable to the Alternate Payee during the period if the order had been determined to be a Qualified Domestic Relations Order. If, within 18 months the order is determined not to be a Qualified Domestic Relations order or the issue as to whether the order is a Qualified Domestic Relations Order is not resolved, then the Board of Trustees may pay the segregated amounts to the person or persons who would have been entitled to those amounts if there had been no order. If a plan fiduciary acts in accordance with the fiduciary responsibility provisions of the Plan, then the Plan's obligation to the Participant and each Alternate Payee is discharged to the extent of any payment made. (Ord. No. 1266, § 1.)

Section 32.12.810 Investment of Plan Assets.

The duty of the Trustee is to hold in trust the funds it receives. The Trustee in accordance with the instructions of the Board of Trustees, will have exclusive authority and discretion to manage and control the assets of the Plan and to manage, invest, and reinvest the Trust Fund and the income from it under this Article,

without distinction between principal and income. The Trustee will make payments and distributions from the Trust Fund in accordance with the terms of this Plan and instructions of the Board of Trustees. The Trustee will be responsible only for sums that it actually receives as Trustee plus net gains on such amounts. The Trustee will have no duty to collect any sums from the Board of Trustees, City, or from a Participant. (Ord. No. 1266, § 1.)

Section 32.12.820 Records.

The Trustee will keep full records of its administration of the Plan assets. (Ord. No. 1266, § 1.)

Section 32.12.830 Administrative Powers of the Trustee.

Subject to the requirements imposed by law, the Trustee will have all powers necessary or advisable to carry out the provisions of this Plan and Trust and all inherent, implied, and statutory powers now or subsequently provided by law, including specifically the power to do any of the following:

[a] to invest or reinvest any and all money or property of any description at any time held by the Trustee and constituting assets of the Plan, without previous application to, or subsequent ratification of, any court, tribunal or commission, or any federal or state governmental agency, in real prop6rty and all interests in real property, in bonds, notes, debentures, mortgages, commercial paper, preferred stocks, common stocks, or other securities, rights, obligations, or property, real or personal, including shares or certificates of participation issued by regulated investment companies or regulated investment trusts, shares or units of participation in qualified common Trust Funds, in qualified pooled funds, including Common Trust Funds or pooled funds maintained by the Trustee, or in pooled investment funds of an insurance Company qualified to do business in the state, group annuity contracts and with any federally insured bank or savings and loan association, and if the Trustee is a bank or similar financial institution supervised by the United States or a state, in its own deposits, savings accounts, and certificates of deposit;

[b] to cause any securities or other property to be registered and held in its name as Trustee, or in the name of one or more of its nominees, without disclosing the fiduciary capacity, or to keep the same in unregistered form payable to bearer;

[c] to sell, grant options to sell, exchange, pledge, encumber, mortgage, deed in trust, or use any other form of hypothecation, or otherwise dispose of the whole or any part of the Trust Fund on such terms and for such property or cash, or part cash and credit, as it may deem best; to retain, hold, maintain, or continue any securities or investments that it may hold as part of the Trust Fund for as long as it deems advisable; and generally, in all respects, to do all things and exercise each and every right, power, and privilege in connection with and in relation to the Trust Fund as could be done, exercised, or executed by an individual holding and owning such property in absolute and unconditional ownership;

[d] to abandon, compromise, contest, and arbitrate claims and demands; to institute, compromise, and defend actions at law (but without obligation to do so); in connection with such powers, to employ counsel the Trustee deems advisable; and to exercise such powers all at the risk and expense of the Trust Fund;

[e] to borrow money for this Trust on the terms and conditions the Trustee deems advisable, and to secure repayment by the mortgage or pledge of any assets of the Trust Fund except insurance contracts;

[f] to vote in person or by proxy any shares of stock or rights held in the Trust Fund; to participate in and to exchange securities or other property in reorganization, liquidation, or dissolution of any corporation, the securities of which are held in the Trust Fund;

[g] to pay any amount due on any loan or advance-made to the Trust Fund, to charge against and pay from the Trust Fund all taxes of any nature levied, assessed, or imposed upon the trust fund, and

to pay all reasonable expenses and attorney fees necessarily incurred by the Trustee with respect to any of the foregoing matters; and

[h] to act pursuant to written blanket settlement authorization given by the City or the Participant on any transaction executed by the designated broker. The Trustee is authorized to honor all trade confirmations received according to the terms of the instructions relating to the conduct of business in the plan as previously provided to the designated broker. (Ord. No. 1266, § 1.)

Section 32.12.840 Allocated Earnings Account.

A separate account shall be maintained by the Trustee for Allocated Earnings of each Participant to whom earnings were allocated under plan provisions in effect prior to January 1, 1992. The assets of the trust will be valued annually at fair market value as of the last day of the Plan Year and at any other dates determined by the Board of Trustees to be appropriate. On each valuation date, the earnings and losses of the trust attributable to the Allocated Earnings Accounts will be allocated to each Participant's Allocated Earnings Account in the ratio that each Participant's Allocated Earnings Account balance bears to all such Account balances. (Ord. No. 1266, § 1.)

Section 32.12.850 Organization and Operation of Office of Office of Trustee.

The Trustee(s) may adopt the procedures deemed desirable for the conduct of its affairs and may appoint agents any of whom may be an officer or Employee of the City. Any person dealing with the Trustee(s) may rely on a certificate or memorandum signed by the Trustee, or by any one Trustee if more than one Trustee is appointed, as evidence of any action taken by the Trustee(s). (Ord. No. 1266, § 1.)

Section 32.12.860 Advice of Counsel.

The Trustee may consult with legal counsel, who may be counsel for the City or Trustee's own counsel, with respect to the meaning or construction of the Plan and Trust or Trustee's obligation or duties. The cost of any consultation will be an expense of the Plan and will be paid by the Plan unless paid by the City. The Trustee will be protected from any responsibility with respect to any action taken or omitted by it in good faith pursuant to the advice of counsel, to the extent permitted by law. (Ord. No. 1266, § 1.)

Section 32.12.870 Appointment, Resignation, Removal, and Substitution of Trustee.

The City will appoint a Trustee or Trustees, each of which will hold office until resignation or removal by the City. The Trustee may resign at any time upon 30 days' written notice to the City. The Trustee may be removed at any time by the City upon 30 days' written notice to the Trustee with or without cause. Upon resignation or removal of the Trustee, the City will appoint a successor Trustee that will have the same powers and duties as are conferred upon the Trustee appointed under this Plan. The resigning or removed Trustee will deliver to its successor Trustee all property of the Trust Fund, less a reasonable amount necessary to provide for its compensation, expenses, and any taxes or advances chargeable or payable out of the Trust Fund. If the Trustee is an individual, death will be treated as a resignation, effective immediately. If any corporate Trustee at any time is merged, or consolidated with, or sells or transfers substantially all of its assets and business to another corporation, whether state or federal, or is reorganized or reincorporated in any manner, then the resulting or acquiring corporation will be substituted for the corporate Trustee without the execution of any instrument and without any action on the part of the City, any Participant or Beneficiary, or any other person having or claiming to have an interest in the Trust Fund or under the Plan. (Ord. No. 1266, § 1.)

Section 32.12.910 Amendments to Plan and Trust.

At any time the City may amend the Plan. An Amendment will be effective as of the date specified by the City, or if no date is specified, then on the first day of the Plan Year during which it is adopted. Except as may be permitted by regulations, no amendment to the Plan (including a change in the actuarial basis for determining optional or early retirement benefits) will be effective to the extent that it has the effect of decreasing a Participant's Accrued Benefit. (Ord. No. 1266, § 1.)

Section 32.12.920 Termination of Plan and Trust.

The City expects to continue this Plan and Trust indefinitely, but the continuance of the Plan and Trust is not assumed as a contractual obligation by the City and the right is reserved to the City to terminate this Plan and Trust in whole or part at any time. Termination of the Plan and Trust will take effect as of the date specified by the City's written notice of the termination which shall be given by the City to the Trustee and the Sponsor. At any time after termination of the Plan and Trust, but not before receipt of instructions from the Board of Trustees, the Trustee may distribute the interest of any Participant to him under Article VII. The Board of Trustees will file such terminal reports as are required. The Board of Trustees may request appropriate rulings as to qualification upon termination. Termination of this Plan and Trust by the City will not re-vest any part of the Trust Fund in the City; provided, however, that any assets that remain after the Plan is terminated and all Accrued Benefits have been paid will be returned to the City upon written notice by the City to the Trustee. (Ord. No. 1266, § 1.)

Section 32.12.930 Merger, Consolidation or Transfer of Assets or Liabilities of the Plan.

The City may merge or consolidate this Plan with any other plan and may transfer all or part of the assets or liabilities of the Plan to, or to this Plan from, any other plan. (Ord. No. 1266, § 1.)

Section 32.12.940 Distribution Upon Termination of Trust.

If the Plan Trust is terminated Accrued Benefits to the extent funded will be distributed in accordance with the provisions of Article VI. (Ord. No. 1266, § 1.)

Section 32.12.1010 Test to Control.

The headings of articles and sections are included solely for convenience of reference. If any conflict between any heading and the text of this Plan and Trust exists, the text will control. (Ord. No. 1266, § 1.)

Section 32.12.1020 Severability.

If any provision of this Plan and Trust is illegal or invalid for any reason, such illegality or invalidity will not affect the remaining provisions, on the contrary, the remaining provisions will be fully severable, and this Plan and Trust will be construed and enforced as if the illegal or invalid provisions never had been inserted in this agreement. (Ord. No. 1266, § 1.)

Section 32.12.1030 Jurisdiction.

This Plan will be construed and administered under the laws of the State of North Dakota when the laws of that jurisdiction are not in conflict with federal substantive law. (Ord. No. 1266, § 1.)

Section 32.12.1040 Forum Selection.

Any claims or disputes involving the Plan shall be litigated only in North Dakota and to the extent not preempted by federal law, North Dakota statutory and common law shall control during litigation. The litigants expressly waive any right they have to institute or conduct litigation in any other forum or location. (Ord. No. 1266, § 1.)

Section 32.12.1050 Expenses.

The expenses of the Plan and Trust shall be paid from Plan assets unless, in its discretion the City elects to pay some or all of the Plan expenses. (Ord. No. 1266, § 1.)

Section 32.12.1060 Rules of Construction.

The masculine gender will include the feminine, and the singular will include the plural. (Ord. No. 1266, § 1.)

Article 32.16 Volunteer Fire Department Pension Plan

Sections:

32.16.010 Dickinson Volunteer Fire Department Pension Plan created
32.16.020 Definitions
32.16.030 Contributions by city; pension fund and investment of same
32.16.040 Board of trustees
32.16.050 Plan interpretation and intent
32.16.060 Receipt of gifts, grants, devises or bequests
32.16.070 Actuarial valuations
32.16.080 Eligible membership in plan
32.16.090 Exemption of benefits from debts
32.16.100 Pension fund
32.16.110 Procedure for disbursement from fund
32.16.120 Fiscal year and annual reports
32.16.130 Accrued monthly pension benefits
32.16.140 Regular benefit payments under plan and vesting
32.16.150 Optional benefit payment under plan
32.16.160 Severability and inclusiveness
32.16.170 Uniformed Services Employment and Reemployment Rights Act
32.16.180 Required Distributions
32.16.190 Eligible Rollover Distribution
32.16.200 Limitation on Annual Addition Definitions
32.16.220 Exclusive Benefit

Section 32.16.010 Dickinson Volunteer Fire Department Pension Plan created

A pension plan for members of the Dickinson Volunteer Fire Department is hereby created to be effective on and after July 1, 1979. (Ord. No. 783, § 1.)

Section 32.16.020 Definitions

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

Actuarial Equivalent or Actuarially Equivalent means a payment or a series of payments that has the same present value computed on the basis of the following interest rate and mortality assumptions:

(i) Interest Rate: 8% pre-retirement and 6% post-retirement.

(ii) Mortality Table: 1983 IAM with six year setback.

Notwithstanding any other Plan provisions to the contrary, effective for any distribution with an annuity starting date on or after December 31, 2002, the applicable mortality table used for purposes of adjusting any benefit or limitation under Code Section 415(b) (2) (B), (C) or (D) and the applicable mortality table used for purposes of satisfying the requirements of Code Section 417(e) is the table described in Revenue Ruling 2001-62. For any distribution with an annuity starting date on or after the effective date of this Section and before the adoption date of this Section, if application of the amendment as of the annuity starting date would have caused a reduction in the amount of any distribution, such reduction is not reflected in any payment made before the adoption date of this section. However, the amount of any such reduction that is required under Code Section 415(b) (2) must be reflected actuarially over any remaining payments to the Member.

Department. The Dickinson Volunteer Fire Department as created, established, maintained and improved by the city.

Member. Any person who is a member of the Dickinson Volunteer Fire Department as determined by written bylaws, regulations or rules of such department, which written bylaws, regulations or rules shall be approved by the board of city commissioners, and who have been certified to the city auditor by the chief of the Dickinson Fire Department as provided in section 32.16.080.

Normal Retirement Age means the date a member attains the age 60 or completes 30 certified years of service, whichever occurs first.

Plan or The Plan or This Plan. The Dickinson Volunteer Fire Department Pension Plan as created by the city and as thereafter may be amended by ordinance. This Plan is intended to qualify under Code Section 401(a) as a defined benefit pension plan. This Plan is also intended to be a governmental plan under Code Section 414(d).

A "qualifying year" shall mean a year in which the affected member of the Dickinson Volunteer Fire Department obtains at least 65% of the available points toward the Dickinson Volunteer Fire Department Retirement Program, as provided in the Dickinson Volunteer Fire Department Constitution and By-laws. (Ord. No. 783, § 1; Ord No. 1119 § 1; Ord. No. 1136 § 1; Ord. No. 1342 § 1; Ord No. 1375 §1)

Section 32.16.030 Contributions by city; pension fund and investment of same

The board of city commissioners shall annually appropriate sufficient funds to maintain the pension fund herein created in accordance with the most recent actuarial valuation. The proceeds of such fund shall be placed in a pension fund to be invested by the board of trustees. The funds may be invested in interest-bearing bonds of the United States or the state, bonds or warrants of any county, township or municipal corporation of the state which constitute the general obligations or contingent general obligations of the issuing tax authority or investments with any federally insured bank or savings and loan association. All securities in which monies belonging to the fund are invested shall be deposited with the treasurer of the board of trustees for safekeeping. The board may also invest all or part of such funds in other investments by selecting a funding agent and establishing an investment agreement contract regarding such funds. This contract shall authorize the funding agent to hold and invest such funds for the board, and such funds shall be placed for investment only with a firm whose primary endeavor is money management and only after a trust agreement or contract has been executed.

The board of trustees shall have the power, in selecting a funding agent or agents and establishing an investment agreement contract regarding such surplus fund, to delegate any such administrative functions necessary, including, but not limited to, funds established, issuance of checks and payments to retirees and establishing such custodial accounts as necessary in furtherance hereof. By delegation of such authority, the board of trustees in no way transfers such powers and such duties or responsibilities as may now or hereafter be provided by law which are nondelegable. (Ord. No. 783, § 1; Ord. No. 910, § 4.)

Section 32.16.040 Board of trustees

The plan herein created shall be administered by a board of trustees which is hereby established. Such board shall be composed of the chief of the fire department, who shall be the president of the board, the president of the board of city commissioners of such other member of the board of city commissioners as appointed by said president, who shall be the vice-president of the board, the city administrator, or some other person from the city department of administration or finance as appointed by the board of city commissioners, who shall be the secretary and treasurer of the board, and one member elected from and by the membership of the Dickinson Volunteer Fire Department, who shall serve for a three year term and may serve consecutive terms thereafter. The City attorney and the Finance Director shall be ex-officio non-voting members of the board of trustees. The faithful performance of the duties of the treasurer shall be secured by the official bond of the city administrator. Such trustees shall receive no compensation for their services as members of the board and they shall have such powers and perform such duties as may now or hereafter be provided by law for trustees generally and specifically as provided in this chapter. The board of trustees shall meet at least annually and at such other times as called by the president. (Ord. No. 783, § 1; Ord. No. 1179 § 1.)

Section 32.16.050 Plan interpretation and intent

The board of trustees shall be authorized to adopt such regulations as may be deemed necessary, consistent with the terms and provisions of this plan, to aid in the interpretation or operation of the plan. (Ord. No. 783, § 1.)

Section 32.16.060 Receipt of gifts, grants, devises or bequests

The board of trustees may accept by gift, grant, devise or bequest any money or real or personal property or other thing of value for the benefit of this pension fund. When received, such property shall become a part of such fund. (Ord. No. 783, § 1.)

Section 32.16.070 Actuarial valuations

This pension plan shall have an actuarial valuation performed at intervals not to exceed five years. Such valuations shall be performed by an enrolled actuary within the context of the Employee Retirement Income Security Act of 1974 (ERISA). (Ord. No. 783, § 1.)

Section 32.16.080 Eligible membership in plan

Each regular volunteer member in good standing of the Dickinson Volunteer Fire Department shall be a member of the pension plan herein created and entitled to participate in the plan as provided in this chapter. The Dickinson Volunteer Fire Department shall provide and determine by written bylaws, rules or regulations approved by the board of city commissioners the various criteria for determining who shall be a member in good standing. Within fifteen days after December 31 of each year, the chief of the fire department shall certify to the city auditor the names of all persons who were members in good standing during the preceding fiscal year ending on December 31 of each year. During either the first year or the last year of membership, a period of seven months or more in good standing shall constitute sufficient credit for a full year. (Ord. No. 783, § 1; Ord. No. 1119, § 2.)

Section 32.16.090 Exemption of benefits from debts

All pensions paid under the provisions of this pension system shall not be subject to assignment and shall be exempt from liability for debts of the person to or on account of whom such pension is paid and shall not be subject to seizure upon execution or other process. (Ord. No. 783, § 1.)

Section 32.16.100 Pension fund

The pension fund established hereunder shall be used for the payment of benefits under this system and any related expenses of operation. No funds held hereunder shall inure to any other purpose. (Ord. No. 783, § 1.)

Section 32.16.110 Procedure for disbursement from fund

All benefits paid and all monies drawn from the pension fund shall be upon warrants authorized by the board of trustees and issued by the treasurer of such board. Such warrants shall designate the name of the payee and the purpose for which payment is made. (Ord. No. 783, § 1.)

Section 32.16.120 Fiscal year and annual reports

The first fiscal year shall be from January 1 to December 31. On or prior to January 31 of each year hereafter the treasurer shall prepare an annual report showing the receipts and disbursements for the preceding

fiscal year and the present status of the funds invested. Such report shall be made to the board of trustees, the board of city commissioners and shall be filed in the office of the city auditor. (Ord. No. 783, § 1; Ord. No. 1119 § 3.)

Section 32.16.130 Accrued monthly pension benefits

At any time a member's accrued monthly pension benefit shall be equal to the sum of:

(a) Three dollars multiplied times the number of completed qualifying years of service from first date of service through July 1, 1991.

(b) Five dollars multiplied times the number of completed qualifying years of service from July 1, 1991 through December 31, 1998.

(c) Ten dollars multiplied times the number of completed qualifying years of service from January 1, 1999 through December 31, 2006.

(d) Fifteen dollars multiplied times the number of completed qualifying years of service after December 31, 2006. (Ord. No. 783, § 1; Ord. No. 1209, § 1; Ord. No. 1342 § 2.)

Section 32.16.140 Regular benefit payments under plan and vesting

Hired or Rehired on or after January 1, 2010. A member who is hired or rehired on or after January 1, 2010, and who is entitled to benefit under this plan will be eligible to receive a monthly pension for life commencing at normal retirement, or upon termination of the employment, if later, in an amount equal to such member's vested benefit determined as follows:

Completed Years of Employment	Vesting % Factor to be Multiplied times the Accrued Benefit to Determine the Vested Benefit
Less than 5	0%
5	50%
6	60%
7	70%
8	80%
9	90%
10 or more	100%

If a member is employed until age sixty, such member will be one hundred percent vested in the accrued benefit regardless of the years of employment. It is the responsibility of a member or his authorized representative to make application to the board of trustees in order to initiate the payment of any benefit under this plan. Notwithstanding anything to the contrary, upon the termination or partial termination of this Plan, the rights of all affected members to the benefits accrued as of the date the termination or partial termination (to the extent funded as of such date) will be fully (100%) vested.

Hired or Rehired Prior to January 1, 2010. A member who is hired or rehired prior to January 1, 2010, and who is entitled to benefit under this plan will be eligible to receive a monthly pension for life commencing at normal retirement age, or upon termination of employment, if later, in an amount equal to such member's vested benefit determined as follows:

Completed Years of Employment	Vesting % Factor to be Multiplied times the Accrued Benefit to Determine the Vested Benefit
Less than 1	0%
1	10%

2	20%
3	30%
4	40%
5	50%
6	60%
7	70%
8	80%
9	90%
10 or more	100%

If a member is employed until age sixty, such member will be one hundred percent vested in the accrued benefit regardless of the years of employment. It is the responsibility of a member or his authorized representative to make application to the board of trustees in order to initiate the payment of any benefit under this plan. Notwithstanding anything to the contrary, upon the termination or partial termination of this Plan, the rights of all affected members to the benefits accrued as of the date the termination or partial termination (to the extent funded as of such date) will be fully (100%) vested.

(Ord. No. 783 § 1; Ord. No. 1119 § 4. Ord. No. 1377 §1)

Section 32.16.150 Optional benefit payment under plan

A member who terminates employment as a volunteer member of the Dickinson Fire Department will be entitled to a benefit determined in accordance with section 32.16.140. With the approval of the board of trustees, a member may waive rights to the regular benefit payments and elect instead an optional benefit which will be of actuarial equivalent value and may be of the following forms: (a) A single sum cash settlement, or (b) A monthly pension for life, commencing at an earlier age than normal retirement age. If a member has ten certified years of service or less, he shall receive a single sum cash settlement, as soon as administratively feasible after the member's termination of employment.

Upon the death of an active or of a retired member, benefits shall be paid to the surviving spouse or surviving children, if any, as follows:

(1) A monthly benefit shall be paid to the surviving spouse for life in an amount equal to the member's accrued benefits as of the date of death.

(2) A benefit of $10 per month shall be paid on behalf of each surviving child until the child attains the age of 18 to the parent of the surviving child or if no parent is surviving then to the guardian of the surviving child. (Ord. No. 783, § 1; Ord. No. 1119 § 5; Ord. No. 1209, § 2.)

Section 32.16.160 Severability and inclusiveness

This article as created by Ordinance No. 783, and as may thereafter be amended by ordinance, shall constitute all of the provisions of the Dickinson Volunteer Fire Department Pension Plan. No other benefits, express or implied, shall be provided or allowed, except as expressly provided in this article by ordinance. In the event that any parts or sections of this article shall be declared to be invalid or unconstitutional, the remaining parts and sections of this article shall remain valid and in full force and effect. (Ord. No. 783, § 1.)

Section 32.16.170 Uniformed Services Employment and Reemployment Rights Act

Effective for veterans reemployed on or after December 12, 1994, and notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u). (Ord. No. 1375 §4)

Section 32.16.180 Required Distributions

[a] The Required Beginning Date is the April 1 of the calendar year following the calendar year in which occurs the later of (1) the date the Participant attains age 70-1/2, or (2) the date the Participant retires from employment with the City.

[b] All distributions required under this section will be determined and made in accordance with the Regulations under Code Section 401(a)(9), including the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G). Effective with respect to distributions made on or after January 1, 2003 and prior to January 1, 2005, all required distributions under this Section were determined in accordance with a reasonable and good faith interpretation of the requirements of Code Section 401(a)(9). Effective with respect to distributions made on or after January 1, 2005, all distributions required under this section will be made in accordance with the final Regulations under Code Section 401(a)(9) issued on April 17, 2002 and June 15, 2004, notwithstanding any provision to the contrary.

[c] The vested Accrued Benefits of a Member must be distributed or begin to be distributed no later than the Member's Required Beginning Date.

[d] As of the first Distribution Calendar Year, distributions shall be made in the form of an annuity for the life of the Member.

[e] Payments under the annuity must satisfy the following requirements:

(1) the annuity distributions must be paid in periodic payments made at intervals not longer than one year:

(2) the distribution period must be over a Life described in Section 401(a) (9) (A) (ii); and

(3) payments must either be non-increasing or increase only to provide cash refunds of employee contributions upon the Member's death; or because of an increase in benefits under the Plan.

[f] The following rules shall apply to any distribution with an annuity starting date prior to January 1, 2005. The "Life Expectancy" is calculated using the attained age of the Member (or Designated Beneficiary) as of the Member's (or Designated Beneficiary's) birthday in the applicable calendar year. The applicable calendar year will be the first distribution calendar year. If annuity payments commence before the Required Beginning Date, the applicable calendar year is the year such payments commence. Life Expectancy and Joint and Last Survivor Expectancy are computed by use of the expected return multiples in Tables V and VI of Section 1.72-9 of the Income Tax Regulations.

The following rules shall apply to any distribution with an annuity starting date on or after January 1, 2005. Unless the Member's spouse is the sole Designated Beneficiary, the period certain for the single life annuity with 120 payments guaranteed commencing during the Member's lifetime may not exceed the applicable distribution period for the Member under the Uniform Table set forth in Section 1.401(a) (9) -9, Q&A-2 of the Regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the calendar year in which the Member reaches age seventy (70), the applicable distribution period for the Member is the distribution period for age seventy (70) under the Uniform Table set forth in Section 1.401(a)(9)-9, Q&A-2 of the Regulations plus the excess of seventy (70) over the age of the Member as of the Member's birthday in the calendar year that contains the annuity starting date If the Member's spouse is the Member's sole Designated Beneficiary, the period certain for the single life annuity with 120 payments guaranteed may not exceed the longer of the Member's applicable distribution period (determined as described in the preceding sentence) or the joint life and last survivor expectancy of the Member and the Member's spouse as determined under the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9, Q&A-3 of the Regulations using the Member's and Spouse's attained ages as of the Member's and Spouse's birthdays in the calendar year that contains the annuity starting date.

[g] If a Member dies after distribution of the Member's interest begins in the form of an annuity meeting the requirements of this section, the remaining portion of the Member's interest (if any) will continue to be distributed over the remaining period over which distributions commenced.

[h] If a Member dies before distributions begin, the benefit provided to the Member's surviving spouse or surviving children pursuant to Section 32.16.150 shall begin by the December 31 of the calendar year immediately following the calendar year in which the Member died. (Ord No. 1375 §5)

Section 32.16.190 Eligible Rollover Distribution

This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

[a] Eligible Rollover Distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

[1] any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; or

[2] any distribution to the extent such distributions is required under Code Section 401(a)(9); and

[3] the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities).

[b] Eligible Retirement Plan: An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a) that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse of a member, an eligible retirement plan is an individual retirement account or individual retirement annuity.

[c] Distributee: A distributee includes a member or former member. In addition, the member's or former member's surviving spouse and the member's of former member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.

[d] Direct Rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

Section 7: Paragraph (a) of Section 32.16.190 entitled "Eligible Rollover Distributions" is hereby amended and re-enacted as follows effective for Plan Years beginning on or after January 1, 2000 and prior to January 1, 2002:

[a] Eligible Rollover Distribution: An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:

[1] any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more; or

[2] any distribution to the extent such distributions is required under Code Section 401(a)(9);

[3] any hardship distribution described under Code Section 401(k)(2)(B)(i)(IV) that is made after December 31, 1999;

[4] the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities).

Section 8: Section 32.16.190 entitled "Eligible Rollover Distributions" is hereby amended and re-enacted as follows effective for Plan Years beginning on or after January 1, 2002: Section 32.16.190 Eligible Rollover Distributions.

This Section applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

[a] Eligible Rollover Distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

[1] any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; or

[2] any distribution to the extent such distributions is required under Code Section 401(a)(9);

[3] any hardship distribution; and

[4] the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

[b] Employee After-Tax Contributions. For purposes of the direct rollover provisions in this section of the Plan, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

[c] Eligible Retirement Plan: An Eligible Retirement Plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), a plan described in Code Section 403(a) or an annuity contract described in Code Section 403(b), or a qualified trust described in Code Section 401(a) that accepts the distributee's eligible rollover distribution, or an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code Section 414(p).

[d] Distributee: A Distributee includes a member or former member. In addition, the member's or former member's surviving spouse and the member's of former member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.

[e] Direct Rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee. (Ord. No. 1375 §6)

Section 32.16.200 Limitation on Annual Addition Definitions

Section 32.16.220 Exclusive Benefit

Article 32.20 City of Dickinson Defined Contribution Plan

Sections:

32.20.100 Defined Contribution Plan

Section 32.20.100 Defined Contribution Plan

Effective as of April 18, 2006, the City establishes a new, tax qualified, defined contribution plan for the benefit of eligible employees. The details of the City of Dickinson Defined Contribution Plan are set forth in a Plan document entitled "City of Dickinson, North Dakota Defined Contribution Retirement Plan", which is adopted herein by reference, together with its First Amendment of City of Dickinson, North Dakota, Retirement Savings Plan (2006 Statement), Second Amendment of City of Dickinson, North Dakota, Retirement Savings Plan (2006 Statement), and Third Amendment of City of Dickinson, North Dakota, Retirement Savings Plan (2006 Statement).

In general, the City of Dickinson Defined Contribution Plan provides as follows; provided, however, that in the event of any discrepancy between the following and the Plan document, the Plan document shall control:

[a] Each City employee who has never been a Participant in either the City of Dickinson Police Employee' s Pension Plan or the City of Dickinson Pension Plan shall be eligible to become a Participant in the new Defined Contribution Plan after meeting the eligibility requirements of the new Plan. Each such employee hired as regular, full-time, employee shall become a Participant as of April 18, 2006 or, if later, upon the employee's hire. Each other such employee shall become a Participant after the employee has both: (i) completed 1,000 hours of service for the City in the year following the employee's date of hire (or any subsequent Plan Year); and (ii) attained age 21.

[b] Upon commencement of participation, each such Participant, as a condition of employment with the City, shall contribute five percent (5%) of his or her Recognized Compensation to this Plan. These required contributions are designated employee contributions. Notwithstanding that designation, however, these employees contributions will be picked up by the Employer within the meaning of Code § 414(h) (2). Such required employee contributions for a calendar month shall be delivered to the Trustee for deposit in the Fund not later than fifteen (15) days after the end of that calendar month. No other Participant contributions will be required or permitted.

[c] In addition, the City shall contribute to the Trustee for deposit in the Fund and for crediting to the Participant's Employer Contribution Account an amount which (when taken together with forfeitures, if any, to be reallocated as of the date of the contribution) will equal five (5%) of the Participant's Recognized Compensation for the Plan Year.

[d] Participants will be fully (100%) vested in their own contributions (adjusted from time to time for earnings, gains and losses). Participants will vest in the City contributions (adjusted from time to time for earnings, gains and losses) after 3 years of service.

[e] Participants will be allowed, within limits, to direct the investment of their accounts in the Plan. Distributions will be made, upon proper application, in a single lump sum payment after severance from employment.

[f] A formal Plan document was adopted August 21, 2006 but is effective as of April 18, 2006. The terms used above are defined in the Plan document and the Plan document contains substantial, additional, necessary, rules and provisions. (Ord No. 1313 §3. Ord No. 1539 § 17).

Chapter 33 STREETS AND SIDEWALKS

Last updated December 2013

Articles:

33.ED Editor's note to Chapter 33
33.02 Adoption of Standards
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33.08 House Numbering
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Article 33.ED Editor's note to Chapter 33

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33.ED.010 Editor's note to Chapter 33

Section 33.ED.010 Editor's note to Chapter 33

For state law as to authority of city to establish, regulate, etc., streets and sidewalks, see NDCC, 40-05-01 (8).

As to cleanliness, see NDCC, 40-05-01 (14). As to curbs and gutters, see NDCC, § 40-05-01 (15). As to sidewalks, see NDCC § 40-29-01 et seq. As to boulevards, see NDCC, § 40-32-01 et seq.

As to sale, consumption, etc., of alcoholic beverages, on streets, etc., see § 4.04.070 of this Code. As to riding of bicycles on sidewalks, see § 6.08.100. As to use of streets by community antenna television system, see §§ 10.04.060, 10.04.070. As to spitting, throwing litter, etc., in public place, see § 25.16.12.150. As to specifications for streets in subdivisions, see § 34.24.04.010.

Article 33.02 In General

Sections:

33.02.010 Adoption of Standards

Section 33.02.010 Adoption of Standards

There is hereby adopted by the Board of City Commissioners certain standard specifications (known as the "City of Dickinson Standard Specifications") and standard drawings (known as the "Dickinson Standard Drawings") for all public improvements within the jurisdiction of the City of Dickinson.

"Public improvement" shall include any improvement undertaken by the City of Dickinson for the good of the public and which is paid for with public funds and constructed on public land (including public easements or rights-of-way). "Public improvement" shall also include any improvement on public or nonpublic land if any portion of the construction is paid for with public funds, or if the City of Dickinson is expected or anticipated to accept ownership of the improvement upon its completion.

A copy of such Standard Specifications and Standard Drawings is on file in the office of the City Administrator, and is available for use and examination by the public.

Upon notice to the Board of City Commissioners, the Standard Specifications and Standard Drawings may be modified, amended or supplemented from time to time by the City Administrator or his duly designated representative.

The City Administrator, or his duly designated representative, is hereby authorized and directed to enforce such Standard Specifications and Standard Drawings as hereby adopted or as may be amended from time to time.

The Standard Specifications and Standard Drawings adopted pursuant to this Section are minimum standards. This Section shall not create any liability on the part of the City, or its officers, agents, servants, representatives or employees for any damages that result from any person's reliance upon this Section or any administrative decisions lawfully made hereunder.

(Ord. 1534, § 1)

Article 33.04 In General

Sections:

33.04.010 Definitions
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33.04.360 Painting signs on sidewalks
33.04.370 Coasting, tobogganing, etc.
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33.04.400 Assemblies impeding traffic or access to buildings
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33.04.420 Using boulevards, etc., for gardening purposes
33.04.430 Commercial tree trimmers
33.04.440 Regulation of pesticides application
33.04.450 Fastening animals to trees; traveling on areas used for lawn or park
33.04.460 Deposits accompanying application for vacation of public grounds, streets or alleys
33.04.470 Appeal of interpretation or enforcement of chapter

Section 33.04.010 Definitions

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

Grade. The elevation from which the levels of street surfaces, curves and sidewalks are to be determined.

Owner. Any person owning or controlling property or a duly authorized agent, attorney, guardian, conservator or trustee.

Street. Any public highway designated as a street, highway, avenue, boulevard, place, court or road otherwise indicated as a public highway on the official records or maps.

Used. Includes the terms "arranged," "designed" or "intended to be used." (Code 1958, § 28-1.)

Section 33.04.020 Composition of street department

The street department shall consist of the commissioner of streets, the superintendent of streets and such number of other employees as from time to time may be deemed necessary by the board of city commissioners. (Code 1958, § 28-2.)

Section 33.04.030 Powers and duties of superintendent of streets generally

The grading and surfacing of streets and alleys, except under contract; the construction of crosswalks; the grading, planting and maintenance of parking strips; the cleaning, maintenance and repair of all streets and alleys and all pavements, driveways, sidewalks, curbs, crosswalks and parking strips in or along such streets, etc.; the sprinkling of the streets, alleys and avenues; the cleaning, maintenance and repair of manholes, catch basins and drains; and the preservation of such streets, etc., safe and unobstructed for public travel shall be under the supervision and regulation of the superintendent of streets, subject to such rules and regulations as may be given him by the commissioner of streets and the city engineer and subject also to such rules and regulations as may be adopted for his guidance by the board of city commissioners. (Code 1958, § 28-3.)

Section 33.04.040 Duties of city engineer generally

The determination of lines and elevations for sidewalks, crosswalks, curbs and street surfaces in conformity with the grades established in this chapter and the widths of roadways and sidewalks laid down herein; the grading and surfacing of streets and alleys where such work is done under contract; and the construction of pavements, driveways, sidewalks, curbs and retaining walls in or along the public streets and alleys, whether by or for private persons or the city shall be under the supervision and regulation of the city engineer and shall conform to the plans and specifications established by the city engineer and adopted and approved by the city commission. (Code 1958, § 28-4.)

Section 33.04.050 Designation of streets and avenues

All streets in the city running east and west shall be known as streets, and all streets running north and south shall be known as avenues. (Code 1958, § 28-5.)

For state law as to authority of city to name streets, etc. see NDCC, § 40-05-01 (20).

Section 33.04.060 Street grades--Filing

All street grades shall be on file in the city engineer's office. (Code 1958, § 28-6.)

For state law as to authority of city to establish street grades, see NDCC, § 40-39-03.

Section 33.04.070 Same--Initial bench mark designated

The initial bench mark on the east face of the city hall, three feet north of the southeast corner and four and one-half feet above the sidewalk, stamped "J-14-1931," such disc being the standard disc stamped "J-14-1931" set vertically 2,416.731 feet, such disc having been determined by the 1929 general adjustment of the first order level net of the United States Coast Geodetic Survey based on mean sea level datum, is hereby declared to be the initial bench mark from which all grades of streets, avenues, alleys, water mains, gas mains and sewers of the city are established. (Code 1958, § 28-7.)

Section 33.04.080 Same--Changes generally; excavations or additions changing grade

No regularly established grades shall be changed by any authority other than the city commission, except grades which affect work previously constructed in accordance with established grades given by the duly authorized officer appointed at that time to do such work.

No street or alley shall be graded, by contract or otherwise, in such manner as to bring an excavation lower than the established grade, or any fill or embankment higher than the established grade. No ashes, cinders, gravel or other surfacing material shall be placed upon any street or alley, by contract or otherwise, unless such street shall first have been so graded that the finished surface shall conform to the established grade. (Code 1958, § 28-8.)

Section 33.04.090 Grading, ditching, etc., of streets generally

No grading, ditching or other alteration of the existing ground level in the roadway of any street or alley and no surfacing by means of the placing of ashes, cinders, gravel or other material in or upon such street, etc., shall be undertaken or executed by any person other than the street commissioner or persons employed under him, unless such work is done under contract with the city. (Code 1958, § 28-9.)

Section 33.04.100 Crosswalk construction--Generally

No person shall lay any plank, stone or other material in any street or alley for the purpose of providing a crosswalk or construct any crosswalk therein, except the street commissioner and those employed under his direction. All crosswalks across the roadways of any streets, which the board of city commissions may require to be constructed, shall be laid by the street commissioner. (Code 1958, § 28-10.)

Section 33.04.110 Same--Private crossings

It shall be unlawful for any person to construct over or across any boulevard or sidewalk any private or other crossing except in conformity with the plans and specifications to be prescribed by the city engineer. (Code 1958, § 28-27.)

Section 33.04.120 Sidewalk construction--Width and location

All sidewalks in the residential areas of the city shall be constructed not less than four and one-half feet in width with either the outer edge of the walk six feet from the property line or with the outer edge of the sidewalk along the curb. The width and location shall be subject to the judgment and determination of the engineer of the city with due regard to the pedestrian traffic thereon, the suitability, existing walks, street widths and traffic, the architectural landscaping and building harmony in the area and the street upon which such walk is constructed. In special instances where retaining walls are placed on the property line, the walks shall be full six feet in width for the full length of such retaining walls with the inner edge of such walk on the property line.

Within the fire limits and in areas generally devoted to commercial activities, the sidewalk shall be constructed to extend from the property line to the curb. (Code 1958, § 28-11.)

For state law as to authority of city to prescribe the width and location of sidewalks, see NDCC, § 40-29-01.

Section 33.04.130 Same--Thickness

The thickness of all concrete sidewalks placed in the city shall be three and one-half inches, except where such sidewalk is used for driveway or car parking, in which case the thickness shall be a full six inches. (Code 1958, § 28-13.)

For state law as to authority of city to prescribe the manner of sidewalk construction, see NDCC, § 40-29-01.

Section 33.04.140 Same--Permits

Any person who desires to or who has been ordered to construct or repair any sidewalk abutting his property and desires to construct such sidewalk within the time limit provided by law may do so; provided, however, that he shall first make application to the city engineer for a permit to construct such work, which application shall state the location of the work to be done, the name of the applicant, the name of the person who is to do the work, and the applicant's willingness that such sidewalk be constructed in accordance with the provisions of this chapter. Upon complying with the above requirements, a permit will be issued for such work, which permit shall expire in thirty days from the date of issuance or upon the day set as the time limit in which the sidewalk is to be built by the owner, in case such sidewalk has been ordered constructed as provided by law. The city engineer shall keep a record of such permits in his office. A separate permit shall be issued for each separate piece of work, but one permit may be issued to cover all continuous work in the same block. No permit shall be required by the city contractor for sidewalks to be constructed by him upon orders from the city commission. (Code 1958, § 28-12.)

Section 33.04.150 Preparation of area between curb and sidewalk

Within sixty days after the construction of any curb or curb and gutter along any property, the owner shall cause the parking between the curb and the sidewalk to be properly filled in and graded and seeded to grass. (Code 1958, § 28-15.)

Section 33.04.160 Construction of private driveways

Whenever any private driveway is opened up between the roadway of any street and the property line so as to cross any existing sidewalk, such sidewalk, for the full width of the driveway, shall be removed and replaced with a walk constructed in accordance with the specifications prepared from time to time by the city engineer for the construction of crosswalks under contract with the city. Such work shall be done without expense to the city.

No private driveway or other approach to any building or property to be used for the passage of vehicles of any kind shall be so constructed that any portion of such driveway or approach is closer than six feet to any fire hydrant. (Code 1958, § 28-16.)

Section 33.04.170 Construction of curbs and gutters generally

The city commission, at the time specified by law, shall advertise for bids for the construction of curb and gutter in or along the streets and alleys of the city when application for the construction thereof has been made to the commission or the commission may proceed with the construction of curb and gutter, as is provided for in state law. (Code 1958, § 28-17.)

For state law as to construction and repair of curbs and gutters in cities, see NDCC, § 40-31-01 et seq.

Section 33.04.180 Costs of curbing, gutter and grading

All costs for curbing, gutter and grading shall be paid by the property owner either in cash or by special assessment against the property benefitted. (Code 1958, § 28-14.)

For state law as to assessment of property owners for costs of curbing and gutters, see NDCC, § 40-31-06.

Section 33.04.190 License for construction of driveways, sidewalks, curbs and retaining walls--Required

No person shall engage in the business or occupation of constructing paved driveways, sidewalks, curbs and retaining walls in or along the streets and alleys of the city nor engage in the construction of paved driveways, sidewalks, curbs and retaining walls in or along the streets and alleys of the city without first procuring a license to do so. (Code 1958, § 28-18.)

Section 33.04.200 Same--Application generally

All applications for licenses required by section 33.04.190 shall be made in writing to the city auditor and shall set forth the experience and competency of the applicant to perform such work. An applicant shall be required to submit, as part of the application, a copy of his contractor's license or renewal certificate, issued pursuant to North Dakota Century Code, Chapter 43-07. A concrete license may not be issued unless the applicant has a current North Dakota contractor's license. (Code 1958, § 28-19; Ord. No. 1105, § 1.)

Section 33.04.210 Same--Approval of application; bond required of applicant

If all of the requirements of this chapter are met, the city auditor shall approve the application for a license required by section 33.04.190, which shall be filed with the city auditor, together with a surety bond in the sum of five thousand dollars approved by the city auditor, for the execution of all work in strict conformity with the provisions of this chapter and the protection, indemnification and saving harmless the city from any or all loss, claim, suit or damages, direct or consequential which the city may sustain through violation or any of the provisions of this chapter, through negligence or in any other manner whatsoever. (Code 1958, § 28-20; Ord. No. 1083, § 3; Ord. No. 1105, § 2.)

Section 33.04.220 Same--Issuance; fee; term; renewal

Upon the filing of the required application and bond the city auditor shall issue a license, as required by section 33.04.100, to the applicant upon payment by such person to the city auditor of a fee in such amount as determined from time to time by the board of city commissioners and shall be on file in the office of the city auditor in the city fee schedule. All licenses shall be for one year or a fractional part thereof and shall expire as of the thirty-first day of December of each year. They shall be renewed by the board of city commissioners from year to year upon the approval of such board and upon the filing of a bond and the payment of the annual license fee. (Code 1958, § 28-21; Ord. No. 705, § 1; Ord. No. 1086, § 20.)

Section 33.04.230 Notice to city engineer of construction of sidewalks, curb or retaining wall

No person shall commence the construction of any sidewalk or curb in or along any street or alley until he shall have notified the city engineer of his intention to construct such sidewalk or curb, nor until the city engineer shall have set stakes marking the line and grade at which such sidewalk is to be constructed; provided, that where a sidewalk and curb already are in place, no notification to the city engineer and no line and grade stakes shall be required for the construction of walks leading from the sidewalk to the curb, or for the

construction of curbs adjacent to private drives. No person shall commence the construction of any retaining wall without first notifying the city engineer and obtaining from him the correct line and grade of such wall, unless the line and grade are already sufficiently marked by an existing sidewalk which is at the correct line and grade. (Code 1958, § 28-22.)

Section 33.04.240 Repair or removal of defective driveways, sidewalks, etc.

The city engineer is hereby given authority to order the repair or removal of any paved driveway, sidewalk, curb or retaining wall which has been constructed in violation of any provision of this chapter or of the specifications prepared by the city engineer for such work. In case such driveway, sidewalk, curb or retaining wall is not properly repaired or removed, in accordance with the directions of the city engineer, he may cause such sidewalk, etc., to be repaired or removed at the expense of the city and the city shall be entitled to recover, under the bond specified in section 33.04.210, for all costs arising from such repairs or removal. (Code 1958, § 28-23.)

Section 33.04.250 Protection of manholes, gate boxes, etc.

It shall be unlawful to allow the wheels of any engine or other heavy body of injurious weight to go over or come in contact with any manhole, gate box or stop box within the city. (Code 1958, § 28-25.)

Section 33.04.260 Removal or destruction of construction stakes

No person shall in any way move or destroy any construction stakes, referencing alignment or grades, which have been placed by or under the direction of the city engineer. (Code 1958, § 28-26.)

Section 33.04.270 Openings in sidewalks generally

No permanent opening shall be made in any sidewalk in any of the public streets of the city for the purpose of stairways leading to any basement or cellar, for admitting light or for any other purpose; provided, that openings in sidewalks for the admission of coal, light, air or for other purposes, if covered with suitable iron covers, iron grating or glass set in iron or cement, set level with the surface of the sidewalk and of such construction as not be dangerous to pedestrians passing over such covers, may be constructed upon the approval of the city engineer under a permit obtained from him specifying the details of the construction to be used. No person shall keep or leave open or suffer or permit to be kept or left open any cellar door or grating of any kind in or upon any sidewalk in the city, except during such time as such door, etc., may be necessarily open during the use thereof, during which time it shall be properly guarded and protected. (Code 1958, § 28-24.)

Section 33.04.280 Maintenance of sidewalks--Generally

It shall be the duty of every owner of premises fronting on a public street or avenue to keep the sidewalk in front of such premises unobstructed, clean and in good order and repair.

It shall be the duty of the owner of any property along which a sidewalk has been constructed to maintain such sidewalk in good repair and safe condition. Should any such owner fail to so maintain such sidewalk, the street commissioner shall direct him to make such repairs as may be necessary to restore such sidewalk to a safe condition. Should he fail, within a reasonable time, to follow the directions of the street commissioner, the street commissioner shall report the facts to the board of city commissioners, who shall then proceed, as provided in the laws of the state, to make such sidewalk safe. (Code 1958, § 28-28.)

For similar state law, see NDCC, § 40-29-02.

Section 33.04.290 Same--Removal of snow and ice

(a) It shall be the duty of the owner or occupant of each lot in the city to remove from the sidewalk in front of or along such lot any ice or snow which forms, accumulates or obstructs such sidewalk within seventy-two hours after the ice forms or the snow ceases to fall thereon; provided, that where the ice accumulated is of such character as to make removal thereof impossible, the sprinkling of ashes, salt or sand thereon within the time specified for removal in such manner as to make such sidewalk safe for the travel of pedestrians thereon shall be deemed a compliance with the provisions of this section.

(b) In case the owner of any lot in the city refuses or neglects to remove from such sidewalk in front of or along any lot the ice or snow, within seventy-two hours after the ice forms or the snow ceases to fall thereon, such ice or snow may be removed by or under the direction of the street commissioner of the city. The street commissioner may remove or direct the removal of such ice or snow upon complaint received, wherein the complainant shall furnish his or her name, address and telephone number. The necessary expense of such ice or snow removal shall be chargeable against the abutting lot or property by billing and special assessment, if not paid in the manner prescribed by law.

(c) Notwithstanding any other provision hereof, any violation of this section shall be an infraction, punishable by the general penalty provided in section 11.12.010. (Code 1958, § 28-29; Ord. No. 753, § 1; Ord. No. 921, § 1.)

For state law as to snow and ice removal by city and assessment of costs against owner of abutting property, see NDCC, §§ 40-05-01 (13), 40-29-18, 40-29-19.

Section 33.04.300 Depositing or scattering rubbish, refuse, etc.

It shall be unlawful for any person in the city to throw or permit to be deposited or scattered upon any sidewalk, alley, street, bridge, public passageway or any vacant lot, public or private property in the city any waste or other material of any kind, including but not limited to wood, ashes, grass, rubber, cans, cartons, bottles, offal, paper, earth or any other thing or substance whatever which may injure, disfigure or tend to render such street, etc., unclean or a nuisance.

Nothing herein shall prevent or make unlawful the storage and deposit of garbage and refuse pursuant to and in the manner provided in chapter 18, relating to the storage and collection of garbage and refuse within the city.

Notwithstanding any other provision hereof, any violation of this section shall be an infraction, punishable by a fine of no less than $200.00. (Ord. No. 314, §§ 1, 2; Ord. No. 1460, §§ 1)

Section 33.04.310 Depositing snow or ice onto streets, etc.

(a) Generally. It shall be unlawful for any person in the city to throw, move, dump, deposit or permit to be deposited or scattered any snow or ice accumulated on private property, sidewalks or public passageway onto driving lanes of any street or alley, except as otherwise permitted by this section.

(b) Residential Exceptions. Snow or ice may be deposited on the boulevard or area between the edge of the curb or paved surface of a street or alley and the sidewalk. Snow or ice may also be deposited, in the event there is no boulevard or the boulevard area is filled, along the curb and gutter in the parking lane of the street or alley.

(c) Commercial Buildings. In order to facilitate safe and adequate parking for customers and other business related activities, any person operating or conducting a business in any commercial building within the city shall be prohibited from depositing snow or ice from the premises along the curb and gutter in the parking lane of the street or alley.

(d) Commercial Exceptions. Subsection (c) of this section shall not apply to the sidewalk portions of the commercial building premises.

(e) Penalty. Notwithstanding any other provisions hereof, violation of this section shall be punishable by a fine not exceeding five hundred dollars or by imprisonment not exceeding thirty days, or both such fine and imprisonment, for each such offense. (Ord. No. 970, § 1.)

Section 33.04.320 Hauling sand, mud, etc., over streets, etc.

No person shall haul or transport over the paved streets, avenues or alleys of the city any manure, sand, mud, dirt, clay, stone, ashes, coal, gravel or rubbish of any kind, unless such material is hauled or transported in a tight box so constructed as to prevent the spilling, sifting or scattering of any of the substances therein contained upon such streets, avenues or alleys. (Code 1958, § 28-31.)

Section 33.04.330 Washing of earth, etc., onto sidewalks

The owner of any lot or piece of land abutting any sidewalk in the city shall not allow or permit earth or other substances from such lot or piece of land to wash or accumulate upon any such walk, and in the event that any earth or other substance shall wash or accumulate upon any such walk, it shall be the duty of the owner of the abutting lot or piece of land to remove it, and failure so to do shall be a violation of this section. (Code 1958, § 28-32.)

Section 33.04.340 Depositing or throwing materials on streets--Glass, nails, etc.

No person shall throw or place in any street or alley any glass, nails or other material likely to puncture or injure the rubber tires of any vehicle. Any person who, through accident, may cause to be thrown or placed in any street or alley any glass, nails or other material likely to puncture or injure the rubber tires of any vehicle shall remove such material immediately. (Code 1958, § 28-33.)

Section 33.04.350 Same--Wire or tacks

It shall be unlawful for any person to throw or deposit in any street, avenue or alley of the city any wire or tacks. (Code 1958, § 28-34.)

Section 33.04.360 Painting signs on sidewalks

It shall be unlawful for any person to paint any signs upon the sidewalks within the city either with paint, chalk or other substance. (Code 1958, § 28-35.)

Section 33.04.370 Coasting, tobogganing, etc.

No person shall use any portion of any street or sidewalk for coasting, tobogganing or similar sports. (Code 1958, § 28-36.)

Section 33.04.380 Driving vehicles and animals across sidewalks and curbs

It shall be unlawful for any person to place, push, draw or propel any wagon, cart, buggy, automobile, bicycle or tricycle upon, over, against or across any sidewalk or curb or to use, ride or drive any horse or other animal, wagon, sleigh or other vehicle over, against, upon or across any sidewalk or curb in the city. (Code 1958, § 28-37.)

Section 33.04.390 Exhibition or sale of goods on streets, sidewalks or building entrances

It shall be unlawful for any person to place, construct or maintain any showcase or other device or display for the exhibition or sale of goods, wares or merchandise upon any of the streets or sidewalks of the city or the entrance to any building. (Code 1958, § 28-38.)

For state law as to authority of city to regulate sales on sidewalks, see NDCC, § 40-05-01 (17).

Section 33.04.400 Assemblies impeding traffic or access to buildings

It shall be unlawful for any person to assemble upon any street, sidewalk or upon any public grounds in the city so as to hinder the street travel or traffic thereon or to hinder or impede free ingress and egress to and from any public place of business, private dwelling, public hall, church or other public building. Any person so assembled who shall refuse or neglect to move away, depart and give free passage after being requested by any police officer or by the owner, occupant or manager of such public place of business, hall, church or other public building obstructed as aforesaid shall be guilty of violating this section. (Code 1958, § 28-39.)

For state law as to authority of city to regulate traffic on streets and sidewalks, see NDCC § 40-05-01 (17).

Section 33.04.410 Signs, fences, etc., generally

It shall be unlawful for any person to erect, construct or place any sign, signpost, fence or hedge or to keep or maintain any sign, signpost, fence or hedge on the sidewalks, parking lots, boulevards or streets of the city or outside of the property line of the abutting property to any sidewalk, parking lot, boulevard or street of the city. This section shall not affect the right of the city to erect, construct, keep and maintain fire hydrants, manholes, catch basins or other construction used for the maintenance or operation of the sewer or water systems of the city; nor shall it affect the right of the city or the state to erect, construct, keep end maintain highway signs and signposts upon sidewalks, parking lots, boulevards and streets of the city. (Code 1958, § 28-40.)

For state law as to authority of city to regulate signs on streets and sidewalks, see NDCC, § 40-05-01 (16).

Section 33.04.420 Using boulevards, etc., for gardening purposes

It shall be unlawful for any person to use any of the boulevards or any part or portion thereof lying adjacent to any of the paved streets or lying or being within the paved area of the city for gardening purposes. (Code 1958, § 28-41.)

Section 33.04.430 Commercial tree trimmers

(a) Generally. It shall be unlawful to do commercial tree trimming in any public boulevard in the city without a permit therefor obtained from the city auditor, and the fee therefor shall be ten dollars. The applicant shall furnish a one thousand dollar bond and evidence of liability insurance in the amount of twenty-five thousand dollars property damage, fifty thousand dollars bodily injury in one accident or occurrence and one hundred fifty thousand dollars aggregate.

(b) Commercial Certification. Any person providing commercial tree services within the city shall be required to obtain commercial certification under the state pesticide certification program in the category of ornamental and turf certification. This certification is provided by the state extension service. Failure to comply with this section shall subject such person to the penalty provided in section 35.130. (Ord. No. 610; Ord. No. 984, § 1.)

Section 33.04.440 Regulation of pesticides application

(a) Purpose. It is hereby declared to be the policy of the city to regulate and control the application of pesticides within the city in order to protect persons and property within the city and to guard against injury to persons, property, pets, wildlife and desirable plants and other vegetation.

(b) Definitions. Whenever the following words or terms are used in this section, they shall be construed to have the following meanings:

Pesticide. Any chemical or agent applied to lawns, shrubs, trees or other vegetation used to kill vegetation, insects or diseases.

Public Trees, Lawns and Shrubs. All trees, lawns or shrubs located on any park, playground or other property controlled or owned by the city or on any public street, boulevard or alley right-of-way.

(c) Permit Required:

(1) Permit Required. It shall be unlawful for any person, for compensation, to apply pesticides in the city without first obtaining a commercial applicator license therefor from the city.

(2) Application and Qualifications. Any person desiring a commercial applicator permit to apply pesticides within the city shall file an application therefor with the office of the city auditor, on forms to be furnished by the city auditor, and as a part of such application shall certify and agree to the following:

A. That applicant shall obey all ordinances and regulations of the city and state with respect to the commercial application of pesticides.

B. That applicant agrees to indemnify and hold harmless the city from any and all claims for loss or damage caused by or resulting from the application of pesticides by applicant, its agents or employees within the city pursuant to the commercial applicator permit issued by the city.

(3) Additional Documents. Prior to the issuance of any commercial applicator permit, applicant will furnish to the city the following documents:

A. Evidence of liability insurance with coverage of not less than three hundred thousand dollars per occurrence protecting applicant, its agents and employees from any and all claims for any loss or damages caused by or resulting from the application of pesticides;

B. Applicant's North Dakota Commercial Applicator's Certification/Classification;

C. A check for the annual license fee in such amount as determined from time to time by the board of city commissioners in the city fee schedule which shall be on file in the office of the city administrator.

(4) Granting of Permit. The city administrator shall review the application and attachments of the proposed applicant for a commercial applicator permit and, if the application is in order and the applicant otherwise is qualified for a commercial applicator's permit, the city administrator shall issue a commercial applicator's permit. All permits issued hereunder shall run for annual periods commencing January 1of each year and terminating on December 31 of the same year.

(5) Revocation of Permit. The board of city commissioners shall have the authority to revoke or to refuse to reissue a commercial applicator's permit for any violation by the permit holder of ordinances and regulations or for any other cause resulting in violation of this section. Written notice detailing such violations shall be given to the permit holder and the permit holder shall be entitled to a public hearing upon such violations before the board of city commissioners.

(6) Exemptions from Permit Requirements. No individual owners or tenants of real property shall be required to have a permit to apply pesticides to their property or to the public property or right-of-way adjoining such property.

(d) General Pesticide Application Regulations.

(1) Pesticides must be applied in accordance with label directions.

(2) Any persons applying pesticides commercially must, after making the application, leave written information with the property owner or occupant specifically stating (but not limited to) the following:

A. Product names of all pesticides applied.

B. Names of intended target organisms.

C. Date and exact time of application.

D. Applicator's signature, business phone number and name of firm.

(e) Penalties.

(1) In the event that any person violates any provision of this section, he shall be subject to a fine not to exceed five hundred dollars or imprisonment not exceeding thirty days, or both such fine and imprisonment. Each day any violation of any provision of this section shall continue shall constitute a separate offense.

(2) In addition to the penalties set forth herein, the city may avail itself of such injunctive remedies to enforce the terms and conditions of this section or to prohibit conduct contrary to the terms and conditions of this section as it may deem necessary and is allowable by law by commencing an appropriate action in the appropriate courts having jurisdiction over such an action. Any such legal action by the city shall in no way affect the right of the city to enforce penalties within the criminal court in addition to obtaining injunctive relief. (Ord. No. 1042, § 1; Ord. No. 1059, § 1; Ord. No. 1083, § 2; Ord. No. 1086, § 21; Ord. No. 1320 §1)

Section 33.04.450 Fastening animals to trees; traveling on areas used for lawn or park

No person shall at any time fasten any horse or other animal to any ornamental or shade tree in any of the streets or public grounds of the city or to any box or protection around such tree without the consent of the owner of such tree.

No person shall go upon, cross or otherwise travel upon the grass or turf of any land or lot abutting on a public street or boulevard within the city where such land is used for lawn or park purposes or a boulevard without permission from the owner or person in charge thereof. (Code 1958, § 28-42.)

Section 33.04.460 Deposits accompanying application for vacation of public grounds, streets or alleys

Any petition that may be filed pursuant to chapter 40-39 of the North Dakota Century Code for the vacation of any public grounds, street or alley shall be accompanied by a deposit of one hundred and fifty dollars cash, which shall be deposited with the city treasurer before any proceedings pursuant to such petition will be held.

The city auditor shall keep an accurate account of all expenses incurred in connection with any such proceeding, including statements to be received from the city attorney, city engineer and any city department involved, reciting the value of any such services rendered in such proceeding. The total amount of all such actual expenses as well as the value of other services rendered in such proceeding shall be deducted from the amount deposited and shall be retained in the city treasury. Any part of such deposit not used for such expenses shall be returned to the petitioner at the conclusion of the proceeding. (Ord. No. 346, §§ 1, 2.)

For state law as to the opening and vacating of streets, alleys and public places, see NDCC, § 40-39-01 et seq.

Section 33.04.470 Appeal of interpretation or enforcement of chapter

In case any difference should arise between the city engineer or street commissioner and the owner of any property adjacent to any street, alley or any pavement, driveway, sidewalk, curb, retaining wall or parking strip in or along such street or alley, subject to the regulations of this chapter or any persons desirous of

constructing any driveway, sidewalk, curb or retaining wall or of laying out or planting any parking strip regarding the interpretation or enforcement of any of the provisions of this chapter, appeal may be made to the board of city commissioners, whose decision regarding all matters affecting such dispute shall be final.

An appeal from any such determination by the city engineer or the street commissioner, as the case may be, shall be taken by filing notice thereof in writing in the office of the city auditor within five days after such determination is made. The board of city commissioners shall act upon such appeal at its next regular meeting following the filing of such notice of appeal.

In the event that an appeal is not taken, the decision of the city engineer or street commissioner shall be final and conclusive. (Code 1958, § 28-43.)

Article 33.08 House Numbering

Sections:

33.08.00E Editor's note to Article 33.08
33.08.010 Compliance with article required
33.08.020 Designation and furnishing of numbers by city engineer
33.08.030 Size and location of figures
33.08.040 Failure, refusal or neglect of owner, etc., to comply with article

Section 33.08.00E Editor's note to Article 33.08

For state law as to authority of city to regulate numbering of houses and lots, see NDCC, § 40-05-01 (19).

Section 33.08.010 Compliance with article required

The owner of each building in the city shall number the same in conformity with the provisions of this article. (Code 1958, § 28-44.)

Section 33.08.020 Designation and furnishing of numbers by city engineer

The city engineer shall designate the numbers of all houses and shall furnish the owner, occupant or agent of each house now or hereafter built with its proper number. (Code 1958, § 28-45.)

Section 33.08.030 Size and location of figures

The figures forming the numbers of all buildings shall be not less than three inches in height and shall be conspicuously painted over the entrance to each building or may be painted, stamped or printed on glass, tin or other substantial background or body and attached to such buildings in a conspicuous place over the front entrance thereto. (Code 1958, § 28-46.)

Section 33.08.040 Failure, refusal or neglect of owner, etc., to comply with article

If the owner or other person in charge or custody of a building within the city fails, refuses or neglects to comply with the requirements of this article, the city engineer shall cause proper numbers to be placed upon such building and the cost of so doing shall be collected from the owner or custodian of the building in a suit therefor by the city. (Code 1958, § 28-47)

Article 33.12 Excavations

Sections:

33.12.010 Permits--Fees
33.12.020 Same--Form and display of placard
33.12.030 Same--Surety bond of applicant
33.12.040 Routing of traffic
33.12.050 Interference with fire-fighting equipment, fire escapes, etc.
33.12.060 Encroachment of earth onto highways; traffic crossings
33.12.070 Removal and protection of utilities
33.12.080 Protection of adjoining property
33.12.090 Erection of footbridges over sidewalk excavations
33.12.100 Barriers, etc., surrounding excavation and materials excavated
33.12.110 Maintenance of attractive nuisance
33.12.120 Maintenance and storage of excavated materials generally
33.12.130 Repairing damage done to existing improvements
33.12.140 Cleaning site and surrounding area
33.12.150 Protection and restoration of watercourses, sewers or drains; accommodation of surplus water, muck, silt, etc.
33.12.160 Promulgation of standards
33.12.170 Restoration of surface
33.12.180 Length, bracing and sheathing of pipe trenches
33.12.190 Period for completion of work generally
33.12.200 Emergency repairs generally
33.12.210 Declaration of emergency work
33.12.220 Avoidance of unnecessary inconveniences or annoyances; reduction of noise, dust, etc.
33.12.230 Disturbing surface monuments or hubs
33.12.240 Inspections; promulgation of regulations to carry out article
33.12.250 Maintenance of drawings of subsurface street installations
33.12.260 Applicability of article to work done by or for city
33.12.270 Applicability of article to persons operating public utilities
33.12.280 Liability insurance required of permittee
33.12.290 Liability of city

Section 33.12.010 Permits--Fees

A permit fee shall be charged by the city engineer for the issuance of an excavation permit which shall be in addition to all other fees for permits or charges relative to any proposed construction work. The excavation permit fee shall be in an amount varying with the type of surface to be opened, dug or excavated under the permit issued as per the schedule of assessed fees maintained by the city engineer's office; such fees shall be uniform. The amount of said fees shall be in such amount as determined from time to time by the board of city commissioners and shall be on file in the office of the city auditor in the city fee schedule. (Ord. No. 482, § 28-48; Ord. No. 1086, § 22.)

Section 33.12.020 Same--Form and display of placard

The contractor shall provide each permittee at the time a permit is issued hereunder a suitable placard plainly written or printed in English letters at least one inch high with the following notice: "City of Dickinson, Permit No. __ Expires ____." In the first blank space on such placard there shall be inserted the number of the permit and after word "expires" shall be stated the date when the permit expires.

It shall be the duty of any permittee to keep the placard posted in a conspicuous place at the site of the excavation work. It shall be unlawful for any person to exhibit such placard at or about any excavation not covered by such permit or to misrepresent the number of the permit or the date of expiration of the permit. (Ord. No. 482, § 28-49.)

Section 33.12.030 Same--Surety bond of applicant

Before an excavation permit as herein provided is issued, the applicant shall deposit with the city auditor a surety bond in the amount of one thousand dollars payable to the city, unless the applicant has a current franchise issued by the City of Dickinson. The required surety bond must be:

(a) With good and sufficient surety;

(b) By a surety company authorized to transact business in the state;

(c) Satisfactory to the city attorney in form and substance;

(d) Conditioned upon the permittee's compliance with this article and to secure and hold the city and its officers harmless against any and all claims, judgments or other costs arising from the excavation and other work covered by the excavation permit or for which the city, the city council or any city officer may be made liable by reason of any accident or injury to persons or property through the fault of the permittee either in not properly guarding the excavation or for any other injury resulting from the negligence of the permittee and further conditioned to fill up, restore and place in good and safe condition as near as may be to its original condition and to the satisfaction of the city engineer all openings and excavations made in streets, and to maintain any street where excavation is made in as good condition for the period of twenty-four months after such work shall have been done, usual wear and tear excepted, as it was in before such work shall have been done. Any settlement of the surface within such two-year period shall be deemed conclusive evidence of defective back-filling by the permittee. Nothing herein contained shall be construed to require the permittee to maintain any repairs to pavement made by the city if such repairs should prove defective. Recovery on such bond for any injury or accident shall not exhaust the bond but it shall in its entirety cover any or all future accidents or injuries during the excavation work for which it is given. In the event of any suit or claim against the city by reason of the negligence or default of the permittee, upon the city's giving written notice to the permittee of such suit or claim any final judgment against the city requiring it to pay for such damage shall be conclusive upon the permittee and his surety.

An annual bond may be given under this provision which shall remain in force for one year conditioned as above, in the amount specified above and in other respects as specified above but applicable as to all excavation work in streets by the principal in such bond during the term of one year from such date. (Ord. No. 482, § 28-50; Ord. No. 1269 § 1.)

Section 33.12.040 Routing of traffic

The permittee shall take appropriate measures to assure that during the performance of the excavation work traffic conditions as nearly normal as practicable shall be maintained at all times so as to cause as little inconvenience as possible to the occupants of the abutting property and to the general public; provided, that the city engineer may permit the closing of streets to all traffic for a period of time prescribed by him if in his opinion it is necessary. The permittee shall route and control traffic including its own vehicles as directed by the city police department. The following steps shall be taken before any highway may be closed or restricted to traffic:

(a) The permittee must receive the approval of the city engineer and the police department therefor;

(b) The permittee must notify the chief of the fire department of any street so closed;

(c) Upon completion of construction work, the permittee shall notify the city engineer and city police department before traffic is moved back to its normal flow so that any necessary adjustments may be made;

(d) Where flagmen are deemed necessary by the city engineer they shall be furnished by the permittee at its own expense. Through traffic shall be maintained without the aid of detours, if possible; in instances in which this would not be feasible the city engineer will designate detours. The city shall maintain roadway surfaces of existing highways designated as detours without expense to the permittee but in case there are no existing highways the permittee shall construct all detours at its expense and in conformity with the specifications of the city engineer. The permittee will be responsible for any unnecessary damage caused to any highways by the operation of its equipment. (Ord. No. 482, § 28-51.)

Section 33.12.050 Interference with fire-fighting equipment, fire escapes, etc.

The excavation work shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within fifteen feet of fire plugs. Passageways leading to fire escapes or fire-fighting equipment shall be kept free of piles of material or other obstructions. (Ord. No. 482, § 28-52.)

Section 33.12.060 Encroachment of earth onto highways; traffic crossings

The permittee shall erect and maintain suitable timber barriers to confine earth from trenches or other excavations in order to encroach upon highways as little as possible.

The permittee shall construct and maintain adequate and safe crossings over excavations and across highways under improvement to accommodate vehicular and pedestrian traffic at all street intersections. Vehicular crossings shall be constructed and maintained of plank, timbers and blocking of adequate size to accommodate vehicular traffic safely. Decking shall be not less than four inches thick and shall be securely fastened together with heavy wire and staples. Pedestrian crossings shall consist of planking three inches thick, twelve inches wide and of adequate length together with necessary blocking. The walk shall be not less than three feet in width and shall be provided with a railing as required by the city engineer. (Ord. No. 482, § 28-53.)

Section 33.12.070 Removal and protection of utilities

The permittee shall not interfere with any existing utility without the written consent of the city engineer and the utility company or person owning the utility. If it becomes necessary to remove an existing utility this shall be done by its owner. No utility owned by the city shall be moved to accommodate the permittee unless the cost of such work be borne by the permittee. The cost of moving privately owned utilities shall be similarly borne by the permittee unless he makes other arrangements with the person owning the utility. The permittee shall support and protect by timbers or otherwise all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the excavation work and do everything necessary to support, sustain and protect them under, over, along or across such work. In case any such pipes, conduits, poles, wires or apparatus should be damaged, they shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittee, and his bond shall be liable therefor. The permittee shall be responsible for any damage done to any public or private property by reason of the breaking of any water pipes, sewer, gas pipe, electric conduit or other utility and his bond shall be liable therefor. The permittee shall inform itself as to the existence and location of all underground utilities and protect them against damage. (Ord. No. 482, § 28-54.)

Section 33.12.080 Protection of adjoining property

The permittee shall at all times and at his own expense preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. Where in the protection of such property it is necessary to enter upon private property for the purpose of taking appropriate protective measures, the permittee shall obtain a license from the owner of such private property for such

purpose; and if he cannot obtain a license from such owner; the city engineer may authorize him to enter the private premises solely for the purpose of making the property safe. The permittee shall, at its own expense shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of the excavation work and shall be responsible for all damage to public or private property or highways resulting from its failure properly to protect and carry out such work. Whenever it may be necessary for the permittee to trench through any lawn area, the sod shall be carefully cut and rolled and replaced after ditches have been backfilled as required in this article. All construction and maintenance work shall be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as nearly as possible to that which existed before such work began. The permittee shall not remove even temporarily any trees or shrubs which exist in parking strip areas or easements across private property without first having notified and obtained the consent of the property owner or in the case of public property the appropriate city department or city official having control of such property. (Ord. No. 482, § 28-55.)

Section 33.12.090 Erection of footbridges over sidewalk excavations

Any excavation made in any sidewalk or under a sidewalk shall be provided with a substantial and adequate footbridge over such excavation on the line of the sidewalk, which bridge shall be at least three feet wide and securely railed on each side so that foot passengers can pass over safely at all times. (Ord. No. 482, § 28-56.)

Section 33.12.100 Barriers, etc., surrounding excavation and materials excavated

The permittee shall erect such fence, railing or barriers about the site of the excavation work as shall prevent danger to persons using the city streets or sidewalks, and such protective barriers shall be maintained until the work shall be completed or the danger removed. At twilight there shall be placed upon such place of excavation and upon any excavated materials or structures or other obstructions to streets suitable and sufficient lights which shall be kept burning throughout the night during the maintenance of such obstructions. It shall be unlawful for anyone to remove or tear down the fence or railing or other protective barriers or any lights provided there for the protection of the public. (Ord. No. 482, § 28-57.)

Section 33.12.110 Maintenance of attractive nuisance

It shall be unlawful for the permittee to suffer or permit to remain unguarded at the place of excavation or opening any machinery, equipment or other device having the characteristics of an attractive nuisance likely to attract children and hazardous to their safety or health. (Ord. No. 482, § 28-58.)

Section 33.12.120 Maintenance and storage of excavated materials generally

All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such manner as not to endanger those working in the trench, pedestrians or users of the streets and so that as little inconvenience as possible is caused to those using streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, such as might be the case in a narrow alley, the city engineer shall have the authority to require that the permittee haul the excavated material to a storage site and then re-haul it to the trench site at the time of back-filling. It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites. (Ord. No. 482, § 28-59.)

Section 33.12.130 Repairing damage done to existing improvements

All damage done to existing improvements during the progress of the excavation work shall be required by the permittee. Materials for such repair shall conform with the requirements of any applicable code or ordinance. If upon being ordered the permittee fails to furnish the necessary labor and materials for such repairs the city engineer shall have the authority to cause such necessary labor and materials to be furnished by the city and the cost shall be charged against the permittee and the permittee shall also be liable on his bond therefor. (Ord. No. 482, § 28-60.)

Section 33.12.140 Cleaning site and surrounding area

As the excavation work progresses all streets and private properties shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such work. All clean-up operations at the location of such excavation shall be accomplished at the expense of the permittee and shall be completed to the satisfaction of the city engineer. From time to time as may be ordered by the city engineer and in any event immediately after completion of such work, the permittee shall at his own expense clean up and remove all refuse and unused materials of any kind resulting from such work, and upon failure to do so within twenty-four hours after having been notified to do so by the city engineer, such work may be done by the city engineer and the cost thereof charged to the permittee, and the permittee shall also be liable for the cost thereof under the surety bond provided hereunder. (Ord. No. 482, § 28-61.)

Section 33.12.150 Protection and restoration of watercourses, sewers or drains; accommodation of surplus water, muck, silt, etc.

The permittee shall provide for the flow of all watercourses, sewers or drains intercepted during the excavation work and shall replace watercourses, etc., in as good condition as it found them or shall make such provisions for them as the city engineer may direct. The permittee shall not obstruct the gutter of any street but shall use all proper measures to provide for the free passage of surface water.

The permittee shall make provision to take care of all surplus water, muck, silt, slickings or other run-off pumped from excavations or resulting from sluicing or other operations and shall be responsible for any damage resulting from its failure to so provide. (Ord. No. 482, § 28-62.)

Section 33.12.160 Promulgation of standards

Standards for breaking through pavement, tunnels, back-filling and restoration of surface shall be promulgated by the city engineer from time to time which standards shall be kept on file in the city engineer's office for inspection during business hours. (Ord. No. 482, § 28-63.)

Section 33.12.170 Restoration of surface

If the permittee shall have failed to restore the surface of the street to its original and proper condition upon the expiration of the time fixed by such permit or shall otherwise have failed to complete the excavation work covered by such permit, the city engineer, if he deems it advisable, shall have the right to do all work and things necessary to restore the street and to complete the excavation work. The permittee shall be liable for the actual cost thereof and twenty-five percent of such cost in addition for general overhead and administrative expenses. The city shall have a cause of action for all fees, expenses and amounts paid out due it for such work and shall apply in payment of the amount due it any funds of the permittee deposited as herein provided and the city shall also enforce its rights under the permittee's surety bond provided pursuant to this article.

It shall be the duty of the permittee to guarantee and maintain the site of the excavation work in the same condition it was prior to the excavation for two years after restoring it to its original condition. (Ord. No. 482, § 28-64.)

Section 33.12.180 Length, bracing and sheathing of pipe trenches

Except by special permission from the city engineer, no trench shall be excavated more than two hundred fifty feet in advance of pipe laying nor left unfilled more than five hundred feet where pipe has been laid. The length of the trench that may be opened at any one time shall not be greater than the length of pipe and the necessary accessories which are available at the site ready to be put in place. Trenches shall be braced and sheathed according to generally accepted safety standards for construction work as prescribed by the city engineer. No timber bracing, lagging, sheathing or other lumber shall be left in any trench. (Ord. No. 482, § 28-65.)

Section 33.12.190 Period for completion of work generally

The permittee shall prosecute with diligence and expedition all excavation work covered by the excavation permit and shall promptly complete such work and restore the street to its original condition, or as near as may be, as soon as practicable and in any event not later than the date specified in the excavation permit therefor. (Ord. No. 482, § 28-66.)

Section 33.12.200 Emergency repairs generally

In the event of any emergency in which a sewer, main, conduit or utility in or under any street breaks, bursts or otherwise is in such condition as to immediately endanger the property, life, health and safety of any individual, the person owning or controlling such sewer, main, conduit or utility, without first applying for and obtaining an excavation permit hereunder, shall immediately take proper emergency measures to cure or remedy the dangerous conditions for the protection of property, life, health and safety of individuals. However, such person owning or controlling such facility shall apply for an excavation permit not later than the end of the next succeeding day during which the city engineer's office is open for business and shall not proceed with permanent repairs without first obtaining an excavation permit hereunder. (Ord. No. 482, § 28-68.)

Section 33.12.210 Declaration of emergency work

If in his judgment traffic conditions, the safety or convenience of the traveling public or the public interest require that the excavation work be performed as emergency work, the city engineer shall have full power to order, at the time the permit is granted, that a crew of men and adequate facilities be employed by the permittee twenty-four hours a day to the end that such excavation work may be completed as soon as possible. (Ord. No. 482, § 28-67.)

Section 33.12.220 Avoidance of unnecessary inconveniences or annoyances; reduction of noise, dust, etc.

Each permittee shall conduct and carry out the excavation work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The permittee shall take appropriate measures to reduce to the fullest extent practicable in the performance of the excavation work, noise, dust and unsightly debris. During the hours of 10:00 p.m. and 7:00 a.m., such permittee shall not use, except with the express written permission of the city engineer or in case of an emergency as herein otherwise provided, any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighboring property. (Ord. No. 482, § 28-69.)

Section 33.12.230 Disturbing surface monuments or hubs

The permittee shall not disturb any surface monuments or hubs found on the line of excavation work until ordered to do so by the city engineer. (Ord. No. 482, § 28-70.)

Section 33.12.240 Inspections; promulgation of regulations to carry out article

The city engineer shall make such inspections as are reasonably necessary in the enforcement of this article.

The city engineer shall have the authority to promulgate and cause to be enforced such rules and regulations as may be reasonably necessary to enforce and carry out the intent of this article. (Ord. No. 482, § 28-71.)

Section 33.12.250 Maintenance of drawings of subsurface street installations

Users of subsurface street space shall maintain accurate drawings, plans and profiles showing the location and character of all underground structures including abandoned installations. Corrected maps shall be filed with the city engineer within sixty days after new installations, changes or replacements are made. (Ord. No. 482, § 28-72.)

Section 33.12.260 Applicability of article to work done by or for city

The provisions of this article shall not be applicable to any excavation work under the direction of competent city authorities by employees of the city or by any contractor of the city performing work for and in behalf of the city necessitating openings or excavations in streets. (Ord. No. 482, § 28-73.)

Section 33.12.270 Applicability of article to persons operating public utilities

All persons operating public utilities in the city under franchise granted by the city and having the right either by general or special permission to enter upon streets and open and excavate pavements, sidewalks or disturb the surface thereof by excavation or other work shall not be required to apply for a permit but shall be required to perform the work and bring it to completion as promptly as practicable and to that end shall employ an adequate standing force. Any person operating any such public utility shall, however, comply with other requirements of this article, including the surety bond and deposit requirements. (Ord. No. 482, § 28-74.)

Section 33.12.280 Liability insurance required of permittee

A permittee, prior to the commencement of excavation work hereunder, shall furnish the city engineer satisfactory evidence in writing that the permittee has in force and will maintain in force during the performance of the excavation work and the period of the excavation permit public liability insurance of not less than one hundred thousand dollars for any one person and three hundred thousand dollars for any one accident and property damage insurance of not less than fifty thousand dollars duly issued by an insurance company authorized to do business in this state. (Ord. No. 482, § 28-75.)

Section 33.12.290 Liability of city

This article shall not be construed as imposing upon the city or any official or employee any liability or responsibility for damages to any person injured by the performance of any excavation work for which an excavation permit is issued hereunder; nor shall the city or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit or the approval of any excavation work. (Ord. No. 482, § 28-76.)

Article 33.16 Creation of Municipal Street Light Utility

Sections:

33.16.010 Creation of Municipal Street Light Utility
33.16.020 Control of Systems
33.16.030 Rates and Charges to be Established
33.16.040 Rates and Charges to be Billed and Collected
33.16.050 Due Date; Failure to Pay - Generally
33.16.060 Joint and Several Liability of Owner and Occupant
33.16.070 Charges to constitute a lien on premises; assessment and collection of lien
33.16.080 Special Assessments Not Precluded

Section 33.16.010 Creation of Municipal Street Light Utility

There is hereby created a municipal street light utility on all lands, easements, rights in land, facilities, poles, wires, cables, conduits, and other electrical fixtures, and equipment necessary or proper for the maintenance and operation of the municipal street light system, whether heretofore or hereafter acquired by the City. (Ord No. 1376 §1)

Section 33.16.020 Control of Systems

All properties and other assets set aside or held by the City for the municipal street light utility, and all monies derived or to be derived from the operation of the municipal street light utility shall at all times be under the management and control of the Board of City Commissioners, and shall be operated under such rules, regulations, terms, and conditions as the Board of City Commissioners may from time to time ordain and establish. (Ord No. 1376 §1)

Section 33.16.030 Rates and Charges to be Established

In order to help defray the costs of operation, maintenance, and repair of the municipal street light system, the Board of City Commissioners shall from time to time determine and establish, by resolution, such rates, charges, or fees as the Board may deem necessary and proper for the services and benefits furnished by the municipal street light system. Such rates, charges, or fees shall be incorporated into the regular municipal fee schedule maintained by the City. (Ord No. 1376 §1)

Section 33.16.040 Rates and Charges to be Billed and Collected

The rates and charges for the municipal street light utility shall be billed and collected on a monthly basis in the same manner and time as bills for other municipal utility services as provided by city ordinance. (Ord No. 1376 §1)

Section 33.16.050 Due Date; Failure to Pay - Generally

All invoices for the municipal street light utility shall be due and payable on the date of billing. Accounts unpaid at the next billing date will be considered past due and will be assessed penalties as set by the Board of City Commissioners. (Ord No. 1376 §1)

Section 33.16.060 Joint and Several Liability of Owner and Occupant

Rates and charges for the municipal street light utility shall be charged against both the owner of property so charged and any occupant, tenant, or lessee thereof, and shall be a personal liability on the part of the owner, occupant, tenant, or lessee and may be collected from any such person so liable. The owner and any occupant, tenant, or lessee of each premises billed shall be jointly and severally liable for all charges of the

municipal street light utility during the period of their respective ownership or occupancy, tenancy, or lease. Any charges properly billed but not paid may be recovered by the City of Dickinson in a civil action in any court of competent jurisdiction against either the owner or occupant, tenant, lessee, or any of them. (Ord No. 1376 §1)

Section 33.16.070 Charges to constitute a lien on premises; assessment and collection of lien

All charges for the municipal street light utility shall constitute liens upon the respective lots, tracts, and premises so billed for the municipal street light utility. All such charges that have been properly billed to the owner or occupant, tenant, or lessee of the premises, and which are more than 30 days past due or September 30th of each year shall be certified by the City to Stark County between the first and the tenth day of October each year. The City, in so certifying such charges, shall specify the amount thereof, the description of the premises, and the name of the owner thereof. The amount so certified shall be extended by the County on the tax rolls against such premises and collected by the County and paid to the City in the same manner as other county and municipal taxes are assessed, certified, collected, and returned. (Ord No. 1376 §1)

Section 33.16.080 Special Assessments Not Precluded

It is recognized that the municipal street light utility hereby created may not fully defray the costs of construction, operation, maintenance, and repair of the municipal street light system. Accordingly, nothing in this Chapter shall be deemed or construed to preclude the City from defraying any part of the expense of the construction, operation, or improvement of the municipal street lighting system by levy of special assessments, taxes, or the issue of general obligation bonds, whenever and to the extent that such action is authorized in the manner provided by law and is deemed fair and equitable by the Board of City Commissioners. (Ord No. 1376 §1)

Chapter 34 SUBDIVISION OF LAND

Last updated December 2014

In General
Sections:

34.010 Planning Commission
34.020 Purpose of Subdivision Regulations: Approval of Plats
34.030 Definitions
34.040 Procedure
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34.090 Fees
34.100 Penalties
34.110 Vacation of Plats
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Section 34-010. Planning Commission.

1. The planning commission of the City of Dickinson is hereby authorized and instructed to review and approve or disapprove the formal subdivision of land within its jurisdiction.
2. The territorial jurisdiction of the city planning commission over the subdivision or platting of land shall include all land located within the corporate limits, and all land lying within the extraterritorial jurisdiction as defined in Section 14-02-03 hereof.

Section 34-020. Purpose of Subdivision Regulations; Approval of Plats.

As each new subdivision of land in the City becomes a permanent unit in the basic structure of the expanding community, to which the community will be forced to adhere, the design and arrangement of such subdivisions must correlate to the unified scheme of community interests. In order to provide for the proper arrangement of streets in relation to other existing and planned streets, and to the master plan of the City of Dickinson; to provide for adequate and convenient open spaces, for recreation, for light and air; in order to avoid congestion of population; in order to provide for traffic, for utilities, for access of fire-fighting apparatus; in order to promote, preserve and enhance area natural resources; in order to provide for and improve the public health, safety and general welfare of the City of Dickinson, the following rules and regulations for the platting and subdivision of land within the City of Dickinson and adjacent territory have been adopted by the Planning Commission of the City of Dickinson, in accordance with the laws of the State of North Dakota and the ordinances of the City of Dickinson.

Every piece of land proposed within the City or within the City's extraterritorial area shall be prepared, presented for approval and recorded as described in this Chapter. This chapter applies to the platting of land into a single parcel, the subdivision of a lot or parcel of land into two or more lots, or other division of land for the purpose of sale or development, whether immediate or future, including the resubdivision or replatting of lots. No plat of a subdivision of land within the City of Dickinson or within the adjacent territory designated on any filed master plan as subject to subdivision regulations of the City of Dickinson, shall be filed or recorded until it shall have been approved by the Planning Commission of the City of Dickinson and such approval entered in writing on the plat by the chairman and secretary of the City Planning Commission. Such subdivision plats must be prepared in accordance with provisions of Chapter 40-50 of the North Dakota Century Code. The filing of a plat of irregular description in accordance with Chapter 57-02-39 of the North Dakota Century Code does not meet the requirements of this Chapter.

Section 34-030. Definitions.

The following definitions represent the meanings of terms as they are used in these regulations:

Alley: A public right-of-way generally designed to provide secondary access to the side or rear of a property whose principal frontage is on another street.

Applicant: An owner, developer, or subdivider submitting an application to divide property pursuant to this Ordinance.

Block: A tract of land entirely surrounded by public streets, by streets and the exterior boundary of the subdivision, by other blocks, or a combination of the above with a physical or man-made land barrier.

Collector: Roadway which provides traffic movements between local roads and arterial roads and also provides direct access to abutting property. Collectors are often only two-lane roads but should be planned and designed to minimize on-street parking and direct driveway access.

Cul-de-Sac: A turnaround at the end of a dead end street.

Dedication: A grant of land to the City or another public agency for a public purpose.

Development: The act of building, engineering, mining, or other operations in, on, over, or under land or the making of any material change in the use of any building or other land or the subdivision of land into two or more lots or tracts.

Drainage: The removal of surface or ground water from land by drains, grading, or other means.

Drainage system: The system through which water flows from the land.

Easement: A grant of one or more of the property rights by the property owner to the public, a corporation, or another person or entity.

Easement/Drainage: An easement required for the installation of storm water sewers or drainage ditches, or required for the preservation or maintenance of a natural stream or water course or other drainage facility.

Final Approval: The final action of the City Commission, upon a recommendation by the Planning and Zoning Commission, permitting the filing of a subdivision with the Stark County Register of Deeds and the conveyance of individual parcels and lots to subsequent owners. Final Approval follows the completion of detailed engineering plans, negotiation of subdivision agreements, posting of required guarantees, and other approvals of this Ordinance.

Frontage: The length of the property line for a single parcel which runs parallel to and along each public right-of-way (exclusive of alleys) it borders.

Functional Classification: The process by which streets and highways are grouped into classes, or systems, according to the character of service they are intended to provide.

Ghost platting: A method of master planning for future urban densities in rural residential large-lot subdivisions located within the Urban Service Area Boundary (USAB). Platting for future urban densities is achieved by establishing lines for future splits of large lots into smaller lots and dedication of right-of-way and easements for future streets, utilities, storm water facilities etc. As the city grows and rural residential large-lot subdivisions are incorporated into the city, costs of public facility improvements can be shared among more users by planning ahead for conversion of rural residential subdivisions into urban density neighborhoods.

Grade: The slope of a street or other public way is defined as a percentage or ratio of vertical change in elevation to horizontal change in distance.

Improvement: A public improvement consisting of any sanitary sewer, storm sewer, drainage ditch, water main, roadway, street grading and surfacing, sidewalks, planting strips, crosswalks, off-street parking areas, park or greenway, trail, or any other facility for which the city may ultimately assume operational responsibility.

Intersection: A place of joining or crossing of streets.

Interstate: Roadway which provides rapid movement of large traffic volumes between major population centers and other arterials. Interstates are multi-lane divided highways with grade separations at all crossroads, full access control and no parking. The locations of roadways classified as interstates shall be as

designated on the most recent edition of the North Dakota Department of Transportation functional classification map.

Local: Roadway whose primary function is to provide access to abutting property. Local roads are usually two-lane roads with parking and direct access to adjacent lands.

Lot: One unit of a recorded plat or subdivision or a portion of land considered as a unit and occupied or to be occupied by a building and its accessory buildings and including as a minimum such open spaces as required by other city ordinances and having frontage on a public street.

Lot, corner: A lot abutting on and at the intersection of two or more streets.

Lot, double frontage: A lot, other than a corner lot, having frontage on two streets. Access shall be provided on a double frontage lot to the minor of the two streets or to the front lot line as determined at the time of platting.

Lot, interior: A lot other than a corner lot.

Lot area: The total horizontal distance measured from the front and rear lot lines.

Lot Line: A property boundary line(s) of record that divides one lot from another lot or a lot from the public or private street rights-of-way or easement.

a) **Front Lot Line:** The lot lines separating a lot and a public or private street right-of-way or easement.
   1) For an interior lot, the lot line separating the lot from the right-of-way or easement.
   2) For a corner lot, the shorter lot line abutting a public or Private Street or easement. The Subdivision Administrator shall determine the front lot line, or as may be noted on a final plat.
   3) For a double frontage lot, the lot lines separating the lot from the right-of-way or easement of the more minor street. In cases where each street has the same classification, the Subdivision Administrator shall determine the front lot line, or as may be noted on a final plat.

b) **Rear Lot Line:** The lot line which is opposite and most distant from the front lot line.

c) **Side Lot Line:** Any lot line that is neither a front or rear lot line. A side lot line separating a lot from a street, or private way, is a street side lot line. A side lot line separating a lot from another lot or lots is an interior side lot line.

Lot Width: The horizontal distance measured between the side lot lines of a lot, at right angles to its depth along a straight line parallel to the front lot line at the minimum required setback line.

Main: The principal artery of a system of continuous piping which conveys fluids and to which branches may be connected.

Minor Arterial: Roadway which provides through traffic movements between areas and links collectors with other arterials. Minor arterials usually have two to four lanes and may be divided or undivided roads, preferably with little or no parking, and limited access.

Monument: An identification marker established by a registered land surveyor at each section corner, block corner, lot corner, or other point as required by this ordinance and North Dakota State Law.

Off-site: Located outside the boundaries of the parcel that is the subject of an application.

Open space: Any parcel or area of land or water that is essentially retained in an open state and set aside for public or private use.

Parcel: A continuous quantity of land in the possession of or owned by, or recorded as the property of, the same person or persons.

Parking, Off-Street: Space located outside of any street right-of-way or easement and designed to accommodate the parking of domestic vehicles.

Pedestrian Way: A public or private right-of-way or easement across or within a block to provide access to be used by pedestrians. A pedestrian way may also be used for the installation of public utilities.

Plat: A map or delineated representation of the subdivision of lands, being a complete exact representation of the subdivision, and other information in compliance with the requirement of all applicable

sections of this chapter, state statutes and of any local ordinances, and may include the terms "replat" and "amended plat."

Principal Arterial: Roadway which provides for rapid movements of relatively large traffic volumes between large land areas, major traffic generators and other arterials. Principal arterials should have controlled access and are usually multi-lane roads with no parking.

Right-of-Way: Land dedicated, deeded, used or to be used, for a street, alley, walkway, boulevard, drainage facility, access for ingress, egress or other purpose by the public, certain designated individuals or governing bodies.

Sidewalk: A paved path provided for pedestrian use, usually located at the side of and detached from a road, but within the right-of-way.

Street: Any access way such as a street, road, lane, highway, avenue, boulevard, parkway, viaduct, circle, court, terrace, place or cul-de-sac and also includes all of the land lying between the right-of-way lines as delineated on a plat showing such street, whether improved or unimproved, but shall not include those access ways such as easements and rights-of-way intended solely for limited utility purposes, such as for electric power lines, gas lines, telephone lines, water lines, drainage and sanitary sewers, and easements or rights-of-way of ingress and egress.

Street hierarchy: The conceptual arrangement of streets based on function. The hierarchical approach classifies streets from local, which provide private access to a limited number of lots, to arterials, which accommodate large volumes of high-speed, regional traffic. Street types contained within the hierarchy include:

(a) Local
(b) Collector
(c) Minor Arterial
(d) Major Arterial

Storm Sewer: A conduit which conducts storm drainage from a development or subdivision, ultimately to a drainage system or stream.

Stormwater: Flow of surface runoff water which results from and which occurs during and immediately after a rainfall event.

Stormwater Management Plan: That part of a Site Development Plan that shows existing and proposed low water and high water elevations, together with adequate justification that the proposed low water elevations will be attained, locations of proposed channels and ponds and delineation of offsite areas draining to the proposed development along with the drainage calculations and other pertinent information.

Subdivision: The division of a tract or parcel of land into record lots for the purpose, whether immediate or future, of sale or of building development, including any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights-of-way, whether public or private, for access to or from such lots, and/or including the creation of new or enlarged parks, playgrounds, plazas or open spaces. However, the division of land for into parcels of forty (40) or more acres not involving any new street or easement of access shall be exempted from these regulations, except as to the rezoning of property. Federal, state and local jurisdictions, public utilities and telecommunications are exempt from this Chapter, but are required to dedicate rights-of-way along abutting roads if determined necessary by the appropriate jurisdiction. This provision does not include administrative or general office buildings. In addition, any rezoning of property shall require platting and conformance with this Chapter. (Ord. No. 1562 § 1)

Subdivision Plat, Minor: A subdivision, platted pursuant to Chapter 40-50.1 NDCC, that meets all of the following criteria:

a. Does not require the dedication of public rights-of-way or the construction of new streets;
b. Does not land-lock or otherwise impair convenient ingress and egress to or from the rear or side of the subject tract or any adjacent property;
c. Does not violate any local, state or federally-adopted law, ordinance, regulation, plan or policy;
d. Consists of four lots or less. (Ord. No. 1545 § 2)

Subdivision Plat, Major: Any subdivision, platted pursuant to Chapter 40-50.1 NDCC, that does not meet the definition of a minor subdivision.

Plat of Irregular Description: A plat made for taxation purposes at the request of the County Auditor in accordance with Section 57-02-39 NDCC. Such a County Auditor's plat is not platting pursuant to Chapter 40-50 NDCC, but rather is made for the convenience of tax officials in describing property on the tax rolls.

Lot Line Adjustment: An adjustment of an existing platted lot line between two (2) adjoining lots by relocation of a common boundary that meets the following criteria:

a. Does not involve lots within more than one zoning classification;
b. Is not one lot line adjustment in a series of lot line adjustments proposed for contiguous lots as a way to circumvent the minor subdivision plat process.
c. Both of the resulting parcels conform to the minimum lot area, width and depth for the zoning district in which the property is located, or will when combined with an adjacent parcel as part of the same lot modification action;
d. The resulting parcels can be legally described with no more than two (2) directional descriptors (e.g. the north 100 feet of the west 200 feet of Lot 1, Block 1, ABC Addition). For lot line adjustments between irregularly-shaped parcels or to transfer an irregularly-shaped portion of a lot to an adjacent land owner, the City Planner may waive this requirement, provided the resulting parcels can be legally described as the original lot number combined with a letter (e.g. Lot 1 would become Lots 1A, 1B and 1C);

Lot Combination: A combination of two (2) or more platted lots into a single lot whose boundaries coincide with the lot lines shown on the recorded plat of the subdivision that meets the following criteria:

a. Does not involve the vacation of existing easements;
b. does not involve lots within more than one zoning classification.

Lot Split: The division of a previously platted lot into not more than three (3) lots, that meets the following criteria:

a. The lot split does not involve the creation of new utility easements;
b. The lot split does not require the dedication of public rights-of-way for the purpose of gaining access to the property;
c. All parcels conform to the minimum lot area, width and depth for the zoning district in which the property is located;
d. The resulting parcels can be legally described with no more than two (2) directional descriptors (e.g. the north 100 feet of the west 200 feet of Lot 1, Block 1, ABC Addition). For an irregularly-shaped lot, the City Planner may waive this requirement, provided the resulting parcels can be legally described as the original lot number combined with a letter (e.g. Lot 1 would become Lots 1A, 1B and 1C), and provided that any line dividing the parcel along a common wall is a straight line from the front property line to the back property line among the common wall;
e. The property has not previously been divided through the lot split provisions of this ordinance.

Lot Modification: A lot line adjustment, lot split or lot combination as defined herein

Subdivision Administrator: Unless otherwise designated by the City, the Subdivision Administrator shall be the City Planner, or designee, who is responsible for the following:
Enforcing and administering this ordinance;
Reviewing concept plans, preliminary plats, and final plats for conformance with the regulations of this ordinance; providing proper notice of public hearings for subdivision approval as established in this ordinance;
Submitting reports to the Planning and Zoning Commission regarding conformance of proposed plats with these regulations, other applicable ordinances and status, and the Comprehensive Plan; and
Providing and maintaining public information relative to matters pertaining to this chapter.

Tangent: A straight line departing from a curve which is perpendicular to the radius of that curve.

Utility: A community service available to the general public, including but not limited to electricity, telephone, cable television, water supply, gas and sanitary sewers.

Variance: A relaxation of the dimensional regulations of the code where such actions will not be contrary to the public interest and where, owning to conditions peculiar to the property and not the result of actions or the situation of the applicant, a literal enforcement of this code would result in unnecessary and undue hardship.

Zoning District: Areas of land or water, whose boundaries are indicated on the Zoning Map, within which all properties are regulated by the general regulations of this Code and the specific regulations of the individual district.

Section 34-040. Procedure.

1. Preliminary steps:
   a. Prior to preparing a subdivision plat for submittal, the applicant shall meet with planning and engineering staff to discuss the proposed plat, consistency of the plat with City policies and plans, the overall concept plan for the area, extension of municipal utilities to service the plat, compliance with the fringe area road master plan, and storm water management issues.
   b. The subdivider should also consult with parties potentially interested with him or with the ultimate users of the development, such as mortgage, insurance and lending institutions, with a view to reaching at this stage a clear understanding of the part of the market demand that should be served, suitability of the location of the proposed subdivision, the most advantageous general plan or arrangement of streets, lots, and other features of the proposed development.
   c. It will be the duty of the planning commission to discourage the subdividing of lands that are far in advance of the needs of the community; that by their location cannot be efficiently served by public utilities, fire protection, police protection or other municipal services; that are located in areas subject to flooding; that are located in areas that would adversely impact water quality and environmentally sensitive lands; that are topographically unsuitable for development; or that for any other reason are being unwisely or prematurely subdivided. It shall also be the duty of the planning commission to encourage the replatting of lands deemed to be unsatisfactorily subdivided or which represent an obstacle to the orderly and efficient growth of the city. It shall also be the duty of the planning commission to encourage the coordinated platting of adjacent parcels of land.
2. Lot Modifications - Lot Line Adjustments, Lot Splits and Lot Combinations:
   a. The purpose of this subsection is to provide for approval of lot modifications that meet specific criteria and for the waiver of standard platting requirements specified elsewhere in this Chapter. This process is intended to facilitate the further division of previously platted lots, the combination of previously platted lots or for the adjustment of an existing lot line by relocation of a common boundary.
   b. Any person having a legal interest in the property may file an application for a lot modification. For an adjustment of an existing lot line, an affidavit from all affected property owners indicating their consent must also be submitted.
   c. An application for a lot modification shall be submitted to the City Planner, along with the applicable fee; a certificate of survey prepared by a registered land surveyor showing the parcel or lot, the proposed modification, and all existing building or structures; a legal description of the original parcel, and a legal description of the resulting parcel(s).
   d. For lot combinations and lot line adjustments in all zoning districts and for lot splits in all zoning districts, the application will be reviewed by the City Planner in consultation with the City Engineer. No hearing or review by either the Planning and Zoning Commission or City Commission is necessary.
3. Minor Subdivision Plat:

a. The purpose of this subsection is to provide for an expedited review and approval process for the resubdivision of previously platted property that meets the criteria for a minor subdivision plat. Subdivision plats that do not meet the criteria shall be considered major subdivision plats.

b. The subdivider shall apply in writing to the City Planner for approval of a minor subdivision plat by the specified application deadline and on the proper form. All current owners of property within the plat shall sign or ratify the application form.

c. The number of prints of the minor subdivision final plat as indicated on the current application form shall accompany the application for approval. The minor subdivision final plat shall comply with the provisions of Section 34-70 (2) of these regulations and shall be accompanied by:

i. The applicable fee;

ii. Either a copy of a current title insurance policy or a current attorney's opinion of ownership;

iii. An 8½ x 11 reduction of the plat;

iv. A digital copy of the plat; and

v. A storm water management plan in accordance with City Code.

vi. Any other documentation and/or studies as deemed necessary by the City Planner and/or City Engineer.

Application Requirements

After the concept plat conference, the applicant shall prepare and submit an application for preliminary plat approval. The application for preliminary plat approval shall be submitted to the Subdivision Administrator at least 60 days before the Planning and Zoning Commission meeting at which the application will be considered. The application shall consist of a form established by the Subdivision Administrator; the supporting documents required for Major Subdivisions; and payment of a fee, the amount of which shall be determined by the City Commission.

d. The City Planner shall give notice of a public hearing on such proposed subdivision by advertising the time and place of such hearing in a newspaper of general circulation in the City of Dickinson once each week for two (2) consecutive weeks prior to the date of such hearing. Not less than ten (10) days prior to date of the scheduled public hearing, the City shall attempt to notify all known adjacent property owners within three hundred (300) feet of the proposed minor subdivision plat. "Notify" shall mean the mailing of a written notice to the address on record with the City Assessor or Stark County Auditor. The failure of adjacent property owners to actually receive the notice shall not invalidate the proceedings. The City Planner shall send a notice of the time and place of such public hearing to the subdivider and property owner(s) before the date fixed for the hearing. The public hearing may be held at any regular or special meeting of the Planning and Zoning Commission.

e. After a public hearing, the Planning Commission may act upon the request for minor subdivision plat approval. If the Planning Commission approves the minor subdivision plat, such approval will be entered upon the tracing and will be signed by the secretary of the Planning Commission (City Planner) and the Chair of the Planning and Zoning Commission. If the Planning and Zoning Commission disapproves the subdivision, such action, together with the reasons therefore, will be entered in the official records of the Planning and Zoning Commission and the subdivider shall be so notified.

4. Major Subdivision Plat:

a. The subdivider shall apply in writing to the City Planner for preliminary approval of a major subdivision plat by the specified application deadline and on the proper form. All current owners of property within the plat shall sign or ratify the application form.

Application Requirements

After the concept plat conference, the applicant shall prepare and submit an application for preliminary plat approval. The application for preliminary plat approval shall be submitted to the Subdivision Administrator at least 60 days before the Planning and Zoning Commission meeting at which the application will be considered. The application shall consist of a form established by the Subdivision Administrator; the supporting documents required for Major Subdivisions; and payment of a fee, the amount of which shall be determined by the City Commission.

Draft Subdivision Agreement

The preliminary plat application shall include a draft of a subdivision agreement, following a format established by the City. The subdivision agreement establishes the mutual responsibilities of city and developer, including financing of public improvements; the nature of performance bonds and guarantees that the developer will offer; and the financing arrangements proposed for the subdivision.

b. The number of prints of the preliminary plat as indicated in the current application form shall be filed with the City Planner at the time application for tentative approval is made. The plat shall comply with the provisions of Section 34-70 (1) of these regulations and shall be accompanied by:

i. The applicable fee;
ii. An 8½ x 11 reduction of the plat and 24x36 inch plat;
iii. A digital copy of the plat;
iv. A concept development plan showing the proposed location of roadways and a generalized lot layout for all adjacent land within ½ mile of the proposed plat that is owned by the applicant.
v. A preliminary storm water management plan that includes:
    a. The proposed preliminary grading plan shown at contours as required to clearly indicate the relationship of the proposed changes to existing topography and remaining features;
    b. A preliminary drainage plan of the developed site delineating the direction and at what rate storm water runoff will be conveyed from the site and setting forth the areas of the site where storm water will be collected; and
    c. Any other information pertinent to the particular project which, in the opinion of the applicant, is necessary for the preliminary review of the project.
vi. A traffic impact study, if deemed necessary by City Engineer.
vii. Any other documentation and/or studies as deemed necessary by the City Planner and/or City Engineer.

c. For a proposed subdivision plat within or adjacent to the corporate limits, a preliminary utility servicing plan is also required. This preliminary utility servicing plan shall include:

i. An accurate location map;
ii. The proposed layout of lots and streets;
iii. Topographic contours with a minimum contour interval of two (2) feet;
iv. The location of any existing municipal utilities within or adjacent to the plat; and
v. The proposed location of water and sanitary sewer mains within the subdivision, how these mains are proposed to connect to the existing utility systems, and any easements on adjacent property required to accommodate connections.

d. For proposed subdivision plats outside of the corporate limits, but within the Urban Service Area Boundary, the following profiles for roads/streets are also required:

i. Three profiles of existing ground elevation; one at centerline and one on each side of the right-of-way, fifty feet beyond the right-of-way lines, and

ii. Two centerline profiles of proposed design elevations; one for a rural road section and another for a future urban street section design.

e. For proposed subdivision plats within two-miles of the corporate limits, the source of water shall be identified. If the subdivision is to be served by Southwest Water District a formal request from Southwest Water District to service the subdivision shall be submitted in conjunction with the request for tentative approval. The City Engineer shall review the request and make a determination as to whether or not Southwest Water District service will be allowed.

f. All areas proposed for development shall be platted to the edge of the property with all undevelopable land included within the plat (subject to discussion and agreement by the landowner and the City).

i. Land determined by the owner and City to be undevelopable and/or needed for stormwater purposes shall be:

Included in adjoining platted lot(s) as a stormwater easement that is privately owned, with only major maintenance by City. The amount of property taxes and special assessments for these areas will be determined by the City based on the level of benefit and the value of the land; or

Platted as a separate lot(s) that is owned and maintained by the City, as a regional stormwater conveyance or detention facility; or

Platted as a separate lot(s) that is owned and maintained by the Dickinson Parks and Recreation Department (subject to their agreement) as a natural area; or

Platted as a separate lot(s) that is owned and maintained by the Dickinson Parks and Recreation Department, (subject to their agreement) and including a City-maintained stormwater easement; or

Other maintenance entity approved by the City; or

Any combination of the above options.

Undevelopable land will be maintained as a natural area unless a drainage easement is present and the easement requires major maintenance. Major maintenance shall include maintenance of existing structures, mowing below floodplain elevation, cleaning of sediment and maintenance of access.

g. The Planning Commission shall approve, approve conditionally, table or disapprove such preliminary major subdivision plat. If approved with modification or waiver of certain requirements by the planning commission, the reasons therefore shall be specified. If approved conditionally, the conditions and reasons therefore shall be specified. In any conditional approval, the Planning Commission may require the subdivider to submit a revised preliminary major subdivision plat. If disapproved, the reasons for that action shall be stated, and if possible, the Planning Commission shall make recommendations on the basis of which the proposed subdivision may be approved.

h. The action of the Planning Commission shall be entered on the official records of the Planning Commission, including any conditions imposed and the reasons for any disapproval of a preliminary major subdivision plat.

i. Tentative approval of a preliminary major subdivision plat by the Planning Commission is not an acceptance of the major subdivision plat for record, but is rather an expression of approval of a general plat for the final approval and recording upon fulfillment of all requirements of these regulations.

j. Tentative approval shall be effective for a maximum period of twelve (12) months, unless upon application by the subdivider, the City Planner grants an extension. If the final major subdivision plat has not been submitted for final approval within this time limit, a preliminary

major subdivision plat must again be submitted to the Planning and Zoning Commission for tentative approval.

5. Final approval - Major Subdivision Plats:

a. The subdivider shall apply in writing to the City Planner for final approval of a major subdivision plat by the specified application deadline and on the proper form. All current owners of property within the plat shall sign or ratify the application form.

b. The number of prints of the final major subdivision plat as indicated in the current application form shall accompany the application for final approval. The final plat shall comply with the provisions of Section 34-70 (2), of these regulations, and shall be accompanied by:

i. Either a copy of a current title insurance policy or a current attorney's opinion of ownership, running to the benefit of the City of Dickinson;

ii. An 8½ x 11 reduction of the plat and 24x36 plats;

iii. A final digital copy of the plat; and

iv. A storm water management plan in accordance with Title 14.

c. For proposed subdivision plats located within the City of Dickinson's extraterritorial area, an assurance of completion of the required improvements (in a form acceptable to the Planning Commission) shall be required only if such improvements are not constructed and accepted prior to recording of the plat.

d. For plats proposed within the Urban Service Area Boundary, the following are also required:

Grading plans for both rural section roadways to be constructed to serve the rural lots and future urban roadway sections to be constructed to serve the ghost platted urban lots.

Master plans for the future extension of municipal water and sewer facilities to ghost platted urban lots.

The above listed requirements may be waived by the City Engineer.

Application Requirements

The application for final plat approval shall be submitted to the Subdivision Administrator at least 45 days before the Planning and Zoning Commission meeting at which the application will be considered. The application shall consist of a form established by the Subdivision Administrator; the supporting documents required for Major Subdivisions; and payment of a fee, the amount of which shall be determined by the City Commission.

Subdivision Agreement

The final plat application shall include a final version of a subdivision agreement, following a format established by the City. The subdivision agreement establishes the mutual responsibilities of city and developer, including financing of public improvements; the nature of performance bonds and guarantees that the developer will offer; and the financing arrangements proposed for the subdivision.

e. The City Planner shall give notice of a public hearing on such proposed subdivision by advertising the time and place of such hearing in a newspaper of general circulation in the City of Dickinson once each week for two (2) consecutive weeks prior to the date of such hearing. Not less than ten (10) days prior to date of the scheduled public hearing, the City shall attempt to notify all known adjacent property owners within three hundred (300) feet of the proposed major subdivision plat. "Notify" shall mean the mailing of a written notice to the address on record with the City Assessor or Stark County Auditor. The failure of adjacent property owners to actually receive the notice shall not invalidate the proceedings. The City Planner shall send a notice of the time and place of such public hearing to the subdivider and property owner(s) before the date fixed for the hearing. The public hearing may be held at any regular or special meeting of the Planning and Zoning Commission.

f. After a public hearing, the Planning and Zoning Commission may act upon the request for final approval. If the Planning and Zoning Commission approves the subdivision, such approval will be entered upon the tracing and will be signed by the secretary (City Planner) and the Chair of the Planning and Zoning Commission. If the Planning and Zoning Commission disapproves the subdivision, such action, together with the reasons therefor will be entered in the official records of the Planning and Zoning Commission and the subdivider shall be so notified.

g. Final approval of a major subdivision plat by the planning commission shall in no way constitute legal acceptance of any dedicated streets, alleys or other public lands.

h. A final major subdivision plat that is approved by the Planning and Zoning Commission will be recommended for approval to the Board of City Commissioners. Following final approval by the Board of City Commissioners, a plat in recordable form shall be furnished to the City Planner within one hundred eighty (180) days following approval. The City Planner may grant extensions of thirty (30) days for good cause shown in writing. Upon review and obtaining required signatures, the City Planner shall file and record the original signed final major subdivision plat with the Stark County Recorder. All final plats shall be provided digitally formatted to the City of Dickinson's current computer-aided drafting and geographic system software and policy, including coordinate system ties as defined within this zoning ordinance.

Section: 34-050. Design Standards.

1. Streets and alleys:

a. The arrangement, character, extent, width, grade, and location of all streets shall conform to the City's road standards and shall be considered in relation to existing and planned streets, to topographical conditions, and to the proposed uses of lands to be served thereby.

b. Where it is not shown on the road master plan, the arrangement of streets in a subdivision shall either:

1. Provide for the continuation or appropriate projection of existing arterial and collector streets in surrounding areas; or
Conform to a plan for the neighborhood approved or adopted by the planning commission to meet a particular situation where topographical or other conditions make continuance of or conformance to existing streets impractical.
Provide a minimum of two (2) points of ingress and egress.

c. Where a subdivision abuts or contains an existing or proposed arterial street, the planning commission shall limit access to the arterial street and may require reverse frontage of lots with a screen planting contained in a non-access reservation along the rear property lines, deep lots with rear services alleys, or other treatment that it deems advisable to limit such access and to give adequate protection to residential properties and to afford separation of through and local traffic.

d. Nonaccess lines shall be placed along all arterial streets and intersections thereof with the dimensions of same to be approved by the planning commission.

e. Street jogs should be avoided, but if unavoidable centerlines must be separated by a minimum of 300 feet.

f. A tangent at least one hundred (100) feet long shall be introduced between reverse curves on arterial and collector streets.

g. When connecting street lines deflect from each other by more than ten (10) degrees they shall be connected by a curve of adequate radius to insure clear visibility for vehicles.

h. Intersecting streets shall be laid out at as nearly right angles as possible, and no such angle of intersection shall be less than sixty (60) degrees.

i. In all areas within the corporate limits of the City of Dickinson, unless otherwise shown on the master plan, right-of-way and roadway widths shall be as follows:

Functional Classification	Minimum Right-of-Way (in feet)	Typical Roadway Width (in feet)
Principal Arterial	150	63
Minor Arterial	120	51
Collector	80	44
Local	66	40

If demonstrated by the developer that special circumstances exist, the City Engineer may adjust minimum required right-of-way widths.

In all areas outside the corporate limits but within the two-mile extraterritorial area of the City of Dickinson, unless otherwise shown on the master plan, right-of-way and roadway widths shall be as follows:

Functional Classification	Minimum Right-of-Way (in feet)	Typical Roadway Width (in feet)
Principal Arterial	150	40
Minor Arterial	150	36
Collector	120	30
Local	80	26

If demonstrated by the developer that special circumstances exist, the County Engineer/Road Supervisor may adjust minimum required right-of-way widths.

Private streets shall meet, at a minimum, the requirements of the city fire code and shall not become a city maintenance liability. Each private street shall be evaluated by the city prior to installation.

l. Half-streets shall be prohibited except where essential to the reasonable development of the subdivision in conformity with the other standards of these regulations, and where the planning commission finds it will be practicable to require the dedication of the other half-street when the adjoining property is subdivided. Wherever there exists a half-street adjacent to a tract to be subdivided, the other half of the street shall be platted within such tract.

m. Cul-de-sacs. The use of cul-de-sac streets shall be limited in order to promote a well-connected street network that provides for safe, direct and convenient access by vehicles, bicycles, and pedestrians. Cul-de-sac streets may be permitted in instances where there is no reasonable opportunity to provide for future connections to adjoining streets, including natural barriers such as topography or water features, man-made barriers such as railroad tracks, or to discourage through traffic between incompatible land uses. Detailed written justification for the use of cul-de-sac streets in proposed subdivision plats shall be provided as part of the plat application process. In such cases where cul-de-sacs are accepted by the City, the following standards shall apply:

Length. The maximum overall length of a cul-de-sac shall be seven hundred-fifty (750) feet. The minimum throat length of a cul-de-sac shall be two hundred-thirty (230) feet. Such lengths shall be measured from the centerline intersection with the through street to the center point of the turnaround.

Diameter. The minimum drivable pavement diameter shall be 96 feet. Additional diameter may be necessary if required for municipal emergency service equipment. Right-of-way distances beyond required pavement shall be consistent with the connecting and/or adjacent road.

Multi-use Paths. Access easements may be required to provide current and/or future access connections from the turnaround terminus area to other streets, schools, neighborhood activity centers, or open space areas. Such access easements shall be included in a maintenance agreement with either a neighborhood association or governmental entities, subject to review and approval by the City and recorded as part of the subdivision plat approval process.

Islands/Medians. Islands or medians within a cul-de-sac are subject to the following standards:

a. Maintenance. Landscaped islands or medians may be permitted provided a neighborhood association assumes responsibility for curb and vegetation maintenance. Maintenance agreements shall be reviewed and approved by the City and recorded as part of the subdivision plat approval process.

b. Parking. Islands and medians may provide off-street parking areas. All such parking shall be subject to review and approval by the City.

c. Snow storage. Islands or medians, including any adjacent parking area shall be available for snow storage purposes by the City.

d. The design of such proposed islands or medians shall be subject to review and approval by the City during the subdivision plat approval process. Landscaping within islands or medians shall be subject to the City's landscape permit approval process.

n. No street names will be used that will duplicate or be confused with the names of existing streets. Streets that are now or will eventually be continuations of existing streets shall be called by the names of the existing streets. The city shall make at least general recommendations for street names.

o. All streets shall have a grade of not less than three-tenths (0.3) per cent. No arterial street shall have a grade in excess of five (5) per cent, and no other street shall have a grade in excess of eight (8) per cent except that roadways with grades not meeting these standards may be allowed where topography makes it impossible to meet normal standards.

p. On rural road sections the following standards shall apply:

1. Adequate culverts shall be installed to handle all drainage, with a minimum size of eighteen (18) inches in diameter or equivalent. The owner shall present to the engineer of the appropriate jurisdiction two (2) copies of a report proposing the size, type, and location of all drainage structures. All drainage structures shall conform to current North Dakota State Highway Department standard specifications. For drainage structures with drainage areas of over forty (40) acres, the report shall include acceptable engineering calculations for the required hydraulic capacity. Written approval shall be obtained from the engineer of the appropriate jurisdiction prior to the installation of drainage structures.

2. Rural subdivision roadways must be paved in accordance with the standards and specifications of the engineer of the appropriate jurisdiction (city or county), unless an alternative roadway material is approved by the jurisdiction engineer.

   All approaches shall be paved in accordance with the standards and specifications of the engineer of the appropriate jurisdiction (city or county), unless an alternative roadway material is approved by the jurisdiction engineer.

3. All drainage under streets, private drives, and approaches must have culverts installed where required by the engineer of the appropriate jurisdiction or superintendent of roads.

4. All streets must be constructed to an adequate height to insure proper snow clearance and removal. Any deviation from the minimum road section must

have written approval of the engineer of the appropriate jurisdiction prior to construction. Protective covenants shall be filed by the owner to preserve the backslopes extending onto the lots.

5. The engineer of the appropriate jurisdiction or superintendent of roads will inspect the completed roads in each subdivision before assuming responsibility and maintenance of the roads and streets to insure that the above standards, and those of the zoning and subdivision regulations, have been complied with.

6. No more than two (2) approaches onto a county or township road in any one thousand three hundred twenty (1,320) feet of distance will be allowed without prior approval of the engineer of the appropriate jurisdiction. No approach may be constructed without first having obtained an approach permit from the engineer of the respective jurisdiction.

2. Easements:

a. Where a subdivision is traversed by a watercourse, coulee, drainageway, channel, or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially with the lines of such watercourse, and such further width for construction that will be adequate for such purpose. Parallel streets or parkways may be required in connection with such drainage easement.

b. There shall be a sidewalk construction and maintenance easement established on the front one and one-half feet of each lot except where this area is covered by a building.

c. Utility easements shall be located in the side or rear of lots.

3. Blocks:

a. Block length should usually not exceed one thousand three hundred twenty (1,320) feet nor be less than three hundred (300) feet, measured from street center line to street center line.

b. Pedestrian walkways not less than twelve (12) feet wide may be required in blocks longer than nine hundred (900) feet where such crosswalks are deemed by the planning commission to be essential to provide circulation, or access to schools, playgrounds, shopping centers, transportation, or other community facilities. Crosswalks may be six (6) feet wide if they are no more than one hundred fifty (150) feet in length.

c. Blocks intended for business and industrial use should be designed for such purposes.

4. Lots:

a. Lot dimensions and areas shall be no less than the underlying zoning district minimum lot, and shall be sized to accommodate on-site wastewater, storm water and water supply facilities as soil conditions require.

b. Rural residential lots platted within the city's Urban Service Area Boundary (USAB) shall show future re-subdivision into urban sublots (ghost lots) as required by the Planning and Zoning Commission. These sublots shall be lettered and dimensioned within the boundaries of the plat and the area of each sublot shall be shown in a table format to avoid confusion with the area shown for the numbered rural lots. A plat note shall also be included which indicates that the sublots must be held in common ownership until annexation and servicing by municipal utilities occurs. Within the Urban Service Area Boundary, proposed structures shall be subject to the R1 or other designated zoning district by the Planning and Zoning Commission for side and rear yard building setbacks from interior ghost lot lines, in addition to any setbacks from the primary lot lines required in the underlying zoning district.

c. Within the Urban Service Area Boundary and as part of the ghost platting process, dedications are required for any additional right-of-way, utility easements or stormwater easements needed for further subdivision and the future development of ghost lots. Installation of roadways and utilities within the dedications are not required until annexation occurs.

d. All lots shall abut on a street or other public or private right-of-way.

e. Double frontage or reverse frontage lots shall not be permitted except where lots back on arterial streets or highways, or where topographic or other conditions render subdividing in another fashion unreasonable. Such double frontage lots shall have an additional depth of at least twenty (20) feet over and above normal lot size in order to allow screen planting and landscaping along the back lot line.

f. Corner lots shall be of extra width sufficient to maintain building lines on both streets.

g. Side lot lines shall be approximately at right angles or radial to street lines.

h. A screen planting easement is required between residential and commercial or industrial lots in accordance with the Zoning Code.

5. Parks and Recreational Spaces

(a) Establishment and Approval of Policy

The City of Dickinson hereby establishes and approves its design policy for parks and recreational spaces within the City of Dickinson. This policy shall be interpreted and administered by the City Planner, City Engineer, City Administrator, or such other city personnel as may apply.

The Board of City Commissioners hereby finds that parks and recreational spaces provide a benefit to the general public and to the citizens of the City of Dickinson, and that adoption of an appropriate design policy for parks and recreational spaces within the City is for the general welfare of the City and its citizens.

(b) Land for Park District Purposes

(1) ***Purpose of Section.***

The purpose of this section is to provide an equitable and effective development standard for securing adequate land for park district purposes, or funds for development of the same, in new residential subdivisions throughout the city or in areas of the city which are rezoned from some other land use to a residential land use.

(2) ***Application for Plat Containing Residential Zoning – Residential Zoning Request***

Any person applying for approval of a plat intended for any residential zoning request within the corporate limits of the City of Dickinson, and any person applying for a zoning or rezoning request of any property to residential uses within the corporate limits of the City of Dickinson, shall be obligated to first meet with Board of Commissioners of the Park District of City of Dickinson. Such meeting shall be for the purpose of ascertaining whether the Park District desires to acquire land in such area for park district purposes. This meeting may take place following presentation of a sketch plat to the Dickinson Planning and Zoning Commission. The Park District shall provide its comments and recommendations regarding the plat application or zoning application prior to any final action on the matter by the Dickinson Planning and Zoning Commission.

(3) ***Acquisition of Land – Generally***

Any plat of any subdivision or development in the city, when the same shall be designed, in whole or in part, for residential uses, shall provide that no less than seven percent (7%) of the combined area of land to be developed, exclusive of all other dedications, has been or will be conveyed to the Park District for any uses authorized by a park district under North Dakota law. Such uses may include, pursuant to N.D.C.C. 40-49-12, the right to sell and convey the same. The Park District shall work in consultation with the planning and zoning commission in order to determine suitable locations for parks, playgrounds, trails, and recreational areas within the City of Dickinson.

Land so conveyed under this section shall be sufficient and suitable for use by the public as a park, playground, recreational space, trail, public space, green space, or other recreational area, and shall be acceptable to the Park District for park district purposes.

(4) ***Review of PUD by Park District.***

Any proposed plat of a planned unit development residential area, or any petition for rezoning from an existing classification to a planned unit development, shall be submitted to the Board of Commissioners of the Park District of City of Dickinson who shall have a reasonable opportunity to review the same and submit to the planning and zoning commission their recommendations regarding such project. The planning and zoning commission shall consider the recommendations of the park district regarding dedication of land, payment of funds in lieu thereof, whether the owners or developers of such PUD shall provide and maintain privately such parks, playgrounds or recreational areas which are proposed and any other reasonable recommendations which the park district may submit.

(5) ***Cash Payment in Lieu of Land.***

At the sole option of the Board of Commissioners of the Park District of City of Dickinson, the Park District may permit the owner or developer of residential property, or the applicant for approval of a plat or zoning designation, to make cash payment in lieu of the deeding to the Park District of seven percent (7%) of the total land area to be developed, exclusive of all other dedications, as provided in subsection (c). The Park District may further permit such owner or developer to make partial cash payment in lieu, in the event that the owner or developer conveys some land to the Park District for park purposes, but less than seven percent of the total land area to be developed exclusive of all other dedications.

Such cash payment in lieu of land shall be intended to provide the Park District with a substantially equivalent economic benefit as if the Park District had received the land itself, as provided in subsection (c). Such payment in lieu of land shall be in amounts as may be determined by the Board of City Commissioners, and included, by resolution, in the annual City Fee Schedule.

Such payment shall be calculated by the City, and shall be due and payable from the applicant for zoning at the time of zoning approval as a part of the application fee therefore. No zoning change shall be approved by the City prior to such payment being made.

In the event of an application for replatting or rezoning of property already platted or zoned for residential uses, the applicant for such replatting or rezoning shall pay cash in lieu only for the difference between such rezoned residential use and the prior residential use previously paid for. However, an applicant seeking rezoning or replatting of a residential land use shall not be permitted to receive any reimbursement of cash in lieu previously paid therefore.

In the event that an applicant, owner, or developer cannot comply with the provisions of this Article, either by deeding seven percent (7%) of the land to be developed or by paying cash in lieu therefore, the application for plat approval or application for zoning shall be denied.

(6) ***Off-site impact assessment – Commercial and Industrial properties***

Any party applying for a Limited Commercial Downtown Commercial, Community Commercial, General Commercial, Limited Industrial, or General Industrial zoning designation on any property within the corporate limits of the City of Dickinson shall be assessed an off-site impact assessment for the Park District.

Such off-site impact assessment shall be in amounts as may be determined by the Board of City Commissioners, and included, by resolution, in the annual City Fee Schedule.

Such payment shall be calculated by the City, and shall be due and payable from the applicant for zoning at the time of zoning approval as a part of the application fee

therefore. No zoning change shall be approved by the City prior to such payment being made.

In the event that an applicant, owner, or developer cannot comply with the provisions of this Article by paying the off-site impact assessment therefore, the application for plat approval or application for zoning shall be denied.

(7) ***Waiver of Requirements.***

Any or all of the requirements of this section may be waived upon a two-thirds majority vote of the entire planning and zoning commission. (Ord. No. 1491 § 1)

Section: 34-060. Improvements – Issuance of Building Permits

Before issuing a building permit for any structure within the city limits, the City shall require that the certain public improvements are either (1) constructed in place; or (2) assured of completion by deposit with the City of Dickinson of sufficient surety equal to 130% of the engineer's estimate of the cost of the improvements. Such surety may be by certified check, performance bond, certificate of deposit, irrevocable letter of credit, or other instrument accessible to the City. Such surety shall be acceptable in form to the City Attorney.

Such surety shall be held by the City in order to ensure completion of the required public infrastructure, and shall be released in full by the City upon completion of the work and inspection and acceptance of the same by the City. In the event that the applicant or developer of the property should fail to construct or complete the required public improvements, the City shall be entitled to execute upon the surety and complete construction of the required public improvements.

The public improvements for which the posting of surety shall be required are as follows:

- Stormwater management systems, including associated grading, sewers and structures.
- Street and alley grading and paving, including curb and gutter.
- Sanitary sewers, except where, in the opinion of the city engineer, the provision of sanitary sewers is impractical, in which case individual lots will comply with the size requirements of these regulations and will be provided with approved septic tanks and disposal fields prior to or at the time of construction of any buildings on such lots.
- Watermains, except where, in the opinion of the city engineer, connection to a public water supply is impractical, in which case individual lots will comply with the size requirements of these regulations.
- Monuments, as required by the North Dakota Century Code.
- Fences shall be provided along the boundary of any subdivision at all points at which the subdivision abuts or adjoins interstate highway right-of-way, arterial or any open drainage facility if determined necessary by the Planning and Zoning Commission. Said fence shall meet the requirements of the North Dakota Department of Transportation where applicable, and the city engineer. This requirement shall also apply to commercial and industrial zoned properties abutting or adjoining residential property.
- Approval of Plans, Profiles and Specifications
    - No public improvements shall be made unless and until all necessary plans, profiles and specifications therefor shall have been submitted to and approved by the City Engineer.
    - At the time such plans, profiles and specifications are submitted for review, the City Engineer shall prepare an estimate of cost for office checking and field inspection of all improvements, which such costs may include the cost of third-party review by City engineering consultants. The applicant shall thereupon deposit with the City an amount of money equal to the estimated cost of such office checking. If during the progress of the review, it shall appear that the cost thereof will exceed the estimate, the City Engineer shall notify the applicant of this fact and shall provide the applicant

with an updated estimate in connection with such review and the applicant shall then deposit the additional amount of money necessary to cover the cost of the review.

- Building Permits
    - No Building Permit or Certificate of Occupancy shall be issued by the City except where all of the requirements of this Chapter have been satisfied.
    - No Building Permit or Certificate of Occupancy shall be issued by the City unless a street giving access to such proposed structure is an existing street or unless such street appears on a recorded plat.
    - At the time of filing an application for a Building Permit the applicant shall submit either (a) a certificate signed by the City Engineer that all required improvements are in place or (b) a certificate signed by the City Engineer that plans, specifications, and profiles for such improvements have been filed with and approved by him, and a certificate signed by the Community Development Director that sufficient surety has been posted for completion of the public improvements. Where part of the public improvements has been completed, appropriate certification shall be filed.
- Other Improvements
    - Other improvements which may be required by the City after a building permit is issued include:
        - Crosswalks;
        - Street and alley paving;
        - Sidewalks;
        - Curb and gutter;
        - Street lights;
        - Landscaping.
- Acceptance of Public Improvements
    - The City shall accept ownership and maintenance responsibility of all public improvements constructed with the City right-of-way only as provided herein.
    - No public improvement shall be accepted by the City unless and until written acceptance of such public improvement is issued by the City Engineer. Until such written acceptance is issued by the City Engineer, the applicant and developer of the subdivision shall retain ownership and maintenance responsibility for all public improvements within the subdivision, including, but not limited to, snow removal, street maintenance, and maintenance of water mains, sanitary sewer mains, and storm sewer infrastructure.
    - Upon completion of the public improvements, the applicant or developer of the property shall request final acceptance of the public improvements by the City. The City Engineer or his designee shall make a final inspection of the public improvements and identify, in writing, a punch-list of any deficiencies. Such deficiencies shall be corrected by the applicant or developer of the subdivision prior to acceptance of the public improvements by the City. In the event that the applicant or developer of the subdivision fails to correct the punch-list deficiencies within ninety (90) days following the final inspection, the City may proceed to correct any such deficiencies and charge the cost thereof to the applicant and developer of the subdivision.
    - In general, sequencing of construction and City acceptance shall include, but not limited to, the following:
        - Storm sewer and sanitary sewer facilities shall be televised and submitted to City Engineer for review. Deficiencies shall be corrected prior to placement of any road surface.

- Erosion and sedimentation control for the entire development shall be maintained by the developer until 70% of land to be disturbed has received permanent ground cover or until all public improvements have been accepted. (Ord. No. 1545 § 2)

Section: 34.070 Specifications for Plats

1. The preliminary plat shall contain the following:
   - a. Proposed name of subdivisions.
   - b. Location of subdivision by section, township and range, to the quarter section, or other legal description.
   - c. Names and addresses of property owner(s) and registered land surveyor who prepared the plat.
   - d. Scale of plat, which shall be one (1) inch equals one hundred (100) feet or less and shown graphically.
   - e. Date.
   - f. North point indication.
   - g. Boundary line of proposed subdivision indicated by a solid heavy line.
   - h. Total acreage within subdivision.
   - i. A location map inset showing the boundary of the proposed subdivision and covering the area within a one-mile radius of the subdivision.
   - j. Existing and proposed access points along public right-of-way within or adjacent to the subdivision. In addition, all such adjacent access points within one-quarter (1/4) mile of the subdivision shall be shown or noted if the subdivision is located within the extraterritorial jurisdiction.
   - k. Name, location, width of all existing or previously platted streets, including the type and width of surfacing within or adjacent to the subdivision.
   - l. Name, dimensions and location of any railroad right-of-way within or adjacent to the subdivision.
   - m. Name, dimensions and location of any utility easements within or adjacent to the subdivision.
   - n. Name, dimensions and location of any parks, public land or multi-use trails or crosswalks within or adjacent to the subdivision.
   - o. Name, dimensions and location of any permanent buildings or structures within or adjacent to the subdivision.
   - p. Location of any corporate boundaries within or adjacent to the subdivision.
   - q. Location and identification of any section lines within or adjacent to the subdivision.
   - r. Existing water mains, storm sewers, sanitary sewers, culverts, bridges, poles, pipelines and other utility structures within or adjacent to the tract, indicating pipe sizes, grades, and exact locations, oil wells, septic tanks and outlets, farm drains inlets and outfalls..
   - s. Existing zoning of proposed subdivision and adjacent tracts of subdivided and un-subdivided land.
   - t. Boundary lines of tracts of subdivided and un-subdivided land within or adjacent to the proposed subdivision. Owners' names are not needed for adjacent tracts within the corporate limits but must be shown for any adjacent tracts within the extraterritorial jurisdiction.
   - u. Topographic contours with a minimum contour interval of two (2) feet, with indication of datum used (NGVD29 or NAVD88 with NAVD88 required for areas with current floodplain information in that datum).
   - v. 100-year floodplain and floodway elevations if any portion of the subdivision is within the floodplain, with indication of datum used (NAVD88 required for areas with current floodplain information in that datum).
   - w. Layout, numbers and dimensions of lots and blocks.

x. Layout of proposed streets, alleys, crosswalks and easements, showing all widths and proposed street names, proposed building setback lines with dimensions.

y. Location and dimensions of proposed utility easements, including easements for storm water management facilities and proposed locations of culverts and retention/detention areas, if available.

z. Location and dimension of all non-access lines.

aa. Identification of parcels of land intended to be dedicated or reserved for public use, or set aside for use of property owners within the subdivision.

bb. Fencing note for fencing along Interstate 94, arterials or drainage facilities in accordance with the Zoning Code.

cc. Proposed deed restriction if any.

dd. Traffic Impact Study analyzing the improvements required within and nearby the proposed subdivision, if deemed necessary by the City Engineer.

ee. Detailed grading plan of part or all of the area, if required by the City Engineer.

ff. Statement of the general type of improvements required within and nearby the proposed subdivision.

gg. Soil survey/report, if required by the City Engineer.

hh. Wetlands study

2. The final plat shall be submitted on high quality Mylar in sheets thirty (30) inches by thirty-six (36) inches, provided that when more than one sheet is required, there shall also be filed an index sheet on high quality Mylar and of the same dimensions, showing the entire subdivision on one sheet and giving block and lot numbers. The final plat shall contain the following:

a. Name of subdivision of which should not duplicate or resemble any existing subdivision within the area.

b. Location of subdivision by section, township and range, to the quarter section, or other legal description.

c. Names and addresses of owners and registered land surveyor.

d. Scale of plat, which shall be one (1) inch equals one hundred (100) feet or less and shown graphically.

e. Date.

f. North point indication.

g. Basis of bearings, as derived from State Plane Coordinates.

h. Indication of both vertical datum and horizontal datum used for the plat.

i. Boundary line of subdivision based on an accurate traverse, with angular and lineal dimensions indicated.

j. Legal description of property being platted, including any section line right-of-way not previously deeded for plats within the extraterritorial jurisdiction.

k. Accurate locations of all monuments. For plats located within the corporate limits or plats that will be annexed prior to development, one such monument shall be placed at each corner and at each change of direction in the boundary line of the subdivisions; one such monument shall be placed at each block corner, one such monument shall be placed at each lot corner and at each point of deflection in the interior lot lines, and one such monument shall be placed at the point of curvature and point of tangency of each curve in a street line on both sides of the street. The monuments for the boundary line of the subdivision must be placed prior to recording the final plat, the monuments for block corners and the points of curvature and tangency of each curve in a street line on both sides of the street must be placed upon completion of roadway and municipal utility improvements, and monuments for lot corners and each point of deflection in the interior lot lines must be placed prior to obtaining a building permit for that lot.

For plats located in the extraterritorial jurisdiction, one such monument shall be placed at each corner and at each change of direction in the boundary line of the subdivision; one such monument shall be placed at each block corner, one such monument shall be placed at each lot corner and at each point of deflection in the interior lot lines, and one such monument shall be placed at the point of curvature and point of tangency of each curve in a street line on both sides of the street. All monuments must be placed prior to recording the final plat.

l. True angles and distances to the nearest official monuments (which shall be accurately described on the plat and not less than two (2) for subdivisions within the extraterritorial jurisdiction and not less than one (1) for subdivisions within the corporate limits). For the purpose of this requirement, an official monument is defined as a section corner or quarter corner.

m. Ties to a minimum of two (2) accepted State Plane Coordinates based on NAD 83 horizontal datum (adjusted 86), units of measurement international feet, ND south zone 3302.

n. Elevations referenced to a durable benchmark described on the plat with its location and elevation to the nearest hundredth of a foot, with indication of datum uses (NAVD88 required for areas with current floodplain information in that datum).

o. Exact location, width and name of all rights-of-way within and adjoining the subdivision, and the exact location of all alleys and or multi-use trails within the subdivision.

p. Accurate outlines and legal description of any areas (not including streets, alleys or public utility easements) to be dedicated or reserved for public use, with the purposes indicated; and of any areas to be reserved by deed covenant for common use of all property owners within the subdivision.

q. All easements for rights-of-way provided for public services and public utilities.

r. All lot and block numbers and lot lines, with accurate dimensions in feet and hundredths.

s. Square footage or acreage of land within the subdivision, each individual lot, each sublot created by ghost platting, and the total area in streets. If the subdivision crosses a quarter-section line, the acreage within each quarter section must also be noted.

t. Radii, deltas, and lengths of all curves based on arc definitions.

u. Location and dimension of all non-access lines and any access points within a continuous non-access line.

v. 100-year floodplain and floodway elevations and topographic contours with a minimum contour interval of two (2) feet for the portion of the plat lying within a designated floodplain, with an indication of datum used (NAVD88 required for areas with current floodplain information in that datum).

w. For any waterways or bodies of water within or adjacent to the plat, the present shoreline locations (relative to the meander line).

x. Water elevations must be shown and dated (meander line).

y. Certification by registered land surveyor to the effect that the plat represents a survey made by him/her, or under the surveyor's direct supervision, and that the monuments shown thereon are accurate, all required monuments have been set, and that all dimensions and elevations are correct.

z. Notarized certification by the owners of the land of the adoption of the plat and the dedication of sewers, water distribution lines, streets, public areas and other improvements. If there are multiple owners, the specific lot(s) owned by each owner must be specified.

aa. Proper form for the approval of the Planning Commission.

bb. Proper form for the approval of the City Engineer.

cc. Fencing note for fencing shall be shown in accordance with Section 34-60.

dd. All restrictive airport noise, clear zone and approach zone elevations as established by the latest available data, where applicable.

ee. All easements for stormwater management facilities shall be shown and dedicated in accordance with Title 14.1.

ff. Border line of one-half (1/2) inch shall be provided on the top, bottom and right sides of the plat, with two (2) inches provided on the left side.

gg. Certification from Stark County that all taxes are paid in full.

Section: 34-80. Variances.

1. Hardship.
   a. Where it can be shown in the case of a particular proposed subdivision, that strict compliance with the requirements of these regulations would result in extraordinary hardship to the subdivider because of unusual topography, soils, or other such conditions which would result in retarding the achievement of the objective of these regulations, then the board of adjustment may vary, modify or waive requirements so substantial justice may be done and the public interest secured; provided that such variance, modification or waiver will not have the effect of nullifying the intent and purpose of these regulations, or of the master plan.
   b. In no case shall any variance, modification or waiver be more than a minimum easing of the requirements; in no case shall it have the effect of reducing the traffic capacity of any arterial or collector street; in no case shall it be in conflict with the existing zoning regulations.
   c. In granting variances, modifications or waivers, the board of adjustment may require such conditions as will, in its judgment secure substantially the objectives of the standards and regulations so affected.
2. Large-scale development:
   a. These regulations may be modified by the planning commission in the case of a plan for a planned unit development which provides such covenants, financial guarantees, and other legal assurance that the plan will be followed and will be achieved.

Section: 34-90. Fees.

1. In order to cover the costs of examining plans, advertising and holding public hearings, and other expenses incidental to the approval of a subdivision, the subdivider shall pay a fee at the time of application for a lot modification, a minor subdivision plat or tentative approval of a preliminary major subdivision plat. If, because of the failure of the subdivider to submit a final major subdivision plat within twelve (12) months after receiving tentative approval of a preliminary major subdivision plat, it is necessary to resubmit a preliminary major subdivision plat for tentative approval, the subdivider shall be required to pay the fee currently in effect at the time of resubmission.
2. The fees to be charged and collected for consideration of any application for a major subdivision plat, subdivision plat vacation, lot modification or minor subdivision plat shall be established by the Board of City Commissioners and shall be collected at the time of filing of an application.
3. All fees established by this section are in addition to any sums paid to cover the costs of review of improvement plans and field inspection of construction required under this chapter and other provisions of the Dickinson Municipal Code.

Section: 34-100. Penalties.

Any owner or the agent of any owner of land located within a subdivision, who transfers, sells or negotiates to sell any such land by reference to or exhibition of a plat of a subdivision or by any other use thereof before such plat has been approved by the planning and zoning commission and governing body and recorded as approved by the planning and zoning commission in the office of the register of deeds, shall forfeit and pay a penalty of one hundred dollars for each lot or parcel transferred or sold or agreed or negotiated to be sold. The description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the

remedies provided in this section. The municipality may enjoin such transfer, sale or agreement by an action for injunction or it may recover the penalty by a civil action.

For similar state law, see NDCC, § 40-48-23.

Section: 34-110. Vacation of Plats.

Any property owner wishing to vacate a previously approved and recorded plat or any part thereof must follow the same procedures as those required for plat approval and outlined in this chapter.

Section: 34-120. Vacation of Easements.

The procedure hereinafter set forth may be used as an alternative to the procedure set forth in NDCC §40-39 for the vacation of utility easements. For the purposes of this Section, "utility easements" shall mean all platted easements within the City of Dickinson or its extra-territorial jurisdiction.

1. No utility easement shall be vacated by the City except on a petition signed by all of the owners of the property upon which to utility easement to be vacated is located. Such petition shall set for the facts and reasons for the vacation, shall be accompanied by a plat of the utility easement to be vacated, and shall be verified by the oath of the petitioner.

2. If the City Engineer finds that the petition for vacation is in proper form and contains the proper signatures, the City Engineer shall give notice by publication in the official newspaper of the City that the petition will be considered by the Board of City Commissioners on a certain specified date, not less than seven (7) days following publication of the notice. The City Engineer may cause additional notice to be given to adjoining property owners as the City Engineer may deem necessary.

3. Prior to consideration of the petition by the Board of City Commissioners, the City Engineer shall provide a copy of the petition to all utility companies (including, but not limited to, electrical, gas, telephone, and cable television) which may be affected by the vacation. Consent of all such utility companies shall be required prior to any action by the Board of City Commissioners to vacate such easement.

4. The Board of City Commissioners shall investigate and consider the matter set forth in the petition. At the time and place specified in the notice, the Board of City Commissioners shall her testimony and evidence of the persons interested is such petition to vacate the easement. After public hearing, the Board of City Commissioners, by a resolution passed by a two-thirds vote of all of its members, may declare the utility easement described in the petition to be vacated upon such terms and conditions as it shall deem just and reasonable.

5. The resolution shall be filed for record and duly recorded in the Office of the Recorder, and such resolution shall have the effect of conveying to the abutting property owners all of the right, title, and interest of the municipality to the easement vacated.

6. All expenses incurred in vacating any utility easement shall be paid by the petitioners, who shall deposit with the City such sum as may be necessary before any such expense is incurred. The amount to be deposited shall be determined from time to time by the Board of City Commissioners in its fee schedule. (Ord. No. 1541, § 1.)

Chapter 35 SALES AND USE TAX

Last updated November 2011

Sections:

35.010 Definitions
35.020 Sales tax imposed
35.030 Use tax imposed
35.040 Exemptions
35.050 Maximum tax imposed
35.060 Collection and administration
35.070 Contract with state tax commissioner
35.080 Corporate officer liability
35.090 Dedication of tax proceeds
35.100 Effective date
35.110 Termination
35.120 Lodging and restaurant tax
35.125 Hospitality Tax
35.130 Visitors committee for lodging and restaurant tax

Section 35.010 Definitions

All terms defined in chapter 57.39-2 NDCC, and chapter 57-40.2 NDCC, including all future amendments, are adopted by reference. (Ord. No. 1040, § 1.)

Section 35.020 Sales tax imposed

Except as otherwise provided in this article, a tax of one and one-half percent is imposed upon the gross receipts of retailers from all retail sales within the corporate limits of the City of Dickinson, North Dakota, of the following:

(a) Tangible personal property, consisting of goods, wares, or merchandise.
(b) The furnishing or service of gas, communication services, or steam other than steam used for processing agricultural products.
(c) Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the playing of any machine for amusement or entertainment in response to the use of a coin.
(d) Magazines and other periodicals.
(e) The leasing or renting of a hotel or motel room or tourist court accommodations.
(f) The leasing or renting of tangible personal property, the transfer of title to which has not been subjected to a retail sales tax under this chapter.
(g) Sales of alcoholic beverages and tobacco products as defined in section 57-39.2-03.2 NDCC.
(h) Furnishing and installment or attachment to real property in this state by a contractor or a subcontractor who is a retailer of drapes, hardware for hanging drapes, or carpet for floor covering. (Ord. No. 1040, § 1; Ord. 1233 § 1.)

Section 35.030 Use tax imposed

Except as otherwise provided in this chapter, a use tax of one and one-half percent is imposed on the storage, use or consumption, in the city on:

(a) The purchase price of tangible personal property purchased at retail for storage, use, or consumption within the city.

(b) The fair-market value of tangible personal property which was not originally purchased for storage, use or consumption in the city, at the time which it is brought into this city.
(c) Alcoholic beverages and tobacco products which are stored, used or consumed in this city, as provided in section 57-39.2-03.2 NDCC.
(d) The purchase price of tangible personal property used by a contractor or subcontractor to fulfill a contract as defined in section 57-40.2-03.3 NDCC. This tax applies only to bids submitted on or after July 1, 1990. (Ord. No. 1040, § 1; Ord. 1233 § 2.)

Section 35.040 Exemptions

All sales, storage, use, or consumption of tangible personal property which are exempt from imposition and computation of the sales or use tax of the state are specifically exempt from the provisions of this article. (Ord. No. 1040, § 1.)

Section 35.050 Maximum tax imposed

No single transaction involving one or more items is subject to a tax in excess of thirty-seven dollars and fifty cents. (Ord. No. 1040, § 1; Ord. 1233 § 3.)

Section 35.060 Collection and administration

The tax commissioner and the city auditor for the city shall have the powers enumerated in the provisions of chapter 57-39.2 NDCC and chapter 57-40.2 NDCC relating to the collection and administration of the state sales and use tax, including all administrative rules adopted by the tax commissioner. The tax commissioner is authorized to establish rate tables integrating the tax imposed by this chapter with other state, county and city taxes. (Ord. No. 1040, § 1.)

Section 35.070 Contract with state tax commissioner

The city auditor is hereby authorized to contract with the tax commissioner for the administration and collection of taxes imposed by this chapter. The city auditor has all powers granted the commissioner and in the absence of a valid contract with the commissioner or failure of the commissioner to perform the delegated duties, shall perform these duties in place of the commissioner. (Ord. No. 1040, § 1.)

Section 35.080 Corporate officer liability

Officers of any corporation required to remit taxes imposed by this article are personally liable for the failure of the corporation to file required returns or remit required payments. The dissolution of a corporation shall not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The tax, penalty, and interest due may be assessed and collected pursuant to the provisions adopted by this chapter. (Ord. No. 1040, § 1.)

Section 35.090 Dedication of tax proceeds

(a) All revenues raised and collected from the one percent sales and use tax initially adopted on July 1, 1990, less administrative expenses, shall be dedicated as follows:
    (1) Fifty percent of said revenues shall be dedicated to bonded indebtedness, property tax reduction, and infrastructure (streets, water and sewer).
    (2) Thirty percent of said revenues shall be dedicated to capital improvements to enhance social and economic vitality of Dickinson and the Southwest area.

(3) Twenty percent of said revenues shall be dedicated to job creation and senior citizen activities. All revenue shall be maintained in a fund, to be known as the sales tax fund, separate and apart from all other funds, except as provided by this section.

(b) All revenues raised and collected from the additional one-half percent sales and use tax adopted by Ordinance No. 1233, less administrative expenses, shall be dedicated as follows:

(1) Construction of a public building (community center) to be used for the purpose of an aquatic center, gymnasium and related uses, which may include pledging such sales and use tax revenues to the payment of bond issued for such construction in anticipation of the collection and receipt of such sales and use tax, and if so pledged, the sales and use tax may not be repealed so long as any such bonds or bonds refunding the bonds are outstanding; or

(2) Operation, maintenance and repair expenses for a public building (community center) to be used for the purpose of an aquatic center, gymnasium and related uses; or

(3) Property tax reduction and infrastructure (streets, water and sewer).

(c) The board of city commissioners shall determine the amount by which the bonded debt and the property tax levy shall be reduced each year prior to the adoption of the city's budget.

(d) In the event that the board of city commissioners desires to change the distribution formula herein created and the board of city commissioners has so determined the necessity of such changes, the board of city commissioners shall call for an election for any change or modification of a sales tax in the city.

(e) Revenues and any income therefrom shall accumulate in the sales tax fund until expended by the board as permitted by this section. (Ord. No. 1040, § 1; Ord. No. 1100, § 1; Ord. 1233 § 4; Ord. No. 1351 §1.)

Section 35.100 Effective date

The tax shall be implemented and take effect on July 1, 1990. (Ord. No. 1040, § 1.)

Section 35.110 Termination

The board of city commissioners shall refer to a vote of electorate, no later than July 1, in the fifth year following the year in which the ordinance codified in this chapter takes effect, the question of whether said ordinance shall be repealed or continued in effect. If a majority of qualified voters voting on the question vote to repeal the ordinance, it shall be repealed effective at midnight on March 31 of the following year. (Ord. No. 1040, § 1.)

Section 35.120 Lodging and restaurant tax

In accordance with a resolution adopted May 17, 1982, the city of Dickinson imposes a two-percent tax on the gross receipts of retailers on the leasing or renting of hotel, motel, or tourist court accommodations within the City for periods of less than one month. All proceeds of this tax, less administration costs shall be deposited in the city visitor's promotion fund. (Ord. No. 1074, § 1; Ord. No. 1088, § 4; Ord. No. 1091, § 1; Ord. No. 1149 § 1, Ord. No. 1426 § 1.)

Section 35.125 Hospitality Tax

Under the authority of NDCC 40-57.3, and its home rule authority, the City imposes a one-percent (1%) tax on gross receipts, which is separate from the lodging sales tax imposed under Dickinson Municipal Code 35.120 and the sales tax imposed under Dickinson Municipal Code 35.020 on the following: 1. the leasing or renting of hotel, motel, or tourist court accommodations within the City for periods of less than one month; 2. the gross receipts of a restaurant from any sales of prepared food or beverages, which are subject to state sales taxes. For purposes of this section, “restaurant” means any place where food is prepared and intended for individual position service for consumption on or off the premises and “prepared” includes heating prepackaged

food; and 3. Other accommodations, food, and beverages are all, each, or in any combination subject to the tax under this section, if all items in any category which are taxable under state law are taxable, except as otherwise provided by chapter NDCC 40.57.03. An owner of an establishment licensed to engage in the sale of alcoholic beverages that is not required to pay the tax may voluntarily pay the tax to become a qualified alcoholic beverage licensee for the purposes of sections 4.08.270 and 4.08.280. Failure to continuously pay the tax will void the remaining term of the permit and the licensee will be ineligible for any additional permit. A portion of the proceeds will be deposited in the visitor's promotion capital construction reserve account within the fund. The City Commission may transfer funds from the visitor's promotion capital construction fund to the visitor's promotion fund. A portion not exceeding 25% of total revenues are dedicated to support of Dickinson visitor attraction through a grant program to special projects and programs. The grant program will be established by the visitors committee, which will also oversee the program and recommend grant awards to the City Commission. (Ord. No. 1149 § 1; Ord. No. 1184, § 14; Ord. No. 1373 §1; Ord. No. 1426 § 1.)

Section 35.130 Visitors committee for lodging and restaurant tax

There is hereby created a visitor's committee, which shall serve as an advisory committee to the City Commission in administering the proceeds of taxes available to the City under Sections 35.120 and 35.125. The committee shall be appointed by the Board of City Commissioners. The appointees shall serve without compensation, except for reimbursement for necessary expenses. (Ord. 1076, § 1; Ord. No. 1149 § 1; Ord. No. 1426 § 1.)

Chapter 36 TAXICABS AND OTHER VEHICLES FOR HIRE

Last updated February 2016

Articles:

36.ED Editor's note to Chapter 36
36.04 In General
36.08 Taxicab License
36.12 Driver's License
36.16 Buses and Omnibuses

Article 36.ED Editor's note to Chapter 36

Sections:

36.ED.010 Editor's note to Chapter 36

Section 36.ED.010 Editor's note to Chapter 36

As to stopping, standing and parking of buses, see § 23.76.110. As to stopping, standing and parking of taxicabs, see § 23.76.160. As to bus stops and taxicab stands, see § 23.80.010.

Article 36.04 In General

Amended by Ord. No. 1583.

Article 36.04 Taxicab Licensing

Sections:

36.04.010 Statement of Purpose
36.04.020 Definitions
36.04.030 Taxicab License Required - Penalty
36.04.040 Taxicab Licensing Procedures – Business Applicants
36.04.050 Chauffeur Licensing Procedures – Driver Applicants
36.04.060 Revocation of License
36.04.070 Taximeters
36.04.080 Schedule of fares
36.04.090 Taxicabs – Requirements
36.04.100 Hours of Operation
36.04.110 Individual Service
36.04.120 No Delivery of Alcoholic Beverages and tobacco Products
36.04.130 Riders Prohibited
36.04.140 Direct Route
36.04.150 No Smoking
36.04.160 Non-Interference
36.04.170 Lost articles Delivered to Police

Section 36.04.010 Statement of Purpose

A. The board of City Commissioners hereby finds that it is necessary and appropriate, and in the best interests of the public health, safety, and welfare, to provide for the regulation of taxicabs, buses, and others pursuing like occupations. Authority to license, tax, regulate, and prescribe rates for taxi drivers, bus drivers, and others pursuing like occupations is expressly granted to municipalities pursuant to NDCC §40-05-01(27).

B. This Chapter 36 is adopted under the general police powers of the City of Dickinson as a regulatory measure, and does not and is not intended to grant a franchise to any person or entity, but is intended solely to regulate the operation of taxicabs and other vehicles for hire.

C. This Chapter 36 governs the operation of vehicles for hire and ground transportation services in the City of Dickinson; provided, however, that this Chapter does not apply to the following:

1) A vehicle operated for a funeral home in the performance of funeral services;
2) A vehicle provided by an employer or employee association for use in transporting employees between the employees' homes and the employer's place of business or between work stations, with the employees reimbursing the employer or employee association in an amount calculated only to offset the reasonable expenses of operating the vehicle;
3) A vehicle owned and operated by the federal or state government, by a political subdivision of the state, or by a person under contract with the city for operation of the vehicle;
4) A vehicle used in a carpool to transport the person and others on prearranged basis between their homes and places of employment or places of common destination, if only a fee calculated to reasonably cover expenses is charged;
5) A vehicle used to transport children to or from school if only a fee calculated to reasonably cover expenses is charged;

6) A vehicle owned by a nonprofit organization and carrying only passengers associated with that organization, if no compensation is received from any other person for carrying the passengers;
7) A courtesy vehicle, if the name of the business or sponsor of such vehicle is permanently affixed to the outside of the vehicle.

Section 36.04.020 Definitions

A. Taxicab: A motor vehicle offering carriage of passengers for hire upon the public streets, whether by means of dispatch from a centralized location, accepting on demand response hails from passengers on a public street, or other public or private are accessible to the public. Each Taxicab shall be equipped with one taximeter, which shall be used every time the taxicab is engaged. Each Taxicab shall be limited to carrying no more than six passengers, provided further that the maximum passengers allowable, up to six, shall be determined by the number of available seatbelts for passengers in the Taxicab.
B. Taximeter: an instrument or device that operates in conjunction with an affixed device in a Taxicab which automatically calculates at predetermined rates and plainly displays the charges to the passenger of a Taxicab. The taximeter shall be the only instrument authorized to calculate fares in a Taxicab. Any device which calculates fares charged to passengers for taxicab service, including devices which operate remotely based upon vehicle location technology, and which bases said fares upon time and distance, is considered a Taximeter, and must be approved by the City Administrator or his designee, irrespective of whether such device is a portable or handheld device, monitor, smart phone, or other electronic device or unit.
C. Taxicab Fleet: Two or more Taxicabs owned and operated by the same business entity.

Section 36.04.030 Taxicab License Required – Penalty

A. No person, firm, corporation, or other entity shall operate or permit to be operated any Taxicab or other vehicle for the purpose of carrying passengers for hire within the City of Dickinson without having first obtained a Taxicab license under the provisions of this Chapter.
B. The Taxicab license issued under this Chapter shall be prominently displayed within the Taxicab and available upon demand for inspection by any Taxicab rider or customer, or by any law enforcement officer acting on behalf of the City of Dickinson. The Taxicab Identification Number issued in association with the Taxicab license shall be prominently displayed on the outside of the Taxicab on the right and left front and rear fenders of the Taxicab and on the trunk of the Taxicab in a font and size approved by the City Administrator or his designee.
C. It shall be a Class B Misdemeanor for any person to operate or permit to be operated a Taxicab or other vehicle for hire without first obtaining from the City a Taxicab license under the provisions of this Chapter, to fail to prominently display such license within the Taxicab, or fail to prominently display the trademark or logo of the Taxicab business on the Taxicab in a font and size approved by the City Administrator or his designee. Violation of this Section shall be punishable by a fine of not less than $1,000 per occurrence. An occurrence shall be deemed to be each fare collected, and each occurrence shall be deemed a separate and distinct violation.

Section 36.04.040 Taxicab Licensing Procedures – Business Applicants

A. Any person over the age of twenty-one (21) years who owns and operates a Taxicab business may apply for a Taxicab license from the City of Dickinson by submitting a fully-completed application therefore on the application form prescribed by the City Administrator or his designee, and by paying the license fee in an amount established by the Board of City Commissioners and incorporated in the City Fee Schedule.

B. Along with the taxicab license application and fee, the applicant shall submit to the City the following:

(1) Full legal name of the business owner applying for the license, and other appropriate contact information including physical address, mailing address, phone number and email address for the business owner

(2) Full legal name of the business applying for the license, and other appropriate contact information including physical address, mailing address, phone number and email address for the business.

3) Business location(s) where the Taxicab will be stored when not in use, and where any required maintenance will be performed. Such business location(s) shall be permitted in commercial, industrial and residential zones. Parking of Taxicab Fleets in residential zones is strictly prohibited Heavy maintenance of any kind including but not limited to engine and transmission repair on a Taxicab or Taxicab fleet in a residential zone is strictly prohibited.

(4) If the owner of the business will be operating a Taxicab, a copy of a valid North Dakota driver's license for the business owner

(5) Documentation that the business is registered with the North Dakota Secretary of State and is in active and good standing with the North Dakota Secretary of State.

(6) Identification of each vehicle the applicant seeks to license as a Taxicab within the City of Dickinson. Such identification shall be made by year, make, model, and VIN# of the vehicle.

(7) Evidence of insurance for each vehicle for which the applicant seeks a Taxicab license, including those owned by individual drivers but which are used in the operation of the Taxicab business. Such insurance shall be in the form of a commercial automobile insurance policy. Individual, private, or personal automobile insurance policies shall not be acceptable. Such insurance policy shall be issued by an insurance company authorized to conduct business in the State of North Dakota, and shall provide for policy limits of not less than $500,000 for injury or damage to one person and not less than $1,000,000 for injury or damage in one accident. The City of Dickinson shall be listed as a Certificate Holder on each such policy of insurance. The policy of insurance filed with the City shall contain a clause obligating the company issuing the same to give at least ten (10) days' notice to the City Administrator before cancellation of the policy. Any taxicab license issued under this Chapter shall immediately and automatically expire upon lapse or termination of said policy. Upon cancellation of the policy, the licensee shall provide documentation of the cancellation to the City Administrator or his designee.

(8) If the owner of the business applicant will be operating the Taxicab, a list of all alcohol offenses committed by the business owner, , in any jurisdiction, in the seven (7) years immediately preceding the date of the application.

(9) If the owner of the business will be operating the Taxicab, a list of all felony convictions against the business owner in any jurisdiction, in the seven (7) years immediately preceding the date of the application.

(10) If the owner of the business will be operating the Taxicab, a statement as to whether the business owner has ever been required to register as a sex offender in any jurisdiction, and whether the business owner would be required to register as a sex offender under the state and federal laws currently in effect.

(11) A drawing of similar size and font of the business' trademark or logo that will be prominently displayed and permanently affixed on each Taxicab to be licensed under this Chapter,

(12) A proposed schedule of fares to be uniformly charged by the business in the operation of the Taxicab business

(13) Signed statement by the applicant as follows:

The applicant hereby does expressly agree that he or she shall follow and agree to abide by and obey all applicable laws of the State and all applicable ordinances of the City, in particular as such laws and ordinances may pertain to motor vehicles and the carrying of persons for reward. The applicant further hereby does expressly consent that any person(s) duly authorized by the City of Dickinson may enter upon the taxicab subject to this license at any reasonable hour of the day or night including all hours in which the taxicab is occupied, and at such times they shall have free access to all portions of the taxicab for the purpose of inspecting the same for any possible violations of laws of the State of North Dakota or ordinances of the City of Dickinson.

C. Applications for a Taxicab license shall be reviewed by and subject to the approval of the Board of City Commissioners. No license shall be issued to any applicant or entity who:

(1) is found to have falsified any part or portion of the license application or any materials submitted therewith.

(2) does not identify a valid business location for the Taxicab business.

(3) does not possess a valid North Dakota driver's license if the owner of the business will be operating the Taxicab.

(4) is unable or unwilling to provide valid evidence of insurance as required in the license application.

(5) has a business owner who has committed an alcohol violation as identified in the application

(6) has a business owner who has been convicted of a felony as identified in the application

(7) has a business owner who has been or would be required to register as a sex offender as identified in the application.

(8 refuses or fails to submit a complete and whole application as required under this Chapter.

(9) is not licensed with the North Dakota Secretary of State to do business in North Dakota.

(10) who is otherwise deemed by the Board of City Commissioners to be unsuitable or unfit

for the occupation of being a common carrier of persons or operating a Taxicab.

D. Licenses issued by the Board of City Commissioners shall run from January 1st to December 31st of each calendar year. The license fee shall not be prorated for applications received mid-year.

E. All licenses issued under the provisions of this Chapter shall be given a number by the City Administrator or his designee. All Taxicabs licensed under the provisions of this Chapter shall also be given a Taxicab Identification Number specific to the Taxicab business. A record of the issuance of such licenses, trademarks and logos of all Taxicabs licensed under this Chapter shall be kept by the City and available for public inspection. If the business owner applicant will be operating a Taxicab, then the business owner applicant shall also be issued a personal identification card by the City Administrator or his designee identifying the business owner licensee as a licensed Taxicab operator. The personal identification card must be carried on the business owner licensee during licensee's operation of a Taxicab and made available for public inspection. A record of the issuance of such business licenses and personal identification cards shall be kept by the City and available for public inspection.

F. No license issued under this Chapter shall be transferable to any other person, business, partnership, corporation, or other entity.

Section 36.04.050 Chauffeur Licensing Procedures – Driver Applicants

A. Any person over the age of twenty-one (21) years may apply for a chauffeurs license from the City of Dickinson, which shall be required for the applicant to operate a Taxicab for a Taxicab business with a valid Taxicab license issued by the City of Dickinson, by submitting a fully-completed application therefore on the application form prescribed by the City Administrator or his designee, and by paying the license fee in an amount established by the Board of City Commissioners and incorporated in the City Fee Schedule for Chauffeurs Licenses.

B. Along with the chauffeurs license application and fee, the driver applicant shall submit to the City the following:

1. Full legal name of the person applying for the chauffeurs license, and other appropriate contact information including physical address, mailing address, phone number and email address
2. Full legal name of the Taxicab business under which the driver applicant is employed or has an offer of employment conditional upon receipt of a chauffeurs license.
3. location(s) where the Taxicab will be stored when in use by the driver applicant, and where any required maintenance will be performed when in possession of driver applicant.
4. Statement from applicant acknowledging that theParking of Taxicab fleets in residential zones is strictly prohibited. Heavy maintenance of any kind including but not limited to engine and transmission repair on a Taxicab or Taxicab Fleet in a residential zone is strictly prohibited.
5. Copy of a valid North Dakota driver's license for the driver applicant.
6. Identification of each vehicle the driver applicant seeks to license as a Taxicab within the City of Dickinson. Such identification shall be made by year, make, model, and VIN# of the vehicle.
7. Evidence of insurance for each vehicle for which the driver applicant seeks a chauffeurs license. Such insurance shall be in the form of a commercial automobile insurance policy. Individual, private, or personal automobile insurance policies shall not be acceptable. Such insurance policy shall be issued by an insurance company authorized to conduct business in the State of North Dakota, and shall provide for policy limits of not less than $500,000 for injury or damage to one person and not less than $1,000,000 for injury or damage in one accident. The City of Dickinson shall be listed as a Certificate Holder on each such policy of insurance. The policy of insurance filed with the City shall contain a clause obligating the company issuing the same to give at least ten (10) days' notice to the City Administrator before cancellation of the policy. Any Taxicab license issued under this Chapter shall immediately and automatically expire upon lapse or termination of said policy. Upon cancellation of the policy, the licensee shall provide documentation of the cancellation to the City Administrator or his designee.
8. List of all alcohol offenses committed by the driver applicant, in any jurisdiction, in the seven (7) years immediately preceding the date of the application.
9. List of all felony convictions against the driver applicant, in any jurisdiction, in the seven (7) years immediately preceding the date of the application.
10. Statement as to whether the driver applicant has ever been required to register as a sex offender in any jurisdiction and whether the driver applicant would be required to register as a sex offender under the state and federal laws currently in effect.
11. Signed statement by the driver applicant as follows:

    The driver applicant hereby does expressly agree that he or she shall follow and agree to abide by and obey all applicable laws of the State and all applicable ordinances of the City, in particular as such laws and ordinances may

pertain to motor vehicles and the carrying of persons for reward. The driver applicant further hereby does expressly consent that any person(s) duly authorized by the City of Dickinson may enter upon the taxicab subject to this license at any reasonable hour of the day or night including all hours in which the taxicab is occupied, and at such times they shall have free access to all portions of the taxicab for the purpose of inspecting the same for any possible violations of laws of the State of North Dakota or ordinances of the City of Dickinson.

C. Applications for a chauffeurs license shall be reviewed by and subject to the approval of the City Administrator or his designee. No license shall be issued to any person who:

1. is found to have falsified any part or portion of the license application or any materials submitted therewith.
2. does not identify a valid location for the Taxicab when in driver applicant's possession if applicable.
3. does not possess a valid North Dakota driver's license.
4. is unable or unwilling to provide valid evidence of insurance as required in the license application.
5. has committed an alcohol violation as identified in the application
6. has been convicted of a felony as identified in the application
7. has been or would be required to register as a sex offender as identified in the application.
8. refuses or fails to submit a complete and whole application as required under this Chapter.
9. who is otherwise deemed by the City Administrator or his designee to be unsuitable or unfit for the occupation of being a common carrier of persons or operating a taxicab.

D. Chauffeurs licenses issued by the City Administrator or his designee shall run from January 1st to December 31st of each calendar year. The license fee shall not be prorated for applications received mid-year.

E. All chauffeurs licenses issued under the provisions of this Chapter shall be given a number by the City Administrator or his designee. All licensees under this Chapter shall also be given a personal identification card issued by the City Administrator or his designee identifying the licensee as a licensed Taxicab operator. The personal identification card must be carried on the licensee during licensee's operation of a Taxicab and made available for public inspection. A record of the issuance of such chauffeurs licenses and personal identification cards shall be kept by the City and available for public inspection.

F. No chauffeurs license issued under this Chapter shall be transferable to any other person, business, partnership, corporation, or other entity.

Section 36.04.060 Revocation of License

A. No licensee under this Chapter shall obtain or accede to any property right in such license.

B. Any Taxicab license issued by the City under the provisions of this Chapter shall be revocable for any cause which, in the reasonable judgment of the Board of City Commissioners, demonstrates that the business licensee is unfit or improper to operate a Taxicab business within the City of Dickinson. Such finding of cause by the Board of City Commissioners shall be sufficient to justify revocation of the license. Such cause shall include:

(1) The licensee fails to maintain a policy of commercial automobile insurance in force upon the Taxicab vehicle as required under this Chapter.

(2) The licensee allows a driver who is convicted of any two or more moving violations during any continuous one year period to operate a Taxicab licensed under this Chapter.

(3) The licensee allows a driver who is convicted of a violation, in any jurisdiction, of an alcohol offense, including but not limited to, driving under the influence of alcohol or intoxicating drugs to operate a Taxicab licensed under this Chapter.

(4) The licensee allows a driver who is convicted of a felony offense in any jurisdiction including any sexual offense that requires the registration as a sexual offender to operate a Taxicab licensed under this Chapter.

(5) The licensee is not active and in good standing with the North Dakota Secretary of State.

C. Any chauffeurs license issued by the City under the provisions of this Chapter shall be revocable for any cause which, in the reasonable judgment of the City Administrator or his designee demonstrates that the chauffeur licensee is unfit or improper to operate a Taxicab within the City of Dickinson. Such finding of cause by the City Administrator or his designee shall be sufficient to justify revocation of the license. Such cause shall include:

(1) The licensee is no longer a licensed driver in the State of North Dakota, or has such North Dakota driver's license suspended, revoked, or cancelled.

(2) The licensee fails to maintain a policy of commercial automobile insurance in force upon the Taxicab vehicle as required under this Chapter.

(3) The licensee is convicted of any two or more moving violations during any continuous one year period.

(4) The licensee is convicted of a violation, in any jurisdiction, of an alcohol offense, including but not limited to, driving under the influence of alcohol or intoxicating drugs.

(5) The licensee is convicted of a felony offense in any jurisdiction including any sexual offense that requires the registration as a sexual offender.

E. Sanctions or penalties under this section may not be invoked without a public hearing if requested by the licensee. Upon written notification to the licensee by the City Administrator that a penalty is being sought under this section, the licensee may notify the City Administrator's office within ten (10) days of the date of such written notification and request a hearing on the proposed penalty. Failure to notify the City Administrator within ten (10) days of the date of such written notification will be deemed acceptance of the penalty without hearing.

F. For sanctions or penalties regarding a Taxicab license, a hearing shall be set before the Board of City Commissioners specifying the time and place of the hearing, and shall be served on the licensee in the same manner as provided by law for the service of a Summons in a civil action. No suspension hearing shall be held before the expiration of fifteen (15) days after the date of service of the notice. A record of any hearing shall be made by electronic recording device. If, upon such hearing, it appears to a majority of the Board of City Commissioners that sufficient cause exists for the penalty sanctions, the Board of City Commissioners shall make its order in accordance with the provisions of this Chapter. Instead of revoking such Taxicab license, for a violation of any of the provisions of subsection B(1)-(5) above or for such other cause as to him may make such course necessary or advisable, the Board of City Commissioners may suspend such license for a period not to exceed 60 days with conditions to be determined by the Board of City Commissioners. Upon successful completion of the conditions, the licensee may apply to renew its Taxicab license. The Board of City Commissioners shall further issue its findings, conclusions and order which shall be served upon the licensee. The order is appealable pursuant to Chapter 28-34 of the North Dakota Century Code.

G. For sanctions or penalties regarding a chauffeurs license, a hearing shall be set before the City Administrator specifying the time and place of the hearing, and shall be served on the licensee in the same manner as provided by law for the service of a Summons in a civil action. No

suspension hearing shall be held before the expiration of fifteen (15) days after the date of service of the notice. A record of any hearing shall be made by electronic recording device. If, upon such hearing, it appears to the City Administrator that sufficient cause exists for the penalty sanctions, the City Administrator shall make its order in accordance with the provisions of this Chapter. Instead of revoking such chauffeurs license, for a violation of subsection C(1)-(4) above or for such other cause to him may make such course necessary or advisable, the City Administrator or his designee may suspend such license for a period not to exceed 60 days with conditions to be determined by the City Administrator. Upon successful completion of the conditions, the licensee may apply to renew his or her chauffeurs license. The City Administrator shall further issue its findings, conclusions and order which shall be served upon the licensee. The order is appealable pursuant to Chapter 28-34 of the North Dakota Century Code.

Section 36.04.070 Taximeters

Each taxicab shall have only one taximeter, which must be approved by the City Administrator or his designee. Taximeters must be activated with each taxicab trip or any time a taxicab driver accepts a fare.

Section 36.04.080 Schedule of fares

A. Each licensee under this Chapter, before charging or collecting any fares for or with respect to the transportation of passengers, shall first file with the City Administrator or his designee a schedule of fares to be uniformly charged in the operation of all taxicabs used in the taxicab business of such licensee. The schedule of fares shall show separately the charge for the transportation of passengers, whether a flat rate or by mileage, and shall include a rate for the carriage of more than one passenger with different destinations. The schedule of fares shall be prominently displayed in all of the Taxicabs used in the operation of the Taxicab business of such licensee. .

B. A Uniform Schedule of Taxicab Fares may be adopted by the Board of City Commissioners by resolution, incorporated in the Annual City Fee Schedule, upon notice and public hearing thereon.

C. It shall be a Violation of this Chapter to charge any schedule of fares to any person or entity that exceeds the fares designated in the Uniform Schedule of Fares on file with City, or as may be otherwise determined in a uniform schedule of fares by the Board of City Commissioners.

Section 36.04.090 Taxicab - Requirements

A. Each Taxicab must have at least three or more doors, and have seating capacity and carry no more than six passengers.

B. Each taxicab must be equipped with adequate and operable brakes, horn, speedometer, lights, turn signals, tires, steering gear, windshield wipers, door locks, and restraint devices, and shall be examined and tested prior to issuance of the original license and at least annually thereafter. The inspection shall be made by any vehicle mechanic operating within the City of Dickinson and licensed with the North Dakota Secretary of State and shall be evidenced by a certificate of examination and sufficiency, which shall be filed with the City Administrator or his designee before the Taxicab can be operated. The business applicant will be responsible for the cost of the inspection. A copy of such inspection shall be posted within the Taxicab, showing the date of such inspection. The City of Dickinson reserves the right to conduct a secondary inspection of the Taxicab.

C. Each Taxicab must have a business trademark or logo approved by the City Administrator or his designee prominently displayed on the driver's door and the front passenger door of the Taxicab.

D. Each Taxicab must have the Taxicab Identification Number issued in association with the Taxicab business license prominently displayed on the outside of the Taxicab on the right and

left front and rear fenders of the Taxicab and on the trunk of the Taxicab in a font and size approved by the City Administrator or his designee.

Section 36.04.100 Hours of Operation

It shall be unlawful for any Taxicab driver to operate a Taxicab for more than twelve (12) consecutive hours or sixteen (16) total hours in any twenty-four (24) hour period, or for more than sixty (60) hours in any seven (7) day period. A driver shall be deemed to be operating a Taxicab within the terms of this Section whenever the driver is in charge of the Taxicab and holding the vehicle in readiness to convey passengers.

Section 36.04.110 Individual Service

Any Taxicab customer who first engages service in a Taxicab shall receive individual service, unless the customer shall give consent to additional passengers being carried.

Section 36.04.120 No Delivery of Alcoholic Beverages and tobacco Products

It shall be unlawful for any Taxicab driver to pick up or deliver any alcoholic beverage or tobacco products solely for the purpose of delivery. It is not unlawful for a Taxicab driver to pick up a passenger(s) who has purchased and is transporting alcoholic beverages or tobacco products for his or her own personal use. Passengers may not consume any alcoholic beverages while being transported in a Taxicab.

Section 36.04.130 Riders Prohibited

It shall be unlawful for any Taxicab driver to permit any person, other than a Taxicab customer or licensee to ride in the Taxicab unless person is in the Taxicab to train for purposes of employment or for purposes of dispatching..

Section 36.04.140 Direct Route

Any Taxicab driver employed to transport passengers to a definite location shall take the most direct route possible over which the passenger can be carried to the destination safely and expeditiously unless passenger chooses otherwise

Section 36.04.150 No Smoking

It shall be unlawful for any Taxicab driver and passengers to smoke or use tobacco products in a Taxicab, whether or not transporting passengers.

Section 36.04.160 Non-Interference

It shall be unlawful for any driver of any Taxicab to scuffle or crowd about or interfere with any other driver with whom any person is negotiating or inquiring about the transportation of persons or baggage.

Section 36.04.170 Lost articles Delivered to Police

Whenever any package or article of baggage or items of value including but not limited to purses, handbags, backpacks, cellphones, wallets, or credit cards are left in or on any Taxicab, the driver shall, upon the discovery of such package or item, forthwith deliver the same to the Dickinson Police Department within twenty-four (24) hours, unless such package or item shall be sooner delivered to the owner thereof, on the order of such owner.

Article 36.08 Taxicab License

This Article is hereby repealed by Ordinance Number 1583.

Article 36.12 Driver's License

This Article is hereby repealed by Ordinance Number 1583.

Article 36.16 Buses and Omnibuses

Sections:

36.16.010 "Bus" or "omnibus" defined
36.16.020 License--Required
36.16.030 Schedule of Fares
36.16.040 Revocation of License
36.16.040 Alcoholic Beverages
36.16.050 Exemptions for private school buses
36.16.060 Repealed by Ordinance Number 1583
36.16.070 Repealed by Ordinance Number 1583
36.16.080 Repealed by Ordinance Number 1583
36.16.090 Repealed by Ordinance Number 1583

Section 36.16.010 "Bus" or "omnibus" defined

For purposes of this article, the term "bus" or "omnibus" shall mean any automobile or vehicle propelled by the use of gasoline or other power and with a seating capacity for the carrying of four or more passengers for compensation or hire within the corporate limits of the city. (Ord. No. 526, Ord. No. 1600, § 2.)

Section 36.16.020 License--Required

A. No person shall engaged in the business of operating buses or omnibuses nor use or cause to be used in or upon the streets of the city any such bus or omnibus in the carrying of passengers for pay, wages or hire without such vehicle being licensed under the provisions of this article. (Ord. No. 526.)

B. Along with the application and fee, the applicant shall submit to the City the following:

(1) Full legal name of the business applying for the license, and other appropriate contact information including physical address, mailing address, phone number and email address for the business

(2) Business location(s) where the buses and omnibuses will be stored when not in use, and where any required maintenance will be performed. Such business location(s) shall be permitted in commercial, industrial and residential zones. Parking of more than two buses and omnibuses in residential zones is strictly prohibited Heavy maintenance of any kind including but not limited to engine and transmission repair on a bus or omnibus in a residential zone is strictly prohibited.

(3) Documentation that the business is registered with the North Dakota Secretary of State and is in active and good standing with the North Dakota Secretary of State.

(4) Identification of each vehicle the applicant seeks to license as a bus or omnibus within the City of Dickinson. Such identification shall be made by year, make, model, and VIN# of the vehicle.

(5) Evidence of insurance for each bus or omnibus for which the applicant seeks a bus or omnibus license, including those owned by individual drivers but which are used in the operation of the business. Such insurance shall be in the form of a commercial automobile insurance policy. Individual, private, or personal automobile insurance policies shall not be acceptable. Such insurance policy shall be issued by an insurance company authorized to conduct business in the State of North Dakota, and shall provide for policy limits of not less than $500,000 for injury or damage to one person and not less than $1,000,000 for injury or damage in one accident. The City of Dickinson shall be listed as a Certificate Holder on each such policy of insurance. The policy of insurance filed with the City shall contain a clause obligating the company issuing the same to give

at least ten (10) days' notice to the City Administrator before cancellation of the policy. Any Taxicab license issued under this Chapter shall immediately and automatically expire upon lapse or termination of said policy. Upon cancellation of the policy, the licensee shall provide documentation of the cancellation to the City Administrator or his designee.

(6) A statement as to whether the applicant has any drivers who would be operating any bus or omnibus that have ever been required to register as a sex offender in any jurisdiction, and whether the drivers would be required to register as a sex offender under the state and federal laws currently in effect.

(7) A statement as to whether all applicant's drivers possess valid North Dakota driver's licenses

(8) A drawing of similar size and font of the business' trademark or logo that will be prominently displayed and permanently affixed on each bus or omnibus to be licensed under this Chapter,

(9) A proposed schedule of fares to be uniformly charged in the operation of the business

(10) Signed statement by the applicant as follows:

The applicant hereby does expressly agree that he or she shall follow and agree to abide by and obey all applicable laws of the State and all applicable ordinances of the City, in particular as such laws and ordinances may pertain to motor vehicles and the carrying of persons for reward. The applicant further hereby does expressly consent that any person(s) duly authorized by the City of Dickinson may enter upon the bus or omnibus subject to this license at any reasonable hour of the day or night including all hours in which the taxicab is occupied, and at such times they shall have free access to all portions of the bus or omnibus for the purpose of inspecting the same for any possible violations of laws of the State of North Dakota or ordinances of the City of Dickinson.

C. Applications for a bus or omnibus license shall be reviewed by and subject to the approval of the Board of City Commissioners. No license shall be issued to any applicant or entity who:

(1) is found to have falsified any part or portion of the license application or any materials submitted therewith.

(2) does not identify a valid business location for the business.

(3) is unable or unwilling to provide valid evidence of insurance as required in the license application.

(4) refuses or fails to submit a complete and whole application as required under this Chapter.

(5) is not licensed with the North Dakota Secretary of State to do business in the State of North Dakota.

(6) who is otherwise deemed by the Board of City Commissioners to be unsuitable or unfit for the occupation of being a common carrier of persons or operating a bus or omnibus.

D. Bus or omnibus licenses issued by the Board of City Commissioners shall run from January 1st to December 31st of each calendar year. The license fee shall not be prorated for applications received mid-year.

E. All bus or omnibus licenses issued under the provisions of this Chapter shall be given a number by the City Administrator or his designee. A record of the issuance of such licenses, trademarks and logos of all Taxicabs licensed under this Chapter shall be kept by the City and available for public inspection.

G. No bus or omnibus license issued under this Chapter shall be transferable to any other person, business, partnership, corporation, or other entity.

Section 36.16.030 Schedule of Fares

A. Each licensee under this Chapter, before charging or collecting any fares for or with respect to the transportation of passengers, shall first file with the City Administrator or his designee a schedule of fares to be uniformly charged in the operation of all buses used in the business of such licensee. The schedule of fares shall show separately the charge for the transportation of passengers, whether a flat rate or by mileage, and shall include a rate for the carriage of more than one passenger with different destinations.

B. A Uniform Schedule of Fares may be adopted by the Board of City Commissioners by resolution, incorporated in the Annual City Fee Schedule, upon notice and public hearing thereon.

C. It shall be a Violation of this Chapter to charge any fares to any person or entity that exceeds the maximum allowable fare as designated in the Uniform Schedule of Fares on file with City, or as may be otherwise determined in a uniform schedule of fares by the Board of City Commissioners. (Ord. No. 526; Ord. No. 1086, § 25, Ord. No. 1583, § 4.)

Section 36.16.040 Revocation of License

A. No licensee under this Chapter shall obtain or accede to any property right in such license.

B. Any license issued by the City under the provisions of this Chapter shall be revocable for any cause which, in the reasonable judgment of the Board of City Commissioners, demonstrates that the business licensee is unfit or improper to operate a bus or omnibus business within the City of Dickinson. Such finding of cause by the Board of City Commissioners shall be sufficient to justify revocation of the license. Such cause shall include:

(1) The licensee fails to maintain a policy of commercial automobile insurance in force upon the bus(es) or omnibus(es) as required under this Chapter.

(2) The licensee allows a driver who is convicted of any two or more moving violations during any continuous one year period to operate a bus or omnibus licensed under this Chapter.

(3) The licensee allows a driver who is convicted of a violation, in any jurisdiction, of an alcohol offense, including but not limited to, driving under the influence of alcohol or intoxicating drugs to operate a bus or omibus licensed under this Chapter.

(4) The licensee allows a driver who is convicted of a felony offense in any jurisdiction including any sexual offense that requires the registration as a sexual offender to operate a bus or omnibus licensed under this Chapter.

(5) The licensee is not active and in good standing with the North Dakota Secretary of State.

C. Sanctions or penalties under this section may not be invoked without a public hearing if requested by the licensee. Upon written notification to the licensee by the City Administrator that a penalty is being sought under this section, the licensee may notify the City Administrator's office within ten (10) days of the date of such written notification and request a hearing on the proposed penalty. Failure to notify the City Administrator within ten (10) days of the date of such written notification will be deemed acceptance of the penalty without hearing.

D. For sanctions or penalties regarding a bus or omnibus license, a hearing shall be set before the Board of City Commissioners specifying the time and place of the hearing, and shall be served on the licensee in the same manner as provided by law for the service of a Summons in a civil action. No suspension hearing shall be held before the expiration of fifteen (15) days after the date of service of the notice. A record of any hearing shall be made by electronic recording device. If, upon such hearing, it appears to a majority of the Board of City Commissioners that sufficient cause exists for the penalty sanctions, the Board of City Commissioners shall make its

order in accordance with the provisions of this Chapter. Instead of revoking such bus or omnibus license, for a violation of any of the provisions of subsection B(1)-(5) above or for such other cause as to him may make such course necessary or advisable, may suspend such license for a period not to exceed 60 days with conditions to be determined by the Board of City Commissioners. Upon successful completion of the conditions, the licensee may apply to renew its bus or omnibus license. The Board of City Commissioners shall further issue its findings, conclusions and order which shall be served upon the licensee. The order is appealable pursuant to Chapter 28-34 of the North Dakota Century Code. (Ord. No. 526, Ord. No. 1583, § 4.)

Section 36.16.040 Alcoholic Beverages

The sale, dispensing, distribution, use, or possession of alcoholic beverages by minors within such bus or omnibus is strictly prohibited.

Section 36.16.050 Exemptions for private school buses

Notwithstanding any other provisions of this Code, any person operating a private school bus or buses for the sole purpose of transporting students to and from public or private schools in the city for pay, wages or hire shall be exempt from the application of sections 36.16.010 to 36.16.040 and 36.16.060 to 36.16.080 hereinabove. Any such person or persons shall, however, comply with section 36.16.050 hereinabove providing for certain insurance requirements therein stated and shall further at all times be in full compliance with any laws, rules or regulations of the state or its departments, including but not limited to rules and regulations of the state department of public instructions. The county superintendent of schools is herewith authorized and directed to inspect such private school buses periodically to determine whether such buses and the operators thereof are in full compliance with all of such laws, rules and regulations, including this City Code, and shall report any violations thereof to the chief of police of the city. (Ord. No. 526, Ord. No. 1583, § 4.)

Section 36.16.060 Designation of territory of operation

Repealed by Ordinance Number 1583. (Ord. No. 1583, § 4)

Section 36.16.070 Regulation of time and number of trips and stopping places

Repealed by Ordinance Number 1583. (Ord. No. 1583, § 4)

Section 36.16.080 Issue of additional licenses for same route or territory

Repealed by Ordinance Number 1583. (Ord. No. 1583, § 4)

Section 36.16.090 Exemptions for private school buses

Repealed by Ordinance Number 1583. (Ord. No. 1583, § 4)

Chapter 37 URBAN FORESTRY

Last updated October 2007

Articles:

37.10 Urban Forestry Program
37.20 Urban Forestry Related Nuisances
37.30 Penalties

Articles 37.10 Urban Forestry Program

Sections:

37.10.010 Definitions
37.10.020 Urban Forestry Committee
37.10.030 Authority, responsibilities and jurisdiction of city foresters or designated city employees
37.10.040 Interference with officers or employees
37.10.050 Permits for tree planting on public property
37.10.060 Tree topping
37.10.070 Commercial arborists - License required
37.10.080 Commercial chemical and biological treatment applicator - Certification required

Sections 37.10.010 Definitions

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

Boulevard: That strip of land in a right of way the streets of the city, lying between the outside edge of the street or alley surface and the adjacent private property and grassed areas between lanes on divided streets.

Commercial Tree Trimming: A service whereby an individual or business accepts money for the trimming, pruning, or removal of trees and shrubs.

City: The city of Dickinson, North Dakota. and all City owned property inside and outside the City limits such as walking trails, airports, landfills and lagoons.

Easement: A grant by a property owner of the use of a strip of land for such public use as constructing and maintaining utilities, including, but not limited to, sanitary sewers, water mains, electric lines, telephone lines, television, or v.m. transmission lines, storm sewer or storm drainage ways, gas lines and roadways.

Forester: The person or persons assigned day to day responsibility for the operation and maintenance of the City' s Urban Forestry Program as directed by Supervisor.

Park District: The Dickinson Parks and Recreation District.

Private Property: Property owned by a non-government entity as shown in the records held by the Stark County Register, and the owner thereof.

Property Lines: The outer boundaries of any lot or parcel of land, including boulevards.

Property Owner: The person owning such property as is shown by the county register of deeds.

Public Property: "Public property" shall be construed to include rights-of-way, boulevards and all property owned and maintained by the city or park district.

Public Trees: All shade and ornamental trees now or hereafter growing on any public right-of-way or in any public place or park.

Right of Way: The area between property lines of every way or place of whatsoever nature, when any part thereof is open to the use of the public as a matter of right-of-way for the purpose of vehicular and pedestrian traffic, which is commonly referred to as a street or alley.

Tree Topping: The severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown, to such a degree so as to remove the normal canopy and disfigure the tree. (Ord. No. 1262 § 3)

Sections 37.10.020 Urban Forestry Committee

The City hereby establishes an Urban Forestry Committee to assist with programming and implementation of various urban forestry programs and projects. (Ord. No. 1262 § 3; Ord. No. 1336 § 1.)

Sections 37.10.030 Authority, responsibilities and jurisdiction of city foresters or designated city employees

City foresters shall be responsible for the urban forestry program activities for both the City and the Park District and shall perform all the duties prescribed by law and the ordinances of the City, as directed by their supervisor.

The authority and jurisdiction of city foresters shall be as follows:

(a) City foresters shall be responsible for the care and maintenance of all trees located on the right of ways, City property, and Park District property and the enforcement of all laws, ordinances and regulations relating to the Urban Forestry Program. They shall also take appropriate steps to safeguard the future health and well-being of the City's urban forest.

(b) City foresters shall follow the standards of practice governing the planting, maintenance, protection and removal of trees on the right of ways and public areas of the city.

(c) City foresters may supervise work done under any permit or contract, issued in accord with the terms of this chapter if so directed by supervisor. (Ord. No. 1262 § 3)

Sections 37.10.040 Interference with officers or employees

It shall be unlawful for any person, firm or corporation to prevent, delay or interfere with a city forester or designated city employees while they are engaged in the performance of duties imposed by this chapter. (Ord. No. 1262 § 3)

Sections 37.10.050 Permits for tree planting on public property

Property owners shall obtain a permit from the city prior to planting of any tree or shrub on public property. Failure to comply may result in the immediate removal of the tree or bush. All costs associated with the removal shall be the offending property owner's responsibility. (Ord. No. 1262 § 3)

Sections 37.10.060 Tree topping

It shall be unlawful for any person to top any tree on public property or within dedicated utility easements. (Ord. No. 1262 § 3)

Sections 37.10.070 Commercial arborists - License required

It shall be unlawful to do commercial tree trimming in the city without a Commercial Arborist license issued by the City. The applicant must pass a test approved by the City through which the applicant demonstrates knowledge and ability as an arborist and furnishes to the City evidence of liability insurance as required by the City fee schedule. (Ord. No. 1262 § 3)

Sections 37.10.080 Commercial chemical and biological treatment applicator - Certification required

Any person providing commercial tree chemical and/or biological treatment within the city shall be required to obtain commercial certification under the North Dakota State Pesticide Certification Program in the category of ornamental and turf certification. Failure to comply with this section shall be considered a violation of City code and subject the offender to penalties as described in this chapter. (Ord. No. 1262 § 3)

Articles 37.20 Urban Forestry Related Nuisances

Sections:

37.20.010 Nuisances--Defined
37.20.020 Maintaining nuisance unlawful
37.20.030 Inspections and investigation of nuisances on private property
37.20.040 Abatement of nuisance on public property
37.20.050 Abatement of nuisance on private property
37.20.060 Chemical and/or biological application to abate nuisance
37.20.070 Assignment of nuisance abatement costs
37.20.080 Certification of nuisance abatement costs as special assessments
37.20.090 Nuisance abatement notice and appeal procedures

Sections 37.20.010 Nuisances--Defined

The following conditions shall be declared to be public nuisances whenever found to exist in the City:

1. Any living or standing tree or part thereof infected to any degree with any disease or insect which is, in the judgment of a city forester, harmful to said tree and/or other trees.
2. Any dead tree or part thereof, including logs, branches, stumps, firewood or any portion of any diseased tree that has not been disposed of in accordance with the regulations of the City.
3. Any tree, shrub or hedge, or part thereof, growing upon public property or upon private property but overhanging or interfering with the use of any public walk, street or highway, park or public place in the City which, in the opinion of a city forester, endangers the life, health, safety or property of the public.
4. Planting of trees which are on the city's prohibited tree list, as determined from time to time by the board of city commissioners shall be prohibited for the purpose of preventing diseases or infestations.
5. Transporting or keeping any bark bearing elm wood within the city. (Ord. No. 1262 § 3; Ord. No. 1336 § 3.)

Sections 37.20.020 Maintaining nuisance unlawful

It shall be unlawful for any person to willfully permit any public nuisances as defined in section 37.20.010 hereof to remain on any premises owned or controlled by him/her within the City. (Ord. No. 1262 § 3)

Sections 37.20.030 Inspections and investigation of nuisances on private property

(a) City Foresters shall inspect all premises and places within the city as often as practicable to determine whether nuisance described in section 37.20.010 exist.

(b) City employees may enter upon private premises at any reasonable time to investigate the existence of a potential nuisance as defined in 37.20.010.

(c) When a city forester has reasonable cause to believe that a tree is diseased, said forester or other assigned employee may procure specimens and submit said specimens to a qualified plant diagnostician for diagnosis. No action to remove such nuisance shall be taken until positive diagnosis of the disease has been made. (Ord. No. 1262 § 3)

Sections 37.20.040 Abatement of nuisance on public property

In abating the nuisance on public property or public right of ways as defined in 37.20.010 hereof, the City shall cause the nuisance to be abated so as to destroy and prevent as fully as possible any tree disease or harmful insect in accordance with accepted tree care practices. (Ord. No. 1262 § 3)

Sections 37.20.050 Abatement of nuisance on private property

The procedure for the abatement of tree hazards on private property shall be as follows: The nuisance, as defined in section 37.20.010 hereof, shall be abated by the owner following notification of the existing nuisance. If not corrected or removed within the time allotted, the City shall abate of the nuisance. (Ord. No. 1262 § 3)

Sections 37.20.060 Chemical and/or biological application to abate nuisance

(a) Whenever a city forester determines that any tree, shrub or part thereof is infected with any tree disease or harmful insect, the City may cause all such trees within a City defined radius thereof to be treated as appropriate.

(b) In order to facilitate the work and minimize inconvenience to the public of any treating operations conducted under this article, the City may give up to 24 hours advance public notice in a manner deemed appropriate by the City when conditions warrant such notice.

(c) When appropriate notice has been given and posted in accordance with subsection (b) hereof for any treatment conducted or contracted by the City, the city shall not allow any claim for damages to any vehicle or other property resulting from such treating operations.

(d) When trees on private property are to be treated, the City shall notify the owner of such property of the need for treatment and proceed in accordance with the requirements of this article regardless whether City or a commercial applicator does the work. (Ord. No. 1262 § 3)

Sections 37.20.070 Assignment of nuisance abatement costs

The costs for abating of the public nuisances as defined in this article shall be borne as follows:

(a) For abatement where the nuisance occurs on public land or rights of ways, the cost will be borne by the City.

(b) For abatement where the nuisance occurs on private property, the cost shall be borne by the private owner.

(c) The cost of treating for abatement of nuisances shall be borne by the City when such nuisances are on public property or right of way and shall be borne by the private owner when such nuisances are on private land.

(d) The costs of removal of dead or hazardous trees on private property shall be borne by the property owner.

(e) The cost of planting trees and shrubs on right of ways following the abatement of a nuisance shall be the adjoining property owner's responsibility.

(f) If it is necessary for the City to remove a tree or trees from a right of way in connection with improvements of the portion of street or highway used for vehicular traffic, the city may replant the trees or replace them, provided that conditions permit, as determined appropriate by the City. (Ord. No. 1262 § 3)

Sections 37.20.080 Certification of nuisance abatement costs as special assessments

If a property owner requests special assessment of nuisance abatement costs or if a property owner is billed by the City for abatement of a nuisance on that property owner' s property and said bill is unpaid

following a City established time period, the City may special assess the property upon which the nuisance was abated. Said special assessment shall include the cost of the abatement and accumulated late fees. (Ord. No. 1262 § 3)

Sections 37.20.090 Nuisance abatement notice and appeal procedures

(a) Whenever a city forester determines existence of a public nuisance or hazardous condition on private property in violation of this chapter, he/she shall give written notification to the property owner or person in possession of the property and order that said nuisance be abated within the time allotted by the City, provided, however, that if the nuisance is an imminent danger to the traveling public or property of others, the City may abate the nuisance immediately and allocate costs according to Section 37.20.070.

(b) All orders issued pursuant to this chapter are subject to appeal to the board of city commissioners upon written notice of appeal postmarked or delivered to City Hall within ten days of the date of the order. If an appeal is not postmarked or delivered to City Hall within ten days of the date of the order, the order of the City shall be final. An appeal meeting the requirements of this subsection will stay an order issued pursuant to subsection (a) until the board of city commissioners have ruled on said order.

(c) Upon receipt of the notice of appeal meeting the requirements of subsection b, the City Administrator shall set a date for a hearing before the board of City Commissioners. Notice of time and place for the hearing must be served upon the person, who filed the appeal not less than five days prior to the hearing. The decision of the board of city commissioners is final.

(d) Any person who fails to comply with a final order of the city is guilty of an ordinance violation. (Ord. No. 1262 § 3)

Articles 37.30 Penalties

Sections:

37.30.010 Penalties

Sections 37.30.010 Penalties

Any violation of this Chapter 37 shall be punishable in municipal court as provided in section 11.12.010 (Ord. No. 1245 § 1). (Ord. No. 1262 § 3; Ord. No. 1336 § 2.)

Chapter 38 WATER AND SEWERS

Last updated January 2016

Articles:

38.04 In General
38.08 Water Generally
38.12 Sewers Generally
38.14 Storm Water Management
38.16 REPEALED WITH ORD 1245
38.20 Water, Wastewater and Storm Water Charges
38.22 Wastewater Backup Claims
38.24 Wells
38.25 Excavating Licenses

Article 38.04 In General

Sections:

38.04.010 **Improvement or special assessment districts in new additions to city (REPEALED)**
38.04.020 **Permits for connections where property not assessed for cost--Application (REPEALED)**
38.04.030 **Same--Inspection of property; assessment of costs of construction of mains; issuance (REPEALED)**
38.04.040 **Costs of replacement of water and sewer mains (REPEALED)**
38.04.100 **Definitions**
38.04.110 **Penalty**

Section 38.04.010 Improvement or special assessment districts in new additions to city (REPEALED)

This section was repealed with Ordinance No. 1245, approved May 6, 2002.

Section 38.04.020 Permits for connections where property not assessed for cost--Application (REPEALED)

This section was repealed with Ordinance No. 1245 approved May 6, 2002.

Section 38.04.030 Same--Inspection of property; assessment of costs of construction of mains; issuance (REPEALED)

This section was repealed with Ordinance No. 1245 approved May 6, 2002.

Section 38.04.040 Costs of replacement of water and sewer mains (REPEALED)

This section was repealed with Ordinance No. 1245 approved May 6, 2002.

Section 38.04.100 Definitions

For the purpose of Chapter 38, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Corporation Stop: A water service shut off valve located at the water main in the street.

City service line: A water service line, including the service pipes, corporation stops and curb stops from the water main up to and including the first curb stop.

Curb Stop: A water service shut off valve located in a water service pipe near the curb or property line between the water main and the building and is used to shut off water service to a building.

Fire Protection Service: A private water service line, including private hydrants, tanks and other equipment, larger than 2-inches which are used to provide fire suppression in a building. This line extends from the water main including the tap to the building.

Property Line: The point at which a service line crosses private property, whether or not such private property is owned by the Property Owner receiving water service.

Property Owner: An individual, company or Corporation which owns property in Dickinson.

Septic System: A privately owned wastewater treatment system which may consists of a tank, pump and drain field and is not connected to the city wastewater system and is used to collect and treat wastewater from a home or business.

Sewer Service Line: A sewer service line, including the wye or other connection to the sewer main.
Wastewater System: The lines of pipe, manholes, flush tanks, pumps, lift stations and all connections of every kind and nature now constructed or hereafter constructed and operating the wastewater system of the city.
Water Meter: A device which is used to measure water including the meter, register, wiring and reading equipment.
Water Service Line: A pipe 2-inches or less in diameter extending from the water main to the building used to provide a domestic water supply.
Waterworks System: All lands, buildings, machinery, equipment, tools and apparatus, water mains, hydrants, service connections and all other property used for the purpose of furnishing a water supply to the city and the inhabitants thereof now owned or to be owned by the city. (Ord. No. 1245 § 1; Ord No. 1369 §1)

Section 38.04.110 Penalty

Any violation of this Chapter 38 shall be punishable in municipal court as provided in section 11.12.010. (Ord. No. 1245 § 1)

Article 38.08 Water Generally

Sections:

38.08.00E Editor's note to Article 38.08
38.08.010 Definitions - REPEALED
38.08.020 Water Department Generally
38.08.030 Powers and duties and waterworks superintendent generally - REPEALED
38.08.040 Duties of city engineer generally - REPEALED
38.08.050 Permits to lay, relay, repair or tap main or service pipe
38.08.060 Installation and repair of service pipes, corporation stops, etc.
38.08.070 Construction of tap or connection to mains generally
38.08.080 Service lines--Construction and maintenance generally
38.08.090 Same--Material specifications; connections - REPEALED
38.08.100 Same--Capacity and size of service from main - REPEALED
38.08.110 Same--Depth; stop and curb cocks; length of lead services from main - REPEALED
38.08.120 Number of consumers per service connection
38.08.130 Turning on or shutting off supply
38.08.140 Shutting off of corporation stop on abandonment of connection
38.08.150 Fire protection system--Construction of services generally; opening service generally
38.08.160 Same--Notice of broken seals
38.08.170 Same--Valves - REPEALED
38.08.180 Same--Use of fire hydrants generally
38.08.190 Liability of city for failure or increase in pressure
38.08.200 Damage and obstructing access to waterworks system
38.08.210 Unnecessary wasting of city water
38.08.220 Access of employees of waterworks to premises supplied with water
38.08.230 Statement of legislative policy - REPEALED
38.08.240 Application of sections - REPEALED
38.08.250 Determination of emergency, notice thereof and restrictions and prohibited uses
38.08.260 Restrictions and prohibited uses - REPEALED
38.08.270 Penalty - REPEALED
38.08.280 Installation required for tapping of water main
38.08.290 Furnishing, installation, testing and repair--Generally
38.08.300 Same--Refusing or neglecting to comply after notice
38.08.310 Placement
38.08.320 Removal
38.08.330 Bypassing of meters over one and one-half inches in size; valves
38.08.340 Protection from damage

Section 38.08.00E Editor's note to Article 38.08

For state law as to authority of city to maintain, etc., a system of waterworks, see NDCC, 40-05-01 (36), 40-05-02 (19).

Section 38.08.010 Definitions - REPEALED

This section was appealed with Ordinance No. 1245, approved May 6, 2002.

Section 38.08.020 Water Department Generally

The activities of the waterworks system shall be directed and supervised by such individuals as designated by the Board of City Commissioners. (Code 1958, § 31-5; Ord. No. 1245 § 1.)

Section 38.08.030 Powers and duties and waterworks superintendent generally - REPEALED

This section was repealed with Ordinance No. 1245, approved May 6, 2002.

Section 38.08.040 Duties of city engineer generally - REPEALED

This section was repealed with Ordinance No. 1245 approved May 6, 2002.

Section 38.08.050 Permits to lay, relay, repair or tap main or service pipe

A permit issued by the City shall be obtained by the owner of a property before any person shall excavate to lay, relay, repair or tap any main or service water pipe. The owner shall first make application for a permit so to do upon forms furnished by the City. Such application shall be made by the owner of the property to which the water is furnished or to be furnished or his agent. No permit shall be issued until all delinquent fees, taxes and special assessment against the property is paid in full. (Code 1958, § 31-8; Ord. No. 1245 § 1; Ord No. 1369 §1)

Section 38.08.060 Installation and repair of service pipes, corporation stops, etc.

(a) Property owners are responsible, at their expense, for the installation of the city service line and the water service line. After installation, the city service line shall be operated, maintained and repaired by the City.

(b) Upon their installation, the Property Owner is responsible for repair and/or replacement of the property owner's portion of the service line.

(c) Upon the city receiving knowledge of a defective service line, the property owner shall be notified. If the Property Owner fails, neglects or refuses to repair such lines within five days after notification, the city will enter upon said property to repair the defective water service line. The cost of said repairs shall be billed to the owner of the property. If the cost of repair is not paid within thirty day of the billing, the city may take action to have the charges assessed to the property in accordance with Chapter 40-28 of the NDCC, or pursue such other remedies as allowed by law. The Property Owner is also responsible for the cost of water loss caused by the defective service line, as estimated by the City. (Code 1958, § 31-9; Ord. No. 1034, § 1; Ord. No. 1245 § 1; Ord No. 1369 §1)

Section 38.08.070 Construction of tap or connection to mains generally

No person other than a Master Plumber or Water and Sewer Installer shall make any tap or connection to a water main. Any such tap or connection shall be inspected and approved by the City prior to being placed in service. (Code 1958, § 31-10; Ord. No. 1245 § 1.)

Section 38.08.080 Service lines--Construction and maintenance generally

All water service lines and city service lines shall be constructed by licensed Master Plumbers or Water and Sewer Installers at the owner's expense in the manner and of such material or pipe as shall be designated by the policies set forth by the City, the North Dakota State Plumbing Board and the North Dakota Department of Health. (Code 1958, § 31-11; Ord. No. 588; Ord. No. 1245 § 1; Ord No. 1369 §1)

Section 38.08.090 Same--Material specifications; connections - REPEALED

This section was repealed with Ordinance No. 1245 approved May 6, 2002.

Section 38.08.100 Same--Capacity and size of service from main - REPEALED

This section was repealed with Ordinance No. 1245, approved May 6, 2002.

Section 38.08.110 Same--Depth; stop and curb cocks; length of lead services from main - REPEALED

This section was repealed with Ordinance No. 1245, approved May 6, 2002.

Section 38.08.120 Number of consumers per service connection

No service connection shall supply more than one water consumer, unless each consumer's service is controlled by a separate curb stop and meter. (Code 1958, § 31-15; Ord. No. 1245 § 1.)

Section 38.08.130 Turning on or shutting off supply

No person, except an authorized City employee, shall shut off or turn on the water at the curb stop to any premises without first obtaining permission from the City. The City may shut off water service upon twenty-four hours' notice to the owner or occupant of the premises when leaks or defects are found in the service between the main and the meter. Mains may be shut off without notice when required for repairs or extensions, but efforts shall be made by the City to notify consumers before interruption of service. The City shall make a reasonable charge for labor and materials for shutting off and turning on services, as specified in the City fee schedule. (Code 1958, § 31-16; Ord. No. 868, § 1; Ord. No. 1245 § 1.)

Section 38.08.140 Shutting off of corporation stop on abandonment of connection

Any water service line abandoned or which does not comply with the policies, regulations or ordinances of the City, the North Dakota State Plumbing Board or the North Dakota State Health Department shall be disconnected at the corporation stop. Abandoned service lines shall not be reconnected to the waterworks system until they comply with all of said requirements. (Code 1958, § 31-17; Ord. No. 1245 § 1.)

Section 38.08.150 Fire protection system--Construction of services generally; opening service generally

All fire protection services shall be constructed by properly licensed Master Plumbers or Water and Sewer Installers in the manner prescribed by the policies determined by the City.

A fire protection service shall not be used to provide water service to the water consumer unless a separate water service line is provided. The separate water service line shall be on the outside of the building. The separate water service line shall be controlled by a valve located at the water main. (Code 1958, § 31-18; Ord. No. 1245 § 1; Ord No. 1369 §1.)

Section 38.08.160 Same--Notice of broken seals

When seals on a fire protection service are broken, it shall be the duty of the owner or occupant to notify the City within twenty-four hours thereafter. (Code 1958, § 31-19; Ord. No. 1245 § 1.)

Section 38.08.170 Same--Valves - REPEALED

This section was repealed with Ordinance No. 1245 approved May 6, 2002.

Section 38.08.180 Same--Use of fire hydrants generally

Only personnel of the Water Utility, Street or Fire Departments are authorized to operate a fire hydrant. The users of temporary hydrant connections shall be charged fees as determined by the City Commission in the annual fee resolution. (Code 1958, § 31-21; Ord. No. 1245 § 1; Ord. No. 1369 §1.)

Section 38.08.190 Liability of city for failure or increase in pressure

Under no circumstances shall the city be liable for failing to provide adequate water supply or for changes in water pressure. The City reserves the right to increase water pressure at any time for fire protection or for any other purpose. (Code 1958, § 31-22; Ord. No. 1245 § 1.)

Section 38.08.200 Damage and obstructing access to waterworks system

No person shall tamper with, block access to, damage, destroy or interfere with any part of the waterworks system. If any person violates the provisions of this Section, the City may immediately shut off the water service, and pursue such other remedies as allowed by law. (Code 1958, § 31-23; Ord. No. 1245 § 1.)

Section 38.08.210 Unnecessary wasting of city water

No person shall permit water to continuously run from a fixture nor unnecessarily waste any water delivered by the waterworks system. Upon the discovery of such waste, the City shall notify the water user of such fact, and it shall be the duty of the water customer to make the corrections necessary to prevent such waste. If after forty-eight (48) hours the water user has failed to make the necessary corrections, the water service line shall be shut off and not turned on again until the necessary corrections have been made and the customer has paid all costs in connection therewith. The customer shall also pay for the wasted water in an amount as determined by the City. (Code 1958, § 31-24; Ord. No. 1245 § 1.)

Section 38.08.220 Access of employees of waterworks to premises supplied with water

Authorized employees of the City shall have access to any premises supplied with water at proper times to inspect and ascertain the condition of the meters and fixtures or for reading meters, or for the purpose of repairs or replacement to the system, and no owner or occupant shall refuse such employees such access. If any person violates the provisions of this Section, the City may immediately shut off the water service, and pursue such other remedies as allowed by law. (Code 1958, § 31-25; Ord. No. 1245 § 1.)

Section 38.08.230 Statement of legislative policy - REPEALED

This section was repealed with Ordinance No. 1245 approved May 6, 2002.

Section 38.08.240 Application of sections - REPEALED

This section was repealed with Ordinance No. 1245 approved May 6, 2002.

Section 38.08.250 Determination of emergency, notice thereof and restrictions and prohibited uses

A determination of an emergency which requires the imposition of certain water use restrictions or the prohibition of the use of water for certain purposes shall be made in the following manner:

(a) The City may declare an emergency due to inadequate supplies of water, or insufficient capacity to provide adequate water. The determination of emergency and imposition or restrictions and prohibited uses of water shall be made by such persons authorized by the board of city commissioners. The board of commissioners, after declaration of such emergency, may impose additional restrictions and prohibited uses of water.

(b) The City may declare an emergency due to a mechanical or electrical breakdown which results in the inability of the Southwest Water Authority to deliver adequate supplies of treated water to the waterworks system.

(c) Public notice of the emergency and the restrictions or prohibitions of the use of water shall be published and/or broadcast in any reasonable manner. Upon the declaration of an emergency, it shall be unlawful for any person to use water delivered by the waterworks system in any manner contrary to such restrictions or prohibitions. (Ord. No. 799, § 1; Ord. No. 1245 § 1.)

Section 38.08.260 Restrictions and prohibited uses - REPEALED

This section was repealed with Ordinance No. 1245 approved May 6, 2002.

Section 38.08.270 Penalty - REPEALED

This section was repealed with Ordinance No. 1245 approved May 6, 2002.

Section 38.08.280 Installation required for tapping of water main

A water meter shall be installed on all water service lines to the waterworks system. The water meter shall be the size, type and kind determined by the City. (Code 1958, § 31-32; Ord. No. 486; Ord. No. 1203, § 1; Ord. No. 1245 § 1.)

Section 38.08.290 Furnishing, installation, testing and repair--Generally

All water meters shall be furnished, installed, tested, repaired and replaced by the City. The cost to test, repair or replace a meter shall be paid by the City unless the property owner has violated Section 38.08.340. The property owner shall provide or modify any plumbing necessary for the installation of the water meter. A ball valve shall be installed on each side of the meter. (Code 1958, § 31-33; Ord. No. 486; Ord. No. 1203, § 2; Ord. No. 1245 § 1.)

Section 38.08.300 Same--Refusing or neglecting to comply after notice

If the property owner, upon notice from the City, neglects or refuses to have a meter installed, repaired or replaced or provide or modify the plumbing necessary to install a meter, the water service shall be shut off. The water service shall not be restored until the property owner has complied with the notice and paid any fees associated with shutting off and turning on the water service. (Code 1958, § 31-33; Ord. No. 486; Ord. No. 1203, § 3; Ord. No. 1245 § 1.)

Section 38.08.310 Placement

The property owner, shall provide a location for the water meter that is accessible for the purposes of maintenance, replacement and reading. If the property owner fails to maintain the accessibility of the water meter, the water service shall be shut off. Service shall not be restored until the property owner has complied with this Section and paid any fees associated with shutting off and turning on the water service. (Code 1958, § 31-35; Ord. No. 1203, § 4; Ord. No. 1245 § 1.)

Section 38.08.320 Removal

Water meters shall be removed only by authorized employees of the City. (Code 1958, §31-37; Ord. No. 1203, §6; Ord. No. 1245 § 1.)

Section 38.08.330 Bypassing of meters over one and one-half inches in size; valves

All services 1 1/2" or larger shall be equipped with a valved bypass. The bypass valve shall be sealed in the closed position unless authorized by the City. (Code 1958, § 31-38; Ord. No. 1203, § 7; Ord. No. 1245 § 1.)

Section 38.08.340 Protection from damage

The property owner shall at all times protect the water meter from damage due to freezing, back pressure, or any other damage caused by the actions or inactions of the property owner. The costs of repairing or replacing water meters damaged due to freezing, back pressure or the actions or inactions of the property owner shall be paid by the property owner.

If the property owner fails to pay the costs to repair or replace the water meter, the water service shall be shut off. The water service shall not be restored until the property owner has complied with this Section and paid any fees associated with shutting off and turning on the water services. (Ord. No. 1203, § 8; Ord. No. 1245 § 1)

Article 38.12 Sewers Generally

Sections:

38.12.00E Editor's note to Article 38.12
38.12.010 "Sewer system" defined - REPEALED
38.12.015 Wastewater Department Generally
38.12.020 Powers and duties of city engineer and street commissioner - REPEALED
38.12.030 Application for permit to connect with wastewater system
38.12.031 Installation and repair of service pipes, wyes, connections, etc.
38.12.040 Plans, specifications, etc., for connections
38.12.050 Depositing, draining, etc., harmful materials into sanitary sewers
38.12.060 Erection and maintenance of privies or cesspools

Section 38.12.00E Editor's note to Article 38.12

For state law as to sewage disposal in municipalities, see NDCC, § 40-34-01 et seq.

Section 38.12.010 "Sewer system" defined - REPEALED

This section was repealed with Ordinance No. 1245 approved May 6, 2002.

Section 38.12.015 Wastewater Department Generally

The activities of the wastewater system shall be directed and supervised by such individuals as designated by the Board of City Commissioners. (Ord. No. 1245 § 1.)

Section 38.12.020 Powers and duties of city engineer and street commissioner - REPEALED

This section was repealed with Ordinance No. 1245 approved May 6, 2002.

Section 38.12.030 Application for permit to connect with wastewater system

Any person desiring to make any connection with the wastewater system of the city must apply to the city for a permit. No permit shall be issued until all delinquent fees, property taxes and any special assessment against the property are paid in full. (Code 1958, § 31-28; Ord. No. 1245 § 1.)

Section 38.12.031 Installation and repair of service pipes, wyes, connections, etc.

(a) All sewer service lines including the wye or other connection to the sewer main shall be installed, operated, maintained and repaired by the property owner.

(b) If any service line or fixture is allowed to get out of repair or is damaged in any manner and the property owner fails, neglects or refuses to repair such pipes or fixtures, the City shall have the right to repair them and charge the cost of such repairs to the property owner. If no action is taken or positive response received within 5 days after notice, the City will enter upon said property to repair the defective sewer service line. The cost of the repair will be billed to the property owner. If the cost of the repair is not paid within thirty days of the date of billing, the City may take action to have the charges assessed to the property in accordance with Chapter 40-28, NDCC, and pursue such other remedies as are allowed by law.

(c) If the City determines that a damaged sewer service line causes an immediate health or safety concern, it may immediately enter upon said property and make said repairs, and assess the costs thereof as set forth in subsection (b), above. (Ord. No. 1245 § 1.)

Section 38.12.040 Plans, specifications, etc., for connections

All sewer service lines and main connections shall be constructed by properly licensed Master Plumbers or Water and Sewer Installers in the manner prescribed by the laws, rules, policies and ordinances of the City, the North Dakota State Plumbing Board and the North Dakota Department of Health. (Code 1958, § 31-29; Ord. No. 1245 § 1.)

Section 38.12.050 Depositing, draining, etc., harmful materials into sanitary sewers

It shall be unlawful for any person to discharge, deposit, dump or drain, or cause to be discharged, deposited, dumped or drained any liquid or solid prohibited by city, state or federal regulations or polices into the wastewater system. It shall be unlawful for any person to, or cause to be discharged, deposited, dumped or drained into the wastewater system liquid or solid that by volume or concentration of contaminants causes damage or exceeds the capacity of the wastewater system or which is unable to treat by or is harmful to the processes of the City's wastewater system. (Code 1958, § 31-30; Ord. No. 413, § 1; Ord. No. 645, § 1; Ord. No. 1245 § 1.; Ord. No. 1369 §1)

Section 38.12.060 Erection and maintenance of privies or cesspools

It shall constitute and is hereby declared a nuisance for any person to erect or to maintain any privy or cesspool on any property in the city. Septic systems and holding tanks, compliant with city, state and federal regulations may be allowed where sewer and water connections are more than 200 feet from the property. (Code 1958, § 31-31; Ord. No. 1245 § 1; Ord. No. 1369 §1.)

Article 38.14 Storm Water Management

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Section 38.14.110 Purpose and Policy.

This title sets forth uniform requirements for Storm Water management systems within the City and its extraterritorial jurisdiction. It is the intent of the Board of City Commissioners that the requirements and standards contained in this ordinance comply with all applicable state and federal laws. In the event of any conflict between the provisions of this ordinance and the provisions of an erosion control, shoreline protection, or floodplain ordinance, or other regulations adopted by the City, County, State or Federal authorities, the more restrictive standard prevails.

The objectives of this title are:

1. To promote, preserve, and enhance the natural resources within the City of Dickinson, its extraterritorial jurisdiction and water sheds;
2. To protect and promote the health, safety, and welfare of the people and property through effective Storm Water management practices;
3. To protect the City's natural resources from adverse impacts occasioned by development or other activities;
4. To regulate land development, land disturbing, or other activities that may have an adverse and potentially irreversible impact on water quality and environmentally sensitive lands;

5. To minimize conflicts and encourage compatibility between land disturbing and development activities and environmentally sensitive issues (i.e. land, water, habitat, etc.);
6. To require detailed review standards and procedures for land development activities proposed throughout the City, and its extraterritorial jurisdiction, water sheds and to persons outside the City who are, by contract or agreement with the City, users of the City Storm Water system, thereby achieving a balance between urban growth and development, and the protection of water quality; and
7. To provide for adequate Storm Water system analysis and appropriate Storm Water system design as necessary to protect public and private property, water quality, and existing natural resources. This title establishes and provides for the following Storm Water management criteria:

a) The regulation of development through the issuance of Storm Water permits and through the enforcement of general Storm Water drainage requirements throughout the City as they relate to managing Storm Water volumes, rates of runoff, flow duration, and their subsequent impacts to downstream property and Storm Water management facilities.

b) The regulation of, and the establishment of criteria for, existing public underground storm sewers, existing artificial and natural open channel drainage systems, existing Storm Water detention and retention ponds, and existing private Storm Water drainage systems discharging into the public system.

c) Provides for a Storm Water management system user charge and the method for calculating charges for each user classification for the equitable distribution of costs associated with the administration of the Storm Water management program established herein. Procedures for rate adjustments and annual review criteria are established.

d) Penalties for violating the provisions of this ordinance, and the orders, rules, regulations and permits issued hereunder. (Ord. No. 1282 § 2.)

Section 38.14.120 Definitions.

For the purpose of this ordinance and title, the following terms, phrases, and words, and their derivatives, shall have the meaning as stated in this section. Words used in the present tense include the future tense. Words in plural number include the singular number, and words in the singular number include the plural number. The word “shall” is mandatory and the word “may” is permissive.

Agricultural Land Use: The use of land for planting, growing, cultivating and harvesting crops for human or livestock consumption and pasturing or yarding of livestock.

Applicant: Any person wishing to obtain a building permit, special use permit, zoning or subdivision approval.

Base Flood: A flood having a one percent chance of being equaled or exceeded in any given year (e.g. 100-year flood). It is also referred to as the regional flood.

City: The Board of City Commissioners

Control Measure: A practice or combination of practices to control erosion and attendant pollution.

Construction: Any site under development which lacks vegetative or permanent cover.

Conveyance Structure: A pipe, open channel, or other facility that transports runoff from one location to another.

Detention Facility: A natural or manmade structure, including wetlands, for the temporary storage of runoff.

Development Properties: Lands and properties located within an approved Storm Water management permit boundary.

Developer: A person, firm, corporation, sole proprietorship, partnership, federal or state agency or political subdivision thereof engaged in a land disturbance and/or land development activity.

EPA: United States Environmental Protection Agency.

Erosion: Any process that wears away at the surface of the land by the action of water, wind, ice, or gravity. Erosion can be accelerated by the activities of man and nature.

Erosion and Sediment Control Plan: A written description containing best management practices designed to meet the requirements of this ordinance.

Extraterritorial Jurisdiction: The extension of the City' s zoning and platting authority to all unincorporated land located within two (2) miles of the corporate limits of the City as authorized by the North Dakota Century Code and any other authority granted by agreement with Stark County or the state of North Dakota regarding building and/or storm water issues.

Flood Fringe: That portion of the flood plain outside of the floodway.

Floodplain: The areas adjoining a water course or water basin that have been or may be covered by a regional or base flood.

Floodplain Management: The regulation of the nature and location of construction on (or other occupancy of) lands subject to inundation by flood waters, so that foreseeable (probable) flooding damages will have an average annual risk smaller than some preselected amount. Includes, but is not limited to technical and non-technical studies, policies, and management strategies, statutes and ordinances that collectively manage floodplains along rivers, streams, major drainage ways, outfalls, or other conveyances.

Floodway: The channel of a water course and the bed of water basins that carries and discharges floodwater.

Hydric Soils: Soils that are saturated, flooded, or covered by water long enough during the growing season to develop anaerobic conditions in the upper part of the soil profile.

Hydrophilic Vegetation: Macrophytic plant life growing in water, soil, or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

Impervious Area: Surfaces, such as pavement or rooftops, which prevent the infiltration of water into the soil.

Land Development Activity: The construction or demolition of buildings, roads, parking lots, paved storage areas, and similar facilities.

Land Disturbing Activity: Any manmade change of the land surface including removing vegetative cover, excavating, filling and grading.

Landowner: Any person holding title to or having an ownership interest in land.

Land User: Any person operating, leasing, renting, or having made other arrangements with a landowner by which the landowner authorizes use of their land.

Local Detention: Detention provided to serve only the developing area in question and no areas outside of the development boundaries.

Major Storm Water System: The portion of the total Storm Water system that collects, stores, and conveys runoff that exceeds the capacity of a minor system. A major storm water system is usually evaluated for the one hundred- (100) year runoff event.

Management Practice: A practice or combination of practices to control erosion and water quality degradation.

Minor Storm Water System: The portion of the total drainage system that collects, stores and conveys frequently occurring runoff, and provides a relief from nuisance and inconvenience. Generally, the minor Storm Water system is designed to accommodate minor (or ordinary) storms classified as two (2) to ten (10) year storms. The system may include but not limited to roof gutters and on-site drainage swales, curbed or side swaled streets, Storm Water inlets, underground storm sewers, open channels and culverts.

Multiple-Purpose Facility: An urban Storm Water facility that fulfills multiple functions, such as enhancement of runoff quality, erosion control, wildlife habitat, or public recreation, in addition to its primary purpose of conveying or controlling runoff.

National Pollution Discharge Elimination System (NPDES) Permit: Any permit or requirement enforced by the North Dakota State Department of Health pursuant to the Clean Water Act as amended for the purposes of regulating Storm Water discharge.

Occupant: Any person using a lot, parcel of land, or premises connected to and discharging Storm Water into the Storm Water system of the City.

Onsite Detention: See Local Detention.

Outfall: Any storm water outlet which discharges, into a watercourse, pond, ditch, lake or other body of water.

Permanent Development: Any buildings, structures, parking lots, roads, landscaping and related features constructed as part of a development project approved under a Storm Water permit.

Permanent Facilities: Any natural or constructed features of a Storm Water system including, but is not limited to storm sewers, infiltration areas, detention/retention areas, channels, streets, and similar features.

Permittee: Any person who has received a Storm Water permit from the City.

Person: Any developer, individual, firm, corporation, partnership, franchise, association, owner, occupant of property, or agency - public or private.

Planning and Zoning Commission: An appointed Commission of the Dickinson City Commission, which is tasked with addressing land use.

Private Drainage Channel: A drainage channel on privately-owned land or easements which eventually discharges into a public drainage channel or public storm sewer.

Private Storm Sewer: A storm sewer on privately owned land or easements.

Public Drainage Channel: A drainage channel located on public property.

Public Storm Sewer: A storm sewer located entirely on publicly owned land or easements.

Regional Detention: An area which temporarily stores storm water from more than one source.

Regional Flood: A flood that is representative of large floods known to have occurred generally in the state and recently characteristic of what can be expected to occur on an average frequency in the magnitude of a one hundred (100) year recurrence interval. It is also referred to as the base flood.

Retention Facility: A natural or manmade structure that provides for the permanent storage of Storm Water runoff.

Runoff: Rainfall, snowmelt, dewatering or irrigation water flowing over the ground surface and into open channels, underground storm sewers, and detention or retention ponds.

Sediment: Solid or organic material that, in suspension, may be transported by air, water, gravity, or ice, and deposited at another location.

Site: The entire area included in the legal description of the parcel or other land division on which land development or land disturbing activity is proposed in a permit application.

Stabilize: To make the site steadfast or firm, minimizing soil movement by mulching and seeding, sodding, landscaping, concrete, gravel, or other measures.

State: The State of North Dakota.

Storm Sewer: A pipe or conduit for carrying storm waters, surface runoff, street and wash waters, and drainage, excluding sewage and industrial wastes.

Storm Water Detention: Temporary storage of Storm Water runoff in ponds, parking lots, depressed grassy areas, roof tops, buried underground tanks, and other similar features, for future or controlled release

Storm Water Management Policy: City code which regulates runoff within a drainage system.

Storm Water Management Criteria: Specific guidance provided to the designer to carry out Storm Water management policies.

Storm Water Management System: Physical facilities that collect, store, convey, and treat Storm Water runoff in urban areas. These facilities normally include detention and retention facilities, streets, storm sewers, inlets, open channels, and special structures, such as inlets, manholes, and energy dissipaters.

Storm Water Retention: Permanente storm water storage designed to eliminate subsequent surface discharge. Ponds are the most common types of retention storage.

Structure: Anything manufactured, constructed, or erected which is normally attached to or positioned on land, including portable structures, earthen structures, roads, parking lots, and paved storage areas.

Unpolluted Water: Any water of quality equal to or better than the effluent criteria in effect, or water that would not cause a violation of receiving water quality standards.

Urban Area: Land associated with, or part of, a defined city or town.

User: Any person who benefits from and/or is regulated by City storm water management policies and facilities.

User Fee: A fee levied on users of a public storm water management system for the user's proportionate share of the cost of operation and maintenance or replacement of such works.

Water Shed: the land area that drains water to a particular stream, river, or lake. It is a land feature that can be identified by tracing a line along the highest elevations between two areas on a map, often a ridge.

Storm Water Management Plan: The plan that a designer formulates to manage urban Storm Water runoff for a particular project or drainage area. It typically addresses such subjects as characterization of the site development and grading plan; peak rates of runoff, flow duration, runoff volumes for various return frequencies; locations, criteria and sizes of detention or retention ponds and conveyances; runoff control features; land parcels, easement locations, opinions of probable costs, measures to enhance runoff quality, salient regulations, and how the plan addresses them, and consistency with secondary objectives such as public recreation, aesthetics, public safety, and groundwater recharge. It is usually submitted to regulatory officials for their review for adoption.

Waterway: any channel, open ditch, or river which carries natural flows or storm water.

Wetlands: Lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes.

a. A predominance of hydric soils;
b. Are inundated or saturated by the surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophilic vegetation typically adapted for life in saturated soil conditions; and
c. Under normal circumstances support the prevalence of hydric vegetation. (Ord. No. 1282 § 2.)

Section 38.14.130 Scope.

Every applicant for a building permit, subdivision approval, or a permit to allow construction activities must submit a Storm Water Management Plan to the City. No building permit, subdivision approval, or permit to allow construction activities shall be issued until approval of the Storm Water Management Plan or a waiver of the approval requirement has been obtained.

Exemptions to the requirements of this section include:

1. Any part of a fully developed subdivision with streets, curb, and gutter for which a plat was approved and recorded with the County Register on or before June 10, 2003;
2. A parcel for which a building permit was approved on or before June 10, 2003;
3. An Administrative Subdivision or Minor Subdivision, as defined in the Dickinson City Code.
4. Installation of a fence, sign, telephone, and electric poles and other kinds of posts or poles; or
5. Construction of a stand-alone single family dwelling is exempt from filing a Storm Water Management Plan, but must provide erosion control measures while under construction;
6. Emergency work to protect life, limb, or property.

The Planning and Zoning Commission may waive any requirement of this title upon making a finding that compliance with the requirement will involve an unnecessary hardship, and the waiver of such requirement will not adversely affect the standards and requirements put forth in Chapter 38.14.510 to 38.14.520. The City

may require as a condition of the waiver, such dedication or construction, or agreement to dedicate or construct, as may be necessary to adequately meet the said standards and requirements. (Ord. No. 1282 § 2.)

Section 38.14.140 Depositing, Draining, etc., Harmful Materials into Storm Water System.

It shall be unlawful for any person to discharge, deposit, dump or drain, or cause to be discharged, deposited, dumped or drained any liquid, solid or material which may degrade storm water quality and/or is prohibited by city, state or federal regulations or policies into the Storm Water System. (Ord. No. 1282 § 2.)

Section 38.14.210 Application.

A proposed Storm Water Management Plan shall be filed with the City Engineer. The application shall include a description of the location upon which the approval is requested, verification that the proposed use is permitted in the underlying zoning district, and adequate evidence showing the proposed use will conform to the standards set forth in this article.

Two sets of legible copies of the drawings and required information shall be submitted to the City Engineer. Applicable fees as set forth in the city fee schedule shall be paid prior to commencement of any construction activities. Plans shall be prepared to a scale appropriate to the site of the project and suitable for the review to be performed. (Ord. 1282 § 2.)

Section 38.14.220 Mandatory Compliance with Other City Codes.

In addition to this article, the applicant is responsible for adhering to the requirements of all city codes, including but not limited to the following:

1. Zoning regulations
2. The city's flood plain requirements.
3. Regulations governing the subdivision of land.

(Ord. No. 1282 § 2.)

Section 38.14.230 Contents of Storm Water Management Plan.

All Storm Water Management Plans, drawings, specifications, and computations for Storm Water management facilities submitted for review. Any plan for developments five acres or larger shall contain a validated seal and be signed by a Professional Engineer registered in the State of North Dakota. At a minimum, the Storm Water Management Plan shall contain the following information:

1. Storm Water Management Plan Report. A written summary discussing pre and post development hydrology and hydraulic analysis, erosion and sedimentation control measures to be used during and after construction, protective measures for proposed and existing structures, and water quality concerns.
2. Construction Plans and Specifications. Plans and specs submitted as part of the plan shall contain the following:
   a. ***Existing site map.***
      (1). The name and address of the applicant, the section, township and range, and the north point, date and scale of drawing, and number of sheets;
      (2). The location of the tract by an insert map at a scale sufficient to clearly identify the location of the property and giving such information as the names and numbers of adjoining roads, railroads, utilities, subdivisions, towns, and districts or other defining landmarks;
      (3). Existing topography with a contour interval appropriate to the topography of the land, but in no case having a contour interval greater than two feet;

(4). A watershed boundary map illustrating the project site location as a sub watershed within the watershed of the larger or major drainage basin;

(5). A delineation of streams, rivers, public waters and the presence or absence of wetlands located on and immediately adjacent to the site, including depth of water, a general description of vegetative cover found within the site, a statement of general water quality, and any classification given to the water body by state or federal agencies;

(6). Location and dimensions of existing Storm Water drain systems and natural drainage patterns on and immediately adjacent to the site delineating in which direction and at what rate Storm Water is conveyed from the site, identifying the receiving stream, river, public ditch, or wetland, and setting forth those areas of the unaltered site where Storm Water collects or passes;

(7). A description of the soils on the site, including a map indicating soil types of the areas to be disturbed, containing information on the suitability of the soils for the type of development proposed, potential for erosion, the type of Storm Water management system proposed, and any remedial steps to be taken by the developer to render the soils suitable.

(8). Current extent of vegetative cover and a clear delineation of any vegetation proposed for removal;

(9). The current land use of the area in which the site is located; and

(10). The 100-year flood plains, flood fringes, and floodways.

b. ***Site Construction Plan***.

(1). Locations and dimensions of all proposed land disturbing activities and any phasing or scheduling of those activities;

(2). Approximate locations of all temporary soil or dirt stockpile areas;

(3). Location and description of all construction site erosion control measures necessary to meet the requirements of this ordinance;

(4). A schedule of anticipated starting and completion dates for each land disturbing activity, including the installation of construction site erosion control measures needed to meet the requirements of this ordinance; and

(5). Provisions for maintaining the construction site erosion control measures prior to, during, and after construction.

c. ***Plans of Final Site Conditions***.

(1). The proposed final grading plan shown at contours at the same interval as provided above or as required to clearly indicate the relationship of the proposed changes to existing topography and remaining features;

(2). A landscape plan, drawn to an appropriate scale, including dimensions and distances and the location, type, size and description of proposed landscape materials which will be added to the site as part of the development;

(3). A drainage plan of the developed site delineating the direction and at what rate Storm Water runoff will be conveyed from the site and setting forth the areas of the site where Storm Water will be collected;

(4). The proposed size, alignment, and intended use of any structures to be erected on the site;

(5). A clear delineation and tabulation of all areas which shall be paved or surfaced, including a description of the surfacing material to used; and

(6). Any other information pertinent to the particular project which, in the opinion of the applicant, is necessary for the review of the project. (Ord. No. 1282 § 2)

Section 38.14.240 Storm Water Management Criteria for Permanent Facilities.

Storm Water control facilities included as part of the final design for a permanent development shall be addressed in the Storm Water Management Plan and shall meet the following criteria:

1. ***Pre-versus Post Hydrological Response of Site for areas five (5) acres or larger.*** An applicant shall install or construct, on or for the proposed land disturbing or development activity, all Storm Water management facilities necessary to manage increased runoff so that the two (2) year, ten (10) year and one hundred (100) year storm peak discharge rates existing before the proposed development shall not be increased and accelerated channel erosion will not occur as a result of the proposed land disturbing or development activity. In lieu of the installation or construction of Storm Water management facility. An applicant shall contribute to the development and maintenance of regional Storm Water management facilities designed to serve multiple land disturbing and development activities.
2. ***Natural Features of the Site.*** The applicant shall give consideration to reducing the need for Storm Water management facilities by incorporating the use of natural topography and land cover such as wetlands, ponds, natural swales and depressions as they existed before development.
3. ***Storm Water Management Strategies.*** Using sound and current engineering practices, the following Storm Water management practices may include but are not limited to the following.
    a. Natural infiltration of precipitation and runoff on-site, if suitable soil and geological conditions are available. The purpose of this strategy is to encourage the development of a Storm Water Management Plan that encourages natural infiltration.
    b. The use of open vegetated swales and natural depressions.
    c. Storm Water detention facilities.
    d. Storm Water retention facilities (on a case by case basis).

    A combination of successive practices may be used to achieve the applicable minimum control requirements specified in the above four strategies. Justification shall be provided by the applicant for the method selected.
4. ***Adequacy of Outlets.*** The adequacy of any outlet used as a discharge point for proposed Storm Water management facilities must be assessed and documented to the satisfaction of the City Engineer. The hydraulic capacities of downstream natural channels, storm sewer systems, or streets shall be sufficient to receive post-development runoff discharges and volumes without causing increased property damages or any increase in the established base floodplain elevation. If a floodplain or floodway has not been established by the Federal Emergency Management Agency, then the applicant shall provide a documented analysis and estimate of the base flood elevation as certified by a Professional Engineer registered in the State of North Dakota. In addition, projected velocities in downstream natural or manmade channels shall not exceed that which is reasonably anticipated to cause erosion unless protective measures acceptable to the City Engineer are approved and installed as part of the Storm Water Management Plan. The assessment of outlet adequacy shall be included in the Storm Water Management Plan and shall be certified by a Professional Engineer registered in the State of North Dakota
5. ***Storm Water Detention/Retention Facilities.*** Storm Water detention or retention facilities proposed to be constructed in the Storm Water Management Plan shall be designed according to the most current and sound engineering practices. (Ord. No. 1282 § 2)

Section 38.14.250 Operation and Maintenance Considerations.

All Storm Water management facilities shall be designed to minimize the need for maintenance, to provide access for maintenance purposes, and to be structurally sound. All Storm Water management facilities shall have a plan of operation and maintenance that assures continued effective removal of pollutants carried in Storm Water runoff. It shall be the responsibility of the applicant to obtain any necessary easements or other property interests to allow access to the Storm Water management facilities for inspection and maintenance purposes. (Ord. No. 1282 § 2)

Section 38.14.260 Easements and Bonds.

Easements or bonds may be required as conditions to the issuance of a permit. (Ord. No. 1282 § 2)

Section 38.14.270 Management of Site Vegetation.

The applicant shall provide for the installation and maintenance of vegetation on development property in accordance with the following criteria:

1. No person shall apply fertilizer to or deposit grass clippings, leaves, or other vegetative materials on impervious surfaces, or within Storm Water systems. (Ord. No. 1282 § 2)

Section 38.14.310 Process.

Storm Water Management Plans meeting the requirements of Chapter 38.14-.0210 to 38.14.270 shall be submitted to the City Engineer for review and compliance with the standards of Chapter 38.14-.0410 to 38.14.440. The City Engineer shall approve, approve with conditions, or deny the Storm Water Management Plan. If a particular Storm Water management plan involves a complex application or has the potential for significant controversy, a public hearing may be scheduled before the Planning and Zoning Commission for public input. (Ord. No. 1282 § 2)

Section 38.14.320 Duration.

Approval of any plan submitted under the provisions of this article shall expire one year after the date of approval unless construction has commenced in accordance with the plan. However, if prior to the expiration of approval, the applicant makes a written request to the City Engineer for an extension of time to commence construction setting forth the reasons for the requested extension, the City Engineer may grant one extension of not greater than one year. Receipt of any request for an extension shall be acknowledged by the City within fifteen (15) days. The City Engineer shall make a decision on the extension within thirty (30) days of receipt. Any plan may be revised in the same manner as originally approved. Any denied application may be resubmitted with additional information addressing the concerns contained within the denial. The resubmitted plan is subject to all applicable fees and shall be considered as a new application. (Ord. No. 1282 § 2)

Section 38.14.330 Conditions.

A Storm Water Management Plan may be approved subject to compliance with conditions reasonable and necessary to insure that the requirements contained in this article are met. Such conditions may, among other matters, limit the size, kind or character of the proposed development, require the construction of structures, drainage facilities, storage basins and other facilities, require replacement of vegetation, establish required monitoring procedures, stage the work over time, require alteration of the site design to insure buffering, require the acquisition of certain lands or easements, and require the conveyance to the City of Dickinson or other public entity of certain lands or interests therein. The City may specify special requirements for specific watersheds within the City and its extraterritorial jurisdiction. The nature of these requirements will

be subject to the unique environmental and natural resource environment of each sub watershed. Approval of a plan shall bind the applicant to perform all of the conditions and requirements of the plan prior to any land disturbing activities. A plan issued under this title runs with the land and is a condition of plat approval. Any owner or subsequent owner of any parcel within the plat must comply with the plan or any approval, revision or modification of the plan. (Ord. No. 1282 § 2)

Section 38.14.340 Standards.

All Storm Water Management plan designs shall be designed using current and sound engineering practices. All plans submitted shall be reviewed for appropriate content described in this section. No construction may commence until the storm water management plan has been approved by the City. (Ord. No. 1282 § 2)

Section 38.14.350 General.

This section describes approval standards against which proposed Storm Water Management Plans will be measured. A Storm Water Management Plan which fails to meet the standards contained in this section shall not be approved by the City. Other standards, such as state and federal standards, shall also apply. If two standards of different agencies conflict, the more restrictive standards shall apply.

It shall be the responsibility of the applicant to obtain any required permits from other governmental agencies having jurisdiction over the work to be performed. Typically, such agencies would include but are not limited to the Stark County Water Resource District, the State Water Commission, the State Department of Transportation, the State Health Department, the State Historical Preservation Officer, the U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency. (Ord. No. 1282 § 2)

Section 38.14.410 Storm Water Management.

It is unlawful to initiate land development, land disturbing, or other activities which result in an increase in Storm Water quantities, degradation of Storm Water quality, or restriction of flow in any storm sewer system, open ditch or natural channel, Storm Water easement, water body, or wetland outlet within the zoning jurisdiction of the City. (Ord. No. 1282 § 2)

Section 38.14.420 Storm Water Management Permits.

1. Mandatory Permits. Any person proposing a development or project which involves land development, land disturbing, or other activities as defined in this title, shall obtain a Storm Water management permit before initiating those activities.
2. Permit Application. All persons subject to meeting the requirements for a mandatory Storm Water permit shall complete and file with the City Engineer an application in the form prescribed by the City and accompanied by a fee established by the City and adopted by the Board of City Commissioners. The permit application shall be accompanied by a Storm Water Management Plan as prescribed under Chapter 38.14-.0210 to 38.14.270 of this article. The City Engineer will evaluate the data furnished as part of the Storm Water Management Plan and may require additional information. After evaluation and acceptance of the Storm Water Management Plan, the City may issue a Storm Water management permit subject to any terms and conditions deemed necessary.
3. Permit Conditions. Storm Water management permits are issued subject to all provisions of this title and all other applicable regulations, user charges and fees established by the City. Permits may contain any of the following conditions:
    a. The user fee for a Storm Water outlet utilizing a regional Storm Water management facility.
    b. Limits on the maximum rate of Storm Water discharge;

c. Limits on water quality degradation of Storm Water discharge;
d. Requirements for the installation, operation and maintenance of Storm Water detention/retention facilities;
e. Compliance schedule;
f. Requirements for notification to and acceptance by the City of any land disturbing activities which have the potential for increasing the rate of Storm Water discharge resulting in degradation of Storm Water quality; and
g. Other conditions as deemed appropriate by the City to insure compliance with this title.

4. Permit Duration. Permits must be issued for a time period specified by the City. The applicant shall apply for permit renewal a minimum of ninety (90) days prior to the expiration of the applicant's existing permit. The terms and conditions of a permit are subject to modification by the City during the term of the permit as set forth in paragraph five (5).
5. Permit Modification. Permits may be modified by the City for just cause upon 30 days' notice. Just cause shall include but not be limited to:
   a Promulgation of a new applicable state or nationwide permit standard;
   b. Changes in the requirements of this ordinance;
   c. Changes in the process used by the permittee or changes in discharge rate, volume, or character; and
   d. Changes in the design or capability of receiving Storm Water facilities.
   e. A written request submitted by the Permittee to the City and agreed upon by the city

   The applicant must be informed of any proposed changes in the permit at least thirty (30) days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

6. Permit Transfer. A permit runs with the property it covers and is transferable to new owners in its entirety or by parcel, with each parcel being subject to the permit and any conditions which apply to that parcel.
7. Monitoring Facilities. The City may require the applicant to provide and operate, at the applicant' s expense, a monitoring facility to allow inspection, sampling, and flow measurements of each Storm Water facility component. Where at all possible, the monitoring facility shall be located on the property of the applicant as opposed to on public rights-of-way. Ample room must be allowed for accurate flow measuring and sampling and the facility shall be kept in a safe and proper operating condition.
8. Inspection. Any employee of the City of Dickinson may enter with or without notice to inspect the Storm Water management facilities of any permittee to determine compliance with the requirements of this title. The City shall be allowed to set up equipment on the permittee' s premises as required for the purpose of collecting samples and flow recording. The City shall retain enforcement powers for assuring adequate operation and maintenance activities through permit conditions and penalties for noncompliance orders. Maintenance shall remain the responsibility of the subdivision and/or property owners. (Ord. No. 1282 § 2)

Section 38.14.430 Construction Activities.

Construction operations must at a minimum comply with the following requirements:

1. Site Dewatering. Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, up flow chambers, hydro-cyclones, soil concentrators or other appropriate controls as deemed necessary. Water may not be discharged in a manner that causes erosion, sedimentation, or flooding on the site; the receiving channels; or any wetland.

2. Waste and Material Disposal. All waste materials (including garbage, debris, cleaning wastes, wastewater, toxic materials, or hazardous materials) shall be properly disposed of off-site and not allowed to be carried by runoff or wind.
3. Tracking Management At the end of each work day any material placed on a public or private road shall be removed (not by flushing) to prevent sediment tracking.
4. Water Quality Protection. The construction contractor shall be required to control oil and fuel spills, and the discharge of any chemicals to prevent such spills or discharges from entering any water course, sump, sewer system, water body, or wetland.
5. Site Erosion and Sedimentation Control. Construction operations must include erosion and sedimentation control measures meeting accepted design criteria, standards and specifications. (Ord. No. 1282 § 2)

Section 38.14.440 Final Storm Water Management Plan.

Upon completion of all required construction activities, the permit applicant shall submit to the City the final Storm Water Management Plan to document any change to the original Storm Water Management concept. The final Storm Water Management Plan shall contain Record Drawings showing the final configuration for all improvements as constructed. For areas five (5) acres or larger the final Storm Water Management Plan and Record Drawings shall be certified by a Professional engineer registered in the State of North Dakota. (Ord. No. 1282 § 2)

Section 38.14.510 Emergency Suspension of Permits.

The City may for cause order the suspension of the Storm Water management permit and/or building permit of a person, contractor, developer or parcel owner when it appears to the City that an actual or threatened discharge presents or may present an imminent or substantial danger to the health or welfare of persons downstream, substantial danger to the environment, or a violation of any permit conditions imposed by this article. If any person is notified of the suspension order and/or a person fails to comply voluntarily with the suspension order, the City shall commence whatever steps are necessary to obtain compliance, including judicial proceedings. The City may reinstate the Storm Water management permit and/or building permit upon proof of compliance with all permit conditions.

Whenever the City orders the emergency suspension of a Storm Water management permit and/or building permit pursuant to the emergency provisions of this section, the City shall serve notice on the permittee personally or by registered or certified mail before or after actually suspending activity depending on the individual situation. If any person is notified of the suspension order and/or a person fails to comply voluntarily with the suspension order, the City shall commence whatever steps are necessary to obtain compliance, including judicial proceedings.

Any applicant dissatisfied with an order the City issued pursuant to this section may request a hearing before the Board of City Commissioners by filing a written request for a hearing with the City, within fifteen (15) days of receipt of the order. The hearing must be held within thirty (30) days of receipt of the request, or as subject to the current meeting schedule, whereupon the Board of City Commissioners may affirm, modify or rescind the order. A request for a hearing filed pursuant to this section does not stay the order while the hearing is pending. (Ord. No. 1282 § 2)

Section 38.14.520 Revocation of a Permit.

A Storm Water management permit may be revoked following notice and an opportunity for a hearing in accordance with Sections 38.1-06-03 and 38.1-06-04. The City may revoke a Storm Water management permit for cause, including but not limited to if upon permitted site there is:

a. One or more Violation of any terms or conditions of the Storm Water management permit;

b. False statements on any required reports;
c. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or
d. Any other violation of this title or related ordinance.
(Ord. No. 1282 § 2; Ord No. 1369 §1)

Section 38.14.530 Notification.

Whenever the City finds that any person has violated or is violating this title, Storm Water discharge permit and/or its conditions, or any prohibition, limitation or requirement contained herein, the City shall serve upon such person a written notice stating the nature of the violation. Within the time period specified, a plan for the satisfactory correction thereof must be submitted to the City. (Ord. No. 1282 § 2)

Section 38.14.540 Hearing.

If the violation is not corrected by timely compliance, the City may order any permittee who causes or allows a violation to a Storm Water permit to show cause before the Board of City Commissioners why the order of the City should not be upheld. A notice of hearing must be served on the permittee specifying the time and place of a hearing to be held by the Board Commission regarding the order of the City , and directing the permittee to show cause before the Board Commission why the order of the City should not be upheld. The notice must be served personally or by registered or certified mail postmarked at least ten (10) days before the hearing. The evidence submitted at the hearing shall be considered by the city which shall then uphold, modify or rescind the order of the city. An appeal of the city's decision may be taken according to law.

If any person commences any land disturbing activities which result in increased Storm Water quantity or Storm Water quality degradation into the City Storm Water management system contrary to the provisions of this title, federal or state requirements or any order of the City, the City Attorney may, following the authorization of such action by the Board of City Commissioners, commence legal action for appropriate legal and/or equitable relief. (Ord. No. 1282 § 2; Ord No. 1369 §1)

Section 38.14.610 Penalty.

Any person, who is found to have violated an order of the Board of City Commissioners made in accordance with this title, or who has failed to comply with any provision of this title and the orders, rules, regulations and permits issued hereunder, is guilty of an offense. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense. (Ord. No. 1282 § 2)

Section 38.14.620 Costs of Damage.

Any person violating any of the provisions of this title or who initiates an activity which causes a deposit, obstruction, or damage or other impairment to the City' s Storm Water management system is liable to the City for any expense, loss, or damage caused by the violation or the discharge. The City may bill the person violating this title the costs for any cleaning, repair or replacement work caused by the violation of Storm Water discharge. (Ord. No. 1282 § 2)

Section 38.14.630 City Attorney's Fees and Costs.

In addition to the civil penalties provided herein, the City may recover reasonable attorney' s fees, court costs, court reporter' s fees, and other expenses of litigation by appropriate action against the person found to have violated this title or the orders, rules, regulations and permits issued hereunder. (Ord. No. 1282 § 2)

Section 38.14.640 Falsifying Information.

Any person who knowingly makes any false statements, representations, or certification in any applicable record, report, plan, or other document filed or required to be maintained pursuant to this title, or

Storm Water management permit, or who knowingly falsifies, tampers with, or knowingly renders inaccurate any monitoring devices or method required under this chapter, shall be guilty of an offense. (Ord. No. 1282 § 2)

Article 38.16 REPEALED WITH ORD 1245

Article 38.20 Water, Wastewater and Storm Water Charges

Sections:

38.20.010 Definitions - REPEALED
38.20.020 Monthly basis
38.20.030 Water Utility rates
38.20.040 Wastewater rates - REPEALED
38.20.045 Storm water service charge - REPEALED
38.20.046 Storm Water Service Charge
38.20.050 Statements; meter readings; adjustment of errors on estimates - REPEALED
38.20.060 Due date; failure to pay generally
38.20.065 Early Payments List
38.20.070 Joint and several liability of owners and occupants; billing and payment after notice of termination
38.20.080 Charges to constitute lien on premises; assessment and collection of lien
38.20.090 Settlement of claims of overcharging
38.20.100 Connection fees
38.20.110 Water Utility and Stormwater Fund

Section 38.20.010 Definitions - REPEALED

This section was repealed with Ordinance No. 1245 approved May 6, 2002.

Section 38.20.020 Monthly basis

All charges for water utilities, including water, wastewater, and stormwater, shall be billed to the owner or occupant of each property connected to the city waterworks system on a monthly basis. (Ord. No. 1403 §1)

Section 38.20.030 Water Utility rates

The owner or occupant of each property connected with the waterworks system of the city shall pay a fixed minimum charge per month, regardless of the actual amount of water consumed or metered, or the amount of wastewater or stormwater carried from the property. Such fixed minimum monthly charge shall be based upon the size of the meter. The minimum fixed monthly charge shall be in such amount as determined from time to time by the board of city commissioners and shall be in the city fee schedule.

In addition to the minimum fixed rate charge per month each owner or occupant of each property connected with the water works system of the city shall pay, for all water used, a charge per thousand gallons. The charge shall be in such amount as determined from time to time by the board of city commissioners and shall be in the city fee schedule. Such a charge may vary depending on the amount of water used each month.

The Board of City Commissioners hereby finds that the principal purpose of the city's water distribution system is to provide adequate water supply to residents of the City of Dickinson for their ordinary personal, household and commercial use. Accordingly, no person shall operate a Bulk Water Vendor or otherwise convey water in bulk for other than the ordinary personal, household or commercial use of the residents of the City of Dickinson, without special permit from the Board of City Commissioners. In the City's fee schedule, the Board of City Commissioners may establish particular rates for users of the City's water distribution system operating a Bulk Water Vendor.

A Bulk Water Vendor shall be defined as follows: "A person or entity connected to the city's water distribution system, conveying water in bulk principally for purposes other than the ordinary personal, household or commercial use of the of the residents of the City of Dickinson, and shall specifically include any user of the city's water distribution system principally designed to fill water trucks for agricultural or industrial use."

The City reserves the right to shut off water service to any property connected to the city waterworks system if, in the sole subjective discretion of the Board of City Commissioners, that property's use of the city waterworks system, including the daily volume or total volume of water used by the property, endanger the waterworks system or the daily total maximum allotment of water to the City of Dickinson from Southwest

The water utility rate schedule applies to each owner or occupant of each residential or commercial premises connected with the water works system of the city, and the minimum fixed rate charges shall apply to each owner or occupant of residential or commercial premises, regardless of whether the water utilized by such individual owner or occupant comes from a private well.

Section 38.20.035 Penalty

Any person, who is found to have violated any provision of the foregoing Section 38.20.030, or who has failed to comply with any other provision of this title and the orders, rules, regulations and permits issued hereunder, is guilty of an offense, and is subject to penalties as set forth in Section 25.20.010 of the Dickinson City Code, as may be amended from time to time. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense.

In the discretion of the board of city commissioners, users of the city waterworks system located outside of city limits may be charged more for operation, maintenance, and equipment replacement costs than those users inside the city limits. Additional charges to users outside the city limits may be charged for debt retirement, capital improvements, and other costs not readily apportionable according to wastewater flow and strength.

The owner or occupant of each residential premises connected to the wastewater system of the city that have private wells, and do not have metered city water billings shall pay minimum wastewater charge and a charge based upon a city wide average of residential water consumption. The City shall have the right to require the well to be metered. The minimum wastewater charge shall be in such amount as determined from time to time by the board of city commissioners and shall be in the city fee schedule.

Commercial properties with a minimum of ten thousand square feet of irrigated grassed area may apply for the exception which may be capped or averaged per billing period. The minimum fixed monthly charge and the rate based upon the water consumption and cap or average shall be in such amount as determined from time to time by the board of city commissioners and shall be in the city fee schedule. Such written application shall be filed on or before April 1 of the year the exception is requested and every three years thereafter. Laundry and dry cleaning establishments may be entitled to a maximum of twenty-five percent exemption. The owners or occupants of any commercial premises connected to the wastewater system of the city that have private wells must have the well water metered to be eligible for the commercial exception or the laundry and dry cleaning establishments exemption.

When any user of the wastewater system discharges wastewater to the city system with biochemical oxygen demands and/or suspended solids in excess of those from normal residential and commercial users, the city may require the payment of additional charges for wastewater service based upon such excess strength wastewater as determined by measurement. The surcharge for extra strength biochemical oxygen demand and/or suspended solids shall be in such amounts as determined from time to time by the Board of City Commissioners, as set forth in the City Fee Schedule.

Authorized city officials may enter upon any property or premises at reasonable times for the purpose of sampling any wastewater being discharged into the wastewater system. Any authorized City employee may enter upon the property at any hour under emergency circumstances.

The discharge of any waters containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to contaminate the wastewater system, or to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a public nuisance or create any hazard in or have an adverse effect on the waters receiving any discharge from the wastewater system is hereby prohibited.

Each user who discharges any pollutants that cause an increase in the costs of managing the effluent of the city's wastewater treatment system shall pay for such increased costs and EPA penalties and fines assessed.(Code 1958, § 31-39; Ord. No. 519, Ord. No. 597; Ord. No. 622, § 1; Ord. No. 644, § 1; Ord. No. 667, § 1; Ord. No. 697, § 1; Ord. No. 730, § 1; Ord. No. 790, § 1; Ord. No. 831, § 1; Ord. No. 923, § 3; Ord. No. 1001, § 1; Ord. No. 1029, § 1; Ord. No. 1064, § 1; Ord. No. 1086, § 26; Ord. No. 1245 § 1. Ord. No. 1403 §2; Ord. No. 1394 §1)

Section 38.20.040 Wastewater rates - REPEALED

REPEALED (Ord No. 1403 §3)

Section 38.20.045 Storm water service charge - REPEALED

This section was repealed with Ordinance No. 1245 approved May 6, 2002.

Section 38.20.046 Storm Water Service Charge

(1) *Generally.* A monthly storm water charge shall be collected for each property located within the Dickinson city limits. The storm water charge shall be collected either from each water meter connection or on a monthly billing in lieu of the water meter connection. This charge shall be based on the square footage and use of the property draining into the city's storm drainage system and served by said water meter. This charge is based on the estimated increase in storm water runoff rates resulting from property development. This increase is to be determined by subtracting the runoff coefficient for undeveloped property from the runoff coefficient of the developed property, for the purpose of determining the monthly storm water surcharge. Based upon engineering judgment, the following runoff coefficients are adopted:

Low Density Residential	0.35
Mobile Home Parks	0.35
High Density Residential	0.45
Public Buildings	0.55
Commercial	0.75
Undeveloped Land	0.15

Property within the city limits shall be assessed a monthly base charge. In addition, a surcharge will be charged for areas in excess of 20,000 square feet in all areas except low density residential and mobile home parks. The amount of the monthly base charge and surcharge shall be determined from time to time by the Board of City Commissioners in the City of Dickinson fee schedule. The initial monthly base charges and surcharges, until changed by the Board of City Commissioners as set forth above, shall be as set forth below:

Property Use	**Monthly Base Charge**	**Surcharge for Areas in Excess of 20,000 SF**
Low Density Residential Single Family Homes Duplexes Townhouses	$1.25/month	None
Mobile Home Parks	$1.25/mobile home/month	None
High Density Residential Apartments	$2.00/month	$0.08/1,000 SF/month

Multi-family dwellings Condominiums		
Public Buildings School Churches Public Buildings	$3.00/month	$0.10/1,000 SF/month
Commercial Commercial Industrial Fraternal Orders	$3.00/month	$0.15/1,000 SF/month
Vacant Land Undeveloped Areas Parks Cemeteries	None	None

The minimum monthly surcharge, for all properties subject to a surcharge, shall be $1.00/month.

(2) *Exemptions.* The following properties are exempt from the charges imposed herein:

Private or public cemeteries.
Parks.
Undeveloped areas.

(3) *Credits.* Properties that are subject to a surcharge are entitled to apply for certain credits to allow the use of actual runoff characteristics rather than averages to determine the appropriate surcharge. Credits may also be issued for projects which reduce either the volume or discharge rate of runoff. The project must be designed by a qualified third party (architect or engineer) and subject to approval of the City.

(4) *Application for Credits.* All applications must be submitted in writing and supported by an accurate current scaled drawing or photo of the property, together with runoff coefficients determined by an engineer or architect. Said application shall be approved by the City. If denied, the applicant may appeal said denial to the Board of City Commissioners. The credit shall be periodically reviewed and amended as necessary to account for additional site development.

(5) *Runoff.* Any property hereinafter annexed or developed within the City shall be required to manage the runoff in a manner which will limit the runoff from its property to that which would have run off in an undeveloped state.

(6) *Use of Fees.* All fees collected as a result of this charge shall be placed in a separate enterprise fund which will be utilized for the construction, operation, and maintenance of the storm water utility system for the City. (Ord No. 1198, § 1; Ord. No. 1245 § 1.)

Section 38.20.050 Statements; meter readings; adjustment of errors on estimates - REPEALED

This section was repealed with Ordinance No. 1245 approved May 6, 2002.

Section 38.20.060 Due date; failure to pay generally

All bills for water utility and storm water service, labor and materials furnished each month shall be due and payable on the date of billing. Accounts unpaid at the next billing will be considered past due and assessed penalties as set by the Board of City Commission in the annual fee schedule. Unless the account is on the Early

Payment List, if an account is unpaid 60 days after the billing, the water shall be shut off by the City and shall not be turned on again until all utility charges, labor and materials then due shall have been paid, together with the additional sum for establishing the service and penalties, in such amount as determined from time to time by the board of city commissioners and shall in the City of Dickinson fee schedule. (Code 1958, §§ 31-41, 31-42; Ord. No. 364, § 1; Ord. No. 438, § 2; Ord. No. 705, § 7; Ord. No. 1086, § 28; Ord. No. 1245 § 1; Ord. No. 1323 §2 Ord. No. 1403 §4.)

Section 38.20.065 Early Payments List

Any account which has received a water shut off notice within any 12 month period may be placed on the Early Payments List. The property owner will be provided written notice that he is on the Early Payments List. After said written notice, any account on the Early Payments List must pay their bill in full before it becomes delinquent, or the water service will be shut off without further notice. Following shut off, the account must be paid in full, including additional fees and penalties, before service will be reconnected. (Ord. No. 1245 § 1.)

Section 38.20.070 Joint and several liability of owners and occupants; billing and payment after notice of termination

The owner and occupant of each premise shall be jointly and severally liable for all charges for water utility and storm 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.

Upon receipt of notice of termination of ownership or occupancy of any premises, the City shall read the meter and issue a statement of charges for all water utility and storm water service since the last meter reading and not theretofore billed. If such person moves away from the city or to some place within the city where he is not directly supplied with municipal water utility service and refuses or neglects to pay such bill within ten days after the mailing or delivery thereof, such charge shall be collectible from the new owner or occupant of the property for which the bill was rendered and the city shall take such measures to enforce collection of such bill as are provided in the case of nonpayment of other bills. (Code 1958, § 31-43; Ord. No. 438, § 3; Ord. No. 1245 § 1 Ord. No. 1403 §5)

Section 38.20.080 Charges to constitute lien on premises; assessment and collection of lien

All water utility and storm water charges shall constitute liens upon the respective lots, tracts and premises receiving water utility service; and all such charges which have been properly billed to the owner or occupant of the premises served and which are more than thirty days past due on September thirtieth of each year shall be certified by the city to the county between the first and the tenth day of October of each year; and the city, 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 on the tax rolls against such premises and collected by the county and paid to the city in the same manner as other county and municipal taxes are assessed, certified, collected and returned. (Code 1958, § 31-44; Ord. No. 1245 § 1; Ord. No. 1403 §6.)

Section 38.20.090 Settlement of claims of overcharging

All bills against which no complaints have been filed with the City on or before the thirtieth day after the date of the bills shall be taken and considered as correct and shall be paid without any reduction. If billing

is found to be in error, an adjustment will be made to the account. (Code 1958, § 31-45; Ord. No. 438, § 4; Ord. No. 1245 § 1.)

Section 38.20.100 Connection fees

Every property owner who causes or permits his property to be connected to the wastewater or waterworks systems of the city shall pay and be fully responsible for a connection fee which shall be paid before waterworks and wastewater facilities may be utilized. The amount of the connection fees shall be in such amount as determined from time to time by the board of city commissioners in the city fee schedule. If a property owner replaces an existing water service with a larger size service, a connection fee shall be paid, equal to the difference between the fee for the smaller and larger service. (Ord. No. 397, §§ 1, 2; Ord. No. 758, §§ 1, 2; Ord. No. 1086, § 29; Ord. No. 1245 § 1.)

Section 38.20.110 Water Utility and Stormwater Fund

(a) ***Water Utility Fund.***

There shall be maintained a separate enterprise fund, hereby designated as the "Water Utility Fund," which will be used to account for all financial activities of the City water and wastewater system.

(b) ***Stormwater Fund.***

There shall be maintained a separate enterprise fund, hereby designated as the “Stormwater Fund” which will be used to account for all financial activities of the Stormwater System. (Code 1958, § 31-46; Ord. No. 878, § 1; Ord. 1226 § 1; Ord. No. 1245 § 1; Ord. No. 1403 §7)

Article 38.22 Wastewater Backup Claims

Sections:

38.22.010 Wastewater Backup Fund
38.22.020 Wastewater Backup Fee
38.22.030 Claims for Wastewater Backup Damages

Section 38.22.010 Wastewater Backup Fund

There is hereby established a separate agency fund called the "Wastewater Backup Fund." All funds deposited in said fund shall be used as set forth in this Chapter. (Ord. No. 1293 § 1)

Section 38.22.020 Wastewater Backup Fee

A monthly wastewater backup charge shall be collected from each wastewater customer or per living unit which is at or below grade of the City of Dickinson. The amount of the wastewater backup fee shall be determined from time to time by the Board of City Commissioners in the City of Dickinson fee schedule. (Ord. No. 1293 § 1; Ord. No. 1323 §3)

Section 38.22.030 Claims for Wastewater Backup Damages

Any property owner who suffers damages as a result of a wastewater backup incident may submit a claim to the City of Dickinson. All claims will be evaluated and handled as follows:

(a) Dickinson will consider claims that result from the city infrastructure, regardless of whether the City is negligent or at fault for the claim. A wastewater backup eligible for reimbursement shall be a backup of sewage into a residence or commercial building caused by a failure of a municipally owned wastewater main, including a lift station, or a backup caused by city equipment. Wastewater backups caused by failure of a service line or from a storm, flood, act of God or natural disaster or failures resulting from other companies providing service to the city are not eligible for reimbursement. The determination of whether a wastewater backup under this definition has occurred shall be made solely by the City of Dickinson.

(b) Property owners shall notify the City Administrator or his designee of a wastewater backup incident, within 3 working days of the incident, unless the property owner can demonstrate extenuating circumstances that make compliance with the 3-day notice requirement impossible.

(c) The City may conduct such investigation as it deems necessary to adjust the claim, including retaining the services of an independent adjuster. Claims shall be submitted by the property owner to the property owner's private homeowners insurance prior to eligibility for payment by the City from the Wastewater Backup Fund. The City shall further submit any such claims to the North Dakota Insurance Reserve Fund, or such other applicable City insurer, prior to eligibility for payment by the City from the Wastewater Backup Fund.

(d) Authorized employees or agents of the City of Dickinson shall have access to any premises for which a claim is submitted.

(e) If the City determines that the claim is eligible for reimbursement, the City will pay for actual costs incurred by the property owner for cleanup expenses. Such expenses may include costs of professional cleaning, repair to sheetrock, wall coverings or floor coverings; but shall not include payment for personal labor of the property owner in cleaning or repairing the property. The City may also pay for the replacement cost of ordinary personal property damaged by the wastewater backup; but shall not pay for jewelry, guns, furs, artwork, fine arts, antiques, collectibles, or other similar items.

(f) Payment will be made when the claimant executes all such documents as the City may require. No payment will be made unless the claimant releases the City of Dickinson, its officers, agents and employees, from all further claims or damages as a result of the wastewater backup.

(g) The maximum amount the City may pay on any one claim is Ten Thousand Dollars and No Cents ($10,000.00). The maximum amount that the City will pay to all claimants who have suffered damages as a result of a wastewater backup incident shall be $150,000.00. If the aggregate amount of approved claims resulting from one incident exceeds said amount, each claim will be reduced on a pro-rata basis as determined by the Board of City Commissioners.

(h) The City may pay from the wastewater backup fund any charges directly related to a wastewater backup, intended to mitigate the damage attributable to a wastewater backup, or intended to prevent or mitigate a future wastewater backup. Such charges may include, but shall not be limited to, purchase and installation of a backflow valves, mold testing, or any other measure deemed appropriate by the City. (Ord. No. 1293 § 1; Ord. No. 1362 §1.)

Article 38.24 Wells

Sections:

38.24.010 Reporting existence to city
38.24.020 Permits for construction
38.24.030 Connection to service lines connected to municipal water system
38.24.040 Connection to municipal service

Section 38.24.010 Reporting existence to city

Every owner and occupant of real property within the city upon which any water well is presently located is required to notify the City of the existence of such well, providing the location, description and use of such well. (Ord. No. 444, § 1; Ord. No. 1245 § 1.)

Section 38.24.020 Permits for construction

Any person hereafter constructing any water well within the city, before undertaking such construction, shall first make written application to the City, describing in detail the proposed location, dimensions and use of such well and shall then obtain a written permit before undertaking the construction of such well. The permit fee shall be in such amount as determined from time to time by the board of city commissioners and shall be on file in the city fee schedule. (Ord. No. 444, § 2; Ord. No. 1245 § 1.)

Section 38.24.030 Connection to service lines connected to municipal water system

No owner or occupant of any property within the city shall at any time have or permit a direct connection from a private water well supply to the waterworks system, unless a city approved backflow preventer devise is installed. Valving between private water well lines and the waterworks system shall be prohibited and shall be in violation of this article. (Ord. No. 444, § 3; Ord. No. 1245 § 1.)

Section 38.24.040 Connection to municipal service

No property within 200 feet of city water service shall be allowed to connect to a well for domestic use. Any property which does not conform to this requirement on the effective date of this Ordinance may continue such use, subject to the limitations of this section. If at any time city water service is extended to within 200 feet of property, such property shall convert to city water service. If a property becomes connected to the City Waterworks system, it cannot thereafter use a well for domestic use. (Ord. No. 1245 § 1.)

Article 38.25 Excavating Licenses

Sections:

38.25.010 Excavating license required--Application
38.25.020 Same--Approval of application; bond required of applicant
38.25.030 Same--Issuance; fee; term; renewal

Section 38.25.010 Excavating license required--Application

No person shall engage in the business or occupation of excavation of water mains, water lines, sewer mains, sewer lines or any other portion of the waterworks, wastewater or storm water system of the city without first procuring a license to do so. All applications for licenses shall be made in writing to the city. An applicant shall be required to submit, as part of the application, a copy of his contractor's license or renewal certificate, issued pursuant to North Dakota Century Code, Chapter 43-07, and a Master Plumber's License or a North Dakota Water and Sewer Installer's license, issued by the North Dakota State Plumbing Board. An excavator's license may not be issued unless the applicant has a current North Dakota contractor's license and a Master Plumber's License or North Dakota Water and Sewer Installer's license. (Ord. No. 1105, § 3; Ord. No. 1245 § 1.)

Section 38.25.020 Same--Approval of application; bond required of applicant

If all of the requirements of this chapter are met, the City shall approve the application for a license required by section 38.25.010, which shall be filed with the City, together with a surety bond in a sum determined from time to time by the Board of City Commissioners for the execution of all work in strict conformity with the provisions of this chapter and the protection, indemnification and saving harmless the city from any or all loss, claim, suit or damages, direct or consequential which the city may sustain through violation of any of the provisions of this chapter, through negligence or in any other manner whatsoever. (Ord. No. 1105, § 4; Ord. No. 1245 § 1.)

Section 38.25.030 Same--Issuance; fee; term; renewal

Upon filing of the required application and bond the City shall issue a license, as required by section 38.25.010, to the applicant upon payment by such person to the City of a fee in such amount as determined from time to time by the Board of City Commissioners in the City of Dickinson Fee Schedule. All licenses shall be for a period of one year or a fractional part thereof and shall expire as of the thirty-first day of December of each year. (Ord. No. 1105, § 5; Ord. No. 1245 § 1.)

Chapter 39 ZONING

Last updated January 2016

Articles:

39.01 General Provisions
39.02 Definitions
39.03 Use Types
39.04 Zoning District Regulations
39.05 Special and Overlay Districts
39.06 Supplemental Use Regulations
39.07 Supplemental Site Development Regulations
39.08 Landscaping and Screening Standards
39.09 Off-Street Parking
39.10 Sign Regulations
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39.12 Administration and Procedures
39.13 Crew Camp Housing
39.28 Lighting

Article 39.01 General Provisions

Sections:

39.01.001 Title
39.01.002 Jurisdiction
39.01.003 Purpose
39.01.004 Consistency with Comprehensive Development Plan
39.01.005 Conflicting Provisions
39.01.006 Relief from Other Provisions
39.01.007 Severability of Provision
39.01.008 Publication

Section 39.01.001 Title

This title of the Dickinson Municipal Code shall be known as Zoning Ordinance of the City of Dickinson. (Ord. No. 1171 § 1.)

Section 39.01.002 Jurisdiction

The provisions of this chapter shall be applicable to all property within the corporate limits of the City of Dickinson and its extra-territorial jurisdiction as provided by Chapters 40-47 of the North Dakota Century Code. The townships, sections and portions of sections within the jurisdiction of this chapter shall be as set forth in Table 1-1, Entitled "Dickinson ETZ".

In addition to zoning regulations, the application of municipal building and property maintenance codes, basic housing codes, subdivision regulations, special use licensing and fire district codes shall be enforced in the extraterritorial zoning area as well as in the incorporated area of the municipality. (Ord. No. 1171 § 1, Ord. No. 1418 § 1)

TABLE 1-1 Dickinson ETZ

Township 139 North, Range 96 West

Section 1
Section 2
Section 3
Section 4
Section 5
Section 6
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S1/2, NW1/4 and SW1/4NE1/4 of Section 32
(Ord. No. 1561 § 1.)

Section 39.01.003 Purpose

The purposes of the Zoning Ordinance of the City of Dickinson are to:

a. Serve the public health, safety, and general welfare of the city and its jurisdiction.
b. Classify property in a manner that reflects its suitability for specific uses.
c. Provide for sound, attractive development within the city and its jurisdiction.
d. Encourage compatibility of adjacent land uses.
e. Protect environmentally sensitive areas.
f. Further the objectives of the Comprehensive Development Plan of the City of Dickinson. (Ord. No.1171 § 1.)

Section 39.01.004 Consistency with Comprehensive Development Plan

The City of Dickinson intends that this Zoning Ordinance and any amendments to it shall be consistent with the City's comprehensive Development Plan. It is the City's intent to amend this ordinance whenever such action is deemed necessary to keep regulatory provisions in conformance with the Comprehensive Development Plan. (Ord. No. 1171 § 1.)

Section 39.01.005 Conflicting Provisions

The Zoning Ordinance shall be held to provide the minimum requirements necessary for the promotion of the public health, safety and welfare. If any provision of the Zoning Ordinance conflicts with any other provision of the Zoning Ordinance, any other Ordinance of the City of Dickinson, or any applicable State or Federal law, the more restrictive provision shall apply. (Ord. No. 1171 § 1.)

Section 39.01.006 Relief from Other Provisions

Nothing in these provisions shall relieve any property owner or user from satisfying any condition or requirement associated with a previous approval, special permit, variance, development permit, or other permit issued under any local, State, or Federal ordinance or statute. (Ord. No. 1171 § 1.)

Section 39.01.007 Severability of Provision

If any chapter, section, clause, or phrase of this Zoning Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. (Ord. No. 1171 § 1.)

Section 39.01.008 Publication

This Ordinance shall be published in book or pamphlet form and shall, together with the maps being a part hereof, shall be filed with the City Administrator of the City of Dickinson, North Dakota.

The following townships, sections and portions of sections are within the jurisdiction of this chapter:

TABLE: 1-1

Township 139 North, Range 96 West

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Section 4
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Township 139 North, Range 97 West

All of Section 1
All of Section 12
NE1/4 of Section 13

Township 140 North, Range 97 West

SE1/4 of Section 25
All of Section 36

Township 140 North, Range 96 West

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Township 139 North, Range 95 West

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Township 140 North, Range 95 West

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S1/2 and NW1/4 of Section 32

(Ord. No. 1171, § 1; Ord. No. 1195, § 1.)

Article 39.02 Definitions

Sections:

39.02.001 Purpose
39.02.002 General Construction of Language
39.02.003 Definition of Terms
39.02.004 A
39.02.005 B
39.02.006 C
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39.02.008 E
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Section 39.02.001 Purpose

Article Two shall be known as the Definitions. The purpose of these provisions is to promote consistency and precision in the interpretation of the Zoning Ordinance. The meaning and construction of words as set forth shall apply throughout the Zoning Ordinance, unless where modified in a specific section or where the context of such words or phrases clearly indicates a different meaning or construction. (Ord. No. 1171 § 1.)

Section 39.02.002 General Construction of Language

The following general rules of construction apply to the text of the Zoning Ordinance.

a. Headings

Section and subsection headings contained herein are provided for illustrative purposes only and shall not be deemed to limit, govern, modify, or otherwise affect the scope, meaning, intent of any provision of the Zoning Ordinance.

b. Illustration

In the case of any real or apparent conflict between the text of the Ordinance and any

illustration explaining the text, the text shall apply.

c. Shall and May

"Shall" is always mandatory. "May" is discretionary.

d. Tenses and Numbers

Words used in the present tense include the future tense. Words used in the singular include the plural, and the plural the singular, unless the context clearly indicates contrary.

e. Conjunctions

Unless the context clearly indicates the contrary, the following conjunctions shall be interpreted as follows:

1. "**And**" indicates that all connected items or provisions apply.
2. "**Or**" indicates that the connected items or provisions may apply singly or in any combination.
3. "**Either...or**" indicates that the connected items or provisions shall apply singly but not in combination.

f. Referenced Agencies

Unless otherwise indicated, all public officials, bodies, and agencies referred to in this Chapter are those of the City of Dickinson. (Ord. No. 1171 § 1.)

Section 39.02.003 Definition of Terms

For the purposes of this Zoning Ordinance, certain terms and words are hereby defined. Certain sections contain definitions which are additional to those listed here. Where terms are not specifically defined, their ordinarily accepted meaning or meanings implied by their context shall apply. (Ord. No. 1171 § 1.)

Section 39.02.004 A

1. Abutting: Having lot lines or district boundaries in common, including property separated by a public street or alley. Used interchangeably with adjacent.
2. Accessory Structure: A structure which is incidental to and customarily associated with a specific principal use or building on the same site.
3. Accessory Use: A use which is incidental to and customarily associated with a specific principal use on the same site.
4. Addition: Any construction which increases the size of a building or structure in terms of site coverage, height, length, width, or gross floor area.
5. Agent of Owner: Any person showing written verification that he/she is acting for, and with the knowledge and consent of, a property owner.
6. Alley: A public right of way which is used as a secondary means of access to abutting property.
7. Alteration: Any construction or physical change in the internal arrangement of spaces, the supporting members, the positioning on a site, or the appearance of a building or structure.
8. Apartment: A housing unit within a building designed for and suitable for occupancy by only one family. Apartments are generally located within multi-family residential buildings.
9. Attached: Having one or more walls in common with a principal building or connected to a principal building by an integral architectural element, such as a covered passageway; facade wall extension; or archway. (Ord. No. 1171 § 1.)

Section 39.02.005 B

1. Base Zoning District: A district established by this Ordinance which prescribes basic regulations governing land use and site development standards. No more than one Base Zoning District shall apply to any individually platted lot or parcel unless the lot or parcel is part of a Planned Unit Development.

2. Basement: A level of a building below street level that has at least one-half of its height below the surface of adjacent ground. A basement used for independent dwelling or business purposes shall be considered a story for the purposes of height measurement.

3. Beginning of Construction: The initial incorporation of labor and materials within the foundation of a building or structure.

4. Block: An area of land within a subdivision that is entirely bounded by streets, by streets and the exterior boundaries of the subdivision, or by a combination of the above with a watercourse or lake, and which has been designated as such on a plat for the purposes of legal description of a property.

5. Block Face: The property abutting on side of a street and lying between the two nearest intersection streets, or between the one nearest intersecting street and a major physical barrier, including, but not limited to, railroads, streams, lakes, or the corporate limits of Dickinson.

6. Board of Adjustment: A body authorized by the city commission expressly for the purpose of granting relief from situations of hardship and to hear appeals as provided by this Ordinance.

7. Bufferyard: A landscaped area intended to separate and partially obstruct the view of two adjacent land uses or properties from one another.

8. Building: A structure entirely separated from any other structure by space or by walls and having a roof and built to provide shelter, support, or enclosure for persons or property.

9. Building Coverage: The area of a site covered by buildings or roofed areas, excluding allowed projecting, eaves, balconies, and similar features.

10. Building Envelope: The three-dimensional space within which a structure is permitted to be built on a lot after all zoning and other applicable municipal requirements have been met.

11. Building Line: The outer boundary of a building established by the location of its exterior walls.

12. Building Official: The designee of the City Commission, responsible for the enforcement of the Uniform Building Code.

13. Business: Activities that include the exchange or manufacture of goods or services on a site.

14. Business Center: A building containing more than one commercial business, or any group of nonresidential buildings within a common development, characterized by shared parking and access. (Ord. No. 1171 § 1.)

Section 39.02.006 C

1. Certificate of Occupancy: An official certificate issued by the Building Official or his/her designee, upon finding of conformance with the Unified Building Code, and upon receipt of a Certificate of Zoning Compliance.

2. Certificate of Zoning Compliance: An official certificate issued by the Building Official or his/her designee, which indicates that the proposed use of building or land complies with the provisions of the Zoning Ordinance.

3. Change of Use: The replacement of an existing use by a new use.

4. Cluster: A development design technique that concentrates buildings in specific areas on a site to allow remaining land to be used for recreation, common open space, or the preservation of historically or environmentally sensitive features.

5. City: The City of Dickinson, North Dakota.

6. City Commission: The City Commission of Dickinson, North Dakota.

7. Collector Street: A street connecting neighborhoods within the same communities, designed to carry traffic from local to arterial streets.

8. Common Area: An area held, designed, and designated for common or cooperative use within a development.

9. Common Development: A development proposed and planned as one unified project not separated by a public street or alley.

10. Common Open Space: Land within or related to a development that is not individually owned or dedicated for public use, designed and generally intended for the common use of the residents of the development.

11. Compatibility: The degree to which two or more different land use types are able to exist together in close proximity, with no one use having significant negative effects on any other use.

12. Comprehensive Plan: The duly adopted Comprehensive Development Plan of the City of Dickinson.

13. Condominium: A real estate ownership arrangement that combines fee simple title to a specific unit and joint ownership in common elements shared with other unit owners. Types of units may include dwelling units, parking spaces, office spaces, or commercial spaces.

14. Conservation Development: A development design technique that concentrates buildings in specific areas on a site to allow remaining land to be used for recreation, common open space, or the preservation of historically or environmentally sensitive features.

15. Conservation Subdivision: Wholly or in majority, a residential subdivision that permits a reduction in lot area, setback, or other site development regulations, provided 1) there is no increase in the overall density permitted for a conventional subdivision in a given zoning district, and 2) the remaining land area is used for common space.

16. County: Stark County, North Dakota.

17. Court: An approved private right-of-way which provides access to residential properties and meets at least three of the following conditions:

(a) Serves twelve or fewer housing units or platted lots.
(b) Does not function as a local street because of its alignment, design, or location.
(c) Is completely internal to a development.
(d) Does not exceed 600 feet in length.

18. Courtyard: An open, unoccupied space, bounded on two or more sides by the walls of the building.

19. Conventional Subdivision: A subdivision which literally meets all nominal standards of the City' s zoning and subdivision ordinances for lot dimensions, setbacks, street frontage, and other site development regulations.

20. Creative Subdivision: A subdivision which, while complying with the Subdivision Ordinance, diverges from nominal compliance with site development regulations in the Land Development Ordinance. Creative subdivisions imply a higher level of pre-planning than conventional subdivisions. They may be employed for the purpose of environmental protection or the creation of superior community design. Types of Creative Subdivisions include Cluster Subdivisions and Traditional Neighborhood Districts. (Ord. No. 1171 § 1.)

Section 39.02.007 D

1. Density: The amount of development per specific unit of a site.

2. Drive-in Services: Uses which involve the sale of products or provision of service to occupants in vehicles.

3. Detached: Fully separated from any other building or jointed to another building in such a manner as not to constitute an enclosed or covered connection.

4. Driveway: A permanently paved, surfaced area providing vehicular access between a street and an off-street parking or loading area.

5. Dwelling Unit: One or more rooms, designed, occupied or intended for occupancy as a separate living quarter, with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household. (Ord. No. 1171 § 1.)

Section 39.02.008 E

1. Easement: A privilege or right of use granted on, above, under, or across a particular tract of land for a specific purpose by one owner to another owner, public or private agency, or utility.
2. Enclosed: A roofed or covered space fully surrounded by walls.
3. Extraterritorial: Within the zoning or subdivision jurisdiction of the City of Dickinson, but outside its corporate limits. The Extra-territorial jurisdiction of Dickinson extends for two miles beyond its corporate limits. (Ord. No. 1171 § 1.)

Section 39.02.009 F

1. Family: One or more persons living together and sharing common living, sleeping, cooking, and eating facilities within an individual housing unit, no more than four of whom may be unrelated. The following persons shall be considered related for the purpose of this title:
   - (a) Persons related by blood, marriage, or adoption;
   - (b) Persons residing with a family for the purpose of adoption;
   - (c) Not more than eight persons under 19 years of age, residing in a foster house licensed or approved by the State of North Dakota.
   - (d) Not more than eight persons 19 years of age or older residing with a family for the purpose of receiving foster care licensed or approved by the State of North Dakota.
   - (e) Person(s) living with a family at the direction of a court.
2. Federal: Pertaining to the Government of the United States of America.
3. Floor Area Ratio: The quotient of gross floor area divided by gross site area.
4. Frontage: The length of a property line of any one premises abutting and parallel to a public street, private way, or court. (Ord. No. 1171 § 1.)

Section 39.02.010 G

1. Grade: The surface of the ground, court, lawn, yard, or sidewalks adjoining a building, with the established grade being one fixed by the city and which established grade shall also constitute the natural grade and the finished grade.
2. Gross Floor Area: The total enclosed area of all floors of a building, measured to the inside surfaces of the exterior walls. This definition excludes the areas of basements, elevator shafts, airspaces above atriums, and enclosed off-street parking and loading areas serving a principal use. (Ord. No. 1171 § 1.)

Section 39.02.011 H

1. Height: The vertical distance from the established grade to the highest point of the coping of a flat roof, the deck line of a mansard roof, or to the average height between eaves and the ridge for gable, hip, shed, or gambrel roofs. For other cases, height shall be measured as the vertical distance from the established grade to the highest point of a structure as herein defined. Where a building or structure is located on a slope, height shall be measured from the average grade level adjacent to the building or structure.
2. Home Based Business/Home Occupation: An accessory occupational use conducted entirely within a dwelling unit by a member of the family residing in the premises, which is clearly incidental to the residential use of the dwelling or residential structure and does not change the residential character of its site.
3. Housing Unit or Dwelling Unit: A building or portion of a building arranged for and intended for occupancy as an independent living facility for one family, including permanent provisions for cooking. (Ord. No. 1171 § 1.)

Section 39.02.012 I

1. Impervious coverage: The total horizontal area of all buildings, roofed or covered spaces, paved surface areas, walkways and driveways, and any other site improvements that decrease the ability of the surface of the site to absorb water, expressed as a percent of site area. The surface water area of pools is excluded from this definition. (Ord. No. 1171 § 1.)

Section 39.02.013 J

(Ord. No. 1171 § 1.)

Section 39.02.014 K

(Ord. No. 1171 § 1.)

Section 39.02.015 L

1. Landscaped Area: The area within the boundaries of a given lot, site or common development consisting primarily of plant material, including but not limited to grass, trees, shrubs, vines, ground cover, and other organic plant materials; or grass paver masonry units installed such that the appearance of the area is primarily landscaped.

(a) Perimeter Landscaped Area: Any required landscaped area that adjoins the exterior boundary of a lot, site or common development.

(b) Interior Landscaped Area: Any landscaped area within a site exclusive of required perimeter landscaping.

2. Loading Area: An off-street area used for the loading or unloading of goods from a vehicle in connection with the use of the site on which such area is located.

3. Lot: A parcel of property with a separate and distinct number or other identifying designation which has been created, assigned and recorded in the Office of the -- County Register of Deeds, as provided for by the North Dakota Century Code. Each individual lot is subject to the provisions of a particular base Zoning District, and shall have a minimum frontage of 20 feet, except as provided in an approved Planned Unit Development and/or Creative Subdivision.

(a) Corner Lot: A lot located at the junction of at least two streets, private ways or courts or at least two segments of a curved street, private way or court, at which the internal angle of intersection is no greater than 135 degrees.

(b) Double Frontage Lot: A lot, other than a corner lot, having frontage on two streets, private ways or courts. Primary access shall be restricted on a double frontage lot to the minor of the two streets or to the front line as determined at time of platting or as defined by this ordinance. (Also known as a Through Lot).

(c) Interior Lot: A lot other than a corner lot.

(d) Common Development Lot: When two or more contiguous lots are developed as part of a single development, these lots may be considered a single lot for purposes of this ordinance.

4. Lot Area: The total horizontal area within the lot lines of a lot.

5. Lot Depth: The mean horizontal distance measured between the front and rear lot lines.

6. Lot Line: A property boundary line(s) of record that divides one lot from another lot or a lot from the public or private street right-of-way or easement.

(a) Front Lot Line: The lot line separating a lot and public or private street right-of-way or easement.

1. For an interior lot, the lot line separating the lot from the right-of-way or easement.

2. For a corner lot, ordinarily the shorter of the lot lines abutting a public or private street or easement. The owner and Building Official may agree to

designate any lot line abutting a public street or otherwise noted on a final plat as the Front Lot Line.

3. For a double frontage lot, the lot lines separating the lot from the right-of-way or easement of the more minor street. In cases where each street has the same classification, the front lot line shall be determined by the Building Official at the time of application for the original building permit for the lot, or as may be noted on the final plat.

(b) Rear Lot Line: The lot line which is opposite and most distant from the front line.

(c) Side Lot Line: Any lot line that is neither a front or rear lot line. A side lot line separating a lot from a street, private way or court is a street side lot line. A side lot line separating a lot from another lot or lots is an interior side lot line.

(d) Rear Lot Lines for Corner Lots: On corner lots, the Building Official may designate the rear lot line, provided that such lot line does not define a Street Yard.

7. Lot Width: The horizontal distance between the side lot lines at the minimum required front yard setback. Lot width is measured by determining the length of a line drawn parallel to the front lot line set back at the required minimum front yard setback. (Ord. No. 1171 § 1.)

Section 39.02.016 M

1. Manufactured Home Dwelling or Class A Mobile Home: A factory built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site; does not have permanently attached to its body or frame any wheels or axles; bears a label certifying that it was built in compliance with the National Manufactured Home Construction and Safety Standards promulgated by the US Department of Housing and Urban Development; and which complies with the following architectural and aesthetic standards:

(a) The home shall have at least 900 square feet of floor area;

(b) The home shall have an exterior width of at least 20 feet;

(c) The roof shall be pitched with a minimum pitch of 4:1.

(d) The exterior material shall be or have the appearance of being wood siding or masonry, but shall not be sheet siding with a vertical orientation;

(e) The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock;

(f) Permanent utility connections shall be installed in accordance with local regulations;

(g) The home shall have all wheels, axles, transporting lights, and towing apparatus removed; and

(h) The home shall be installed upon a permanent foundation that is constructed and built in accordance with local regulations.

2. Mixed Use Building: A building or structure that incorporates two or more use types within a single building or structure, provided that each use type is permitted within the individual Base Zoning District in which the building or structure is to be located.

3. Mixed Use Development: A single development which incorporates complementary land use types into a single development.

4. Mobile Homes: A building type designed to be transportable in one or more sections, constructed on a permanent chassis or undercarriage, and designed to be used as a dwelling unit or other use with or without a permanent foundation when connected to the required utilities; or not otherwise satisfying the definition of Manufactured Home Dwellings.

5. Mobile Home Park: A unified development under common ownership, developed, subdivided, planned, and improved for the placement of mobile home units for non-transient use. Mobile Home Parks include common areas and facilities for management, recreation, laundry, utility services, storage, storm shelter,

and other services; but do not include mobile home sales lots on which unoccupied mobile homes are parked for the purposes of display; inspection, sale, or storage.

6. Mobile Home Subdivision: A development subdivided, planned, and improved for the placement of mobile home units on lots for uses by the individual owners of such lots. Mobile Home Subdivisions may include common areas and facilities for management, recreation, laundry, utility services, storage, storm shelter, and other services; but do not include mobile home sales lots on which unoccupied mobile homes are parked for the purpose of display, inspection, sale, or storage. (Ord. No. 1171 § 1.)

Section 39.02.017 N

1. Nonconforming Development: A building, structure, or improvement which does not comply with the regulations for its zoning district set forth by this Zoning Ordinance but which complied with applicable regulations at the time of construction.

2. Nonconforming Lot: A lot which was lawful prior to the adoption, revision, or amendment of this zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning ordinance. No action can be taken which would I increase the non-conforming characteristics of the lot.

3. Nonconforming Sign: A sign that was legally erected prior to the adoption, revision or amendment of this zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning ordinance. No action can be taken which would increase the non-conforming characteristics of the lot.

4. Nonconforming Structure: A structure which was lawful prior to the adoption, revision, or amendment of this zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning ordinance. No action can be taken which would increase the non-conforming characteristics of the structure.

5. Nonconforming Use: A land use which was lawful prior to the adoption, revision, or amendment of this zoning ordinance but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning ordinance. No action can be taken which would increase the non-conforming characteristics of the land use.

6. Nuisance: An unreasonable and continuous invasion of the use and enjoyment of a property right which a reasonable person would find annoying, unpleasant, obnoxious, or offensive. (Ord. No. 1171 § 1.)

Section 39.02.018 O

1. Open Space: Area included on any site or lot that is open and unobstructed to the sky, except for allowed projections of cornices, overhangs, porches, balconies, or plant materials.

2. Outdoor Storage: The storage of materials, parts, or products that are related to the primary use of a site for a period exceeding three days.

3. Overlay District: A district established by this Ordinance to prescribe special regulations to be applied to a site only in combination with a base district.

4. Owner: An individual, firm, association, syndicate, partnership, or corporation having sufficient proprietary interest to seek development of land. (Ord. No. 1171 § 1.)

Section 39.02.019 P

1. Parking Facility: An area on a lot and/or within a building, including one or more parking spaces, along with provision for access circulation, maneuvering, and landscaping, meeting the requirements of this Zoning Ordinance. Parking facilities include parking lots, private garages, and parking structures. Vehicle storage is distinct from parking, and is regulated by provisions in Sections 39.03.070, 39.03.080, 39.03.090' s, Table 4-2. Vehicle storage is also governed by provisions of Article 39.09 Parking Regulations.

2. Parking Spaces: An area on a lot and/or within a building, intended for the use of temporary parking of a vehicle. This term is used interchangeably with "parking stall". Each parking space must have a means of access to a public street by way of a driveway, access easement, or other connection. Tandem parking stalls in single-family detached, single family attached, and townhome residential uses shall be considered to have a means of access to a public street.

3. Paved: Permanently surfaced with poured concrete, concrete pavers, or asphalt.

4. Permitted Use: A land use type allowed as a matter of right in a zoning district, subject only to special requirements of this Zoning Ordinance.

5. Planning Commission: The Planning Commission of the City of Dickinson, as authorized pursuant to Chapters 40-47 of the North Dakota Century Code.

6. Planned Unit Development: A development of land which is under unified control and is planned and developed as a whole in a single development operation or programmed series of development stages. The development may include streets, circulation ways, utilities, buildings, open spaces, and other site features and improvements.

7. Porch, Unenclosed: A roofed or unroofed open structure projecting from an exterior wall of a building and having no enclosed features more than thirty-six (36) inches above its floor other than wire screening and a roof with supporting structure.

8. Premises: A lot, parcel, tract or plot of land, contiguous and under common ownership or control, together with the buildings and structure thereon.

9. Private Garage: A building for the storage of motor vehicles where no repair service facilities are maintained and where no motor vehicles are kept for rental or sale.

10. Property Line: See "Lot Line." (Ord. No. 1171 § 1.)

Section 39.02.020 Q

(Ord. No. 1171 § 1.)

Section 39.02.021 R

1. Recreational Vehicle: A vehicle towed or self-propelled on its own chassis or attached to the chassis of another vehicle and designed or used for temporary dwelling, recreational, or sporting purposes. Recreational vehicles include, but are not limited to, travel trailers; campers; motor coach homes; converted buses and trucks, boats, and boat trailers.

2. Regulation: A specific requirement set forth by this Zoning Ordinance which must be followed.

3. Remote Parking: A supply of off-street parking at a location not on the site of a given development. (Ord. No. 1171 § 1.)

Section 39.02.022 S

1. Screening: The method by which a view of one site from another adjacent site is shielded, concealed, or hidden. Screening techniques include fences, walls, hedges, berms, or other features as may be permitted by the landscape provisions of this ordinance.

2. Setback: The distance, as required by the minimum setback(s) which establishes the horizontal component(s) of the building envelope.

3. Sign: A symbolic, visual device fixed upon a building, structure, or parcel of land, which is intended to convey information about a product, business, activity, place, person, institution, candidate, or political idea.

4. Site: The parcel of land to be developed or built upon. A site may encompass a single lot; or a group of lots developed as a common development under the special and overlay districts provisions of this ordinance.

5. Site Plan: A plan, prepared to scale, showing accurately and with complete dimensioning, the boundaries of a site and the location of all buildings, structures, uses, and principal site development features

proposed for a specific parcel of land; and any other information that may reasonably be requested by the City in order that an informed decision can be made on the associated request.

6. Special Permit Use: A use with operating and/or physical characteristics different from those of permitted uses in a given zoning district which may, nonetheless, be compatible with those uses under special conditions and with adequate public review. Special permit uses are allowed in a zoning district only at the discretion of and with the explicit permission of the City Commission, upon the recommendation of the Planning Commission.

7. State: The State of North Dakota.

8. Story: The portion of a building included between the surface of any floor and the surface of the next floor above it; if there is no floor above it, the space between such floor and the next ceiling above it. A half story under a sloped roof, the wall heights of which on at least two opposite, exterior walls are less than four feet.

9. Street: A right of way, dedicated to public use, which affords a primary means of access to the abutting property. This definition is intended to be inclusive of the term as defined in North Dakota statute.

10. Street, Intersecting and Principal: In regard to a site, the principal street shall be the street to which the majority of lots on a blockface are oriented; the intersecting street shall be a street other than a principal street.

11. Street, Local: A street which is used primarily for access to the abutting properties.

12. Street, Major: A street carrying traffic between neighborhoods, connecting neighborhoods with major activity centers, or accommodating major through traffic. Major streets are designated as collectors, arterials, or expressways by the Comprehensive Development Plan.

13. Street Yard: The area of a lot or parcel which lies between any street property line and the fronting walls of any building or buildings on the parcel. The street yard follows all irregularities or indentations in the building, excluding minor irregularities such as porches or steps.

14. Structure: Any object constructed or built, the use of which requires location on the ground or attachment to something located on the ground. (Ord. No. 1171 § 1.)

Section 39.02.023 T

1. Townhouse: A dwelling unit having a common wall with or abutting one or more adjacent dwelling units in a townhouse structure, with its own front and rear access to the outside, and neither above nor below any other dwelling unit.

2. Townhouse Structure: A building formed by at least three contiguous townhouses with common or abutting walls. (Ord. No. 1171 § 1.)

Section 39.02.024 U

1. Use: The conduct of an activity, or the performance of a function or operation, on a site or in a building or facility.

2. Utilities: Installations, either above or below ground, necessary for the production, generation, transmission, delivery, collection, treatments, or storage of water, solid or fluid wastes, storm water, energy media, gas, electronic or electromagnetic signals, or other services which are precedent to development and use of land. (Ord. No. 1171 § 1.)

Section 39.02.025 V

(Ord. No. 1171 § 1.)

Section 39.02.026 W

(Ord. No. 1171 § 1.)

Section 39.02.027 X

(Ord. No. 1171 § 1.)

Section 39.02.028 Y

1. Yard; Required: That portion of a lot which lies between a lot line and the corresponding building setback line or the required landscape area. This area shall be unoccupied and unobstructed from the ground upward except as may be specifically provided for or required by this ordinance.

(a) Corner Front Yard: The space extending the full width of a lot, lying between the front lot line as defined by Section 39.02.015, 6 (d), and the front setback line.

(b) Interior Front Yard: The space extending the full width of a lot, lying between the front lot line and the front setback line.

(c) Rear Yard: The space extending the full width of a lot, lying between the rear lot line and the rear setback line.

(d) Side Yard: The space extending the depth of a lot from the front to rear lot lines, lying between the side yard setback line and the interior lot line.

(e) Street Side Yard: On a corner lot, the space extending from the front yard to the rear yard, between the street yard setback and the street side lot line. (Ord. No. 1171 § 1.)

Section 39.02.029 Z

1. Zoning District: A designated specified land classification, within which all sites are subject to a unified group of use and site development regulations set forth in this Zoning Ordinance.

2. Zoning Administrator: The designee of the City Commission, responsible for the interpretation and administration of the City of Dickinson Zoning Ordinance. Zoning Administrator and Building Official may be used interchangeably. (Ord. No. 1171 § 1.)

Article 39.03 Use Types

Sections:

39.03.001 Purpose
39.03.002 Determinations
39.03.003 Agricultural Use Types
39.03.004 Residential Use Types
39.03.005 Civic Use Types
39.03.006 Office Use Types
39.03.007 Commercial Use Types
39.03.008 Parking Use Types
39.03.009 Industrial Use Types
39.03.010 Transportation Use Types
39.03.011 Miscellaneous Use Types

Section 39.03.001 Purpose

Article Three shall be known as the Use Types. The purpose of the Use Types is to establish a classification system for land uses and a consistent set of terms defining uses permitted or conditionally permitted within various zoning districts. The Use Types section also provides a procedure for determining the applicable use type of any activity not clearly within any defined use type. (Ord. No. 1171 § 1.)

Section 39.03.002 Determinations

a. Classification of Uses

In the event of any question as to the appropriate use types of any existing or proposed use or activity, the Zoning Administrator of the City of Dickinson shall have the authority to determine the appropriate use type. A determination of the Zoning Administrator may be appealed to the Board of Adjustment. In making such determinations, the Zoning Administrator and Board of Adjustment shall consider such characteristics or specific requirements of the use in common with those included as examples of use types. Those examples, when included in use type descriptions, are intended to be illustrative, as opposed to exclusive lists.

b. Records

The Zoning Administrator shall make all such determinations of appropriate use types in writing. The record of the determination shall contain a report explaining the reasons for the determination. (Ord. No. 1171 § 1.)

Section 39.03.003 Agricultural Use Types

Agricultural use types include the on-site production and sale of plant and animal products by agricultural methods.

a. Horticulture

The growing of horticultural and floricultural specialties, such as flowers, shrubs, or trees intended for ornamental or landscaping purposes. This definition may include accessory retail sales under certain conditions. Typical uses include wholesale plant nurseries and greenhouses.

b. Crop Production

The raising and harvesting of tree crops, row crops or field crops on an agricultural or commercial basis. This definition may include accessory retail sales under certain conditions.

c. Type I Animal Production

The raising of animals or production of animal products, such as eggs or dairy products on an agricultural or commercial basis on a site which is also used for crop production or where grazing of natural vegetation is the major feed source; or the raising of animals for recreational use. Type I Animal Production

shall also include confined feeding and holding facilities consisting of no more than 20 feeder or fat cattle; no more than 20 beef cows; no more than 20 dairy cattle; no more than 50 swine, llamas, and ostriches or similar large birds; no more than 200 sheep; no more than 300 turkeys; and/or no more than 1,000 chickens, ducks, or geese. Typical uses include grazing, ranching, dairy farming, and poultry farming.

d. Type II Animal Production

The confined feeding and holding facilities consisting of between 21 and 140 feeder or fat cattle; between 21 and 100 beef cows; between 21 and 100 dairy cattle; between 51 and 500 swine, llamas, and ostriches or similar large birds; between 201 and 2,000 sheep; between 301 and 3,000 turkeys; and/or between 1,001 and 10,000 chickens, ducks, or geese within buildings, lots, pens, or other close quarters which are not used for crop production or where grazing of natural vegetation is not the major feed source. Typical uses include small commercial feedlots.

e. Type III Animal Production

The confined feeding and holding facilities consisting of more than 150 feeder or fat cattle; more than 100 beef cows; more than 100 dairy cattle; more than 500 swine, llamas, and ostriches or similar large birds; more than 2,000 sheep; more than 3,000 turkeys; and/or more than 1,001 and 10,000 chickens, ducks, or geese within buildings, lots, pens, or other close quarters which are not used for crop production or where grazing of natural vegetation is not the major feed source. Typical uses include large commercial feedlots.

f. Livestock Sales

Use of a site for the temporary confinement and exchange or sale of livestock. Typical uses include sales barns. (Ord. No. 1171 § 1.)

Section 39.03.004 Residential Use Types

Residential use types include uses providing wholly or primarily non-transient living accommodations. They exclude institutional living arrangements providing 24-hour skilled nursing or medical care, forced residence, or therapeutic settings.

a. Single-Family Residential

The use of a site for one dwelling unit, occupied by one family. (NOTE: Mobile home units are not a single-family use type. See below categories for such units).

1. *Single-Family Residential (Detached):* A single-family residential use in which one dwelling unit is located on a single lot, with no physical or structural connection to any other dwelling unit.
2. *Single-Family Residential (Attached):* A single-family residential use in which one dwelling unit is located on a single lot and is attached by a common vertical wall to only one other adjacent dwelling unit on another single lot.

b. Duplex Residential

The use of a legally-described lot for two dwelling units, each occupied by one family within a single building, excluding mobile home units.

c. Two-Family Residential

The use of a site for two dwelling units, each occupied by one family, each in a separate building, excluding a mobile home unit.

d. Townhouse Residential

The use of a site for three or more attached dwelling units, each occupied by one family and separated by vertical side walls extending from foundation through roof without openings. Each townhouse unit must have at least two exposed exterior walls.

e. Multiple-Family Residential

The use of a site for three or more dwelling units within one building.

f. Residential - Commercial Zone

The use of levels other than the main level or ground level within LC, CC, DC and GC zoning districts.

g. Group Residential

The use of a site for a residence by more than three unrelated persons, not defined as a family, on a weekly or longer basis.

h. Manufactured Home Residential

Use of a site for one or more manufactured home dwellings, as defined in Section 39.02.016.

i. Mobile Home Park

Use of a site under common ownership for one or more mobile home units. Generally, the land on which mobile homes are placed in a Mobile Home Park is leased from the owner of the facility.

j. Mobile Home Subdivision

Division of a tract of land into lots that meet all the requirements of the City of Dickinson's subdivision ordinance for the location of mobile homes. Generally, a lot within a Mobile Home Subdivision is owned by the owner of the mobile home placed upon such lot.

k. Retirement Residence

A building or group of buildings which provide residential facilities for more than four residents of at least sixty-two years of age, or households headed by a householder of at least sixty-two years of age. A retirement residence may provide a range or residential building types and may also provide support services to residents, including but not limited to food service, general health supervision, medication services, housekeeping services, personal services, recreation facilities, and transportation services. The retirement residence may accommodate food preparation in independent units or meal service in one or more common areas. Retirement residences may include additional health care supervision or nursing care. (Ord. No. 1171 § 1; Ord. 1244 § 1.)

Section 39.03.005 Civic Use Types

Civic use types include the performance of utility, educational, recreational, cultural, medical, protective, governmental, and other uses which are strongly vested with social importance.

a. Administration

Governmental offices providing administrative, clerical or public contact services that deal directly with the citizen, together with incidental storage and maintenance of necessary vehicles. Typical uses include federal, state, county, and city offices.

b. Cemetery

Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbariums, crematoria, mausoleums and mortuaries when operated in conjunction with and within the boundary of such cemetery.

c. Clubs

Uses providing meeting, recreational, or social facilities for a private, non-profit or non-commercial association, primarily for use by members and guests.

d. College and University Facilities

An educational institution of higher learning which offers a course of study designed to culminate in the issuance of a degree certified by a generally recognized accrediting organization.

e. Convalescent Services

A use providing bed care and in-patient services for persons requiring regular medical attention but excluding a facility providing surgical or emergency medical services and excluding a facility providing care for alcoholism, drug addiction, mental disease, or communicable disease. Typical uses include nursing homes.

f. Cultural Services

A library, museum, or similar registered non-profit organizational use displaying, preserving and exhibiting objects of community and cultural interest in one or more of the arts and sciences.

g. Day Care Services (Family)

This Use Type includes all classifications of day care facilities, including but not limited to facilities licensed by the State of North Dakota, providing care for not more than nine (9) individuals. This term includes

nursery schools, preschools, day care centers for children or adults, and similar uses but excludes public and private primary and secondary educational facilities.

h. Day Care Services (Group)

This Use Type includes all classifications of day care facilities, including facilities licensed by the State of North Dakota, providing care for ten (10) or more individuals. This term includes nursery schools, preschools, day care centers for children or adults, and similar uses but excludes public and private primary and secondary educational facilities.

i. Detention Facilities

A publicly operated or contracted use providing housing and care for individuals legally confined, designed to isolate those individuals from the community.

j. Emergency Residential Services

A facility or use of a building to provide a protective sanctuary for victims of crime or abuse, including emergency housing during crisis intervention for victims of rape, abuse, or physical beatings.

k. Group Care Facility

A facility licensed or approved by the State of North Dakota or other appropriate agency, which provides for the care and short or long-term, continuous multi-day occupancy of more than three unrelated persons who require and receive therapy or counseling on site as part of an organized and therapeutic ongoing program for any of the purposes listed below. Such facilities shall exclude those uses defined as group homes. Group Care Facilities include facilities which provide for the:

1. Adaptation to living with, or rehabilitation from, the handicaps of physical disability.
2. Adaptation to living with, or rehabilitation from, the handicaps of emotional or mental disorder; or of mental retardation if such facility has an overnight occupancy of more than eight persons.
3. Rehabilitation from the effects of drug or alcohol abuse.
4. Supervision while under a program alternative to imprisonment, including but not limited to pre-release, work-release, and probationary programs.

l. Group Home

A facility licensed by the State of North Dakota in which at least four but no more than eight persons, not including resident managers or house parents, who are unrelated by blood, marriage, or adoption reside while receiving therapy, training, or counseling for the purpose of adaptation to living with or rehabilitation from cerebral palsy, autism, or mental retardation.

m. Guidance Services

A use providing counseling, guidance, recuperative, or similar services to persons requiring rehabilitation assistance as a result of mental illness, alcoholism, detention, drug addiction, or similar condition on a daytime care basis.

n. Health Care

A facility providing medical, psychiatric, or surgical service for sick or injured persons exclusively on an out-patient basis including emergency treatment, diagnostic services, training, administration and services to out-patients, employees, or visitors.

o. Hospital

A facility providing medical, psychiatric, or surgical service for sick or injured persons primarily on an in-patient basis, including emergency treatment, diagnostic services, training, administration, and services to patients, employees, or visitors.

p. Maintenance Facilities

A public facility supporting maintenance, repair, vehicular or equipment servicing, material storage, and similar activities including street or sewer yards, equipment service centers, and similar uses having characteristics of commercial services or contracting or industrial activities.

q. Park and Recreation Services

Publicly-owned and operated parks, playgrounds, recreation facilities, and open spaces.

r. Postal Facilities

Postal services, including post offices, bulk mail processing or sorting centers operated by the United States Postal Service.

s. Primary Educational Facilities

A public, private, or parochial school offering instruction at the elementary school level in the branches of learning study required to be taught in schools within the State of North Dakota.

t. Public Assembly

Facilities owned and operated by a public agency or a charitable non-profit organization accommodating major public assembly for recreation, sports, amusement, or entertainment purposes. Typical uses include civic or community auditoriums, sports stadiums, convention facilities, fairgrounds, incidental sales, and exhibition facilities.

u. Religious Assembly

A use located in a permanent building and providing regular organized religious worship and religious education incidental thereto (excluding private primary or private secondary educational facilities, community recreational facilities, day-care facilities, and incidental parking facilities). A property tax exemption obtained pursuant to Property Tax Code of the State of North Dakota shall constitute prima facie evidence of religious assembly use.

v. Safety Services

Facilities for conduct of public safety and emergency services including police and fire protection services and emergency medical and ambulance services.

w. Secondary Educational Facilities

A public, private, or parochial school offering instruction at the junior high or high school level in the branches of learning and study required to be taught in the schools of the State of North Dakota.

x. Utilities

Any above ground structures or facilities, other than lines, poles, and other incidental facilities, used for the production, generation, transmission, delivery, collection, or storage of water, sewage, electricity, delivery, collection, or storage of water, sewage, electricity, gas, oil, energy media, communications, electronic or electromagnetic signals, or other services which are precedent to development and/or use of land. (Ord. No. 1171 § 1.)

Section 39.03.006 Office Use Types

Office use types include uses providing for administration, professional services, and allied activities. These uses often invite public clientele but are more limited in external effects than commercial uses.

a. General Offices

Use of a site for business, professional, or administrative office. Typical uses include real estate, insurance, management, travel, or other business offices; organization and association offices; banks or financial offices; or professional offices.

b. Financial Services

Provision of financial and banking services to consumers or clients. Walk-in and drive-in services to consumers are provided on site. Typical uses include banks, savings and loan associations, savings banks, and loan companies. An ATM (Automatic Teller Machine) which is not accompanied on-site by an office of its primary financial institution is considered a “General Retail Services” Use Type.

c. Medical Offices

Use of a site for facilities which provide diagnoses and outpatient care on a routine basis, but which does not provide prolonged, in-house medical or surgical care. Medical offices are operated by doctors, dentists, or similar practitioners licensed for practice in the State of North Dakota. (Ord. No. 1171 § 1.)

Section 39.03.007 Commercial Use Types

Commercial uses include the sale, rental, service, and distribution of goods; and the provision of services other than those classified under other use types.

a. <u>Agricultural Sales and Service</u>

Establishments or places of business engaged in sale from the premises of feed, grain, fertilizers, farm equipment, pesticides and similar goods or in the provision of agriculturally-related services with incidental storage on lots other than where the service is rendered. Typical uses include nurseries, hay, farm implement dealerships, feed and grain stores, and tree service firms.

b. <u>Automotive and Equipment Services</u>

Establishments or places of business primarily engaged in sale and/or service of automobiles, trucks, or heavy equipment. The following are considered automotive and equipment use types:

1. *Automotive Rental and Sales:* Sale or rental of automobiles, noncommercial trucks, motorcycles, motor homes, recreational vehicles or boats, including incidental storage, maintenance, and servicing. Typical uses include new and used car dealerships; motorcycle dealerships; and boat, trailer, and recreational vehicle dealerships.
2. *Auto Services:* Provision of fuel, lubricants, parts and accessories, and incidental services to motor vehicles; and washing and cleaning and/or repair of automobiles, non-commercial trucks, motorcycles, motor homes, recreational vehicles, or boats, including the sale, installation, and servicing of equipment and parts. Typical uses include service stations, car washes, muffler shops, auto repair garages, tire sales, and installation, wheel and brake shops, and similar repair and service activities but exclude dismantling, salvage, or body and fender repair services.
3. *Body Repair:* Repair, painting, or refinishing of the body, fender, or frame of automobiles, trucks, motorcycles, motor homes, recreational vehicles, boats, tractors, construction equipment, agricultural implements, and similar vehicles or equipment. Typical uses include body and fender shops, painting shops, and other similar repair or refinishing garages.
4. *Equipment Rental and Sales:* Sale or rental of trucks, tractors, construction equipment, agricultural implements, mobile homes, and similar heavy equipment, including incidental storage, maintenance, and servicing. Typical uses include truck dealerships, construction equipment dealerships, and mobile home sales establishments.
5. *Equipment Repair Services:* Repair of trucks, tractors, construction equipment, agricultural implements, and similar heavy equipment. Typical uses include truck repair garages, tractor and farm implement repair services, and machine shops, but exclude dismantling, salvage, or body and fender repair services.
6. *Vehicle Storage:* Storage of operating or non-operating vehicles for a period of no more than 21 days. Typical uses include storage of private parking tow-aways or impound yards but exclude dismantling or salvage. Long-term storage of operating or non-operating vehicles beyond 21 days constitutes an Industrial Use Type.

c. <u>Bed and Breakfast</u>

A lodging service that provides overnight or short-term accommodations to guests or visitors, usually including provision of breakfast. Bed and breakfasts are usually located in large residential structures that have been adapted for this use. For the purpose of this definition, bed and breakfasts are always owned and operated by the resident owner of the structure, include no more than ten units, and accommodate each guest or visitor for no more than 7 consecutive days during any one month period.

d. <u>Business Support Services</u>

Establishments or places of business primarily engaged in the sale, rental or repair of equipment, supplies and materials or the provision of services used by office, professional and service establishments to the firms themselves but excluding automotive, construction and farm equipment; or engaged in the provision of maintenance or custodial services to businesses. Typical uses include office equipment and supply firms, small business machine repair shops or hotel equipment and supply firms, janitorial services, photography studios, and convenience printing and copying.

e. <u>Business or Trade Schools</u>

A use providing education or training in business, commerce, language, or other similar activity or occupational pursuit, and not otherwise defined as a home occupation, college or university, or public or private educational facility.

f. Campground

Facilities providing camping or parking areas and incidental services for travelers in recreational vehicles or tents, which accommodate each guest or visitor.

g. Cocktail Lounge

A use engaged in the preparation and retail sale of alcoholic beverages for consumption on the premises, including taverns, bars, cocktail lounges, and similar uses other than a restaurant as that term is defined in this section.

h. Commercial Recreation (Indoors)

Private businesses, or other organizations which may or may not be commercial by structure or by nature, which are primarily engaged in the provision or sponsorship of sports, entertainment, or recreation for participants or spectators. The preponderance of activities occur within enclosed structures. Typical uses include movie theaters, private dance halls, or private skating facilities.

i. Commercial Recreation (Outdoors)

Private businesses, or other organizations which may or may not be commercial by structure or by nature, which are primarily engaged in the provision or sponsorship of sports, entertainment, or recreation for participants or spectators. The preponderance of activities occur outside of enclosed structures. Typical uses include driving ranges, commercial race tracks, and drive-in theaters.

j. Communications Services

Establishments primarily engaged in the provision of broadcasting and other information relay services accomplished through the use of electronic and telephonic mechanisms but excludes those classified as Utilities. Typical uses include television studios, telecommunication service centers, telegraph service offices, or film and sound recording facilities. Broadcast towers, and their minor ancillary ground structures are classified as "Miscellaneous Use Types."

k. Construction Sales and Services

Establishments or places of business primarily engaged in the retail or wholesale sale, from the premises, of materials used in the construction of buildings or other structures other than retail sale of paint, fixtures and hardware. This use type excludes those uses classified under Automotive and Equipment Services. Typical uses include building materials sales, or tool and equipment rental or sales.

l. Consumer Services

Establishments which provide services, primarily to individuals and households, but excluding Automotive Use Types. Typical uses include automated banking machines, appliance repair shops, watch or jewelry repair shops, or musical instrument repair shops.

m. Convenience Storage

Storage services primarily for personal effects and household goods within enclosed storage areas having individual access but excluding use of such areas as workshops, hobby shops, manufacturing, or commercial activity. Typical uses include mini-warehousing.

n. Crematorium

An establishment containing a furnace for the purpose of reducing human or animal bodies or remains to ashes by burning.

o. Food Sales

Establishments or places of business primarily engaged in the retail sale of food or household products for home consumption. Food sales establishments may include the sale of non-food items. Typical uses include groceries, delicatessens, meat markets, retail bakeries, and candy shops.

1. *Convenience Food Sales:* Establishments occupying facilities of less than 10,000 square feet; and characterized by sales of specialty foods or a limited variety of general items, and by the sale of fuel for motor vehicles.

2. *Limited Food Sales:* Establishments occupying facilities of less than 10,000 square feet; and characterized by sales of specialty foods or a limited variety of general items, but excluding the accessory sale of fuel for motor vehicles. Typical uses include delicatessens, meat markets, retail bakeries, candy shops, small grocery stores.

3. *General Food Sales:* Establishments selling a wide variety of food commodities, using facilities larger than 10,000 square feet. Typical uses include supermarkets.

p. <u>Funeral Services</u>

Establishments engaged in undertaking services such as preparing the human dead for burial, and arranging and managing funerals. Typical uses include funeral homes or mortuaries.

q. <u>Gaming Facilities</u>

Establishments engaged in the lawful, on-site operation of games of chance that involve the risk of money for financial gain by patrons. Gaming facilities shall include the accessory sale of liquor and food, pursuant to licensing regulations of the City of Dickinson or the State of North Dakota.

r. <u>General and Limited Retail Services</u>

Sale or rental with incidental service of commonly-used goods and merchandise for personal or household use but excludes those classified more specifically by these use type classifications. Typical uses include department stores, apparel stores, furniture stores, or establishments providing the following products or services:

Household cleaning and maintenance products; drugs, cards, stationery, notions, books, tobacco products, cosmetics, and specialty items; apparel jewelry, fabrics and like items; cameras, photograph services, household electronic equipment, records, sporting equipment, kitchen utensils, home furnishing and appliances, art supplies and framing, arts and antiques, paint and wall paper, hardware, carpeting and floor covering; interior decorating services; office supplies; mail order or catalog sales; bicycles; and automotive parts and accessories (excluding service and installation). General Retail Services include:

1. *Limited Retail Services:* Establishments providing retail services, occupying facilities of 5,000 square feet or less for any single establishment or 10,000 square feet or less for a multi-tenant facility. Typical establishments provide for specialty retailing or retailing oriented to Dickinson and a local market.

2. *General Retail Services:* Establishments providing retail services, occupying facilities of more than 5,000 square feet for any single establishment or more than 10,000 square feet for a multi-tenant facility. Typical establishments provide for general purpose retailing oriented to Dickinson and its immediate vicinity.

s. <u>Kennels</u>

Boarding and care services for dogs, cats and similar small mammals or large birds; or any premises on which three or more animals included under this definition over four months of age are kept and maintained. Typical uses include boarding kennels, ostrich raising facilities; pet motels, or dog training centers.

t. <u>Laundry Services</u>

Establishments primarily engaged in the provision of laundering, dry cleaning or dyeing services other than those classified as Personal Services. Typical uses include bulk laundry and cleaning plants, diaper services, or linen supply services.

u. <u>Liquor Sales</u>

Establishments or places of business engaged in retail sale for off-premise consumption of alcoholic beverages. Typical uses include liquor stores, bottle shops, or any licensed sales of liquor, beer or wine for off-site consumption.

v. <u>Lodging</u>

Lodging services involving the provision of room and/or board, but not meeting the classification criteria of Bed and Breakfasts. Typical uses include hotels, apartment hotels, and motels.

w. <u>Personal Improvement Services</u>

Establishments primarily engaged in the provision of informational, instructional, personal improvements and similar services of a non-professional nature. Typical uses include driving schools, health or physical fitness studios, reducing salons, dance studios, handicraft and hobby instruction.

x. Personal Services

Establishments or places of business primarily engaged in the provision of services of a personal nature. Typical uses include beauty and barber shops; seamstress, tailor, or shoe repair shops; photography studios; or dry cleaning stations serving individuals and households, driving schools, health or physical fitness studios, reducing salons, dance studios, handicraft and hobby instruction.

y. Pet Services

Retail sales, incidental pet health services, and grooming and boarding, when totally within a building, of dogs, cats, birds, fish, and similar small animals customarily used as household pets. Typical uses include pet stores, small animal clinics, dog bathing and clipping salons, and pet grooming shops, but exclude uses for livestock and large animals.

z. Research Services

Establishments primarily engaged in research of an industrial or scientific nature. Typical uses include electronics research laboratories, space research and development firms, testing laboratories, or pharmaceutical research labs.

aa. Restricted Businesses

Any business activity which offers the opportunity to view sexual activities or view or touch anatomical areas for entertainment purposes in a manner that offends contemporary standards in the community of Dickinson, depicts or describes sexual conduct in a patently offensive way, and lacks serious literary, artistic, political, or scientific value. This category includes the sale of viewing of visual or print materials that meet these criteria. Typical uses include retail services or stores which are distinguished by an emphasis on activities or materials that emphasize sexual content; businesses which offer live performances characterized by exposure of specified anatomical areas; and adult theaters.

bb. Restaurants

A use engaged in the preparation and retail sale of food and beverages; including the sale of alcoholic beverages when conducted as a secondary feature of the use, producing less than 50 per cent of the establishment' s gross income.

1. *Restaurant (Drive-in or Fast Food):* An establishment which principally supplies food and beverages in disposable containers and is characterized by high automobile accessibility and on-site accommodations, self-service, and short stays by customers.
2. *Restaurant (General):* An establishment characterized by table service to customers and/or accommodation to walk-in clientele, as opposed to Drive-in or Fast Food Restaurants. Typical uses include cafes, coffee shops, and restaurants.

cc. Stables and/or Riding Academies

The buildings, pens and pasture areas used for the boarding and feeding of horses, llamas, or other equine not owned by the occupants of the premises. This use includes instruction in riding, jumping, and showing or the riding of horses/equine for hire.

dd. Surplus Sales

Businesses engaged in the sale of used or new items, involving regular, periodic outdoor display of merchandise for sale. Typical uses include flea markets and factory outlets or discount businesses with outdoor display.

ee. Trade Services

Establishments or places of business primarily engaged in the provision of services that are not retail or primarily dedicated to walk-in clientele. These services often involve services to construction or building trades and may involve a small amount of screened, outdoor storage in appropriate zoning districts. Typical uses include shops or operating bases for plumbers, electricians, or HVAC (heating, ventilating, and air conditioning) contractors.

ff. Vehicle Storage (Short-term)

Short-term storage of operating or non-operating vehicles for a period of no more than 21 days. Typical uses include storage of private parking tow-aways or impound yards but exclude dismantling or salvage. Long-term storage beyond 21 days constitutes an Industrial Use Type.

gg. Veterinary Services

Veterinary services and hospitals for animals. Typical uses include pet clinics, dog and cat hospitals, pet cemeteries, and veterinary hospitals for livestock and large animals. (Ord. No. 1171 § 1; Ord. 1225 § 1.)

Section 39.03.008 Parking Use Types

a. Off-Street Parking

Parking use types include surface parking of motor vehicles on a temporary basis within a privately or publicly owned off-street parking facility.

b. Parking Structure

The use of a site for a multi-level building which provides for the parking of motor vehicles on a temporary basis, other than as an accessory to a principal use on the same site. (Ord. No. 1171 § 1.)

Section 39.03.009 Industrial Use Types

Industrial use types include the on-site extraction or production of goods by non-agricultural methods, and the storage and distribution of products.

a. Construction Yards

Establishments housing facilities of businesses primarily engaged in construction activities, including incidental storage of materials and equipment on lots other than construction sites. Typical uses are building contractor's yards.

b. Custom Manufacturing

Establishments primarily engaged in the on-site production of goods by hand manufacturing, within enclosed structures, involving the use of hand tools or light equipment. This category also includes the incidental direct sale to consumers of only those goods produced on site. Typical uses include ceramic studios, custom jewelry manufacturing, and candle making shops.

c. Grain Elevators

Establishments or uses engaged in the large-scale storage or processing of agricultural products that cannot be otherwise categorized as light, general, or heavy industries.

d. Light Industry

Establishments engaged in the manufacture or processing of finished products from previously prepared materials, including processing, fabrication, assembly, treatment, and packaging of such products, and incidental storage, sales, and distribution. These establishments are characterized by having no major external environmental effects across property lines and include no unscreened or un-enclosed outdoor storage. Typical uses include commercial bakeries, dressed beef processing plants, soft drink bottling, and apparel assembly from fabrics, electronics, manufacturing, print shops and publishing houses.

e. General Industry

Enterprises engaged in the processing, manufacturing, compounding, assembly, packaging, treatment or fabrication of materials and products from prepared materials or from raw materials without noticeable noise, odor, vibration, or air pollution effects across property lines.

f. Heavy Industry

Enterprises involved in the basic processing, storage, and manufacturing of products, predominately from raw materials, with noticeable noise, odor, vibration, or air pollution effects across property lines; or a use or process engaged in the storage of or processes involving potentially or actually hazardous, explosive, flammable, radioactive, or other commonly recognized hazardous materials.

g. Oil Wells

A use involving on-site extraction of petroleum or petroleum products. The oil well site is the location at which such resources physically penetrate the plane of the ground, and includes any facilities needed for the storage or flaring of petroleum or petroleum products, but excludes underground pipes or conduits.

h. Recycling Collection

Any site which is used in whole or part for the receiving or collection of any post-consumer, non-durable goods including, but not limited to glass, plastic, paper, cardboard, aluminum, tin, or other recyclable commodities.

i. Recycling Processing

Any site which is used for the processing of any post-consumer, non-durable goods including, but not limited to glass, plastic, paper, cardboard, aluminum, tin, or other recyclable commodities.

j. Resource Extraction

A use involving on-site extraction of surface or subsurface mineral products or natural resources, excluding oil wells and the grading and removal of dirt. Typical uses include quarries, borrow pits, sand and gravel operations, and mining.

k. Salvage Services

Place of business primarily engaged in the storage, sale, dismantling or other processing of used or waste materials which are not intended for reuse in their original forms. Typical uses include automotive wrecking yards, junk yards, or paper salvage yards.

l. Vehicle Storage (Long-term)

Long-term storage of operating or non-operating vehicles for a period exceeding 21 days. Typical uses include storage of private parking tow-aways or impound yards but exclude dismantling or salvage. Long-term storage of 21 days or less constitutes a Commercial Use Type.

m. Warehousing (Enclosed)

Uses including storage, warehousing, distribution, and handling of goods and materials within enclosed structures. Typical uses include wholesale distributors, storage warehouses, and van and storage companies.

n. Warehousing (Open)

Uses including open air storage, distribution, and handling of goods and materials. Typical uses include monument yards, materials yards, open storage. (Ord. No. 1171 § 1.)

Section 39.03.010 Transportation Use Types

Transportation use types include the use of land for the purpose of providing facilities supporting the movement of passengers and freight from one point to another.

a. Aviation Facilities

Landing fields, aircraft parking and service facilities, and related facilities for operation, service, fueling, repair, storage, charter, sales, and rental of aircraft, and including activities directly associated with the operation and maintenance of airport facilities and the provision of safety and security.

b. Railroad Facility

Railroad yards, equipment servicing facilities, and terminal facilities.

c. Transportation Terminal

Facility for loading, unloading, and interchange of passengers, baggage, and incidental freight or package express, including bus terminals, railroad stations, public transit facilities.

d. Truck Terminal

A facility for the receipt, transfer, short term storage, and dispatching of goods transported by truck. (Ord. No. 1171 § 1.)

Section 39.03.011 Miscellaneous Use Types

a. Alternative Energy Production Devices

The use of a site for the production of energy utilizing methods that do not involve the oxidation, combustion, or fission of primary materials. Typical uses include solar collector fields, installations which

generate energy by harnessing the natural heat of the earth or of geological features, or water-powered mills or generating facilities.

b. Broadcasting Tower

A structure(s) for the transmission or broadcasting of radio, television, radar, or microwaves, ordinarily exceeding the maximum height permitted in its zoning district or utilizing antennas or satellite dishes for commercial broadcasting.

c. Amateur Radio Tower

A structure(s) for the transmission or broadcasting of electromagnetic signals by FCC-licensed Amateur Radio operators.

d. Construction Batch Plant

A temporary demountable facility used for the manufacturing of cement, concrete, asphalt, or other paving materials intended for specific construction projects.

e. Wind Energy Conservation System (WECS)

Any device which converts wind energy to a form of usable energy, including wind charges, windmills, or wind turbines.

f. Landfill (Inert)

The use of a site as a depository for solid wastes that do not readily undergo chemical or biological breakdown under conditions normally associated with land disposal operations. Typical disposal material would include ashes, concrete, paving wastes, rock, brick, lumber, roofing materials and ceramic tile. Inert landfills must receive appropriate State permission.

g. Landfill (Municipal Industrial or Special Waste)

The use of a site as a depository for any solid waste except hazardous and toxic waste as defined by the Federal Environmental Protection Agency and/or the State of North Dakota. Typical disposal material would include non-putrescible wastes; and putrescible wastes such as vegetation, tree parts, agricultural wastes (garbage) and manure. Municipal Industrial or Solid Waste landfills must receive appropriate State Permission. (Ord. No. 1171 § 1.)

Article 39.04 Zoning District Regulations

Sections:

39.04.001 Purpose
39.04.002 Establishment of Districts
39.04.003 Application of Districts
39.04.004 Hierarchy
39.04.005 Development Regulations
39.04.006 Zoning Map
39.04.007 Interpretation of District Boundaries
39.04.008 Vacation of Streets and Alleys

Section 39.04.001 Purpose

Article Four presents the Zoning District Regulations. Zoning Districts are established in the Zoning Ordinance to promote compatible land use patterns and to establish site development regulations appropriate to the purposes and specific nature of each district. (Ord. No. 1171 § 1.)

Section 39.04.002 Establishment of Districts

The following base districts and overlay districts are hereby established. Table 4-1 displays the purposes of these districts.

BASE ZONING	DISTRICT NAMES DISTRICTS
AG	Agricultural District
RR	Rural Residential District
R-1	Low-Density Residential District
R-2	Medium-Density Residential District
R-3	High-Density Residential District
MH	Mobile Home Residential District
LC	Limited Commercial District
CC	Community Commercial District
DC	Downtown Commercial District
GC	General Commercial District
LI	Limited Industrial District
GI	General Industrial District
P	Public District
	OVERLAY DISTRICTS
MU	Mixed Use Overlay District
PUD	Planned Unit Development Overlay District
FP/FW	Floodplain/Floodway Overlay District
UM	Underground Mine Overlay District

(Ord. No. 1171 § 1.)

Section 39.04.003 Application of Districts

A base district designation shall apply to each lot or site within the city and its planning jurisdiction. A site must be in one base district.

Overlay districts may be applied to any lot or site or any portion thereof, in addition to a base district designation. The Mixed Use District may stand alone as a base district. (Ord. No. 1171 § 1.)

Section 39.04.004 Hierarchy

References in the Zoning Ordinance to less intensive or more intensive districts shall be deemed to refer to those agricultural, residential, commercial, and industrial base zoning districts established in Section 39.04.002, and shall represent a progression from the AG Agricultural District as the least intensive to the GI General Industrial District as the most intensive. The Overlay Districts shall not be included in this reference. (Ord. No. 1171 § 1.)

Section 39.04.005 Development Regulations

For each Zoning District: Purposes are set forth in Table 4-1, Permitted Uses are set forth in Table 4-2, and Site Development Regulations are presented in Table 4-3.

Supplemental Regulations may affect specific land uses or development regulations in each zoning district. The applicable Supplemental Regulations are noted in Table 4-2. (Ord. No. 1171 § 1.)

Section 39.04.006 Zoning Map

a. Adoption of Zoning Map

Boundaries of zoning districts established by this Zoning Ordinance shall be shown on the Zoning Map maintained by the Zoning Administrator. This map, together with all legends, references, symbols, boundaries, and other information, shall be adopted as a part of, and concurrent with this Ordinance. Said Zoning Map shall be prominently displayed in the council chambers and/or an area accessible to the public at Dickinson city offices.

b. Changes to the Zoning Map

The Zoning Map may be changed from time to time by ordinance, following the procedure set forth by Article Twelve. Such changes shall be reflected on the Zoning Map. The Zoning Administrator shall keep a complete record of all changes to the Zoning Map. (Ord. No. 1171 § 1.)

Section 39.04.007 Interpretation of District Boundaries

The following rules shall apply in determining the boundaries of any zoning district shown on the Zoning Map.

a. Where district boundaries are indicated as approximately following lot lines, such lot lines shall be considered the district boundaries.

b. Where district boundaries are indicated as within street or alley, railroad, or other identifiable rights-of-way the centerline of such rights-of-way shall be deemed the district boundary.

c. Where a district boundary divides a property, the location of the boundary shall be determined by the use of the scale appearing on the Zoning Map.

d. The City Council shall determine any other uncertainty regarding district boundaries not covered in this section. (Ord. No. 1171 § 1.)

Section 39.04.008 Vacation of Streets and Alleys

Whenever a public street, alley, or other public right-of-way is vacated, the zoning district adjoining each side of such right-of-way shall be extended out to the former centerline.

Table 4-1 Purposes of Zoning Districts

Symbol	Title	Purpose
AG	Agricultural District	The AG District provides for and preserves the agricultural and rural use of land, while accommodating very low density residential development generally associated with agricultural uses. This district is designed to maintain complete agricultural uses within the Dickinson extra-territorial jurisdiction. In addition, land included in the Urban Reserve in the Comprehensive Development Plan should be retained in the AG district to prevent premature or inappropriate development.
RR	Rural Residential	This district provides for the rural residential use of land, accommodating very low and low density residential environments. The district's regulations assure that density is developed consistent with: land use policies of the Dickinson Comprehensive Plan regarding rural subdivision; levels of infrastructure; and environmentally sensitive development practices. The district also accommodates developments that merge urban living with rural life.
R-1	Low-Density Residential	This district is intended to provide for low-density residential neighborhoods, characterized by single-family dwellings on relatively large lots with supporting community facilities and urban services. Its regulations are intended to minimize traffic congestion and to assure that density is consistent with the carrying capacity of infrastructure.
R-2	Medium-Density Residential	This district is intended to provide for medium-density residential neighborhoods, characterized by single-family dwellings on small to moderately sized lots and low-density, multiple-family development. It provides special regulations to encourage innovative forms of housing development. It adapts to both established and developing neighborhoods, as well as transitional areas between single-family and multi-family neighborhoods. Its regulations are intended to minimize traffic congestion and to assure that density is consistent with the carrying capacity of infrastructure.
R-3	High-Density Residential	This district is intended to provide locations primarily for multiple-family housing, with supporting and appropriate community facilities. It also permits some non-residential uses such as offices through a special permit procedure, to permit the development of mixed use neighborhoods.
MH	Mobile Home Residential	This district recognizes that mobile home development, properly planned, can provide important opportunities for affordable housing. It provides opportunities for mobile home development within planned parks or subdivision, along with the supporting services necessary to create quality residential neighborhoods.

Symbol	Title	Purpose
LC	Limited Commercial	This district reserves appropriately located area for office development and a limited variety of low-impact commercial facilities which serve the needs of residents of surrounding residential communities. The commercial and office uses permitted are compatible with nearby residential areas. Development regulations are designed to ensure compatibility in size, scale, and landscaping with nearby residences.
CC	Community Commercial	This district is intended for commercial facilities which serve the needs of markets ranging from several neighborhoods to the overall region. While allowed commercial and office uses are generally compatible with nearby residential areas, traffic and operating characteristics may have more negative effects on residential neighborhoods than those permitted in the LC District. CC Districts are appropriate at major intersections, at the junction of several neighborhoods, or at substantial commercial subcenters.
DC	Downtown Commercial District	This district is intended to provide appropriate development regulations for Downtown Dickinson. Mixed uses are encouraged within the DC District. The grouping of uses is designed to strengthen the town center's role as a center for trade, service, and civic life.
GC	General Commercial	This district accommodates a variety of commercial uses, some of which have significant traffic or visual effect. These districts may include commercial uses which are oriented to services, including automotive services, rather than retail activities. These uses may create land use conflicts with adjacent residential areas, requiring provision of adequate buffering. This district is most appropriately located along major arterial streets or in areas that can be adequately buffered from residential districts.
LI	Limited Industrial	This district is intended to reserve sites appropriate for the location of industrial uses with relatively limited environmental effects. The district is designed to provide appropriate space and regulations to encourage good quality industrial development, while assuring that facilities are served with adequate parking and loading facilities.
GI	General Industrial	This district is intended to accommodate a wide variety of industrial uses, some of which may have significant external effects. These uses may have operating characteristics that create conflicts with lower-intensity surrounding land uses. The district provides the reservation of land for these activities and includes buffering requirements to reduce incompatibility.
P	Public	This district accommodates substantial public institutions or uses. It sets aside areas for conservation, public recreation, and full access public facilities.

Table 4-2 Permitted Uses by Zoning Districts

Use Types	AG	RR	R-1	R-2	R-3	MH	LC	CC	DC	GC	LI	GI	P	Addl Reg
Agricultural Uses														
Horticulture	P	P			S		P	P	P	P	P	P	P	39.06.002a
Crop Production	P	P											P	39.06.002a
Type I Animal Production	P	S												39.06.002c
Type II Animal Production	S													
Type III Animal Production	S													
Livestock Sales	S										S	S		
Residential Uses														
Single-Family Detached	P	P	P	P	P	P	S							
Single-Family Attached			P	P	P	P	S							39.06.003b
Duplex	P		S	P	P		S							
Two Family	P			P	P		S							
Townhouse	P			P	P		S							39.06.003c
Multiple-Family				P	P		S		P					
Downtown Residential									P					39.06.003d
Group Residential				P	P		S							
Mobile Home Park						S								39.06.003e
Mobile Home Subdivision						S								39.06.003f
Manufactured Housing Residential	P	P	P	P	P	P	S							
Retirement Residential	S		S	P	P		S		S					
Home Occupations	S	S	S	S	S	S			S					39.06.008a
Accessory Structure	P	P	P	P	P	P	P	P	P	P	P	P	P	Note 8
Civic Uses														
Cemetery	P	S	S	S	S								S	
Clubs	S	S	S	S	S	S	S	P	P	P				39.06.004a
College/University													P	
Convalescent Services	S	S		S	S	S	P	P	P	P				
Cultural Services		S	S	S	P	P	P	P	P	P	P		P	
Day Care (Family)	P	P	P	P	P	P	P	P	P	P	S			39.03.005g
Day Care (Group)	S	S	S	S	P	S	P	P	P	P	S			39.03.005h
Detention Facilities	S								S	S	S		S	

Use Types	AG	RR	R-1	R-2	R-3	MH	LC	CC	DC	GC	LI	GI	P	Addl Reg
Emergency Residential	P	P	P	P	P	P	P	P	P	S	S			
Golf Courses (Public)	S	S	S	S	S	S							P	
Government Offices							P	P	P	P	P		P	
Group Care Facility	S	S	S	S	P	S	P	P	P	P				36.06.004c
Group Home	P	P	P	P	P	P	P	P	P	P				36.06.004c
Guidance Services					P		P	P	P	P	P	P		
Hospitals					S		P	P	P	P	S		S	
Health Care	S	S			S		P	P	P	P	P	P	S	
Libraries (Public)							P	P	P	P			S	
Maintenance Facilities	S	S						S		P	P	P	S	
Park and Recreation	P	P	P	P	P	P	P	P	P	P	P	P	P	
Postal Facilities							P	P	P	P	P	P	P	
Primary Education	S	P	P	P	P	P	P	P	P	S			P	
Public Assembly							S	S	P	P			P	
Religious Assembly	P	P	P	P	P	P	P	P	P	P	S			
Safety Services	P	P	P	P	P	P	P	P	P	P	P	P	P	
Secondary Education													P	
Sports Facilities, Fields, and Arenas (Public)													P	
Utilities	S	S	S	S	S	S	S	P	P	P	P	P	S	
Office Uses														
General Offices	S				S		P	P	P	P	P	P		
Financial Services					S		P	P	P	P	P	P		
Medical Offices					S		P	P	P	P	P	S		
Commercial Uses														
Ag Sales/Service	S							S		P	P	P		
Auto Rental/Sales								S	P	P				39.06.005c
Auto Services							S	P	P	P	P	P		39.06.005a,b
Body Repair								S	P	P	P	P		39.06.005a
Equipment Rental/Sales									S	P	P	P		39.06.005c
Equipment Repair									S	P	P	P		39.06.005a
Veh. Storage (Short-Term)										P	P	P		
Bed and Breakfast	P	S		S	P		P	P	P	P				39.06.005d
Business Support Services							P	P	P	P	P	P		

Use Types	AG	RR	R-1	R-2	R-3	MH	LC	CC	DC	GC	LI	GI	P	Addl Reg
Business/Trade School								P	P	P	P			
Campground	S					S				S				
Cocktail Lounge								P	P	P				
Commercial Recreation (Indoor)	S						S	P	P	P	P			
Commercial Recreation (Outdoor)	S									P	P	P	S	
Communication Service							P	P	P	P	P	P		
Construction Sale/Service								S	S	P	P	P		
Consumer Service							P	P	P	P	P			
Convenience Storage	S				S	S	S	S		S	P	P		39.06.005f
Crematorium										S	S	P		
Food Sales (Convenience)							S	P	S	P	P	P		
Food Sales (Limited)							P	P	P	P				
Food Sales (General)							S	P	P	P				
Funeral Service					S		P	P	P	P				
Limited Retail Services							P	P	P	P				
Gaming Facility								S	S	P				
General Retail Services								P	P	P				
Kennels	P	S							S	S	P	P		
Laundry Services								S	S	P	P	P		
Liquor Sales		S					P	P	P	P				
Lodging								P	P	P	S			
Personal Improvement					S		P	P	P	P	P	P		
Personal Services					S		P	P	P	P	P	P		
Pet Services	S						P	P	P	P				
Research Services							P	P	P	P	P	P		
Residential-Commercial							P	P	P	P				
Restaurants (Drive-In)							S	P	S	P	S	S		

Use Types	AG	RR	R-1	R-2	R-3	MH	LC	CC	DC	GC	LI	GI	P	Addl Reg
Restaurants (General)	P						P	P	P	P	S	S		
Restricted Business														
Stables	P	S										S		
Surplus Sales	S								P	P	P	P		
Trade Services	S							P	P	P	P	P		
Vehicle Storage										S	P	P		
Veterinary Services	S	S					S	S	S	P	P			
Parking Uses														
Off-Street Parking			S	S	S		S	S	P	P	P	P		
Parking Structure								S	P	S	P			
Industrial Uses														39.06.007
Custom Manufacturing								S	P	P	P	P		
Light Industry											P	P		
General Industry												P		
Heavy Industry												S		
Oil Wells	S											S		
Resource Extraction	S											S		
Salvage Services and Yards, Junk Yards												P		39.06.006a
Veh. Storage (Long-term)											P	P		
Warehousing (Open) Warehousing (Closed)									S	P	P P	P P		
Construction Yards										S	P	P		
Recycling Collection								S		P	P	P		
Recycling Processing											P	P		
Grain Elevators												S		
Petroleum Storage/Sales	S											S		
Stockyards	S											S		
Toxic Gaseous Storage	S													Note 9
Dairy Plant										S	S	P		
Transportation Uses														
Aviation	P											P		
Railroad Facilities	S								S	S	P	P		

Use Types	AG	RR	R-1	R-2	R-3	MH	LC	CC	DC	GC	LI	GI	P	Addl Reg
Truck Terminal										P	P	P		
Transportation Terminal	S						S	P	P	P	P	P		
Miscellaneous Uses														
Broadcasting Tower	S	S	S	S	S	S		S	S		S	S		
Amateur Radio Tower	P	P	P	P	P	P	P	P	P	P	P	P		
Construction Batch Plant											S	P		
WECS	P	P	S	S	S	S	S	S	S	S	S	P		
Landfill (Inert)	S	S										S		
Landfill (Municipal Industrial or Special Waste)	S												S	
Alternative Energy Production Devices	P	P	S	S	S	S		S	S		S	P		
Motorized Sports	S										S	S		Note 10

*Note: Provisions of Sections 39.06.008 through 39.06.009 apply to all use types

P = Uses Permitted by Right
S = Uses Permitted by Special Permit
Blank = Use Not Permitted

ZONING DISTRICT REGULATIONS

Table 4-3 Summary of Site Development Regulations

Regulator	AG	RR	R-1	R-2	R-3*
Minimum Lot Area (square feet)	5 Acres	1 Acre (Note 1)*	7,500	7,000	7,000
Minimum Lot Width (feet)	300	100			
Single-Family			60	50	50
Other Residential			60	75 (Note 3)	75 (Note 3)
Site Area per Housing Unit (square feet)					
Single-Family	5 Acres	1 Acre	7,500	7,000	7,000
Duplex			7,000	3,500	3,500
Townhouse or multi-family up to 4 units				3,000 (Note 7)	3,000
Each additional multi-family unit over 4 units					1,000 (Note 4)
Retirement Residential Minimum Yards (feet)	(Note 11)		(Note 11)	(Note 11)	(Note 11)

Regulator	AG	RR	R-1	R-2	R-3*
Front Yard Arterial Streets	50	40	25	25	25
Other Streets	50	40	25	25	25
Street Side Yard	15	15	15	15	15
Interior Side Yard	15	15	6	6 (Note 2)	6 (Note 2)
Rear Yard	50	25	20	20 (Note 6)	20 (Note 6)
Maximum Height (feet)	35 (Note 5)	35	35	45	60
Maximum Building Coverage	NA	25%	40%	60%	70%
Maximum Impervious Coverage	NA	35%	50%	65%	75%
Floor Area Ratio	NA	NA	NA	NA	NA

- Notes Accompanying This Table Appear after Table 4-3

ZONING DISTRICT REGULATIONS

Table 4-3 Summary of Site Development Regulations

Regulator	MH	LC*	CC*	DC	GC*
Minimum Lot Area (square feet)	See	5,000	12,000	None	12,000
Minimum Lot Width (feet)	Regulations	50	100	NA	100
Site Area per Housing Unit (square feet)	set forth in Section	Same as R-3	NA	500	NA
Minimum Yards (feet)	39.06.003f				
Front Yard		20	20	0	20
Street Side Yard		20	10	0	10
Interior Side Yard		10	0	0	0
Rear Yard		20	0	0	0
Maximum Height (feet)		40	40	No Limit	60
Maximum Building Coverage		50%	60%	100%	70%
Maximum Impervious Coverage Retirement Residential		70% (Note 11)	80%	100% (Note 11)	90%

*Uses in the R-3, LC, CC, GC, LI, and GI Districts are subject to landscape and screening provisions contained in Article 8

Table 4-3 Summary of Site Development Regulations

Regulator	LI*	GI*
Minimum Lot Area (square feet)	10,000	10,000
Minimum Lot Width (feet)	100	100
Site Area per Housing Unit (square feet)	N/A	N/A
Minimum Yards (feet)		
Front Yard	20	20
Street Side Yard	20	20
Interior Side Yard	10	10
Rear Yard	20	20
Maximum Height (feet)	None	None
Maximum Building Coverage	70%	85%

Regulator	LI*	GI*
Maximum Impervious Coverage	90%	100%
Floor Area Ratio	1.0	2.0

*Uses in the R-3, LC, CC, GC, LI, and GI Districts are subject to landscape and screening provisions contained in Article 39.08

- Notes Accompanying This Table Appear after Table 4-3 -

ZONING DISTRICT REGULATIONS

Notes to Preceding Pages: Tables 4-2 and 4-3

Note 1:

Rural Residential development situated within one of the designated rural development areas of the Comprehensive Plan may occur on minimum lot sizes below 1.0 acres, if such development is approved by the City as a Conservation Subdivision, designed in conformance with the Comprehensive Plan, to ensure compatible installation of infrastructure and sanitary waste collection systems in the future.

Note 2:

Six feet for single-story construction, one foot for each 4 feet for any building over 24 feet in height. See Section 39.06.003 for supplemental regulations governing single-family attached and townhouse residential use types.

Note 3:

See Section 39.06.003 for supplemental regulations regarding modifications of lot width for townhouse residential use type.

Note 4:

Density of multi-family residential may exceed this maximum, subject to approval of a Special Use Permit by the City Council, with the recommendation of the Planning Commission.

Note 5:

Height limit for residential structures. 65 feet for other permitted uses.

Note 6:

Ten feet for single-story construction, five feet for each additional story.

Note 7:

The 3,000 square feet per townhouse unit applies for up to 10 units in townhouse developments in the R-2 district.

Note 8:

All allowable accessory buildings to a residence shall be limited to a maximum of one thousand two hundred feet (1,200) and for a maximum of three (3) detached structures for the first one acre or less. The total area of all accessory buildings may be increased by 250 square feet for each additional half (.5) acre of land area above one acre, but in no case shall the total exceed 30 percent lot coverage. Accessory buildings shall include the following: barns, stable, storage buildings, and detached personal vehicle garages.

Note 9:

Toxic Gaseous Storage: Storage facilities of toxic gaseous, materials, tanks/or bulk facilities shall not be built within (2) two miles of any residential subdivision or within (1) mile of any building for human occupancy.

Note 10:

(1) Adequate direct road access to the site is provided with such access designed to minimize traffic congestion; and

(2) Sufficient off-street parking areas are provided in conformance with Article 39.09, Table 9-1; and

(3) The site is located at least one (1) mile from any residentially zoned area.

Note 11:

Density for Retirement Residential is 7,000 square feet for 4 units and 1,000 square feet for each additional unit.

Note 12:

Attached garages shall not exceed the total square footage and height of the residence.

Note 13:

Detached structures shall not exceed the height of fifteen (15) feet or the height of the primary residence, whichever is less, unless the detached structure is setback from the side and rear property line a minimum of two (2) horizontal feet for every one (1) foot in height exceeding the maximum height of the structure in residential districts.

Note 14:

Accessory structures larger than two hundred and fifty (250) square feet shall be constructed with similar materials of the primary residence or building in residential and commercial zoning districts.

(Ord. No. 1171 § 1; Ord. No. 1205, § 1; Ord. 1225 § 2; Ord. 1235 § 1 & 2; Ord. 1244 § 3, Ord. 1423 § 4; Ord. 1437 § 4; Ord. 1475 § 1)

Article 39.05 Special and Overlay Districts

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Section 39.05.001 General Purpose

Special Districts provide for base districts that allow multiple land uses and flexible development, with the requirement that a specific plan for the area be submitted by applicants. Overlay Districts are used in combination with base districts to modify or expand base district regulations. Overlay Districts are adapted to special needs of different parts of the City of Dickinson.

The Overlay Districts are designed to achieve the following objectives:

a. To recognize special conditions in specific parts of the City which require specific regulation.

b. To provide flexibility in development and to encourage innovative design through comprehensively planned projects. (Ord. No. 1171 § 1.)

Section 39.05.002 Purpose

MU MIXED USE DISTRICT

The MU Mixed Use District is intended to accommodate projects which combine several compatible land uses into an integrated development. The MU District may also be used to pre-designate parts of the city which are appropriate for a mixture of residential areas with workplaces and services. Development in the MU District must accommodate transportation systems, pedestrian and bicycle movement, and surrounding environments. All projects developed in an MU District are subject to a Special Use Permit process. (Ord. No. 1171 § 1.)

Section 39.05.003 Permitted Uses

Each ordinance establishing an MU District establishes the use types permitted within its boundaries. (Ord. No. 1171 § 1.)

Section 39.05.004 Site Development Regulations

a. The minimum area of any MU District is two acres.

b. Prior to the issuance of any building permits or other authorization, all projects in the MU District shall receive approval by the City Commission, following a recommendation by the Planning Commission, according to the Special Use Permit procedure set forth in Article 39.12. This approval may be granted for a specific plan for the development of an MU District in lieu of a plan for individual projects, provided that any subsequent developments are consistent with the specific plan.

c. Applications for approval must contain at a minimum the following information:

1. A detailed site map, including:
   (a) a boundary survey
   (b) site dimensions
   (c) contour lines at no greater than five foot intervals
   (d) adjacent public rights of way, transportation routes, and pedestrian or bicycle systems
   (e) description of adjacent land uses
   (f) utility service to the site and easements through the site
   (g) description of other site features, including drainage, soils, or other considerations that may affect development.
2. A developmental plan, including:
   (a) a site layout, including the location of proposed buildings, parking, open space, and other facilities
   (b) location, capacity, and conceptual design of parking facilities
   (c) description of the use of individual buildings
   (d) description of all use types to be included in the project or area, and maximum floor area devoted to each general use
   (e) maximum height of buildings
   (f) schematic location and design of open space on the site, including a landscaping plan
   (g) vehicular and pedestrian circulation plan, including relationship to external transportation systems
   (h) schematic building elevations and sections if required to describe the project
   (i) grading plans
   (j) proposed sewer and utility improvements
   (k) location, sizes, and types of all proposed signage.
3. Specific proposed development regulations for the project, including:
   (a) the specific use types permitted within the proposed district
   (b) maximum floor area ratios
   (c) front, side, and rear yard setbacks

(d) maximum height
(e) maximum building and impervious coverage
(f) design standards applicable to the project.

4. A traffic impact analysis, if required by the City. (Ord. No. 1171 § 1.)

Section 39.05.005 Amendments

The Zoning Administrator is authorized at his/her discretion to approve amendments to an approved development plan, provided that:

a. A written request is filed with the Zoning Administrator, along with information specifying the exact nature of the proposed amendment.
b. The amendment is consistent with the provisions of this section.
c. The amendment does not alter the approved site regulations of the development plan and does not materially alter other aspects of the plan, including traffic circulation, mixture of use types, and physical design.
d. Any amendment not conforming to these provisions shall be submitted to the Planning Commission and City Commission for action. (Ord. No. 1171 § 1.)

Section 39.05.006 Purpose

PUD PLANNED UNIT DEVELOPMENT DISTRICT

The PUD Planned Unit Development Overlay District is intended to provide flexibility in the design of planned projects; to permit innovation in project design that incorporates open space and other amenities; and to insure compatibility of developments with the surrounding urban environment. The PUD District, which is adopted by the City Commission with the recommendation of the Planning Commission, assures specific development standards for each designated project. (Ord. No. 1171 § 1. Ord. No. 1470 § 1.)

Section 39.05.007 Permitted Uses

Uses permitted in a PUD Overlay District are those permitted in the ordinance adopting the PUD. Any use listed in this Code as a permitted or special use may be allowed. Any other use that the Commission finds compatible with the existing and planned uses in the development and on adjacent properties may be allowed. However, each approved use must be listed in the PUD and included in the approval ordinance adopted by the Commission. A PUD may be established exclusively for residential, commercial or industrial development or any combination of those types of development. (Ord. No. 1171 § 1; Ord. No. 1470 § 1)

Section 39.05.008 Site Development Regulations

A property owner shall have the option of choosing to conform with the underlying zoning district regulations or the established PUD approval, if the PUD was adopted by the Commission prior to the adoption of this chapter. (Ord. No. 1171 § 1; Ord. No. 1470 § 1)

Section 39.05.009 Access to Public Streets

Each PUD District must abut a public street for at least 50 feet and gain access from that street. (Ord. No. 1171 § 1.)

Section 39.05.010 Application Process

a. Development Plan

The application for a Planned Unit Development District shall include a Development Plan containing the following information:

1. A tract map, showing site boundaries, street lines, lot lines, easements, and proposed dedications or vacations.
2. A land use plan designating specific uses for the site and establishing site development regulations, including setback height, building coverage, impervious coverage, density, and floor area ratio requirements.
3. A site development and landscaping plan, showing building locations, or building envelopes; site improvements; public or common open spaces; community facilities; significant visual features; and typical landscape plans.
4. A circulation plan, including location of existing and proposed vehicular and pedestrian, facilities and location and general design of parking and loading facilities.
5. Schematic architectural plans and elevations sufficient to indicate a building height, bulk, materials, and general architectural design.
6. A statistical summary of the project, including gross site area, net site area, number of housing units by type, gross floor area of other uses, total amount of parking, and building and impervious surface percentages. (Ord. No. 1171 § 1.)

Section 39.05.011 Adoption of District

a. The Planning Commission and City Commission shall review and evaluate each Planned Unit Development application. The City may impose reasonable conditions, as deemed necessary to ensure that a PUD shall be compatible with adjacent land uses, will not overburden public services and facilities and will not be detrimental to public health, safety and welfare.
b. The Planning Commission, after proper notice, shall hold a public hearing and act upon each application.
c. The Planning Commission may recommend amendments to PUD district applications.
d. The recommendation of the Planning Commission shall be transmitted to the City Commission for final action.
e. The City Commission, after proper notice, shall act upon any Ordinance establishing a PUD Planned Unit Development Overlay District. Proper notice shall mean the same notice established for any other zoning amendment.
f. An Ordinance adopting a Planned Unit Development Overlay Zoning District shall require a favorable simple majority of the City Commission for approval.
g. Upon approval by the City Commission, the Development Plan shall become a part of the Ordinance creating or amending the PUD District. All approved plans shall be filed with the Zoning Administrator. (Ord. No. 1171 § 1.)

Section 39.05.012 Amendment Procedure

Major amendments to the Development Plan must be approved according to the same procedure set forth in Section 39.05.005. (Ord. No. 1171 § 1.)

Section 39.05.013 Building Permits

The City shall not issue a building permit, certificate of occupancy, or other permit for a building, structure, or use within a PUD District unless it is in compliance with the approved Development Plan or any approved amendments. (Ord. No. 1171 § 1.)

Section 39.05.014 Termination of PUD District

If no substantial development has taken place in a Planned Unit Development District for one year following approval of the District, the Planning and Zoning Commission shall reconsider the zoning of the property and may, on its own motion, initiate an application for rezoning the property. (Ord. No. 1171 § 1.)

Section 39.05.015 Purpose

A. AGRICULTURAL BUSINESS OVERLAY DISTRICT

This district is intended to permit limited agricultural activities in combination with residential land uses. It recognizes the rural character of areas adjacent to Dickinson which may combine residential development at moderate densities with certain farm uses, including the raising of crops and animals, and the storage of agricultural products. It further recognizes that such uses should be strictly controlled in order to minimize effects on neighboring properties. (Ord. No. 1171 § 1.)

Section 39.05.016 Application of District

This district may be used only in combination with any zoning district. (Ord. No. 1171 § 1.)

Section 39.05.017 Permitted Uses

In addition to those uses permitted in the base district, the following additional uses are permitted in the Agricultural Business Overlay District:

a. Horticulture

b. Crop Production

c. Storage and sales of agricultural products, provided that a buffer of at least 30 feet is provided between this use and any adjacent lot within a residential zoning district. (Ord. No. 1171 § 1.)

Section 39.05.018 Adoption of District

a. The Planning Commission and City Commission shall review and evaluate each A Overlay District application.

b. The Planning Commission, after proper notice, shall hold a public hearing and act upon each application.

c. The Planning Commission may recommend amendments to A district applications.

d. The recommendation of the Planning Commission shall be transmitted to the City Commission for final action.

e. The City Commission shall act upon any Ordinance establishing an A Overlay District.

f. The Ordinance adopting the A District shall include a statement of purpose, a description of district boundaries, and a list of supplemental site development regulations and performance standards.

g. An Ordinance adopting an A Overlay District shall require a favorable vote of a simple majority of the City Commission for approval.

h. Upon approval by the City Commission, each A Overlay District shall be shown on the Zoning Map, identified sequentially by order of enactment and referenced to the enacting Ordinance.

i. Any protest against an A Overlay District shall be made and filed as provided by the Century Code of North Dakota, and amendments thereto. (Ord. No. 1171 § 1.)

Section 39.05.019 Purpose

FP/FW FLOODPLAIN/FLOODWAY OVERLAY DISTRICT

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize those losses described in Section 39.05.020 by applying the provisions of this ordinance to:

1. Restrict or prohibit uses which are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities.
2. Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction.
3. Protect individuals from buying lands which are unsuitable for intended purposes because of flood hazard.
4. Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program when identified by the Federal Insurance Administration as a flood prone community. (Ord. No. 1171 § 1.)

Section 39.05.020 Floodplain and Floodway Overlay Districts: Findings of Fact

Flood Losses Resulting from Periodic Inundation

Flood hazard areas of the City of Dickinson, North Dakota, are subject to inundation which results in loss of life or property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

1. *General Causes of These Flood Losses*

   These flood losses are caused by (a) the cumulative effect of obstruction in floodways causing increases in flood heights and velocities, (b) the occupancy of flood areas by uses vulnerable to floods or hazardous to other which are inadequately elevated or otherwise protected from flood damages.

2. *Methods Used to Analyze Flood Hazards*

   This ordinance uses a reasonable method of analyzing flood hazards which consists of a series of interrelated steps.

   a) Selection of a base flood which is based upon engineering calculations which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated and the depth of inundation. The base flood selected for this ordinance is representative of large floods which are reasonably characteristic of what can be expected to occur on the particular streams subject to this ordinance. It is in the general order of a flood which could be expected to have a one (1%) percent change of occurrence in anyone year, as delineated by applicable Flood Insurance Studies and the Federal Emergency Management Administration's Flood Insurance Rate Maps and Flood Boundary and Floodway Map, or any subsequent effective Flood Insurance Studies, Rate Maps, and Flood Boundary and Floodway Maps issued after the effective date of this ordinance and adopted by the City of Dickinson.

   b) Calculation of water surface profiles based upon a hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the base flood.

   c) Computation of the floodway required to convey this flood without increasing flood heights more than 1 foot at any point.

   d) Delineation of floodway encroachment lines within which no obstruction is permitted which would cause any increase in flood height.

   e) Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines but which still is subject to inundation by the base flood.

Land to Which Ordinance Applies

This ordinance shall apply to all lands within the jurisdiction of the City of Dickinson identified on the Flood Insurance Rate map (FIRM) as numbered and unnumbered A zone and/or within the Overlay Districts FP and FW established in this ordinance. In all areas covered by this ordinance, no development shall be permitted except upon a permit to develop granted by the City Council or its duly designated representative under such safeguards and restrictions as the City Council may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community as contained in the City Code.

Enforcement Officer

The Zoning Administrator of the City of Dickinson is hereby designated as the City Council' s duly designated Enforcement Officer under this ordinance. Unless otherwise provided by the City Council, the Natural Resources Commission shall assist the City of Dickinson on interpretation of floodplain/floodway rules and regulations. The Enforcement Officer shall obtain comments from the NRC as part of his/her review of all proposed activity in this Overlay District.

Rules for Interpretation of District Boundaries

The boundaries of the floodway and floodway fringe overlay districts shall be determined by scaling distances on the official zoning map. Where interpretation is needed to the exact location of the boundaries of the districts as shown on the official zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions, the Enforcement Officer shall make the necessary interpretation. In such cases where the interpretation is contested, the Board of Adjustment will resolve the dispute. The base flood elevation for the point in question shall be the governing factor in locating the district boundary on the land. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.

Compliance

No development located within known flood hazard areas of the community shall be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

Abrogation and Greater Restrictions

It is not intended by this ordinance to repeal, abrogate or impair any existing easements, covenants or deed restriction. However, where this ordinance imposes greater restrictions, the provision of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

Interpretation

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the City of Dickinson and shall not be deemed a limitation or repeal of any other powers granted by state statute.

Warning and Disclaimer of Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside floodway and floodway fringe district boundaries or land uses permitted within such districts will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Dickinson or any officer or employee thereof for any flood damages that may result from reliance on this ordinance or any administrative decision lawfully made thereunder.

Severability

If any section, clause, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

Application for Appeal

Where a request for a permit to develop is denied by the Zoning Administrator, the applicant may apply for such permit or variance directly to the Board of Adjustment. Procedures for appeals to the Board of Adjustment shall proceed as set forth by Section 39.12.010b of this Ordinance. (Ord. No. 1171 § 1.)

Section 39.05.021 Floodplain and Floodway Permits and Administration

Permit Required

No person, firm, or corporation shall initiate any development or substantial improvement or cause the same to be done without first obtaining a separate permit for development as defined in Section C. hereof.

Administration

1. The Zoning Administrator is hereby appointed to administer and implement the provisions of this ordinance.
2. Duties of the Zoning Administrator shall include, but not be limited to:
   a) Review of all development permits to assure that sites are reasonable, safe from flooding and that the permit requirements of this ordinance have been satisfied.
   b) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or Local Governmental agencies from which prior approval is required.
   c) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
   d) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures.
   e) Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed.
   f) When floodproofing is utilized for a particular structure, the Zoning Administrator shall be presented certification from a registered professional engineer or architect.

Application for Permit

To obtain a permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every such application shall:

1. Identify and describe the work to be covered by the permit.
2. Describe the land on which the proposed work is to be done by lot, block, tract and house and street address, or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use or occupancy for which the proposed work is intended.
4. Be accompanied by plans for the proposed construction.
5. Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.
6. Give such other information as reasonably may be required by the Zoning Administrator. (Ord. No. 1171 § 1.)

Section 39.05.022 Establishment of Zoning Districts

The mapped flood plain area within the jurisdiction of this ordinance are hereby divided into the two following districts: A Floodway Overlay District (FW) and a Floodplan Overlay District (FP) as identified in the official Flood Plain Study. Within these districts, all uses not meeting the standards of this ordinance and those standards of the underlying zoning district shall be prohibited. These zones shall be consistent with the numbered and unnumbered A Zones as identified on the official FIRM when identified in the Flood Insurance Study provided by the Federal Insurance Administration. (Ord. No. 1171 § 1.)

Section 39.05.023 Standards for Floodway Overlay District and Floodplain Overlay District

a. No permit for development shall be granted for new construction, substantial improvement or other improvements including the placement of manufactured homes within the identified flood plain unless the conditions of this section are satisfied.

b. All areas identified as unnumbered A Zones by the Federal Insurance Administration are subject to inundation of the 100-year flood; however, the water surface elevation was not provided. The unnumbered A Zones shall be subject to all development provisions of this ordinance. If Flood Insurance Study Data is not available, the community shall utilize any base flood elevation data currently available within its area of

jurisdiction. Further, in cases of proposed development within unnumbered " A" zones, the developer' s engineer shall be required to conduct the necessary studies to determine the 100 year flood elevation and its extent in relation to such development.

c. New construction, subdivision proposals, substantial improvement, prefabricated building, placement of manufactured homes and other development shall require:

1. Design or anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads including the effect of buoyancy.
2. New or replacement water supply systems and/or sanitary sewage systems designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination.
3. Construction with materials resistant to flood damage, utilizing methods and practices that minimize flood damages, and with electrical, heating, ventilation that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
4. All utility and sanitary facilities be elevated or floodproofed one foot above the regulatory flood elevation. Such floodproofing is permitted only for non-residential properties.
5. That until a floodway has been designated, no development including landfill, may be permitted within the identified flood plain unless the applicant for the land use has demonstrated that the proposed use, when combined with all other existing and reasonably anticipated uses, will not increase the water surface elevation of the 100-year flood more than one (1') foot on the average cross-section of the reach in which the development or landfill is located as shown in the official flood plan study incorporated by reference herein.
6. Storage of Materials and Equipment
   a) The storage of processing of materials that are in time of flooding buoyancy, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.
   b) Storage of other materials or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.
7. Subdivision proposals and other proposed new development, including manufactured home parks or subdivision, be required to assure that:
   a) All such proposals are consistent with the need to minimize flood damage.
   b) All public utilities and facilities, such as sewer, gas, electrical and water systems are located, elevated and constructed to minimize or eliminate flood damage.
   c) Adequate drainage is provided so as to reduce exposure to flood hazards.
   d) Proposals for development (including proposals for manufactured home parks and subdivisions) of five (5) acres or fifty (50) lots, whichever is less, include within such proposals the regulatory flood elevation. (Ord. No. 1171 § 1.)

Section 39.05.024 Floodplain Overlay District: Regulations

Permitted Uses

Any use permitted in the underlying base district shall be permitted in the Floodplain Overlay District. No use shall be permitted in the district unless the standards of this Section are met.

Standards for the Floodplain Overlay District

1. Any new construction or substantial improvements of residential structures shall have the lowest floor, including basement elevated one foot above the base flood elevation.

2. Any new construction or substantial improvements of non-residential structures shall have the lowest flood, including basement elevated one foot above the base flood elevation, or, together with attendant utility and sanitary facilities, shall be floodproofed so that below such a level the structure is watertight with

walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydro-dynamic loads and effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Section 39.05.023c. Such floodproofing is permitted only for non-residential properties.

3. All new construction and substantial improvements that fully enclosed areas below the lowest floor that are subject to flooding shall be designated to automatically equalize hydro-static flood forces or exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by the registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be not higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(a) Below-Grade Residential Crawlspace Construction

New construction and substantial improvement of any below-grade crawlspace shall:

i. Have the interior grade elevation that is below base flood elevation no lower than two feet below the lowest adjacent grade
ii. Have the height of the below-grade crawlspace measured from the interior grade of the crawlspace to the top of the foundation wall, not exceeding four feet at any point
iii. Have an adequate drainage system that allows floodwaters to drain from the interior area of the crawlspace following a flood
iv. Be anchored to prevent flotation, collapse, or lateral movement of the structure and be capable of resisting the hydrostatic and hydrodynamic loads
v. Be constructed with materials and utility equipment resistant to flood damage
vi. Be constructed using methods and practices that minimize flood damage
vii. 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
viii. Be designed to automatically equalize hydrostatic flood forces on 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 inch for every 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.

4. Within AH zones, adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

5. Manufactured Homes

a) All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with local building codes or FEMA guidelines. In

the event that over-the-top frame ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:

(i) Over-the-top ties shall be provided at each of the four corners of the manufactured home with two additional ties per side at intermediate locations, and manufactured homes less than 50 feet long requiring one additional tie per side.

(ii) Frame ties shall be provided at each corner of the home with five additional ties per side at intermediate points, and manufactured homes less than 50 feet long requiring four additional ties per side.

(iii) All components of the anchoring system shall be capable of carrying a force of 4800 lbs.

(iv) Any additions to manufactured homes shall be similarly anchored.

b) All manufactured homes to be placed within Zones A1-30, AH and AE on the community's FIRM 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 be securely anchored to an adequately anchored foundation system in accordance with the provisions of the Uniform Building Code.

c) AO Zones: Special Regulations

Located within the areas of special flood hazard are areas designated as AO Zones. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. Therefore, the following provisions apply with AO Zones:

1. All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as 1 foot above the depth number specified in feet on the community' s FIRM.
2. All new construction and substantial improvements of nonresidential structures shall:

   a) Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as 1 foot above the depth number specified in feet on the community' s FIRM.

   b) Together with attendant utility and sanitary facilities be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effect of buoyancy. Such certification shall be provided to the official as set forth in Section 39.05.023c.

   c) Adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures. (Ord. No. 1171 § 1; Ord. No. 1246 § 1)

Section 39.05.025 Floodway Overlay Districts

Permitted Uses

Only uses having a low flood-damage potential and not obstructing flood flows shall be permitted within the Floodway District to the extent that they are not prohibited by any other ordinance and provided that they do not require structural fill or storage of materials or equipment. No use shall increase the flood levels of the base flood elevation. These uses are subject to the standards and requirements of Section 39.05.023.

1. Agricultural uses such as general farming, pasture, nurseries, forestry.
2. Accessory residential uses such as lawns, gardens, parking and play areas.
3. Nonresidential areas such as loading areas, parking, and airport landing strips.
4. Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves. New placement of residential structures including manufactured homes are prohibited within the identified floodway (FW) area.
5. In Zone A unnumbered, obtain, review and reasonably utilize any floodway data available through Federal, State of Local sources in meeting the standards of this section. (Ord. No. 1171 § 1.)

Section 39.05.026 Request for Variances From District Requirements

a. The Board of Adjustment, as established by the City of Dickinson, shall hear and decide appeal and requests for variances from the requirements of this ordinance.

b. The Board of Adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Zoning Administrator in the enforcement or administration of this ordinance.

c. Any person aggrieved by the decision of the Board of Adjustment or any taxpayer may appeal such decision to the City Council as provided by the Century Code of North Dakota.

d. In passing upon such applications, the Board of Adjustment shall consider all technical evaluation, 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 of life and property due to flooding or erosion damage.
3. The susceptibility of 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, not subject to flooding or erosion damage, for the proposed use.
7. The compatibility of the proposed use with existing and anticipated development.
8. The relationship of the proposed use to the comprehensive plan and flood plain management program for that area.
9. The safety of access to the property in time of flood for ordinance and emergency vehicles.
10. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effect 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.

e. Conditions for Variance

1. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one half acre of less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level providing terms 2. through 6. below have been fully considered. As the lot size increases beyond the one-half acre, the technical jurisdiction required for issuing the variance increases.
2. 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.
3. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. In addition to the criteria for variances set forth in Section 39.12.011C of this Ordinance, variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

6. Any applicant to whom a variance is granted shall be given a written notice that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. (Ord. No. 1171 § 1.)

Section 39.05.027 Zoning Regulations For Nonconforming Uses

Continuance of Nonconforming Uses

A structure or the use of a structure or premises which was lawful before the passage or amendment of the ordinance but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions:

1. No such use or substantial improvement of that use shall be expended, changed, enlarged, or altered in a way which increases its nonconformity.
2. If such use is discontinued for twelve (12) consecutive months, any future use of the building premises shall conform to this ordinance. The Utility Department shall notify the Building Inspector in writing of instances of nonconforming uses where utility services have been discontinued for a period of twelve (12) months.
3. Uses or adjuncts thereof which are or become nuisances shall not be entitled to continue a nonconforming uses.

Replacement of Residential Uses

If any residential nonconforming use of structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred within those areas identified as floodway (FW). This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Replacement of Non-Residential Uses

If any non-residential nonconforming use of structure is destroyed by any means, including flood, it should not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of this ordinance. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places. (Ord. No. 1171 § 1.)

Section 39.05.028 Definitions

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this ordinance its most reasonable application.

Actuarial Rates. Or "risk premium rates" are those established by the Federal Insurance Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with 42 U.S.C. 4014 and the accepted actuarial principles. Actuarial rates include provisions for operating costs and allowances.

Appeal. A request for a review of the Zoning Administrator's interpretation of any provision of this ordinance or a request for a variance.

Area of Shallow Flooding. A designated AO or AH zone on a community' s Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard. The land in the flood plain within a community subject to one percent or greater chance of flooding in any given year.

Base Flood Elevation. Elevation indicated in the official flood plain study as the elevation of the 100-year flood.

Base Flood Protection Elevation. An elevation one foot higher than the water surface elevation of the base flood.

Channel. A natural or artificial watercourse of perceptible extent, with a definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow, thus, is that water which is flowing within the limits of a defined channel.

Community. Any state or area or political subdivision thereof which has authority to adopt and enforce flood plain management regulations for the area within its jurisdiction.

Development. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

Existing Construction. (For the purposes of determining rates) structures for which the " start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRM' s effective before that date. "Existing Construction" may also be referred to as "existing structures".

Flood or Flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from (1) the overflow of inland or tidal waters; (2) the unusual and rapid accumulation of runoff of surface waters from any source.

Flood Insurance Rate Map (FIRM). An official map of a community, on which the Flood Insurance Study has delineated the Flood Hazard Boundaries and the zones establishing insurance rates applicable to the community.

Flood Insurance Study. The official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.

Flood Plain Management. The operation of an overall program of corrective and preventative measures for reducing flood damage, including but not limited to, emergency preparedness plan, flood control works, and flood plain management regulations.

Flood Protection System. Those physical structural works constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard". Such a system typically includes levees or dikes. These specialized modifying works are those constructed in conformance with sound engineering standards.

Floodproofing. Any combination of structural and non-structural additions, changes, or adjustments to structures, including utility and sanitary facilities, which would preclude the entry of water. Structural components shall have the capability of resisting hydrostatic and hydrodynamic loads and effect of buoyancy.

Floodplain (FP). That area of the flood plain, outside of the floodway, that on an average is likely to be flooded once every 100 years (i.e. that has a one percent chance of flood occurrence in any one year.)

Floodway (FW). The channel of a river or other watercourse and the adjacent portion of the flood plain that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot at any point assuming equal conveyance reduction outside the channel from the two sides of the flood plain.

Freeboard. A factor of safety usually expressed in feet above a flood level for purposes of flood plain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the heights calculated for a selected size flood and floodway conditions, such as wave action, clogged bridge openings, and the hydrological effect of urbanization of the watershed.

Highest Adjacent Grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Lowest Floor. The lowest floor of the lowest enclosed area (including basement). An unfurnished 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 non-elevation design requirements of this ordinance.

Manufactured Home. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

Manufactured Home Park or Subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

New Construction. Structures for which the "start of construction or substantial improvement" is commenced on or after the effective date of the FIRM.

100-Year Flood. The base flood having a one percent chance of annual occurrence.

Overlay District. A district which acts in conjunction with the underlying zoning district or districts.

Start of Construction. For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L97-348) includes substantial improvement, and means the date the building permit was issued, providing the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of street and/or walkways, nor does it include excavation for a basement, footings, or foundations or the erection of temporary forms, nor does it include the installation of the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Structure. A walled and roofed building that is principally above ground, as well as a manufactured home, and a gas or liquid storage tank that is principally above ground.

Substantial Improvement. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (1) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (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.

Variance. A grant of relief to a person from the requirements of this ordinance which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship. (Ord. No. 1171 § 1.)

Section 39.05.030 Corridor Overlay District – Purpose

The purpose of Corridor Overlay District for transportation corridors identified herein is to promote and protect the public health, safety and welfare by providing for consistent and coordinated treatment of properties bordering and within the identified transportation corridors in the City of Dickinson, North Dakota, and in the City of Dickinson's Extraterritorial Zoning Jurisdiction (ETZ). The identified corridors are important transportation corridors, and will continue as such with future growth of the city. These transportation corridors are expected to carry significant volumes of traffic, making development along these transportation corridors highly visible to the traveling public. Therefore, it is the purpose of this District to ensure high aesthetic quality of development along these important transportation corridors through:

(A) The establishment of enhanced standards for buildings, landscaping, and other improvements constructed on the properties bordering and within the identified transportation corridors; and

(B) The establishment of development requirements which will encourage high quality of design of development of those properties and promote the quality, scale, and character of development consistent with existing and planned uses bordering and within the identified transportation corridors.

Section 39.05.031 Corridor Overlay District – Boundaries

The boundaries of the Corridor Overlay Districts are hereby established as follows:

(A) All structures that are within 300 feet of either side of the right-of-way (existing or future if additional right-of-way is required, whichever is greater) for the following identified corridors:

Highway 22 a/k/a 3rd Avenue West
I-94 Highway Corridor
Villard Street
I-94 Business Loop (East and West)
State Avenue
10th Avenue East
21st Street (East and West)
34th Street SW a/k/a 40th Street

Section 39.05.032 Corridor Overlay District – Permitted Uses

The overlay district provisions apply to any base zoning district set forth in this chapter that exists within the defined overlay area. Permitted uses shall be subject to the provisions of this section and shall be further subject to requirements of the applicable base zoning district.

Section 39.05.033 Corridor Overlay District – Application and Exemptions

These standards apply to sites (including all principal and accessory buildings) that are within the Corridor Overlay District unless otherwise specified herein, and apply to all use categories.

Farm structures are exempt from these requirements provided they meet the base zoning district requirements.

Existing single-family structures are exempt from these requirements provided they meet the base zoning district requirements.

Expansions to buildings that exist on the date this ordinance is adopted are exempt from the requirements of this ordinance for any building additions that do not exceed fifty percent (50%) of the existing building square footage. If multiple building expansions are conducted after the adoption of this ordinance, the expansion that causes the total square footage of expansions to reach or exceed a 50% expansion of the original building square footage shall thereafter be required to conform with the requirements of this chapter.

If overlapping regulations appear in other sections of this Land Development Code, those regulations stated herein shall take precedence.

Unless otherwise noted in this Section, the standards of the underlying base zoning districts shall apply.

Section 39.05.034 Corridor Overlay District – Standards

Building Design

Building design shall incorporate materials to convey permanence, substance, timelessness, and restraint. Each building shall be constructed with one or more of the following material(s) consisting of at least fifty percent (50%) of the exterior materials.

Any exterior building wall visible from the corridor shall be constructed of one or more of the following (minimum of 50%):

a. Clay or masonry brick
b. Customized concrete masonry with striated, scored, or broken faced brick type units (sealed) with color consistent with design theme.
c. Poured in place, tilt-up, or precast concrete. Poured in place and tilt-up walls shall have a finish of stone, a texture, or a coating.
d. Architectural flat metal panels or glass curtain walls.
e. Stucco or Exterior Finish Insulation Systems (EFIS).

Natural stone

Residential grade permanent siding provided that buildings are enhanced by the application of brick, decorative masonry, or decorative stucco surfaces in combination with decorative fascia, overhangs, and trim. Wooden siding may be used as a substitute for residential grade permanent siding.

Metal siding systems may be used along the corridor provided that metal is limited to 70% of the building face. In addition the building must be enhanced by the application of brick, decorative masonry, or decorative stucco surfaces in combination with decorative fascia, overhangs, and trim.

Additional materials may be approved by the City Planner provided that the substituted or additional materials meet the purpose and intent of this chapter and are similar in nature to those specified materials herein.

Non-decorative exposed concrete block buildings are prohibited.

Ground floor building facades of commercial and office buildings visible from identified corridors shall have a minimum of 20 percent glass windows.

Any portion of a building façade that exceeds one hundred (100) feet shall incorporate windows or architectural and design elements to break up the expanse of wall. Examples include, but are not limited to, windows, lighting, material changes, articulated wall surfaces, architectural treatments such as sculptured wall features or shadow lines, vertical accents, texture changes or color changes. Landscaping may be used in combination with the design elements listed above.

Sloped roofs shall not exceed one hundred (100) feet in length without a change in roof plane, or gable, or dormer.

Building design shall incorporate architectural characteristics that emphasize human scale design features, and minimize the mass and scale of buildings through the use of features including, but not limited to: variation in the rooflines and form, designs that visually define “tops” and “bottoms” of buildings, use of protected or recessed entries, use of vertical elements on or in front of expansive blank walls, use of focal points, inclusion of windows on elevations facing streets and pedestrian areas.

Building entrances, excluding emergency exits, shall be designed as focal points and shall be enhanced through the use of elements such as canopies, overhangs, peaked roofs, paving materials, planters, landscaping features, and outdoor seating areas.

Roof-mounted and ground mounted mechanical equipment shall be fully screened from the identified corridor. Penthouses for mechanical equipment shall be incorporated into the building façade design, consistent with the exterior building design requirements.

Exterior mechanical equipment shall be shielded in a manner that protects adjacent properties from visual impacts and noise levels.

To assist in the interpretation of the above regulations the Planning Department shall maintain a catalog of approved building designs and materials as a reference.

Multi-building or Mixed Use Projects

Prior to issuance of a building permit on a multi-building development, the applicant shall submit plans that demonstrate the use of consistent design elements throughout the project. Subsequent building permits shall conform to the design elements presented.

Multi-building developments shall include prominent focal points, which shall include, but not be limited to architectural structures, art, historical and/or landscape features. These features shall be located at, or visible from, vehicular and pedestrian entrances to the site.

Free standing garage clusters of multiple family residential sites shall not be placed along the corridor overlay districts unless the overall appearance is similar to the primary residential building.

Site Design

Building and Parking Setbacks

Buildings on sites located at major intersections along the identified corridor (i.e. at intersections with designated future arterial roadways or traffic corridors as identified herein) shall be sited in the corner of the intersection with parking areas in the rear or side yard.

The City Planner shall consider all site design proposals with the requirements set forth herein. In those instances in which a prevailing setback has previously been established, the City Planner may require compliance with the prevailing setback rather than the provisions set forth below.

Natural Features

Significant natural or existing features, such as drainage swales, existing trees, and shelterbelts, shall be incorporated into the site design to the extent that retention of the feature allows reasonable use of the site, as determined by the City Planner.

Functional Site Elements

Trash enclosures and trash compactors shall be located such that they are not visible from the identified corridor.

Outdoor storage that does not consist of display of merchandise shall be located such that it is not visible from the identified corridor, by placing the outdoor storage on the opposite side of the building from the identified corridor, or by placing outdoor storage in an enclosed area that has the appearance of being integral to the building. All outdoor storage shall be fully screened from view through the use of an opaque decorative fencing material or architectural screen walls.

Loading and delivery areas shall not be located along the front or side of the building that fronts on the identified corridor, unless compliance is not reasonable feasible. Such areas shall be screened from view through the use of landscaping or architectural building elements that are consistent with the architecture and building materials used in the primary buildings.

Contractor yards, service yards, heavy equipment, salvage, and items of a similar nature shall be located away from public street frontages and shall be screened with opaque fencing.

Pedestrian Accommodations for Commercial Projects

Pedestrian walkways shall be provided between building entrances/exits and parking areas, and within parking areas to provide a designated walking area, especially where there is a need to connect dispersed buildings with parking areas.

Pedestrian walkways shall be provided between buildings and sidewalks or multi-use paths along adjacent streets.

On multi-building sites and mixed use sites, the site design shall provide functional pedestrian spaces, plazas, and seating areas between or in front of buildings. Designs shall include some areas with weather protection, such as overhangs, awnings, and canopies to increase usefulness in a variety of weather conditions.

Canopy shade trees, landscape features, and seating, or other pedestrian amenities near colonnades, storefronts, and pedestrian routes shall be incorporated into the site.

Lighting for Commercial Projects

Pedestrian scale lighting fixtures shall be provided in areas designed for pedestrian activity (walkways, plazas, outdoor seating areas).

Lighting fixtures shall coordinate and complement the general architectural style of the development.

Lighting should accent entryways and other site focal points, such as significant architectural, landscaping, or artistic features shall be provided.

Administration

Submittal of plans. All plans for construction and renovation of structures within the district shall be submitted to the City Planner or his designee. The owner of the property to be constructed upon or renovated, or their authorized agent, shall submit two (2) full sized and to-scale plans and two (2) reduced copies of the necessary drawings to the planning staff.

Appeals

Any applicant may appeal a decision of the City Planner on the interpretation of the requirements herein. The appeal shall be filed with the City Planner within ten (10) business days following the decision.

The City Planner will notify all property owners abutting the subject property prior to the Planning and Zoning Commission taking action on the appeal.

The applicant or any property owner shall have the right to appeal the decision of the Planning & Zoning Commission to the City Council.

The appeal fee shall be established by the City Commission and included in the City's Fee Schedule. (Ord. No. 1454§ 1.)

Section 39.05.040 West Villard Overlay District - Purpose

The purpose of the West Villard Overlay District is to allow existing residential dwelling units in commercial districts along the designated corridor as described in Section 34.05.041.
(Ord. 1538 § 1)

Section 39.05.041 West Villard Overlay District – Boundaries

The West Villard Overlay District boundary shall be as follows: one block north of Villard Street between State Avenue and 5th Avenue West; and one block south of Villard Street between State Avenue and 8th Avenue West. (Ord. 1538 § 2)

Section 39.05.042 West Villard Overlay District – Application

All residential dwelling units existing on the effective date of this Ordinance shall be considered to be a legally conforming permitted use. No additional residential dwelling units shall be permitted, unless established prior to the effective date of this Ordinance. (Ord. 1538 § 3)

Article 39.06 Supplemental Use Regulations

Sections:

39.06.001 Purpose
39.06.002 Supplemental Use Regulations: Agricultural Uses
39.06.003 Supplemental Use Regulations: Residential Use
39.06.004 Supplemental Use Regulations: Civic Uses
39.06.005 Supplemental Use Regulations: Commercial Use
39.06.006 Supplemental Use Regulations: Industrial Uses
39.06.007 Performance Standards for Industrial Uses
39.06.008 Supplemental Use Regulations: Accessory Uses
39.06.009 Supplemental Use Regulations: Outdoor Storage outside of the GI Zoning District
39.06-010 Accessory Dwelling Units
39.06.011 Subdivision Plat

Section 39.06.001 Purpose

The Supplemental Use Regulations set forth additional standards for certain uses located within the various zoning districts. These regulations recognize that certain use types have characteristics that require additional controls in order to protect public health, safety, and welfare. These regulations complement the use regulations contained in Article Four of this Ordinance. (Ord. No. 1171 § 1.)

Section 39.06.002 Supplemental Use Regulations: Agricultural Uses

Nothing in these provisions shall relieve any property owner or user from satisfying any condition or requirement associated with a previous approval, special permit, variance, development permit, or other permit issued under any local, State, or Federal ordinance or statute.

A. Horticulture and Crop Production: Retail Sales

Retail operation of garden centers or roadside stands associated with a primary agricultural use may be permitted in the AG District, subject to the following requirements:

1. Garden Centers

(a) A garden center is a building or premises used for the retail sale of plant materials or items useful in the growing or display of lawns, gardens, and plants.

(b) Garden centers must conform to all site development regulations for the zoning district.

(c) Any garden center adjacent to a residential district must maintain a 20-foot landscaped bufferyard, consistent with the standards established in Section 804.

2. Roadside Stands

(a) A roadside stand is a facility used on a temporary or seasonal basis for the retail sale of produce grown largely on adjacent or surrounding agricultural lands.

(b) A roadside stand may be located within a required front yard but no closer than 40 feet to the edge of a traveled roadway.

(c) A roadside stand may operate for a maximum of 180 days in any one year.

B. Incidental Animal Production in the RR District

1. Breeding and raising of small animals and fowl, such as birds, rabbits, chinchilla, and hamsters is permitted in the RR District, provided that any building housing such animals shall be at least 50 feet from any property line and 25 feet from any dwelling unit on the site.

2. Within the RR District, any lot of 1 acre and over may maintain one horse or llama and its immature offspring. Such a lot may have one additional animal for each additional two acres of lot area, up to a maximum total of three animals. No stable shall be located closer than 50 feet to any dwelling unit on the site.

C. Type I and Type II Animal Production

1. Location

(a) Any new Type I or Type II Animal Production use established within the two mile Extraterritorial Jurisdiction of the City of Dickinson shall be subject to approval of a Special Use Permit, as set forth in Section 39.12.003.

(b) No confinement area for the feeding or holding of livestock or poultry shall be located within 1,000 feet of the property lines of the parcel on which it is located; or within 1,000 feet of an existing residential structure other than that of the owner or operator of the facility.

2. Operation

(a) Livestock wastes within a confinement area shall be removed or disposed of by spraying or spreading on land promptly followed by disking or plowing; grinding or dehydrating in properly designed dehydrators; or stockpiling in a compost plant located at least one mile from a residential zoning district.

(b) Insect and rodent control measures must be instituted for confined areas by removal or disposal of manure; or by other accepted insect or rodent control measures.

3. Drainage

(a) All ground surfaces within confinement areas shall be graded and compacted to insure proper drainage.

(b) All ground surfaces within confinement areas shall be controlled so that no appreciable amount of soil and livestock waste is carried into any roadway ditch, drainage area, or other low-lying area.

4. Pollution Control

A confined area shall not produce a measurable increase in pollution in any public water-based recreational facility, public water supply, or in any waterway that is part of a public or private water supply and shall obtain proper State Health Department permits.

D. Type III Animal Production

1. No new Type III Animal Production use shall be established within the Extra-territorial Jurisdiction of the City of Dickinson.

2. No expansion of any existing Type III Animal Production use within the planning jurisdiction of the City of Dickinson shall be permitted. (Ord. No. 1171 § 1; Ord. 1229 § 1)

Section 39.06.003 Supplemental Use Regulations: Residential Use

Zero-Lot Line Single-Family Detached Residential

Within a common development, one interior side yard may be equal to zero for single-family detached residential use, subject to the following regulations:

1. The side yard opposite to the zero yard must equal at least twice the normal required side yard. In all cases, a minimum required separation of twelve feet for principal buildings and six feet for accessory buildings shall be maintained.

2. The normal side yard setback requirement must be maintained adjacent to any lot with an existing structure not within the common development; or not otherwise designated for zero lot line use.

3. An easement for maintenance of the zero lotline facade is filed with the Stark County Register of Deeds and the Zoning Administrator at the time of application for a building permit.

Single-Family Attached

When permitted, the minimum side yard opposite the common wall shall be equal to twice the normal required side yard.

Townhouse Residential

Where permitted, townhouse residential is subject to the following regulations:

1. The site area per unit must be 3,000 square feet in all districts where permitted.

2. The minimum width for any townhouse lot sold individually shall be 25 feet, except within an approved creative subdivision.

3. Coverage percentages are computed for the site of the entire townhouse common development.

Residential and Group Residential in LC, CC, DC and GC Districts

The City Commission, with the recommendation of the Planning Commission, may allow a unit specifically designed for occupancy by disabled residents at street level, subject to approval of a Special Permit.

Mobile Home Parks in the MH District

In the MH Mobile Home Residential District, which permits major mobile home residential use, such use may be configured in a Mobile Home Park or Mobile Home Subdivision. Following the effective date of this Ordinance, no mobile home shall be located outside of a Mobile Home Park or Mobile Home Subdivision. A Mobile Home Park is subject to approval of a Special Use Permit and compliance with the following regulations:

- Minimum and Maximum Area

  A Mobile Home Park shall be considered to be one zoned lot. The contiguous area of a Mobile Home Park shall provide for a minimum of 2.5 acres.
- Density Requirements

  (a) The minimum gross site area per dwelling unit shall be 7,000 square feet.

  (b) Each mobile home space shall have a width of at least 40 feet wide and a length of at least 75 feet.
- Site Development Standards

  (a) Setbacks: Each Mobile Home Park shall have a minimum perimeter setback of 35 feet from all exterior lot or property lines. No space for a dwelling unit or any other structure shall be permitted in the required setback.

  (b) Setback landscaping: All area contained within the required setbacks except sidewalks and private drives shall be landscaped and screened in conformance with Section 8 of this Ordinance. Screening shall be provided in conformance with Section 8 for any common property line with another non-residential use.

  (c) Impervious Coverage: Impervious coverage for a Mobile Home Park shall not exceed 50 percent of the total site area.

  (d) Open Space: Each Mobile Home Park shall provide a minimum of 400 square feet of open recreational space per unit. Such space shall be provided at a central location accessible from all parts of the park by pedestrians. Required perimeter setbacks or buffers shall not be credited toward the fulfillment of this requirement.

  (e) Separation Between Mobile Home Units: The minimum separation between a mobile home unit and/or attached accessory structure and any other mobile home units and/or accessory structure shall be 15 feet in all directions.

  (f) Separation and Setbacks for Accessory Buildings: An accessory building on a mobile home space shall maintain a minimum rear and side yard setback of five feet. A minimum distance of six feet shall be provided between any mobile home and an unattached accessory building.
- Street Access and Circulation Requirements

  (a) Access to Public Street: Each Mobile Home Park must abut and have access to a dedicated public street with a right-of-way of at least 60 feet.

  (b) Vehicular Circulation: The Mobile Home Park must provide interior vehicular circulation on a private internal street system. Minimum interior street width between edges of pavement shall be 25 feet. The street system shall be continuous and connected with other internal and public streets; or shall have a cul-de-sac with a minimum diameter of 90 feet. No such cul-de-sacs may exceed 300 feet in length.

  (c) Separation between Units and Circulation Areas: The minimum distance between a mobile home unit together with any attached accessory structure and the pavement of an internal street or parking area shall be 20 feet.

(d) Sidewalks: Each Mobile Home Park shall provide a sidewalk system to connect each mobile home space to common buildings or community facilities constructed for the use of its residents; and to the fronting public right of way. Sidewalk width shall be at least 4.5 feet.

(e) Street and Sidewalk Standards: All internal streets and sidewalks shall be hard-surfaced. Electric street lighting is required along all internal streets.

(f) Parking Requirements: Each Mobile Home Park must provide at least two off-street parking stalls for each mobile home space.

(g) Tornado Shelters: Underground tornado shelters shall be provided in the Mobile Home Park. Such shelter or shelters shall be built according to the recommendations of the Civil Defense authority and be large enough to meet the specific needs of the park and it residents.

- Utilities

  (a) All Mobile Home Parks shall provide individual units and common facilities with an adequate, piped supply of hot and cold water for both drinking and domestic purposes; and standard electrical service, providing at least one 120-volt and one 240-volt electrical service outlet to each mobile home space.

  (b) Complete sanitary and sewer service shall be provided within each Mobile Home Park in accordance with the Subdivision Chapter of the Land Development Ordinance.

  (c) Properly spaced and operating fire hydrants shall be provided for proper fire protection within each Mobile Home Park in accordance with the Subdivision Chapter of the Land Development Ordinance.

  (d) All electric, telephone, gas and other utility lines shall be installed underground.

  (e) All water, sewer, electric light systems, streets, and sidewalks shall be private facilities within a Mobile Home Park.

- Financial Responsibility: Each application for a Mobile Home Park shall include a demonstration by the developer of financial capability to complete the project; and a construction schedule.
- Completion Schedule: Construction must begin on any approved Mobile Home Park within one year of the date of approval by the Planning and Zoning Commission. Such construction shall be completed within two years of approval, unless otherwise extended by the Commission.

Mobile Home Subdivision in the MH District

1. Mobile Home Subdivisions shall be developed in accordance with all standards and requirements set forth in the Subdivision Chapter of the Land Development Ordinance of Dickinson. Site development regulations shall be the same as those required in the R-3 Zoning District. Each mobile home shall be considered a single-family detached residential unit for the purpose of determining applicable development regulations.
2. Mobile home units within Mobile Home Subdivisions shall be built in accordance with the minimum design standards of the US Department of Housing and Urban Development and display a certification of such compliance.
3. Mobile Home Subdivisions shall provide tornado shelter facilities as required by Section 39.06.003(4) (g) (Ord. No. 1171 § 1; Ord. 1244 § 2)

Section 39.06.004 Supplemental Use Regulations: Civic Uses

Clubs

Clubs located adjacent to residential uses shall maintain a bufferyard of not less than twenty feet along the common boundary with such residential use.

Day Care

Day care facilities are permitted by Special Use permit in the GI General Industrial Zoning District only if incidental to a permitted primary use.

Group Care Facilities and Group Homes

1. Each group care facility or group home must be validly licensed by either the State of North Dakota or the appropriate governmental subdivision.
2. Group homes are permitted in the DC District only on levels above street level except that a facility specifically designed for occupancy by disabled residents may be developed at street level, subject to approval of a special permit by the City Commission with the recommendation of the Planning Commission.

Primary and Secondary Educational and Religious Assembly Facilities

1. Each facility shall have a minimum lot area of one acre.
2. Buildings and parking shall have a minimum set back of 20 feet from property lines.
3. Proposed facilities shall conform to all State and federal requirements. (Ord. No. 1171 § 1.)

Section 39.06.005 Supplemental Use Regulations: Commercial Use

Auto Repair, Equipment Repair, and Body Repair

1. Where permitted in commercial districts, all repair activities must take place within a completely enclosed building. Outdoor storage is permitted only where incidental to Auto Repair and Body Repair, provided that such storage is completely screened so as not to be visible from residential areas or public rights-of-way. Screening is subject to provisions of Article 8 of this ordinance.
2. Any spray painting must take place within structures designed for that purpose and approved by the Zoning Administrator.

Auto Washing Facilities

1. Each conveyor operated auto washing facility shall provide 100 feet of stacking capacity per washing lane on the approach side of the washing structure and a minimum stacking space of forty feet on the exit side.
2. Each self-service auto washing facility shall provide stacking space for three automobiles per bay on the approach side and one space per bay on the exit side of the building.

Automobile and Equipment Rental and Sales

1. All outdoor display areas for rental and sales facilities shall be an improved surface, including paving or crushed rock.
2. Body repair services are permitted as an accessory use to automobile rental and sales facilities.

Bed and Breakfasts

Bed and Breakfasts permitted in the DC District must provide any sleeping facility only on levels above street level except that units specifically designed and reserved for occupancy by handicapped people may be located on the street level.

Campgrounds

1. Minimum Size: Each campground established after the effective date of this title shall have a minimum size of one acre.
2. Setbacks: All campgrounds shall maintain a 50-foot front yard setback and a 25-foot bufferyard from all other property lines.
3. Each campground must maintain water supply, sewage disposal, and water and toilet facilities in compliance with all City ordinances; or, alternately, be limited to use by self-contained campers, providing their own on-board water and disposal systems.
4. Campgrounds shall not be permitted to be used for any of the purposes as provided for in Article 39.13. Any campground containing one or more lodging units or skid units ordinarily designed for human living quarters or a place of business, on a temporary or permanent basis, which are not real property, as defined in section 57-02-04, and are not mobile homes, as defined in section

57-55-01, shall be obligated to comply with Article 39.13 and obtain a crew housing special use permit, as provided therein.

Convenience Storage

When permitted in the AG, GC, and LI Districts, convenience storage facilities shall be subject to the following additional requirements:

1. The minimum size of a convenience storage facility shall be one acre.
2. Activities within the facility shall be limited to the rental of storage cubicles and the administration and maintenance of the facility.
3. All driveways within the facility shall provide a paved surface with a minimum width of 25 feet.
4. All storage must be within enclosed buildings and shall not include the storage of hazardous materials.
5. No storage buildings may open into required front yards.
6. Facilities must maintain landscaped bufferyards of 35 feet adjacent to any public right-of-way and 20 feet adjacent to other property lines, unless greater setbacks are required by Article 39.08. (Ord. No. 1171 § 1; Ord. No. 1437 § 1)

Section 39.06.006 Supplemental Use Regulations: Industrial Uses

Salvage Services

1. Screening:
   (a) The perimeter of each new facility shall be fully enclosed by opaque, freestanding fencing or screen walls. Minimum height of this enclosure shall be ten feet. Any such enclosure shall be constructed behind landscaped bufferyards.
   (b) Each existing salvage services facility shall be screened as provided above within one year of the effective date of this Ordinance.
2. Storage of materials within any salvage services facility may not be higher than the height of the surrounding screen fence or wall.
3. No Salvage Services use may be established within 300 feet of the nearest property line of a residential zoning district or of any pre-established civic use. (Ord. No. 1171 § 1.)

Section 39.06.007 Performance Standards for Industrial Uses

Industrial Uses in the LI District: Performance Standards

The following performance standards apply to all industrial uses permitted within an LI Limited Industrial zoning district:

1. Physical Appearance: All operations shall be carried on within an enclosed building except that new materials or equipment in operable condition may be stored outside. Normal daily inorganic wastes may be stored outside in containers, provided that such containers are not visible from the street.
2. Fire Hazard: No operation shall involve the use of highly flammable gases, acid, liquids, or other inherent fire hazards. This prohibition shall not apply to the normal use of heating or motor fuels and welding gases when handled in accordance with the regulations of the City of Dickinson and the Uniform Fire Code, as published by the International Fire Code Institute.
3. Maximum Permitted Sound Levels Adjacent to Residential Zoning Districts: No operation in the LI district shall generate sound levels in excess of those specified in Table 6-1 at the boundary of a residential district. All noises shall be muffled so as not to be objectionable because of intermittence, beat frequency, or shrillness.
4. Sewage and Wastes: All discharges of sewage and wastes into public sewers shall comply with all applicable City ordinances.
5. Air Contaminants: No material may be discharged into the air from any source in such quantity as to cause injury, detriment, nuisance, or annoyance to any considerable number of people or to

the public in general; or to endanger the health, comfort, or safety of any considerable number of people or to the public in general; or to damage other businesses, vegetation, or property.

6. Odor: The emission of odors determined by the Planning and Zoning Commission to be obnoxious to most people shall be prohibited. Such odors shall be measured at the property line of the operation.
7. Gases: No release of noxious or poisonous gases shall be permitted except as provided in this section. Measurements of sulfur dioxide, hydrogen sulfide, or carbon monoxide shall not exceed 5 parts per million taken at the property line of the operation.
8. Vibration: All machines shall be mounted to minimize vibration. No measurable vibration shall occur at the property line of the operation which exceeds a displacement of 0.003 inch.
9. Glare and Heat: All glare generated by a use shall be shielded or directed so as not to be visible at the property line of the operation. No heat may be generated from an operation that raises the air temperature at the property line of the operation by more than five degrees Fahrenheit above the ambient air temperature.
10. Storage of Chemical Products: If allowed by Special User Permit, any above or below ground storage of liquid petroleum products or chemicals of a flammable or noxious nature shall not exceed 150,000 gallons when stored on one lot less than one acre. Such storage shall not exceed 25,000 gallons in any one tank. Storage of liquid petroleum products or chemicals of a flammable or noxious nature in excess of 25,000 gallons shall be located at least 50 feet from any structure intended for human habitation and at least 1,000 feet from any Residential or Commercial zoning district.

Industrial Uses in the GI District: Performance Standards

The following performance standards apply to all industrial uses permitted within an LI Limited Industrial zoning district:

1. Physical Appearance: Salvage services and similar uses and operations shall be screened from view from both streets and adjacent non-industrial properties as provided by Sections 39.06.006 and 39.08.005.
2. Fire Hazard: All flammable substances involved in any activity established in the district shall be handled in conformance with the latest edition of the Uniform Fire Code, as published by the International Fire Code Institute, and other appropriate federal, state, and city statutes.
3. Maximum Permitted Sound Levels Adjacent to Residential Zoning Districts: No operating in the GI district shall generate sound levels in excess of those specified in Table 6-1 at the boundary of a residential district. All noises shall be muffled so as not to be objectionable because of intermittence, beat frequency, or shrillness.
4. Sewage and Wastes: All discharges of sewage and wastes into public sewers shall comply with all applicable City ordinances. (Ord. No. 1171 § 1.)

Table 6-1 Maximum Permitted Sound Levels at Residential Boundaries

Originating Zoning District	**Time**	**Maximum One Hour Leq* (Dba)**
CC, GC, LI	7:00AM - 11:00PM	65
	11:00PM - 7:00AM	60
GI	7:00AM - 11:00PM	75
	11:00PM - 7:00AM	65

*Leq is the constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying a-weighted sound. It is the average sound level and accurately portrays the sound the human ear actually hears.

Section 39.06.008 Supplemental Use Regulations: Accessory Uses

Home-Based Business/Home Occupations

Home-based businesses and home occupations are permitted as an accessory use in residential units subject to the following conditions:

1. External Effects:
   (a) There shall be no change in the exterior appearance of the building or premises housing the home occupation other than signage permitted within this section.
   (b) No noise, odors, bright lights, electronic interference, storage or other external effects attributable to the home occupation shall be noticeable from any adjacent property or public right of way.
   (c) The home occupation shall be carried on entirely within the principal residential structure and/or within a detached accessory building approved by the City in accordance with these zoning regulations. All "External Effects" criteria in items a.1. (a), (b), (d), (e) and (f) of this subsection are applicable for the detached accessory building.
   (d) Mechanical or electrical equipment supporting the home occupation shall be limited to that which is self-contained within the structure and normally used for office, domestic or household purposes.
   (e) No outdoor storage of materials or equipment used in the home occupation shall be permitted, other than motor vehicles used by the owner to conduct the occupation. Parking or storage of heavy commercial vehicles to conduct the home occupation is prohibited.
   (f) All discharges of sewage and wastes into public sewers shall comply with all applicable City ordinances.
2. Employees: The home occupation shall employ no more than one full time or part time employee on site other than the residents of the dwelling unit, provided that one off-street parking space is made available and used by that non-resident employee.
3. Extent of Use: For all residential and agricultural zoning districts, a maximum percent floor area of 30% of the dwelling may be devoted to the home occupation, inclusive of any detached accessory buildings used for the home occupation.
4. Signage: Signage shall be permitted as set forth for each base district in Article Ten.
5. Prohibited Home-Based Businesses/Home Occupations
   (a) Beauty and Barber Shops: Barber and beauty shops are allowed only with a Special Use Permit as home occupations in the AG, R-2, and R-3 zoning districts.
   (b) Welding, vehicle body repair, or rebuilding or dismantling of vehicles are not permitted as home-based businesses.

Permitted Accessory Uses: Residential Uses

Residential uses may include the following accessory uses, activities, and structures on the same lot.

1. Private garages and parking for the residential use.
2. Recreational activities and uses by residents.
3. Home occupations, subject to Section 39.06.008 of these regulations.
4. Residential convenience services for multi-family uses or mobile home parks.
5. Garage sales, provided that the frequency of such sales at any one location shall not exceed one during a continuous, two month period or four sales during any twelve month period.
6. Caretaker's residences.

Permitted Accessory Uses: Civic Use Types

Guidance Services and Health Care use types are permitted in the GI General Industrial zoning districts only as accessory uses to a primary industrial use.

Permitted Accessory Uses: Other Use Types

Other use types may include the following accessory uses, activities and structures on the same lot:

1. Parking for the principal use.

2. Manufacturing or fabrication of products made for sale in a principal commercial use, provided such manufacturing is totally contained within the structure housing the principal use.
3. Services operated for the sole benefit of employees of the principal use.

Permitted Accessory Uses: Agricultural Use Types

1. Garden centers and roadside stands, subject to the regulations set forth in Section 39.06.002a.
2. Other uses and activities necessarily and customarily associated with the purpose and functions of agricultural uses. (Ord. No. 1171 § 1.)

Section 39.06.009 Supplemental Use Regulations: Outdoor Storage outside of the GI Zoning District

Outdoor storage is prohibited in all zoning districts except the GI General Industrial zoning district, except as provided in this section.

Agricultural Use Types

Outdoor storage is permitted only where incidental to agricultural uses.

Civic Use Types

Outdoor storage is permitted only where incidental to Maintenance Facilities.

Commercial Use Types

1. Outdoor storage is permitted where incidental to Agricultural Sales and Service; Auto Rentals and Sales; Construction Sales; Equipment Sales and Service; Stables and Kennels; and Surplus Sales.
2. Outdoor storage is permitted where incidental to Auto Services, Equipment Repair, and Body Repair, provided that such storage is completely screened at property lines by an opaque barrier, as set forth in Section 39.08.005. This provision shall apply to any Auto Services, Equipment Repair, or Body Repair use established after the effective date of this Ordinance.

Industrial and Miscellaneous Use Types

Light Industry within the DC Downtown Commercial District zoning district may not include outdoor storage.

Outdoor storage is permitted where it is incidental to Light Industry outside of the DC Downtown Commercial District; General Industry; Heavy Industry; Resource Extraction; Salvage Services; Warehousing; and Construction Yards. Any such outdoor storage is subject to screening requirements set forth in Article 39.08.

Outdoor storage is permitted where incidental to landfills. (Ord. No. 1171 § 1.)

Section 39.06.010 Accessory Dwelling Units

Within the LC, CC and GC Zones (but specifically not within LI or GI Zones), accessory dwelling units are permitted by special exception, subject to the following criteria:

1. All accessory dwelling unit permits shall be administratively reviewed and approved, if meeting all permit criteria, by the Community Development Department on a designated application provided by the Community Development Department. Said application shall depict, at a minimum, property owner name(s), site address, square foot of existing or proposed principle building and accessory dwelling unit, construction type and any additional information deemed necessary by the Community Development Director. A record of all accessory dwelling units shall be stored at the Community Development Department.
2. If the accessory dwelling unit is an apartment within the structure housing the principal building on the lot, the accessory dwelling unit must be located within the building and not detached.
3. The accessory dwelling unit shall share the same sewage disposal and water supply systems as the principal dwelling unit;

4. Upon proper construction of an accessory dwelling unit, the Building Officer shall issue a temporary certificate of use and occupancy. Such temporary certificate of use and occupancy shall be renewed every twelve (12) months until such time as the accessory dwelling unit is required to be removed. A fee, in the amount to be set by City of Dickinson, shall be paid by the landowner upon each renewal of the temporary certificate of use and occupancy on or before January 30 of each year;
5. A minimum of two (2) off-street parking space shall be provided for the accessory dwelling unit in addition to the off-street parking spaces required for the principal building;
6. The landowner shall submit documentation on how the accessory dwelling unit will be incorporated into the floor plan of the principal dwelling unit once the accessory use is abandoned, or otherwise document how the accessory dwelling unit will be removed from the building;
7. The accessory dwelling unit shall be removed or modified so that it cannot function as a separate dwelling unit within two (2) months after it is no longer occupied by a person who qualifies for the use, and the landowner shall provide a statement of intended future use to the Community Development Director or his designee that conforms with the Zoning Ordinance;
8. The accessory dwelling unit shall be occupied by a maximum of two (2) people; and
9. The accessory dwelling unit shall comply with the minimum space and habitable living area requirements of any applicable housing, building and fire codes.
10. The accessory dwelling unit shall be limited to no more than one direct access into the dwelling unit from the exterior of the building.
11. The square footage of the accessory dwelling unit shall be a minimum of 300 square feet and a maximum of 700 square feet, excluding any garage area; provided, the square footage of the accessory dwelling unit shall not exceed 40 percent of the total square footage of the principle building, excluding the garage area, as it exists or as it may be modified. (Ord. No. 1524 § 1.)

Section 39.06.011 Subdivision Plat

Any person or firm requesting a zoning classification or a zoning reclassification other than for an "AG" (Agriculture) zoning district must file and record an approved subdivision plat of the subject parcel with the Stark County Recorder's office if all or a portion thereof has not been previously platted. The subdivision plat must have final approval prior to or concurrent with the final approval of the proposed zoning change. All plats must be in conformance with Chapter 34, "Subdivision of Land." This provision does not exempt other required plats under Chapter 34. (Ord. No. 1562 § 2.)

Article 39.07 Supplemental Site Development Regulations

Sections:

39.07.001 Purpose
39.07.002 Setback Adjustments
39.07.003 Height Exceptions
39.07.004 Exceptions to Site Development Regulations for Creative Subdivision
39.07.005 Fence Regulations
39.07.006 Appeals

Section 39.07.001 Purpose

The Supplemental Site Development Regulations recognize the existence of special conditions that cannot comply literally with the site development regulations set out for each zoning district. Therefore, these regulations qualify or modify the district regulations of this title and provide for specific areas of exception. (Ord. No. 1171 § 1.)

Section 39.07.002 Setback Adjustments

Exceptions to Openness of Required Yards

Every part of a required yard shall be open and unobstructed from finished grade upward, except as specified herein.

1. Common architectural projections, including roofs which cover porches, enclosed porches, window sills, belt courses, cornices, eaves, flues and chimneys, and ornamental features may project up to six (6) feet into a required yard, excluding the front yard, in the R-2, R-3, Commercial and Industrial Districts.
2. Terraces, patios, uncovered decks, steps, and ornamental features may project ten feet into a required yard. However, all such projections must be set back at least three feet from an adjacent side lot line; or ten feet from the property line bordering an arterial or collector street.
3. Fire escapes, fireproof outside stairways, and balconies opening to fire towers may project a maximum of 3 feet into required yards, provided that they do not obstruct the light and ventilation of adjacent buildings.
4. For buildings constructed upon a front property line, a cornice, defined as an ornamental horizontal projection at the top of a building, may project into public right-of-way. Maximum projection is four feet into the right-of way width.
5. Accessory buildings are subject to all site development regulations of its zoning district, except as provided below:

   (a) Side yards: An accessory building may be located a minimum of 3 feet from the side lot line of the property.

   (b) Front Yards: No accessory building may be located between the front building line of the principal building and the front property line, except for residential buildings equal to or greater than three units per building in in the R03 zoning district.

   (c) Rear Yard: The minimum rear yard setback for accessory buildings shall be 3 feet. This minimum rear yard setback shall be increased to 20 feet if the accessory building requires perpendicular vehicular access from an alley. Double-frontage lots shall require front-yard setbacks along both street frontages as set forth in Table 4-3. Easements may be incorporated into these required setbacks. No accessory building shall be located within any easement or right-of-way along the rear property line.

(d) Street Yards: No accessory building shall be located within 15 feet from any street right-of-way line. If the accessory building requires vehicular access, it shall be located a minimum of 20 feet from any street right-of-way line.
(e) Maximum Size: All buildings on a site, taken together, must comply with the building coverage requirements for the zoning district.
(f) Attached Accessory Buildings: Any accessory building physically attached to the principal building shall be considered part of the principal building and subject to the development regulations of its zoning district.
(g) No accessory building shall be built or placed upon any lot until construction of the principal building has begun.
(h) Perpendicular multi-family garages and garages from other structures shall be required to be separated by a minimum of thirty (30) feet. (Ord. No. 1565 § 1)

6. Lamp posts with a maximum height of ten (10) feet, and flag poles up to maximum height of base district may be located within required yards, provided they are set back at least five (5) feet from property lines.

Setback Adjustments

1. Corner Lots

Required setbacks shall not reduce the buildable width of any corner lot to less than 24 feet. Appropriate setback adjustments shall be allowed to maintain this minimum width.

Antennas

1. Antennas with a surface area over 6.3 square feet and which are accessory to a primary use and are designed to receive and transmit electromagnetic signals, or to receive signals from satellites, shall not be located within any front yard of the primary use.
2. Such antennas shall be located no less than fifteen feet from the property line of an adjacent property within a residential zoning district.

Vision Clearance Zones

No structure, including a fence, shall be built to a height of more than 32 inches above the established curb grade on the part of the lot bounded by the inside lines of the sidewalk parallel to the lines of the streets or alleys which intersect, or driveways backing onto a public street, and a line connecting a point on each of such lines thirty feet from their point of intersection. No such structure may be built upon street rights-of-way. No landscaping shall be planted in such area which will materially obstruct the view of drivers approaching the street intersection (Ord. No. 1171 § 1, Ord. No. 1423 § 2)

Section 39.07.003 Height Exceptions

These provisions allow exceptions to the height limit of any zoning district in certain situations.

Vertical Projections

Chimney' s cooling towers, building mechanical equipment, elevator bulkheads, fire towers, grain elevators, non-parabolic receiving antennas, tanks, solariums, steeples, penthouses not exceeding 25 percent of total roof area, flag poles, stage towers or scenery lofts, and water towers may be built to any height in accordance with existing ordinances.

Amateur Radio Towers and Federal Communication Commission Pronouncements

1. Radio towers, antennas and other appurtenances operated by licensed amateur radio operators, where permitted and when, may not exceed 75 feet in height. This height has been determined by the City to reasonably accommodate amateur service communications, and further represents the minimum practicable regulation to accomplish legitimate municipal land use regulation purpose, as recognized under published guidelines of the Federal Communications Commission.
2. Special instances may require that amateur radio tower heights exceed 75 feet to achieve effective and reliable communications. In such cases, the City Commission may grant a Special Use Permit to a licensed amateur radio operator for a specified tower height that exceeds 75 feet.

In determining whether to grant such permission, the City Commission shall consider the federal guidelines contained in PRB-1 (Amateur Radio Preemption), 101 FCC 2d (1985); codified at C.F.R. Section 97.15 (e).

3. Such radio towers shall not be located within any front yard of the primary use.

Broadcast Towers

Broadcast towers, when operated by a federally-licensed commercial or non-profit organization, may be built to any height in accordance with existing and future ordinances. This exception does not apply to radio towers, antennas and other appurtenances operated by licensed amateur radio operators.

Civic Buildings

Buildings housing civic use may exceed height limits for the zoning district. Such buildings located in residential districts shall be set back one foot in addition to required setbacks from each property line for each foot of height over the maximum height of the zoning district.

Wind Energy Conservation Systems (WECS)

1. The distance from all lot lines or any building or power line to any tower support base of a WECS shall be equal to the sum of the tower height and the diameter of the rotor. A reduction of this requirement may be granted as part of a Special Permit approval if the Planning Commission finds that the reduction is consistent with public health, safety, and welfare.
2. The distance between the tower support bases of any two WECS shall be the minimum of five rotor lengths, determined by the size of the largest rotor. A reduction of this requirement may be granted as part of a Special Permit approval if the Planning Commission finds that the reduction does not impede the operation of either WECS.
3. The WECS operation shall not interfere with radio, television, computer, or other electronic operations on adjacent properties.
4. A fence six feet high with a locking gate shall be placed around any WECS tower base; or the tower climbing apparatus shall begin no lower than twelve feet above ground.
5. The WECS is exempt from the height restrictions of the base district.

Special Permit Uses

The City Commission with the recommendation of the Planning Commission may grant an exception from the height limit for a zoning district for a special permit use, as part of its approval of that use. The limit or extent of this exception shall be a specific part of the special use permit.

Federal Aviation Administration Rules

No structure may be built in any zoning district which exceeds the maximum height permitted under the rules of the Federal Aviation Administration. These rules describe the glide angles and operational patterns for any airport within the planning jurisdiction of the City of Dickinson. (Ord. No. 1171 § 1, Ord. No. 1490 § 1.)

Section 39.07.004 Exceptions to Site Development Regulations for Creative Subdivision

Purpose

In the instance that the Subdivision Chapter of the Land Development Ordinance provides for creative subdivision, the City may authorize such subdivisions to allow for greater flexibility in the design and development of subdivisions, in order to produce innovative residential environments, to provide for more efficient use of land, to protect topographic and to encourage the preservation of common area and open space. These special regulations and design exceptions apply only to creative subdivisions.

Site Area Per Unit

1. Unless otherwise provided, the site area per unit for a creative subdivision as a whole shall be that of the zoning district in which such subdivision is located. For the purpose of computing site area per unit, the area of public streets and private ways within the subdivision must be excluded. Residential use types may be combined within the creative subdivision provided that the subdivision as a whole complies with the required maximum density of the zoning district.

Perimeter Yards

1. Structures must maintain normal street yard setbacks from any public streets that form the perimeter of the development.
2. Structures must maintain a 20 foot minimum sideyard setback from any property line that forms the boundary of the development.

Area and Yards for Individual Lots

1. Individual lots within a creative subdivision are exempt from minimum lot area or yard setback requirements set forth elsewhere in this Ordinance, unless provided for by the regulations for a specific zoning district. A creative subdivision must be planned and developed as a common development. A minimum separation of twelve (12) feet shall be established for all residential structures not attached to another, unless the City Commission grants a specified exception for developments proposing unique circumstances, only in as much as said development can be demonstrated to avoid detriment to Dickinson' s efforts to protect public health, safety, welfare, community character, property values and aesthetics.
2. Any private garage oriented to or facing a public street or private way internal to the creative subdivision must be set back a minimum of 25 feet from the property line.

Coverage and Landscaping Requirements

Individual lots in a creative subdivision are exempt from maximum building and impervious coverage limitations and street yard landscaping requirements established for the zoning district. However, the subdivision as a whole, including streets, walks, and access ways, must comply with the building and impervious coverage regulations for its zoning district. (Ord. No. 1171 § 1.)

Section 39.07.005 Fence Regulations

Location Restriction

Unless otherwise provided by this title or other sections of the Dickinson Municipal Code, no fence shall be built on any lot or tract outside the surveyed lot lines, or tract outside the surveyed lot lines.

Sight Obstruction

No solid fence permitted or required by this title or other sections of the Dickinson Municipal Code shall be built in any manner which creates a traffic hazard or obstructs visibility. Vision clearance zones set forth by Section 39.07.002(d) shall be maintained.

Residential Fences

Fences constructed within residential districts or on land used for residential purposes are subject to the following provisions.

1. Height: The maximum height of a fence within a required front yard or street side yard setback shall be four feet. The maximum height for any fence outside of a required front yard shall be 6.5 feet.
2. Materials: Fences shall be constructed of wood, chain-link, PVC / resin, stone or masonry materials only. Barbed wire and / or electrified fences are not permitted, and are defined as any fence that includes in its material barbs, razors, electric current or other features specifically designed to injure or abrade an individual or animal who attempts to negotiate the fence.

Other Fences

Fences constructed in commercial and industrial districts are subject to the following special provisions.

1. The maximum height of a fence for any permitted use in any non-residential zoning district shall be 6.5 feet.
2. Civic Uses in Residential Districts: The maximum height of fences installed as part of Primary and Secondary Educational Facilities or Park and Recreation Use Types within Residential Zoning Districts shall be eight feet.

3. The Board of Adjustment may approve greater fence heights on a case-by-case basis if it concludes that such permission furthers the health, safety, and welfare of the residents of the City of Dickinson.
4. Barbed wire may be used in the construction of perimeter security fencing in an industrial district or for municipal facilities provided that the bottom strand of the wire shall be at least six feet above ground level. Barbed wire may be constructed for agricultural purposes in an AG District. Electrified fences are permitted only within the AG zoning district.

Existing Fences

Any existing fence lawfully built before the effective date of this Ordinance may remain in place without change. Any replacement or change of such fence shall meet the requirements of this section. (Ord. No. 1171 § 1.)

Section 39.07.006 Appeals

Denial, revocations, or cancellations of a building permit based on the provisions of this Section may be appealed to the Board of Adjustment, as set forth in Sections 39.12.010 through 39.12.012. (Ord. No. 1171 § 1.)

Article 39.08 Landscaping and Screening Standards

Sections:

39.08.001 Purpose
39.08.002 Applicability
39.08.003 Landscaping Requirements
39.08.004 Landscaping Materials and Installation Standards
39.08.005 Bufferyard Provisions
39.08.006 Screening Standards
39.08.007 Tree Plantings
39.08.008 General Provisions

Section 39.08.001 Purpose

The Landscaping and Screening Regulations provide additional guidance on the development of sites within Dickinson by addressing landscaping and screening requirements. They are designed to improve the appearance of the community; buffer potentially incompatible land use from one another; and conserve the value of properties within the City of Dickinson. (Ord. No. 1171 § 1.)

Section 39.08.002 Applicability

The provisions of this section shall apply to all new development on each lot or site upon application for a building permit, except for the following:

a. Reconstruction or replacement of a lawfully existing use or structure following a casualty loss.
b. Remodeling, rehabilitation, or improvements to existing uses or structures which do not substantially change the location of structures, parking, or other site improvements.
c. Additions or enlargements of existing uses or structures which increase floor area to impervious coverage area by less than 20 percent. Where such additions or enlargements are 20 percent or greater, these provisions shall apply only to that portion where the new development occurs. (Ord. No. 1171 § 1.)

Section 39.08.003 Landscaping Requirements

Landscaping shall be required adjacent to each street property line and within street yards as set forth in Table 8-1. (Ord. No. 1171 § 1.)

Section 39.08.004 Landscaping Materials and Installation Standards

Official List of Plant Materials

All plant material installed in landscaped areas or bufferyards shall be consistent with the Official List of Plant Materials provided through the office of the Zoning Administrator. All plant material shall conform in size, species and spacing with this section of the ordinance.

Use of Inorganic Landscaping Materials

Artificial trees, shrubs, plants or turf shall not be used to fulfill the minimum requirements for landscaping. Inorganic materials, such as tone or decorative pavers, may be counted toward fulfilling these minimum requirements provided that such material does not comprise more than 35% of the required landscaped area. Other concrete and/or asphalt pavement surfaces may not be used within the minimum required landscaped area, except for walkways less than 5 feet in width. (Ord. No. 1171 § 1.)

Table 8-1: Required Landscape Depth

Zoning District	Depth of Landscaping Adjacent to Street Property Line
AG	35 Feet
RR	35 Feet
R-1	15 Feet
R-2, R-3	15 Feet
MH	35 Feet
LC	15 Feet
CC	10 Feet
DC	No Requirement
GC	10 Feet
LI	15 Feet
GI	No Requirement

Section 39.08.005 Bufferyard Provisions

These provisions apply when use is established in a more intensive zoning district (District A) which is adjacent to a less intensive zoning district (District B). The owner, developer, or operator of the use within District A shall install and maintain a landscaped bufferyard on his/her lot or site, as set forth in this section. Bufferyard requirements apply only to those districts indicated in Table 8-2. Bufferyards are not required of single-family, 2-family, duplex, or townhouse use types in the more intensive zoning district.

a. The bufferyard dimensions set forth in Table 8-2 apply to zoning districts which share a common lot line. The dimensions may be reduced by ten feet if the uses are adjacent but separated by an intervening alley.

Table 8-2 Bufferyard Requirements (Feet)

		DISTRICT B		(Less Intensive Adjacent District)	
		RR (Note 1)	R-1* (Note 1)	R-2 (Note 1)	R-3, MH (Note 1)
DISTRICT A More Intensive District (Note 2, 3)	R-3	20	20	10	---
	LC	10	10	20	---
	CC	20	20	20	10
	DC	---	---	---	---
	GC	30	30	30	30
	LI	30	30	30	30
	GI	50	50	50	50

Notes to Table 8-2:

Note 1: Applies to residential uses previously established in the zoning district.

Note 2: Vertical screening only is required as set forth in Section 39.08.006.

Note 3: Buffer requirements do not apply to single-family, duplex, or townhouse residential uses established in District A.

b. When a street separates adjacent zoning districts requiring a bufferyard, the size of the bufferyard shall be one-half the required bufferyard set forth in Table 8-2.

c. Each required bufferyard must be landscaped and free of paved areas, access ways, storage, or other disturbances. (Ord. No. 1171 § 1.)

Section 39.08.006 Screening Standards

Application

Screening is required between adjacent zoning districts indicated in Table 8-2 when one or more of the following conditions in the more intensive zoning district is directly visible from and faces toward the boundary of the less intensive zoning district.

1. The rear elevation of buildings.
2. Outdoor storage areas or storage tanks, unless otherwise screened.
3. Loading docks, refuse collection points, and other service areas.
4. Major machinery or areas housing a manufacturing process.
5. Major on-site traffic circulation areas or truck and/or trailer parking.
6. Sources of glare, noise, or other environmental effects.

Opaque Barrier

A six foot opaque barrier shall be provided which visually screens the conditions listed in Section 39.08.06 (a) from less intensive uses as follows:

1. A solid wood and/or masonry fence or wall at least six feet in height.
2. A landscaping screen, using evergreen or deciduous materials, capable of providing a substantially opaque, hedge-like barrier and attaining a minimum height of six feet within three years of planting.
3. A landscaped earth berm with a maximum slope of three to one, rising no less than six feet above the existing grade of the lot line separating the zoning districts.
4. Any combination of these methods that achieves a cumulative height of six feet.

Location of Screening Wall

1. A screening wall or fence shall be installed no closer to the less intensive zoning district than one-half the width of the required bufferyard. Fence regulations are set forth in Section 39.07.005.

Screening: Effect on Drainage

Screening shall not adversely affect surface water or snow drainage. (Ord. No. 1171 § 1.)

Section 39.08.007 Tree Plantings

In any landscaped area required by the Minimum Depth Requirements or the Bufferyard Requirements, one tree of an approved species with a minimum caliper size of two inches shall be planted and maintained for each 500 square feet of required landscaped area. Existing trees approved for preservation shall be counted toward satisfaction of this requirement. (Ord. No. 1171 § 1.)

Section 39.08.008 General Provisions

Time of Application

The provisions contained in this Article shall be applied for each individual lot or site when an application for a building permit on such lot is made.

Maintenance of Required Landscaping

Upon installation of required landscape materials, each owner shall take appropriate actions to ensure their continued health and maintenance. Required landscaping that does not remain healthy shall be replaced consistent with this Article.

Obstruction of View

Landscaping or screening installed in any landscaped area shall not obstruct the view from or to any driveway approach, street, alley, or sidewalk.

Earth Berm Locations

All earth berm locations shall be reviewed by the Public Works Director, or his/her designee to determine how the berms shall relate to drainage, snow, and public utilities.

Exceptions

A development may continue with the bufferyard and screening requirements in effect at the time of issuance of its original permit, regardless of whether an adjacent lot or site is subsequently rezoned to a less intensive district which would otherwise required compliance with bufferyard or screening provisions. (Ord. No. 1171, § 1.)

Article 39.09 Off-Street Parking

Sections:

39.09.001 Purpose
39.09.002 General Applications
39.09.003 Schedule of Off-Street Parking Requirements
39.09.004 Parking Facility Location
39.09.005 Parking for People with Disabilities
39.09.006 Off-Street Parking Design Standards
39.09.007 Off-Street Loading
39.09.008 Parking for Personal and Recreational Vehicles
39.09.009 Supplementary Regulations: Storage and Parking of Unlicensed or Other Vehicles

Section 39.09.001 Purpose

The Off-Street Parking Regulations require that developments provide parking in proportion to the need created by each use. The regulations further establish standards for the functional design of parking facilities. These regulations are intended to accommodate vehicles in a functionally satisfactory manner and to minimize external effects on neighboring properties. (Ord. No. 1171, § 1.)

Section 39.09.002 General Applications

Applicability

Paved off-street parking shall be provided for any new building constructed; for new uses or conversions of existing buildings; or for enlargements of existing structures greater than fifty percent (50%) of the existing building footprint; or for an increase in the required parking stalls greater than fifty percent (50%) for the new use or building expansion. This provision shall include a cumulative fifty percent (50%) increase in total building footprint or required parking stalls from and after January 1, 2012.

Exemptions

Any use within the DC Downtown Commercial District is exempt from the off-street parking, payment in lieu of parking, or loading requirements provided by Section 39.09.003. Any off-street parking facility constructed in the DC District after the effective date of this Ordinance must comply with the design standards set forth in this Article. (Ord. No. 1171 § 1; 1442 § 1.)

Section 39.09.003 Schedule of Off-Street Parking Requirements

Parking facilities for each use shall be provided in accord with the minimum requirements set forth in Table 9-1.

Computation

1. When a computation of required parking results in a fraction of 0.5 or greater, the requirement should be rounded up to the next whole number.

2. Unless otherwise indicated, parking requirements are based on gross floor area. Gross floor areas for the purpose of this calculation exclude any interior space used for the parking or loading of vehicles.
3. When parking requirements are computed on the basis of capacity, capacity shall be determined by the building code in effect for the City of Dickinson at the time the use is established.

Multiple Use Sites and Adjustments

1. For sites with more than one use, the parking requirement shall be the sum of spaces required for each use, except as provided below.
2. The Board of Adjustment may authorize an adjustment in the total requirement for separate uses located on the same site or for separate uses located on adjoining sites and served by the same parking facility. The Board shall consider at least the following criteria in determining approval of such an adjustment:
   (a) The characteristics and time of operation of each use, and differences in projected peak parking demand.
   (b) Potential reduction in total expected vehicle movements afforded by multiple uses of the parking facilities.
   (c) Functional design of the development and its parking facilities.
   (d) Evidence of a written agreement that provides for the joint use of parking facilities. (Ord. No. 1171 § 1.)

Section 39.09.004 Parking Facility Location

Residential Parking

1. Off-street parking for residential uses shall be located on the same lot or site as the use. This provision does not include driveways for single-family or duplex residential uses.
2. Off-street parking areas for any multi-family residential uses shall be at least six feet from any main building; and shall not be located outside of a surfaced driveway within a required front yard or street side yard.

Non-residential Parking

Off-street parking for non-residential uses shall be located on the same lot or site as the use, or within 300 feet of that use if the parking site is within a zoning district that permits the Off-Street Parking use type. Control of ownership or use rights to the remote off-street parking must be demonstrated as a condition of permission. (Ord. No. 1171 § 1.)

Table 9-1 Minimum Off-Street Parking Requirements

Agriculture Use Types	
Horticulture	1 space per 1,000 square feet of sales area.
Crop Production	No requirement
Animal Production	No requirement
Commercial Feedlots	No requirement
Residential Use Types	
Single-Family Residential	2 spaces per dwelling unit
Duplex Residential	2 spaces per dwelling unit
Two-Family Residential	2 spaces per dwelling unit
Multi-Family Residential	1.5 spaces per efficiency or 1-BR unit; 2 spaces per other units; 1 space per 2 units for elderly housing.
Group Residential	1 space for each two residents

Mobile Home Residential	2 spaces per dwelling unit
Retirement Residential	1 space per independent living unit; 1 space for each 3 units of assisted living
Civic Use Types	
Administration	1 space for 300 square feet of gross floor area
Cemetery	No requirement
Clubs	1 space per 4 person capacity in largest assembly space
Colleges and Universities	1 space for every 4 students based on average enrollment during previous 5 years
Convalescent Services	1 space for 4 beds
Cultural Services	1 space per 500 square feet of public area
Day Care Services	1 space per 5 person capacity + 1 space per employee of largest shift
Group Care Facility	1 space per 4 person capacity + 1 space per employee of largest shift
Group Home	1 space per 4 person capacity + 1 space per employee of largest shift
Guidance Services	1 space per 300 square feet
Health Care	1 space per 300 square feet + 1 space per employee of largest shift
Hospitals	1 space per 2 beds
Maintenance Facilities	See Schedule A
Parks and Recreation	No requirement
Postal Facilities	See Schedule A
Primary Education	1 space per employee of max shift
Public or Religious Assembly	1 space per 4 person capacity in largest assembly space
Secondary Education	1 space per employee of max shift + 1 space for each 3 11th and 12th grade
Safety Services	1 space per employee of maximum shift + 1 stall per 1,000 sq. ft.
Utilities	1 space per employee of maximum shift
Commercial Use Types	
Agricultural Sales/Service	See Schedule A
Auto Rental and Sales	See Schedule A
Auto Service*	4 times service capacity
Body Repair*	5 spaces per repair stall
Business Support Services	1 space per 500 square feet
Campground	1 space per camping unit
Cocktail Lounge	1 space per 200 square feet
Commercial Recreation	1 space per 2 person capacity**
Communication Services	1 space per 500 square feet
Construction Sales	See Schedule A
Consumer Services	1 space per 200 square feet
Convenience Storage	1 space per 20 storage units
Equipment Sales/Service	See Schedule A
Food Sales (All Types)	1 space per 200 square feet
Retail Services	1 space per 200 square feet
Liquor Sales	1 space per 200 square feet
Lodging, Bed and Breakfast	1 space per unit + 1 space for each 200 square feet of public meeting area

Personal Improvement	1 space per 200 square feet
Personal Services	1 space per 500 square feet
Pet Services	1 space per 500 square feet
Restaurants (Drive-in)	1 space per 50 square feet of customer service area
Restaurants (General)	1 space per 3 person capacity in dining area
Stables/Kennels	1 space per employee + 1 stall per 5,000 sq. ft. of site area
Surplus Sales	See Schedule A
Veterinary Services	1 space per 500 square feet
Office Use Types	
General Offices	1 space per 300 square feet
Medical Offices	3 spaces per staff doctor or dentist
Miscellaneous Use Types	
Broadcasting Tower	No requirement
Non-Putrescible Landfill	No requirement
All Landfills	No requirement
Industrial Use Types	
Agricultural Industries	See Schedule A
Light Industry	See Schedule A
General Industry	See Schedule A
Heavy Industry	See Schedule A
Railroad Facilities	See Schedule A
Resource Extraction	1 space per employee on largest shift
Salvage Services	See Schedule A
Warehousing	See Schedule A
Construction Yards	See Schedule A

* Auto Service and Body Repair subject to other restrictions applicable under this ordinance:
Section 39.04: Use Types - "Vehicle Storage"; also,
Section 39.06: Supplemental Use Regulations, "Outdoor Storage."

** This standard may be reduced by up to 20% at the discretion of the Building Official, if site plan review demonstrates that circulation and loading patterns accommodate adequate space for queuing and temporary parking by users during the peak hours of operation.

Schedule A

This schedule sets forth minimum off-street parking requirements for uses with elements that have different functions and operating characteristics

Function of Element	Requirement
Office or Administration	1 space per 300 square feet
Indoor Sales, Display or Service Area	1 space per 500 square feet
Outdoor Sales, Display or Service Area	1 space per 2,000 square feet
Equipment Servicing or Manufacturing	1 space per 1,000 square feet
Indoor or Outdoor Storage or Warehousing	1 space per 5,000 square feet

Section 39.09.005 Parking for People with Disabilities

Each off-street parking facility shall provide the number of parking spaces set forth in ANSI A-117 Standards designed and designated for use by people with disabilities. Design criteria and dimensions are set forth in the Off-Street Parking Design Standards and the requirements of the Americans with Disabilities Act. Parking facilities for single-family, duplex, two-family, and mobile home residential uses are exempt from this requirement.

Van Accessible Stalls: One in every accessible spaces, but not less than one stall on each premises, shall be served by an access aisle with a minimum width of 96 inches and shall be designated as " Van Accessible: (Ord. No. 1171 § 1.)

Section 39.09.006 Off-Street Parking Design Standards

Dimensions

Standard parking stalls shall be a minimum of nine feet wide and eighteen feet long.

Pavement and Drainage

1. Off-street parking facilities shall be hard surfaced and maintained with materials sufficient to prevent mud, dust, or loose material.
2. Off-street parking facilities shall be designed and built to prevent the free flow of water onto adjacent properties

Landscape and Screening Requirements

Unless otherwise noted, each unenclosed parking facility of over 3,000 square feet shall comply with the following regulations:

1. Each unenclosed parking facility shall provide a minimum landscaped buffer of ten feet along any street property line.
2. Each parking facility that abuts a residential district shall provide a ten foot landscaped buffer along its common property line with the residential district.
3. Any parking facility which abuts property in a residential district shall provide a fence, wall, landscape screen, or earth berm not less than four feet in height for the length of the common boundary. A grade change, terrace, or other site feature which blocks the sight line of headlights into a residential property may satisfy this requirement, subject to the determination of the Building Official.
4. Each unenclosed parking facility of over 4,500 square feet within a street yard shall provide interior landscaped area equal to no less than 5 percent of the total paved area of the parking facility. Parking facilities within the GI District shall be exempt from this requirement.
5. Interior landscaping shall be credited toward the satisfaction of overall landscaping requirements set forth in Article 39.08

Entrances and Exits

1. Adequate access to each parking facility shall be provided by means of clearly defined and limited driveways or access points. Such driveways shall be designed to direct non-residential traffic away from residential areas.
2. In the downtown commercial district entrances from arterial to off street parking, facilities shall be located at least 60 feet from the intersections of the curb lines of the intersecting streets.
3. In all other districts, the entrances from arterial or collector streets to off off street parking facilities shall be located at least 60 feet from the intersections of the curb lines of the intersecting streets.

Safety Features

1. Parking facilities shall be designed to provide visibility of and between pedestrians and vehicles when circulating within or entering or leaving the facility; and shall not create blind, hidden, or hazardous areas.
2. Circulation patterns shall be designed in accord with accepted standards of traffic engineering and safety.

Lighting

Any lighting used to illuminate any off-street parking area shall be arranged to direct light away from adjoining properties in any residential district.

Maintenance

All parking facilities shall be maintained to assure the continued usefulness and compatibility of the facility. Acceptable maintenance includes keeping the facility free of refuse, debris, and litter; maintaining parking surfaces in sound condition; and providing proper care of landscaped areas.

Adjustment

For uses subject to Special Use Permit approval, the City Commission may adjust the minimum requirements of this section, in order to provide design, usability, attractiveness, or protection to adjoining uses in a manner equal to or greater than the minimum requirements of this Article. (Ord. No. 1171 § 1.)

Section 39.09.007 Off-Street Loading

Loading Requirement

Any use which involves the receipt or distribution of freight, merchandise, supplies, vehicles, or equipment as part of its typical operation shall provide and maintain adequate space for off-street loading and circulation. Loading areas shall be designed to avoid undue interference with the public use of streets and sidewalks.

Schedule of Loading Spaces

Loading spaces for each use requiring them shall be provided in accord with the minimum requirements set forth in Table 9-3.

Table 9-3 Off-Street Loading Requirements

Gross Floor Area of Use (square feet)	Number of Required Loading Spaces
5,000 or less	None
5,001 - 25,000	1
25,001 - 75,000	2
75,001 – 150,000	3
Over 150,000	4 plus one for each additional 100,000 SF

Design Standards

1. Each loading space shall be at least 10 feet wide by 50 feet long, with a vertical clearance of at least 14 feet.
2. Paving of loading spaces and access areas shall be permanent, durable, and free of dust.
3. Off-street loading areas are subject to the landscaping and buffering requirements for parking facilities set forth in this Article. (Ord. No. 1171 § 1.)

Section 39.09.008 Parking for Personal and Recreational Vehicles

Applicability

This section permits the parking of personal vehicles on a single lot in a residential district subject to specific conditions. Personal vehicles include: passenger cars; vans; pick-up trucks; camper shells, toppers, and other similar appurtenances intended for attachment to a personal vehicle; trailers under twenty feet in length, and boats. Trucks, tractor cab units, trailers, recreational vehicles, and vehicles over ten tons gross empty weight shall be defined as heavy commercial vehicles.

Location of Parking

1. Parking is permitted within any enclosed structure when such structure conforms to the regulations of its zoning district.
2. Parking of personal vehicles is permitted on a paved driveway (outside of an enclosed structure) within the front yard setback, but shall in no case encroach upon the public right-of-way.
3. Parking of personal vehicles within an interior side yard must be located on a hard surface.
4. Parking of personal vehicles may occur in the rear yard setback provided that such parking conforms to the provisions of the Zoning Ordinance and meets the following conditions:

(a) The parking space is provided on a paved, graveled, scoria, or rock surface.

5. Heavy commercial vehicles, including tractor cab units weighing more than 10 tons gross empty weight, and recreational vehicles shall not be parked on any lot within the R1, R2, R3, and MH residential zoning districts, except as provided below.

Special Provisions for Recreational Vehicles and Boats

Where permitted, parking and storage of recreational vehicles and boats is subject to the following additional conditions:

1. Recreational vehicles and boats must be maintained in a clean, well-kept state.
2. Recreational vehicles and boats may not be permanently connected to utility lines.
3. Recreational vehicles and boats may not be used for the storage of goods, materials, or equipment other than those items which pertain to the use of the vehicle. (Ord. No. 1171 § 1.)

Section 39.09.009 Supplementary Regulations: Storage and Parking of Unlicensed or Other Vehicles

The storage or keeping of motor vehicles not having a properly issued current motor vehicle registration and current motor vehicle license plate properly displayed, or in good operable condition, is prohibited on any lot, parcel or tract of land or part thereof, situated within the zoning jurisdiction of the City of Dickinson; provided that conformance with the following shall not constitute a violation of this section:

1. The storage of no more than two unlicensed and/or unregistered motor vehicle in a fully-enclosed garage or in a fenced or screened area hidden from view of a public street or adjacent residential property.
2. The storage of operable off-highway farm or industrial vehicles on tracts zoned AG Agriculture or LI or GI industrial uses, and used in agricultural or industrial activity conducted on the premises.
3. The storage of not more than one personal vehicle in good operable condition and shielded from view of the general public.
4. The storage, keeping or abandonment of parts, including scrap metals, from motor vehicles or machinery, or parts thereof, is prohibited on any lot, parcel or tract of land or part thereof, situated within the zoning jurisdiction of the City of Dickinson, except in enclosed buildings or garages, within a permissive zoning district, or where otherwise permitted by this ordinance.
5. Parking, storage or keeping, other than in a fully enclosed garage of any non-operable motor vehicle is prohibited on any residential zoned lot, parcel or tract of land or part thereof, situated within the zoning jurisdiction of the City of Dickinson; provided, however, that automobiles that are non-operable by reasons of repair work being done thereon may be parked on the residential lot of the owner of said automobile within the Dickinson Zoning jurisdiction under the following conditions:
   (a) The automobile is owned by the occupier of the premises and registered to him/her at that address.
   (b) The period of said repair work does not exceed ten days in duration.
   (c) Repair work is at all times conducted on a paved driveway.
   (d) No more than one automobile in need of repair is situated on the premises at the same time.

Removal of Vehicles

Before the City removes a vehicle suspected of being in violation of this section, by reason of it being inoperable, the City shall give the owner of the premises upon which the offending vehicle is situated a seventy-two hour warning notice. Notice shall be given by tagging the motor vehicle and by regular mail, postage pre-paid to the occupier of the premises on which the motor vehicle is situated. Any motor vehicle not removed

from the premises within such seventy-two hour period shall be presumed to be inoperable and may thereafter be removed by the City. If he/she chooses, the owner may demonstrate operability of the vehicle by making special arrangements with the Dickinson Police Department to demonstrate operability of the vehicle within said seventy-two hour period. If operability of the vehicle is satisfactorily demonstrated, the automobile need not be removed. (Ord. No. 1171 § 1.)

Article 39.10 Sign Regulations

Sections:

39.10.10 Purpose
39.10.20 Definition of Terms
39.10.30 General Sign and Street Graphics Regulations
39.10.40 Basic Design Elements for On-Premises Signs
39.10.50 Basic Design Elements for Off-Premises Signs
39.10.60 Other Design Elements
39.10.70 General Permit Procedures
39.10.80 Action and Appeal
39.10.90 Permit Expiration
39.10.100 Assignment of Sign Permits
39.10.110 Non-Conforming Signs
39.10.120 Administration
39.10.130 Severability

Section 39.10.10 Purpose

This Article 39.10 provides standards for communicating information in the environment of the City of Dickinson and its zoning jurisdiction. The regulations recognize the need to protect public health, safety, and welfare; to maintain the City's attractive appearance; to provide for adequate business identification, advertising, and communication of information; and to encourage the fair enforcement of sign regulations.

Section 39.10.20 Definition of Terms

The following definitions shall be used for terms contained in this Article 39.10 that are not otherwise defined in the Dickinson City Code.

Abandoned Sign: A sign which, for a period of at least 180 consecutive calendar days no longer advertises or identifies a legal business establishment, product or activity.

Aggregate sign area: The total available sign area of all sides or portions of a sign.

Animated sign: A sign which has any visible moving part, flashing or osculating lights, visible mechanical movement of any description, or other apparent visible movement achieved by any means that moves, changes, flashes, osculates or visibly alters in appearance.

Attached Sign: A sign which is structurally connected to a building or depends upon that building for support.

Awning: A temporary or movable shelter supported entirely from the exterior wall of a building and composed of non-rigid materials, except for supporting framework.

Awning Sign: A message printed on an awning.

Banner Sign: Material with a printed message or graphic secured or mounted from a structure in such a way as to allow wind movement.

Billboard Sign: An off-premises sign that is principally designed to direct attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located. A Billboard Sign is an off-premises sign.

Building frontage: The linear length of a building facing a public street right-of-way, exclusive of alleys, or the linear length of the street right-of-way, whichever is smaller.

Building Marker: A historic or commemorative plaque, or a building name or cornerstone carved into a masonry surface.

Building Sign: A sign displayed upon or attached to any part of the exterior of a building. Roof signs and wall signs are considered building signs.

Canopy Sign: A roof-like cover, attached or unattached, extending from the exterior wall of a building and composed of supporting framework of rigid materials upon which a sign is indelibly drawn, painted or printed.

Clearance: The distance from the bottom of a sign elevated above grade and the grade below.

Detached Sign: A sign, other than a billboard sign or digital billboard sign, which is self-supporting and structurally independent from any building.

Directional Sign: A sign located at the exit or entrance of a premises that has two or more driveways.

Digital Billboard Sign: A billboard sign that is designed to convey its message, information, and advertising copy by LED or other digital means. A digital billboard sign is an off-premises sign.

Double-Faced Sign: A sign consisting of no more than two parallel faces or V-pattern faces supported by a single structure.

Electronic Message Sign: A sign emitting an illuminated message, image or design created electronically by any light source, LED (light emitting diodes), bare electric bulbs, luminous tubes, fiber optics, or any other combination of light sources creating a message. This definition shall include time, temperature and date signs. An electronic message sign which has copy which moves or appears to be moving, flashing, changing color, pulsing or alternating shall be considered an animated sign.

Flag: Any fabric, banner or bunting containing distinct colors, patterns or symbols, which is used or may be used as a symbol of a government, political subdivision, corporation, business, or other entity. A flag may also be used to express symbolic speech or for decorative purposes. For the purpose of these regulations, the message expressed by a flag shall not be relevant to the display of the flag.

Ground Sign: A sign, other than a billboard sign or digital billboard sign, that is supported by one or more columns, upright poles, or braces extended from the ground or from an object on the ground, or that is erected on the ground, where no part of the sign is attached to any part of a building with a building clearance less than three feet and vertical clearance of less than three (3) feet. Monument signs are considered ground signs.

Illuminated sign: An illuminated sign is one which either:

Provides artificial light through exposed bulbs, lamps or luminous tubes on the sign surface;

Emits light through transparent or translucent material from a source within the sign; or

Reflects light from a source intentionally directed upon it.

Illumination: Lighting sources installed for the primary purpose of lighting a specific sign or group of signs.

Marquee: A permanent roof-like shelter extending from part or all of the building face usually over a public right-of-way.

Monument Sign: Any sign, other than a pole or pylon sign, which is placed upon or supported by structures or

Moving Sign: A sign which conveys its message through rotating, changing, or animated elements.

Nonconforming Sign: A sign that was legally erected prior to the adoption of this Article 39.10, but which does not conform to the provisions thereof.

Off-Premises Sign: Any sign that identifies or directs attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located.

On-Premises Sign: Any sign that (1) principally displays a non-commercial message; or (2) identifies or directs attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location on the premises where the sign is located.

Permanent Sign: A sign which is affixed to a building or the ground in compliance with the requirements of the City of Dickinson Building Code and any other applicable Federal, State or local laws and in such a manner as to be immobile without the use of extraordinary means, such as disassembly.

Pole Sign: An on-premises sign built on a freestanding frame, mast or pole(s) with a clearance greater than three (3) feet.

Portable Sign: Any sign supported by frames or posts rigidly attached to bases not permanently attached to the ground or a building and capable of being moved from place to place.

Premises: A tract of one or more lots or sites which are contiguous and under common ownership or control.

Projecting Signs: A sign other than a wall sign that is attached to and projects from a building face.

Pylon sign: Any sign, other than a billboard sign or digital billboard sign, which is supported by structures or supports in or upon the ground and independent of support from any building with a building clearance of three feet and a vertical clearance of four feet or higher. The base width of the pylon sign shall be no less than 50 percent of the sign length.

Residential Sign: A small detached or attached sign located on a residential property, conveying a message communicated by the owner of the property.

Roof Sign: Any sign or part of sign erected upon, against, or directly above a roof or on top of or above the parapet or cornice of a building.

Integral Roof Sign: A roof sign positioned between an eave line and the peak or highest point on a roof, substantially parallel to the face of a building.

Above-Peak Roof Sign: A roof sign positioned above the peak of a roof or above a parapet or cornice.

Sign: A symbolic, visual device fixed upon a building, vehicle, structure, or parcel of land which is intended to convey information about a product, business, activity, place, person, institution, candidate, or political idea.

Sign Area: The entire area within the periphery of a regular geometric form, or combination of regular geometric forms, comprising all of the display area of the sign and including all of the elements of the matter displayed, but not including a sign structure that does not bear copy. The surface area of the sign shall be measured from the outside edges of the sign or the sign frame, whichever is greater. A double-faced sign shall be permitted to have the allowed area of a single-faced sign on each of the two faces of the double-faced sign.

Sign Height: Sign height shall be measured from the centerline of the road that provides access to the Premises, nearest the base of the sign to the highest point of the sign structure.

Sign Type: A functional description of the use of an individual sign.

Street Frontage: The length of the property line for a single parcel which runs parallel to and along each public right-of-way (exclusive of alleys) it borders.

Temporary Signs: A sign which is installed for a period not to exceed thirty (30) days.

Vision-Clearance Area: An area contained within a triangle with legs of thirty feet from the point at which the curbs or edges of two intersecting streets, private ways, or courts or an intersecting street, private way, or court and driveway, meet.

Wall Sign: A sign attached to and parallel with the side of a building.

Window Sign: A window sign is one that lets light or air through to the habitable part of the building and which is painted on, attached to or visible through a window excluding displays of merchandise.

Zoned Lot: A parcel of land in single ownership that is large enough to meet the minimum zoning requirements of its zoning district and can provide such yards and other open spaces that are required by the site development regulations.

Section 39.10.30 General Sign and Street Graphics Regulations

A. Compliance

Each sign or part of a sign erected within the zoning jurisdiction of the City of Dickinson must comply with the provisions of this Article 39.10 and such other relevant provisions of the Dickinson City Code and relevant building codes including the following:

1. International Building Code, as adopted by the City of Dickinson
2. National Electric Code
3. Rules and Regulations Relating to the Control of Advertising in Areas Adjacent to the Interstate and Federal Aid Primary Highways (North Dakota Department of Transportation)

B. Relation to Zoning Regulations and Building Regulations

1. Signs, which are considered structures for the purposes of this Article 39.10, shall comply with the land use regulations for the zoning district in which they are located; provided, however, that signs may be located in a setback area required by the zoning district.
2. Signs located in the extra-territorial jurisdiction of the City of Dickinson, for which the City does not issue building permits, shall secure a proper building permit from Stark County or such other jurisdiction or agency having authority to issue building permits in the extra-territorial area. The City may deny any application for a sign permit in the extra-territorial area in the event that the applicant therefore is not permitted to build the structure by the applicable building authority
3. All planned unit development districts (PUD) shall comply with either the requirements of the underlying zoning district or requirements as specified within the PUD.

C. Resolution of Conflicting Regulations

In the event any of the provisions of this Article 39.10 are in conflict with other applicable requirements, the more restrictive requirement shall apply.

D. Prohibited Signs

The following signs are prohibited in all zoning districts:

1. Any sign painted on or attached to rocks, trees, or other natural objects.
2. Any sign or sign structure that resembles or conflicts with traffic control signs or devices, that misleads or confuses persons traveling on public streets, or that creates a traffic hazard.
3. Any sign on or overhanging public property or public right-of-way, unless specifically authorized by the appropriate public agency.
4. Any sign that creates a safety hazard by obstructing the clear view of pedestrians or vehicles, or which obscures official signs or signals.
5. Abandoned Signs. Any abandoned sign must be removed within six months of date of abandonment. Removal shall include removal of abandoned structural components. If not removed by the property owner in compliance herewith, the City may proceed to remove the abandoned sign and charge the costs thereof to the property owner.
6. Any sign that is not clean or in substantial good repair, or is not affixed to a sound structure.
7. Any sign advertising activities that are illegal under federal, state, or local laws and regulations.
8. Awning signs.
9. Roof signs.
10. Animated signs that move or change messages and/or displays more than once every one (1) second.

11. Electronic message signs that move or change messages and/or displays more than once every one (1) second.
12. Moving signs that move or change messages and/or displays more than once every one (1) second.
13. Marquee signs that are not constructed of some durable material such as metal, glass or plastic.
14. Projecting signs within the Downtown Commercial ("DC") zoning district.
15. Residential signs within the Downtown Commercial ("DC") zoning district.
16. Any sign erected or intended for the specific purpose or with the intended effect of hiding or covering from view of the public an adjacent or nearby sign.
17. Any sign using or employing flashing, blinking, or moving lights or lighting elements.
18. Any sign using or employing neon lights; provided, however, that neon tubing or LED tubing that maintains a constant light and does not have a flashing, blinking, or moving effect shall be permitted.
19. Any sign using or employing audio speakers, laser lights, strobe lights, searchlights, beacons, or any similar upward or outward oriented lighting or sound elements.
20. Any sign that creates or has the potential to create a public safety hazard.
21. Any obscene or indecent sign that, in whole or in part, shows sexually oriented devices, specified anatomical areas, or specified sexual activities as provided in Chapter 3 of the Dickinson City Code.
22. Any sign within the vision-clearance area.
23. Any sign or advertising device not expressly permitted under this Chapter is prohibited.
24. Billboard signs, digital billboard signs, and other off-premises signs are not prohibited under this Code, but shall be permitted only in compliance with Article 39.10.50

E. Exempt Signs

The following signs are permitted in any zoning district and are exempt from other provisions of this Chapter:

1. Bulletin boards for religious assembly or school uses, provided that they have a maximum sign area of twenty (20) square feet and are not located in the required building setback.
2. Real estate sales or management signs with an area of less than ten (10) square feet.
3. Official signs authorized by a government or governmental subdivision which give traffic, directional, or warning information.
4. Seasonal decorations for display on private property or public property.
5. On-premises construction signs with a maximum sign area of ten (10) square feet in residential districts and thirty two (32) square feet in other districts. Such signs must be removed within one week after the completion of the construction project to which they refer.
6. Works of graphic art painted or applied to building walls which contain no advertising or business identification messages.
7. Residential signs under two (2) square feet.
8. Neighborhood or subdivision identification signs under fifty (50) square feet.
9. Street Numbers.
10. Signs which are not visible from a public right-of-way, private way, or court or from a property other than that on which the sign is installed.

11. Building Markers

F. Temporary and Civic Signs

1. Temporary or portable signs for grand openings, sales, and special events are permitted in Commercial and Industrial zoning districts, subject to the following requirements:
   (a) Such signs are subject to the permit procedures set forth in this Article 39.10.
   (b) The size of such signs does not exceed the limitations set forth in Section 39.10.40.
   (c) No more than one such sign is permitted at any single Premises.
   (d) Temporary or portable signs may be present at any single Premises for a maximum of thirty (30) days per year.
2. Temporary signs for non-profit civic campaigns or events, political campaigns, or other non-commercial events are permitted in any zoning district and are exempt from other provisions of this Article, subject to the following requirements.
   (a) Such signs are installed no earlier than thirty (30) days before the date of the event or election and removed no later than seven (7) days after the date of the event or election.
   (b) The maximum size of such signs is thirty two (32) square feet when located in any residential and Limited Commercial ("LC") zoning district; and one hundred (100) square feet in any other zoning district.

Section 39.10.40 Basic Design Elements For On-Premises Signs

The following on-premises signs are permitted as set forth herein:

A. Building signs are permitted in all zoning districts except residentially zoned districts subject to the following provisions:
   1. Maximum height: A building sign shall not be permitted above the roofline, cornice line, parapet, or the highest point of the building facade.
   2. Maximum sign area: Each premises, and in the case of multi-occupancy buildings, each unit, shall be permitted to display building sign(s), the aggregate sign area of which shall not exceed one square foot per each linear foot of building frontage facing a public street or parking lot, but in no event more than two hundred (200) square feet of aggregate sign area. For each unit not facing a public street or parking lot, the aggregate sign area shall not exceed one square foot for each lineal foot of unit frontage for the elevation on which the building sign will be installed, but in no event more than two hundred (200) square feet of aggregate sign area. Each premises shall be entitled to a minimum aggregate sign area of twenty (20) square feet.
   3. Other limitations: Building signs shall not project more than four feet from the building wall to which the sign is attached, nor shall a building sign project into the public right-of-way

B. Canopy signs are permitted in commercial and industrial zoning districts subject to the following provisions:
   1. Canopy signs shall be allowed in addition to building signs.
   2. The aggregate sign area of all canopy signs and building signs combined per elevation shall not exceed the aggregate sign area permitted for building signs.
   3. Canopy signs shall not be permitted above the roofline of the canopy structure.

C. Ground signs: Ground signs are permitted in all zoning classifications subject to the following provisions:
   1. General ground sign provisions

(a) Maximum Height: The maximum height of ground signs is ten (10) feet. Monument signs shall be set back a minimum of five (5) feet from the right-of-way line, but shall be permitted an increase in height of one foot for each one foot of additional setback provided from the right-of-way line up to a maximum height of twenty (20) feet when adjacent to U.S. Interstate 94 or fifteen (15) feet when adjacent to state highways, arterial roadways, collectors and local roads.

(b) Setback: All ground signs shall be set back a minimum of five (5) feet from the property line or rights- of-way.

2. Non-Residential Zoning District

(a) Maximum Number:

I. Each premises having street frontage of less than six hundred (600) feet shall be permitted to have one ground sign.

II. Each premises with street frontage of six hundred (600) feet or more shall be permitted to have one ground sign and one additional ground sign for each additional six hundred (600) feet of street frontage.

(b) Maximum Sign Area

I. The maximum allowable aggregate sign area for each ground sign shall not exceed one square foot for each lineal foot of public street frontage on the street where the sign is located or one hundred (100) square feet, whichever is less. A double-faced sign shall be permitted to have the allowed area of a single-faced sign on each of the two faces of the double-faced sign.

II. If a premises is permitted to have more than one ground sign, then all allowable ground signs may be combined into a single ground sign which shall not exceed two hundred (200) square feet in aggregate sign area, and no single face shall exceed one hundred (100) square feet in aggregate sign area.

(c) Ground signs shall be placed no closer than three hundred (300) feet apart on the same premises.

3. Residential Zoning Districts

(a) Each residential dwelling will be permitted to have one ground sign not exceeding six (6) square feet of aggregate sign area and not exceeding six (6) feet in height. Nothing contained in this paragraph shall be construed to permit a sign if private restrictions prohibit or restrict the display of signs.

(b) Residential support uses: Each residential support use will be permitted to have one ground sign not exceeding thirty two (32) square feet of aggregate sign area and not exceeding eight (8) feet in height.

(c) Residential entry signs: Not more than two ground signs are permitted to be installed or erected at each entrance to a platted subdivision, multiple family development (apartments, condominiums and mobile home parks) provided the combined aggregate sign area of said signs shall not exceed fifty (50) square feet.

(d) Residential signs shall not be permitted in the Downtown Commercial ("DC") zoning district.

D. Pole Signs and Pylon Signs: Pole signs and pylon signs are permitted in all Commercial and Industrial zoning classifications subject to the following provisions:

1. General Pole and Pylon Sign provisions

(a) Maximum Height: A pole sign shall not exceed twenty (20) feet in height, or forty (40) feet in height if within one hundred (100) feet of I-94 rights-of-way. A pylon sign shall not exceed thirty (30) feet, or fifty (50) in height if within one hundred (100) feet of I-94 rights of way.

(b) Setback: All pole signs and pylon signs shall be set back a minimum of five (5) feet from the property line and/or right of way line and not within the vision-clearance area.

(c) Vertical Clearance: All pole signs must have a minimum of ten (10) feet over sidewalks and outside of parking areas and driveways; fourteen (14) feet over parking lots; and eighteen (18) feet over alleys or driveways

2. Non-Residential Zoning District

(a) Maximum Number:

1. Each premises having street frontage of less than six hundred (600) feet shall be permitted to have one pole sign or pylon sign.
2. Each premises with street frontage of six hundred (600) feet or greater shall be permitted to have one pole sign or pylon sign and one additional pole sign or pylon sign for each additional six hundred (600) feet of street frontage. Pole signs and pylon signs shall be placed no closer than three hundred (300) feet apart on the same premises.

(b) Maximum Sign Area

1. The maximum allowable aggregate sign area for each pole sign shall not exceed one square foot for each lineal foot of public street frontage on the street where the sign is located or two hundred (200) square feet, whichever is less and no single sign face shall exceed one hundred (100) square feet in aggregate sign area. A double-faced sign shall be permitted to have the allowed area of a single-faced sign on each of the two faces of the double-faced sign. Pylon signs are allowed an additional twenty percent (20%) increase over the maximum sign area as described above.
2. If a premises is permitted to have more than one pole sign or pylon sign, then all allowable pole signs or pylon signs may be combined into a single ground sign which shall not exceed two hundred (200) square feet in aggregate sign area. Pylon signs are allowed an additional twenty percent (20%) increase over the maximum sign area as described above.

E. Flags. Each premises shall be permitted to display a maximum of number of five (5) flags, and the aggregate sign area of such flags shall not be included in the calculation of building signs for the premises; provided that any flag displayed on a premises shall only be displayed from a flagpole. Additional flags may be permitted by a special use permit.

F. Window Signs. Window signs shall be permitted, provided that such signs, in aggregate sign area, do not cover more than fifty percent (50%) of the total window surface area of the premises facing a public street or parking lot. Window signs shall not be included in calculating the aggregate sign area for building signs.

Section 39.10.50 Basic Design Elements For Off-Premises Signs

Off-premises signs (including billboard signs and digital billboard signs) shall be permitted only as provided in this Section, and shall otherwise comply with all of the terms and conditions of this Article 39.10. Off-premises signs shall not be included with on-premises signs in determining the total number or size of signs permitted on any premises.

A. Placement of Off-Premises Signs

1. Prior to granting a permit for an off-premises sign, the Building Official (or other appropriate official for signs constructed in the extra-territorial area) shall verify that the off-premises sign as it is proposed to be constructed is structurally sound and complies with all portions of the International Building Code, as adopted by the City of Dickinson, including requiring engineered drawings of the proposed sign.

2. The application for any off-premises sign shall be made by the owner of the sign. The applicant shall supply to the City, prior to the issuance of any permit, sufficient evidence indicating the consent of the owner of the real property on which the sign is proposed to be constructed to the placement of the sign.
3. The applicant shall verify, including by means of a certificate of survey, that the proposed off-premises sign is located on private property and not within any public right-of-way and does not encroach upon such public right-of-way.
4. Off-premises signs are allowed in the General Industrial (GI), Light Industrial (LI), General Commercial (GC), and Community Commercial (CC) zoning districts; provided, however, that off-premises signs shall not be permitted within the designated Renaissance Zone of the City of Dickinson.
5. An off-premises sign shall be allowed only along and oriented towards roads identified as principal arterial roads within the City of Dickinson Comprehensive Plan and Transportation Plan. Designation of such principal arterial roads may be altered from time to time, as provided by law. At the time of its adoption, the Dickinson Comprehensive Plan and Transportation Plan identified the following roads as principal arterial roads:

   Interstate-94
   3rd Avenue West / Highway 22
   Villard Street (from State Avenue to 10th Avenue East)
   I-94 Business Loop West
   I-94 Business Loop East

B. Size Limitations
1. No off-premises sign shall have a sign face area exceeding six hundred seventy two (672) square feet.
2. With the exception of portable signs, all off-premises signs shall have a minimum sign face area of two hundred eighty (280) square feet.

C. Height Limitations and Materials for Off-Premises Signs
1. Off-premises signs shall be a maximum height of fifty (50) feet if placed along and oriented towards Interstate-94; and a maximum height of forty (40) feet in all other locations.
2. Off-premises signs greater than ten (10) feet in height must be constructed of a steel monopole design with a tubular steel support, tubular steel framing, metal catwalk and a single display panel, and a concrete foundation. Applicant shall supply engineered drawings for any off-premises sign; and
3. Center mount and flag mount designs shall be allowed, along with double-faced signs. Double-faced signs shall count as one sign. Triangle face billboards are prohibited.

D. Spacing Requirements
1. No off-premises sign shall be placed within three hundred (300) feet of any residential zoning district, mixed-use zoning district that allows for residential use, overlay zoning district that allows for residential use, religious institution, park, or school. The spacing distance may be reduced below three hundred (300) feet upon approval of a Special Use Permit as provided in Article 39.12.
2. No off-premises sign shall be placed within one thousand (1,000) feet of any other off-premises sign; provided, however, that off-premises signs in existence prior to May 19, 2014, that are located within five hundred (500) feet of any other off-premises sign shall be deemed to be legal conforming signs. Except as it pertains to signs oriented towards Interstate-94, this spacing distance shall include both sides of the public right of way.
3. No digital billboard sign may be placed within one thousand five hundred (1,500) feet of any other digital billboard sign, or within one thousand (1,000) feet of any other off-

premises sign. Except as it pertains to signs oriented towards Interstate-94, this spacing distance shall include both sides of the public right of way.

4. Spacing limitations provided for herein shall apply regardless of whether the measurement is made from a sign permitted under this Article 39.10 or from a sign established as a legal nonconforming use hereunder.
5. In the event that two or more sign applications conflict with each other, so that only one of the applications may be granted, the applications shall be considered for approval in accordance with their respective dates of filing. An applicant shall have a period of no more than ten (10) days from the date of filing to correct any deficiencies in the application. If an applicant is unable to correct such deficiencies within the time allotted, the application shall be denied. All subsequent applications shall remain pending until resolution of the prior application. If a prior application is granted, all subsequent applications shall be immediately denied. All applicants shall be advised in writing regarding their application status.
6. Signs having received prior authorization or that are a legal non-conforming use shall have priority over a later applicant in determining compliance with the spacing restrictions.

E. Digital Billboard Signs

Digital billboard signs are subject to the following additional conditions:

1. Hold Time. Digital billboard signs shall display a static message that may not change or be changed for a period of at least seven seconds.
2. Message Transitions. Transition from one such static message to the next shall occur within a maximum of one second and without the use of animation, flashing or frame effects.
3. Sign Brightness. Digital billboard signs shall come equipped with automatic dimming technology that automatically adjusts the display's brightness based on ambient light conditions. The brightness level for digital billboards shall not increase by more than 0.3 foot-candles over ambient levels.

F. Prohibited Off-Premises Signs. The following off-premises signs are prohibited:

1. Stacked signs.
2. Signs with more than two faces.
3. Building wraps.
4. Any off-premises sign not specifically allowed for in this Article 39.10.

G. Illumination of Off-Premises Signs

1. Off-premises signs may not include any revolving or rotating beam or beacon of light that simulates an emergency light or device.
2. Off-premises signs may not include any flashing, blinking, intermittent or moving light or lights.
3. Off-premises signs may be lighted by external lighting, such as floodlights, thin line and gooseneck reflectors, provided the light source is directed upon the face of the billboard and is effectively shielded so as to prevent beams or rays of light from being directed into any portion of the public right-of-way or into any portion of adjacent properties, and the lights are of an intensity that does not cause glare, impair vision, or otherwise interfere with motorists.
4. Off-premises signs may not be illuminated so as to interfere with the effectiveness of, or obscure, an official traffic sign, device or signal.
5. Light fixtures illuminating an off-premises sign may not exceed 400 watts.
6. Digital Billboard Signs shall not include any flashing, intermittent or moving light or lights except those signs giving public service information such as time, date, temperature, and weather. This paragraph does not prohibit an LED display, provided:

(a) Each change of message is accomplished in one second or less.
(b) Each message remains in a fixed position for at least seven seconds.
(c) Traveling messages (e.g., moving messages, animated messages, full-motion video, and scrolling text messages) or segmented messages shall not be allowed.

H. Vehicular and Pedestrian Traffic.

All vehicles, equipment, and people used to build, service, maintain and repair the signs must confine their activity so as not to interfere with pedestrian or vehicular traffic on public roads.

I. Permitting

1. Any application for an off-premises sign permit shall meet the requirements for sign permits, and provide the following:
   (a) Site plan indicating the proposed off-premises sign location, orientation to the roadway, setbacks, and adjacent structures, including parking areas and driveways.
   (b) A vicinity map indicating nearby off-premises sign and digital billboard signs, and measurements from such signs up to 1,500 feet;
   (c) Construction plans indicating sign height, dimensions and face area;
   (d) Proposed lighting plan for the off-premises sign or digital billboard sign; and
   (e) Written consent of the landowner for the placement of such sign on the property.
2. Off-premises signs shall not be permitted before the applicant has submitted to the City the following certifications from the appropriate professionals registered in North Dakota:
   (a) Certification from a professional engineer registered in the State of North Dakota that the soil and subsoil surface is capable of accepting the projected loads; and
   (b) Certification from a professional engineer registered in the State of North Dakota as to the structural strength of the sign;
3. Off-premises signs shall not be permitted by the City until a permit has been issued by the North Dakota Department of Transportation, when required.
4. A sign permit for an off-premises sign shall be valid for twelve (12) months. If no construction has commenced at the site within twelve (12) months of the date of approval of the permit, the permit shall become null and void.
5. A sign permit issued under the authority of these regulations shall in no way relieve the applicant or property owner from permitting pursuant to the Building Code.

J. Sign Maintenance

Every sign or other advertising structure, together with all its supports or braces, shall be kept in good repair. The sign location shall be free of rubbish and weeds. All structural members and all copy areas shall be kept painted and clean so as to prevent deterioration, oxidation, rust, paint fading, paint peeling or other unsightly conditions.

K. Sign Ownership

Each sign application shall include identification of the sign owner and the sign owner's contact information, including post office address and phone number, in order to allow for proper notification. The identified sign owner shall be responsible for all required maintenance of the sign and compliance with the terms and conditions of this Article 39.10. In the event of a change in ownership of a sign, the new owner thereof shall be responsible to notify the City of new owner's name and contact information.

L. Sign Removal

Permanent signs which are erected or maintained in violation of this Article 39.10 shall be removed after notice to do so. The City shall notify the owner of such sign in writing of such violation and provide the owner 30 days to remove the sign or to bring it into compliance with this Article. Upon the failure to remove the sign or comply with the notice, the City shall cause the removal of the sign. Any costs of removal incurred by the City shall be assessed to the owner of the property on which sign is located and may be collected in the manner of ordinary debt or in the manner of taxes, and such charge shall be a lien on the property.

Section 39.10.60 General Regulations: Other Design Elements

A. Illumination
   1. Lighting, when installed, must be positioned in such a manner that light is not directed onto an adjoining property or onto a public street or highway.
   2. Indirect illumination and internal illumination shall be allowed for civic uses in residential zoning districts and for all uses in non-residential zoning districts and the MH zoning district.
   3. Electronic Message Signs shall be allowed in all non-residential zoning districts.

B. Marquees and Marquee Signs

   Signs placed on, attached to, or constructed on a marquee are subject to the maximum projection and clearance regulations of projecting signs.

C. Banners
   1. A banner sign projecting from a building may not exceed the wall height of the building.
   2. Maximum projection for any banner is five (5) feet from a building with a minimum clearance of ten (10) feet.
   3. Maximum size of a banner is the lesser of twice the permitted size of a projecting sign or one hundred twenty (120) square feet.

D. Clocks

   For the purposes of this Article 39.10, clocks are not considered moving signs.

E. Sign Design

   All permanent signs permitted herein must be designed to be architecturally compatible with the building design on the site.

Section 39.10.70 General Permit Procedures

A. Applicability

   Any installation, modification, or expansion of any sign which is not exempt from the provisions of this Article 39.10 shall be subject to the following permit procedure prior to installation.

B. Maintenance of Valid Sign Permit

   The owner of a sign requiring a permit under this ordinance shall at all times maintain in force a sign permit for such property. Sign permits shall be issued for individually zoned lots. A sign permit may be revoked if the sign is not maintained in good condition.

C. Sign Permit Applications

   All applications for sign permits shall be submitted to the Community Development Director upon the specified application form.

D. Any nonresidential development with three (3) or more tenants shall submit a sign plan, which includes the following:
   1. A summary table listing the location, sign type and area of any existing and proposed signs.
   2. A fully dimensioned and scaled elevation drawings of any proposed sign, showing sign type, height, structure and sign area.
   3. For building signs, an elevation of the building, showing placement of any sign.

4. If the sign is to be electrically lighted, additional information regarding the Testing Laboratory or the ETL No., and the name and address of the electrical contractor as required by the Community Development Director.
5. Information regarding the type of construction, sign supports and electrical details. Fawned load calculations and footer details as required by the Building Code.

Section 39.10.80 Action and Appeal

After submission of a complete application for a sign permit, the Community Development Director shall either:

1. Issue the sign permit, if the sign conforms to the provisions of this Article.
2. Reject the sign permit if the sign(s) that is the subject of the application fails in any way to conform to the requirements of this Article 39.10. The cause for rejection shall be stated in writing.
3. Determinations of the Community Development Director may be appealed to the Board of Adjustment, as provided in Article 39.12.

Section 39.10.90 Permit Expiration

If a sign is not constructed in accordance with an approved permit within twelve (12) months of the date of approval, such permit shall lapse and become null and void.

Section 39.10.100 Assignment of Sign Permits

A current and valid sign permit shall be freely assignable to any successor-in-interest.

Section 39.10.110 Illegal and Nonconforming Signs

A. Any sign erected after May 19, 2014, within the zoning jurisdiction of the City of Dickinson that does not conform to the provisions of this Article 39.10 shall be deemed an illegal sign and shall be removed at the sole cost and expense of the owner thereof. The City shall notify the owner of such sign in writing of such violation and provide the owner thirty (30) days to remove the sign or to bring it into compliance with this Article. Upon any failure to remove the sign or comply with the notice, the City shall cause the removal of the sign. Any costs of removal incurred by the City shall be assessed to the owner of the property on which sign is located and may be collected in the manner of ordinary debt or in the manner of taxes, and such charge shall constitute a lien on the property.

B. Any permanent sign in place and lawfully established as of May 19, 2014, that does not conform to the provisions of this Article 39.10 shall be deemed a legal nonconforming sign.

C. A legal nonconforming sign that is permanently affixed to the ground or to a building may continue to be used and its copy changed from time to time; provided, however, that the nonconforming sign (a) shall not be replaced except in conformity with this Article; and (b) shall not be enlarged, altered, or reconstructed except in conformity with this Article. Such legal nonconforming sign may be repaired to the extent necessary to maintain it in a safe and sanitary condition.

D. Any legal nonconforming sign may be reconstructed, altered, or repaired after any damage not exceeding fifty percent (50%) of its replacement cost, provided that the sign's degree of nonconformity is not increased in any way.

E. Any legal nonconforming sign that is presently or becomes structurally damaged in excess of fifty percent (50%) of its replacement cost at the time of such destruction shall not be reconstructed, repaired, or altered except in conformity with this Article 39.10. The owner of such structurally-damaged sign shall apply for a new sign permit in accordance with this Article 39.10 in order to construct a conforming replacement sign.

Section 39.10.120 Administration

The Community Development Director or his designee shall be the administrator of this Article.

Section 39.10.130 Severability

In the event any section of this Article 39.10 is held invalid by court of competent jurisdiction, the invalidity shall extend only to the section affected, and other sections of this Article 39.10 shall continue in full force and effect. (Ord. No. 1540 § 1.)

Article 39.11 Nonconforming Development

Sections:

39.11.001 Purpose
39.11.002 Regulations Additive
39.11.003 Nonconforming Lots
39.11.004 Nonconforming Structures
39.11.005 Nonconforming Uses

Section 39.11.001 Purpose

Article Eleven shall be known as the Nonconforming Development Regulations. The purposes of these regulations are:

a. To allow for reasonable use of legally created lots of record which do not meet current minimum requirements for their respective zoning districts.
b. To provide for reasonable use of legally constructed structure which do not meet current site development regulations for their respective zoning districts.
c. To allow for the reasonable continuation of legally established uses which do not meet current site development regulations for their respective zoning districts.
d. To limit the continuation and provide for the gradual replacement of nonconforming uses. (Ord. No. 1171 § 1.)

Section 39.11.002 Regulations Additive

Regulations for nonconforming uses are in addition to regulations for nonconforming structures. In the event of a conflict, the most restrictive regulation shall apply. (Ord. No. 1171 § 1.)

Section 39.11.003 Nonconforming Lots

a. Pre-Existing Lots of Record

Nonconforming lots of record existing at the time of the adoption of this chapter shall be exempt, unless otherwise provided, from the minimum lot area in the lot width requirements of each zoning district. Such lots may be developed with use allowed by the regulations for the district and must comply with all other site development regulations set forth by the Zoning Ordinance.

b. Reductions Due to Public Acquisition

If a portion of a legally existing lot in any district is acquired for public use, the remainder of this lot shall be considered a conforming lot.

c. Nonconforming Lots

A nonconforming lot may be developed if a Special Use Permit is granted meeting the following criteria: (1) The lot size is not less than 25% of the minimum lot size for the district; (2) The proposed building shall be compatible in style, height, size, materials and site design of adjacent buildings; (3) The building shall meet the zoning district and all applicable development regulations, including but not limited to, setbacks and lot coverage; and (4) The property owner is not the originator of the nonconforming lot size. (Ord. No. 1171 § 1.)

Section 39.11.004 Nonconforming Structures

These regulations apply to buildings and structures which were constructed legally under regulations in effect before the effective date of this Ordinance.

a. Continuation

A lawful nonconforming structure existing on the effective date of this Title may be continued, repaired, maintained, or altered, subject to the provisions of this Section.

b. Additions or Enlargements to Nonconforming Structures

1. A lawful nonconforming structure may be added to or enlarged if the addition satisfies one or more of the following conditions:

(a) The enlargement or addition, when considered independently of the existing building, complies with all applicable setback, height, off-street parking, and landscaping requirements.

(b) The nonconforming building and impervious surface coverage's on the site are not increased and the building, after the addition, conforms to height and off-street parking regulations applicable to its zoning district.

(c) The addition projects no further into a required side yard setback than the existing building wall; and the enlarged building complies with building and impervious coverage, front and rear yard setbacks, and height regulations applicable to its zoning district.

c. Moving of Nonconforming Structures

A lawful nonconforming building or structure shall not be moved in whole or in part to another location on its lot unless every part of the structure conforms to all site development regulations applicable to its zoning district.

d. Repair of Nonconforming Structures

A lawful nonconforming building damaged by fire, explosion, storm or other calamity, except flood damages, may be repaired and reconstructed provided there is no increase in the degree of nonconformity. Repair and reconstruction within the designated floodplain shall be in conformance with Floodplain development regulations. (Ord. No. 1423 § 1.)

e. Conversion of a Conforming Building

A conforming building shall not be changed in any way that will result in a nonconforming development.

f. Applicability of Landscaping and Screening Regulations

A pre-existing structure, building, or development shall be exempt from Article Eight, Landscaping and Screening Regulations. Any expansion of such structure, building, or development or any adjacent new development onto property that is or becomes vacant on or after the effective date of this Ordinance shall be subject to Article Eight. (Ord. No. 1171 § 1.)

Section 39.11.005 Nonconforming Uses

a. Continuation of Nonconforming Uses

Any nonconforming use lawfully existing on the effective date of this Ordinance may continue, subject to the limitations of this Section.

b. Enlargement of Nonconforming Uses

A building or structure housing a lawful nonconforming use may not be added to or enlarged.

c. Abandonment of Nonconforming Use

If any structure or property used as a lawful nonconforming use becomes vacant or unused for a continuous period of one year, any subsequent use must conform to all use regulations applicable to the property' s zoning district.

d. Change of Use

1. A lawful nonconforming use may be changed only to a use type permitted in a zoning district that is equal to or less intensive than that normally required for the previous use.

e. Allowance for Repair

Repairs and maintenance of a structure occupied by a nonconforming use may be made, provided that no structural alterations are made other than those required by law.

f. Damage or Destruction of Structures

Should a structure occupied by a lawful nonconforming use be damaged to the extent that the cost of restoration exceeds 50 percent of the replacement cost of the structure, the nonconforming use shall no longer be permitted.

g. Nonconforming Uses and Conditional and Special Use Permits

A lawful pre-existing use which would require a Special Use Permit in its zoning district shall be presumed to have the appropriate Permit and shall be considered a conforming use. The use shall be subject to the regulations governing lapses or revocation of Permits, set forth in Article 39.12. (Ord. No. 1171 § 1.)

Article 39.12 Administration and Procedures

Sections:

39.12.001 Purpose
39.12.002 Site Plan Review Procedure
39.12.003 Special Use Permit Procedure
39.12.004 Amendment Procedure
39.12.005 Extension of the Extra-Territorial Jurisdiction
39.12.006 Building Permits and Certificates of Zoning Compliance
39.12.007 Schedule of Fees, Charges and Expenses
39.12.008 Planning Commission - Created; Membership
39.12.009 Same - Terms; Compensation
39.12.010 Board of Adjustment
39.12.011 Powers and Duties of the Board of Adjustment
39.12.012 Appeals From The Board of Adjustment
39.12.013 Duties of Building Official, Board of Adjustment, City Commission, and Courts on
39.12.014 Severability Clause
39.12.015 Complaints Regarding Violations
39.12.016 Penalties for Violation
39.12.017 Temporary Use Permits

Section 39.12.001 Purpose

The Administration and Procedures Provisions establish the methods for implementation of the Zoning Ordinance. These provisions include procedures for reviewing specific uses within certain zoning districts; amending the Zoning Ordinance; and granting variances. (Ord. No. 1171 § 1.)

Section 39.12.002 Site Plan Review Procedure

a. Purpose

The Site Plan Review Procedure provides for the administrative review in addition to plan review required by other sections of the Dickinson Municipal Code of projects that have potentially significant effects on traffic circulation or a significant effect on land uses in adjacent neighborhoods. The procedure provides for review and evaluation of site development features and possible mitigation of unfavorable effects on surrounding property.

b. Administration

The Building Official, or his/her designee shall review, evaluate, and act on all site plans submitted pursuant to this procedure. An applicant may appeal a denial of any application to the Board of Adjustment.

c. Uses Requiring Site Plan Review

All uses listed below shall follow the Site Plan review procedure prior to the issuance of a building permit, unless they are otherwise subject to a Special Use Permit procedure for specific zoning districts.

d. Application Requirements

An application for a Site Plan Review may be filed by the owner(s) of a property or the owners' authorized agent with the Building Official. The application shall include the following information:

1. Name and address of the applicant.
2. Owner, address, and legal description of the property.
3. A description of the nature and operating characteristics of the proposed use.

4. A site plan, drawn to a scale sufficient to permit adequate review and dimensioned as necessary, showing the following information:
   a) The date, scale, north point, title, name of owner, and name of person preparing the site plan.
   b) The location and dimensions of boundary lines, easements, and required yards and setbacks of existing and proposed buildings and site improvements.
   c) The location, size, and use of proposed and existing structures on the site.
   d) The location of all proposed site improvements, including parking and loading areas, pedestrian and vehicular access, sewers, sidewalks, utilities, service areas, fencing, screening, landscaping, and lighting.
   e) Location of any major site feature, including drainage and contours at no greater than five foot intervals.
   f) Any other information that may be required for review by the Building Official, or his/her degree.

e. Administrative Action and Appeal

The Building Official, or his/her designee must act upon each complete application within ten working days of filing. An applicant may appeal a denial to the Board of Adjustment within ten days of the action. The Board of Adjustment shall consider the appeal at the first available meeting after the filing of the appeal.

f. Review and Evaluation

1. The Building Official, or his/her designee (or the Board of Adjustment in cases of appeal), shall review and approve the site plan based on the criteria established in Table 12-1 and conformance with applicable regulations in this Zoning Ordinance.
2. The Building Official, or his/her designee (or the Board of Adjustment in cases of appeal), shall make the following findings before approval of the site plan:
   a) The proposed development, together with any necessary modifications, is compatible with the criteria established in Table 12-1.
   b) Any required modifications to the site plan are reasonable and are the minimum necessary to minimize potentially unfavorable effects.
   c) The site plan conforms to the Zoning Ordinance.

g. Modification of Site Plan

The Building Official, or his/her designee (or the Board of Adjustment in cases of appeal), may require modification of a site plan as a prerequisite for approval. Required modifications may be more restrictive than base district regulations and may include, but not be limited to, additional landscaping or screening; installation of erosion control measures; improvement of access or circulation; rearrangement of structures on the site; or other modifications deemed necessary to protect the public health, safety, welfare, community character, property values, and/or aesthetics.

h. Term and Modification of Approval

1. A Site Plan Approval shall become void two years after the date of approval, unless the applicant receives a Building Permit and diligently carries out development prior to the expiration of this period.
2. The Building Official, or his/her designee, may approve an application to modify a previously approved site plan if he/she determines that the modification does not affect findings related to the criteria set forth in Table 12-1.
3. The Building Official, or his/her designee may revoke a Site Plan Approval if he/she determines that the development is not complying with the terms and conditions of the approval. Such revocation may be appealed to the Board of Adjustment.

i. Approval to Run with Land

An approval pursuant to this section shall run with the land until the expiration date of such approval. (Ord. No. 1171 § 1.)

Section 39.12.003 Special Use Permit Procedure

a. Purpose

The Special Use Permit Procedure provides for public review and discretionary City Commission approval for uses within zoning districts which have unusual site development or operating characteristics that could adversely affect surrounding properties.

b. Administration

The Planning Commission shall review and evaluate each application and transmit its recommendation to the City Commission. The City Commission shall review, evaluate, and act upon all applications submitted pursuant to this procedure.

c. Application Requirements

An application for a Special Use Permit may be filed with the Building Official by the owner(s) of a property or the owners' authorized agent. The application shall include the following information:

1. Name and address of the applicant.
2. Owner, address and legal description of the property.
3. A description of the nature and operating characteristics of the proposed use.
4. Any graphic information, including site plans, elevations, other drawings, or other materials determined by the Building Official to be necessary to describe the proposed use to approving agencies.

d. Approval Process

The Planning Commission, following proper notice, shall hold a public hearing on each Special Use Permit, and following such public hearing, shall recommend action to the City Commission. Notice for a Special Use Permit shall be the same as provided for rezonings, as set forth in Section 39.12.004.

The City Commission, after publication, shall act on the Special Use Permit. A majority vote of those members elected to the City Commission is required for approval. The City Commission may apply any reasonable conditions to the approval of the permit.

e. Criteria for Review

1. The Planning Commission and the City Commission shall review and approve the site plan based on the criteria established in Table 12-1 and conformance with applicable regulations in this Zoning Ordinance.

f. Scope of City Commission's Approval

1. The City Commission may, at its discretion, apply a Special Use Permit to a specific owner or applicant. The City Commission may establish special site development or operational regulations as a condition for approval of a Special Use Permit.
2. The City Commission shall not grant a Special Use Permit for any home occupation/homebased business which is otherwise prohibited under Section 39.06.008 of this Ordinance.

g. Lapse and Revocation of Permit

1. A Special Use Permit shall become void two years after its effective date if the applicant has not carried out development or occupancy during that period.
2. The City Commission may revoke a Special Use Permit should the operation of the use subject to such permit violate the conditions under which the permit was granted.

h. Previously Approved Permits

Any special use approved under regulations in effect before the effective date of this Ordinance shall be considered to have a valid Special Use Permit, subject to requirements imposed at the time of its approval. (Ord. No. 1171 § 1.)

Table 12-1: Criteria For Site Plan Review and Special Use Permits

Land Use Compatibility	Criteria	Applies To	
		Site Plan Review	Special Use Permit
Development Density	Site area per unit or floor area ratio should be similar to surrounding uses if not separated by major natural or artificial features		X
Height and Scale			
Height and Bulk	Development should minimize differences in height and building size from surrounding structures. Differences should be justified by urban design considerations.	X	X
Setbacks	Development should respect pre-existing setbacks in surrounding area. Variations should be justified by site or operating characteristics.	X	X
Building Coverage	Building coverage should be similar to that of surrounding development of possible. Higher coverage should be mitigated landscaping or site amenities.	X	X
Site Development			
Frontage	Project frontage along a street should be similar to lot width	X	X
Parking and Internal Circulation	Parking should serve all structures with minimal conflicts between pedestrians and vehicles	X	X
	All Structures must be accessible to public safety vehicles	X	X
	Development must have access to adjacent public streets and ways. Internal circulation should minimize conflicts and congestion at public access points.	X	X
Landscaping	Landscaping should be integral to the development, providing street landscaping, breaks in uninterrupted paved areas, and buffering where required by surrounding land uses. Parts of site with sensitive environmental features or natural drainage ways should be preserved.	X	X

Operating Characteristics			
Traffic Capacity	**Project should not reduce the existing level of traffic service on adjacent streets. Compensating improvements will be required to mitigate impact on street system operations**	**X**	**X**
External Traffic Effects	**Project design should direct non-residential traffic away from residential areas.**	**X**	**X**
Operating Hours	**Projects with long operating hours must minimize effects on surrounding residential areas.**	**X**	**X**

Table 12-1: Criteria For Site Plan Review and Special Use Permits

Land Use Compatibility	**Criteria**	**Applies To**	
		Site Plan Review	**Special Use Permit**
Operating Characteristics			
Outside Storage	Outside storage areas must be screened from surrounding streets and less intensive land uses.	**X**	**X**
Public Facilities			
Sanitary Waste Disposal	Developments within 200 feet of a public sanitary sewer must connect to sewer system. Individual disposal systems, if permitted, shall not adversely affect public health, safety, or welfare..	**X**	**X**
	Sanitary sewer must have adequate capacity to serve development.	**X**	**X**
Storm Waste Management	Development should handle storm water adequately to prevent overloading of storm water management system.	**X**	**X**
	Development should not inhibit development of other properties.	**X**	**X**
	Development should not increase probability of erosion, flooding, landslides, or other run-off related effects.	**X**	**X**
Utilities	Project must be served by utilities	**X**	**X**

	Rural estate subdivisions should be located in designated areas which can accommodate utility and infrastructure installation consistent with the need to protect the environment and public health.	**X**	**X**
Comprehensive Plan	Projects should be consistent with the City of Dickinson's Comprehensive Development Plan. (Ord. No.1171 § 1.)	**X**	**X**

Section 39.12.004 Amendment Procedure

a. Purpose

The Amendment Procedures describe the methods by which changes may be made in the text of the Zoning Ordinance (text amendment) and/or the official boundaries of zoning districts (rezoning).

b. Initiation of Amendments

1. Text amendments may be initiated by the Planning Commission or City Commission.
2. Rezonings may be initiated by a property owner or authorized agent; the Planning Commission; or the City Commission.

c. Rezoning Application Requirements

An application for a rezoning may be filed with the Building Official, or his/her designee. The application shall include the following information:

1. Name and address of the applicant.
2. Owner, address and legal description of the property.
3. A description of the reason for the rezoning application and the nature and operating characteristics of the proposed use.
4. Any graphic information, including site plans, elevations, other drawings, or other materials determined by the Building Official to be necessary to describe the proposed use to approving agencies.

d. Amendment Process

1. The Planning Commission, following fifteen (15) days' notice and publication, shall hold a public hearing on each proposed text or rezoning and, following such public hearing, shall recommend action to the City Commission. A vote either for or against an amendment by a majority of all Planning Commission members shall constitute a recommendation to the City Commission. A vote either for or against an amendment by less than a majority of all Planning Commission members shall constitute a failure to make a recommendation to the City Commission.
2. The City Commission shall act on the proposed amendment. On applications which receive a recommendation of approval from the Planning Commission, a majority vote of those members elected to the City Commission is required for approval.
3. Protest: If a valid protest petition opposing an amendment is filed with the Building Inspector by eligible property owners, a three-fourths vote of those members elected to the City Commission is required for approval. A valid protest petition must meet the following criteria:
   (a) Submission of the petition in the office of the Building Inspector within (14) fourteen days after the conclusion of the public hearing on the amendment by the Planning Commission.

(b) Notarized signatures by at least one of the following:

(1) The owner or owners of at least 20% of the property proposed for rezoning.

(2) The owners of 20% of the total area, excepting public rights-of-way and public property, within the zoning jurisdiction of the city and within 150 feet of the proposed rezoning.

e. Required Notice and Publication for Rezonings, Special Use Permits, and Text Amendments

1. Prior to consideration of a rezoning or Special Use Permit, notice of public hearings shall be provided by the following methods, as determined by the City:

(a) Publication: At least fifteen days before the date of hearing, the Zoning Administrator shall have published in a daily newspaper having a general circulation in the City of Dickinson a Notice of the time, place and subject matter of such hearing.

(b) Notification by Mail: At least ten days prior to the date of hearing, the party initiating the rezoning request shall present the Zoning Administrator a certified address list of those persons who own property within 300 feet of the subject site. The Zoning Administrator shall mail notice of the time, place and subject matter of the hearing to such property owners at least ten days prior to the date of the hearing.

(c) Notification by Petition: The applicant shall acquire the signatures of the owners of all properties within 200 feet of the property line in question indicating their approval of the proposed rezoning.

2. Prior to consideration of a text amendment, notice of public hearings shall be provided by publication as provided in Section 1204 d (1) above.

f. Notification By Mail of School District

The Zoning Administrator shall mail notice of the time, place and subject matter of any Planning Commission rezoning hearings to the Public and Parochial School District Administrative Officials and/or Chairs of the Board of Education, within whose boundaries the subject site is located. The notification shall be submitted to the applicable official and/or Board of Education at least ten days prior to the date of such meeting. Each school district to be affected by such rezoning proposal shall be notified. (Ord. No. 1171 § 1.)

Section 39.12.005 Extension of the Extra-Territorial Jurisdiction

Upon the automatic extension of the one-mile Extra-Territorial Jurisdiction due to annexation, the City Commission with the recommendation of the Planning Commission shall zone properties within the newly established Jurisdiction concurrent with adoption of the annexation ordinance. The zoning shall consider the Comprehensive Development Plan of the City of Dickinson and the present use of the land. (Ord. No. 1171 § 1.)

Section 39.12.006 Building Permits and Certificates of Zoning Compliance

a. Administration and Enforcement

The Building Official shall administer and enforce this ordinance. The City Commission may direct other persons to assist him/her.

If the Building Official, or his/her designee shall find that any of the provisions of this ordinance are being violated, he/she shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He/she shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions, alterations, or

structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions.

b. Building Permits Required

No building or other structure shall be erected, moved, added to, or structurally altered without a permit therefore, issued by the Building Official. No building permit shall be issued by the Building Official except in conformity with the provisions of this ordinance, unless he/she receives a written order from the Board of Adjustment in the form of an administrative review, special exception, or variance as provided by this ordinance.

c. Application for Building Permit

All applications for building permits shall include plans if applicable in duplicate drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing; if any; and the location and dimension of the proposed building or alteration.

The application shall include such other information as lawfully may be required by the Building Official, including existing or proposed building or alterations; existing or proposed uses of the building and land; the number of families; housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of this ordinance.

One copy of the plans shall be returned to the applicant by the Building Official, after he/she shall have marked such copy either as approved or disapproved and attested to same by his signature on such copy. One copy of the plans, similarly marked, shall be retained by the Building Official.

d. Certificates of Zoning Compliance for New, Altered, or Non-Conforming Uses

It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure until a certificate of zoning compliance shall have been issued therefore by the Building Official stating that the proposed use of the building or land conforms to the requirements of this ordinance.

e. Expiration of Building Permit

1. If the work described in any building permit has not begun within 180 days from the date of issuance thereof; said permit shall expire; it shall be canceled by the Building Official; and written notice thereof shall be given to the persons affected.

2. If the work described in any building permit has not been substantially completed within two years of the date of issuance thereof, said permit shall expire and be canceled by the Building Official, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new building permit has been obtained.

3. The expiration date of a building permit may be established for a period longer than two years if established at the time that such permit is issued by the City. The Building Official, or his/her designee may, at his/her discretion extend the expiration period of the building permit.

f. Construction and Use to be as Provided in Applications, Plans, Permits, and Certificates of Zoning Compliance

Building permits or certificates of zoning compliance issued on the basis of plans and applications approved by the Building Official authorize only the use, arrangement, and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement, or construction at variance with that authorized shall be deemed violation of this ordinance, and punishable as provided by Section hereof. (Ord. No. 1171 § 1.)

Section 39.12.007 Schedule of Fees, Charges and Expenses

The City Commission shall establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of zoning compliance, appeals, and other matters pertaining to this ordinance.

The schedule of fees shall be posted in the office of the Building Official, and may be altered or amended only by the City Commission.

Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal. (Ord. No. 1171 § 1.)

Section 39.12.008 Planning Commission - Created; Membership

This section is hereby repealed. (Ord. No. 1171 § 1; Ord. No. 1593, § 2)

Section 39.12.009 Same - Terms; Compensation

Terms for city planning commission members shall be for three years, with such terms expiring on December 31 of the third year following the appointment. Members of the planning commission as of January 1, 2000 shall continue to serve the terms for which they were appointed, with all subsequent appointments being three-year terms.

Ex officio members, county seat representatives and board of county commissioners' members shall serve for the period of their respective elected or appointed terms.

Appointments to fill vacancies shall be for the unexpired portion of that term.

Members of the planning commission may receive compensation as established by the board of city commissioners. (Ord. No. 1171 § 1; Ord. No. 1200, § 3.)

Section 39.12.010 Board of Adjustment

a. Establishment

1. A Board of Adjustment is hereby established to provide relief in situations of hardship or to hear appeals as provided by this Section. The Board shall consist of five regular members, plus one additional alternate member who shall attend and vote only when one member is unable to attend for any reason.

2. Each member shall be appointed by the board of city commissioners for a three-year term and is removable for cause by the board of city commissioners. Said terms shall expire on December 31 of the third year following the appointment, except that members of the Board of Adjustment as of January 1, 2000 shall continue to serve the terms for which they were appointed. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

3. The Board of Adjustment shall adopt rules and regulations in accordance with this ordinance and the laws of the State of North Dakota pursuant to Sections 40-47 of North Dakota Century Code. Meetings shall be held at the call of the Chairman and at such other times as the Board may determine. Such chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings and records shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact.

The Board shall keep a record of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. Four members of the Board shall constitute a quorum for the transaction of business.

b. Procedure for Appeals

1. Appeals shall be made to the Board of Adjustment through the office of the Building Official in written form as determined by the Building Official. The Board shall fix a reasonable time for the hearing of the appeal and shall decide the appeal within 30 days of the date of the public hearing. An appeal stays all proceedings in furtherance of the action, unless the Building Official certifies to the Board that by reason of the facts stated in the certificate, a stay would, in his/her opinion, cause imminent peril to life or property.

2. The Board shall provide a minimum of ten days notice of a public hearing on any questions before it. Notice of the hearing shall be by publication in a newspaper of general circulation in the City of Dickinson; and by written notice to the appealing party.

3. Upon the public hearing, any party may appear in person or by agent or attorney. The concurring vote of four members of such board as so composed shall be necessary to reverse any order, requirement, decision or determination of any Building Official, or to decide in favor of the appellant on any matter upon which it is required to pass under any zoning ordinance, or to effect any variation in such ordinance. (Ord. No. 1171 § 1; Ord. No. 1200, § 4.)

Section 39.12.011Powers and Duties of the Board of Adjustment

The Board of Adjustment shall have only the following powers and duties:

a. Administrative Review: To hear and decide appeals where it is alleged there is error in any order, requirement, decisions or determination made by the Building Official, or his/her designee in the enforcement of this Ordinance.

b. Interpretation of Zoning Map: To hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map.

c. Variances to Relieve Hardships Relating to Property: To authorize, upon appeal, variances from the strict application of this Ordinance where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the zoning regulations; or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, such strict application would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property.

1. Requirements for Granting of a Variance. No such variance shall be authorized by the Board unless it finds that:

(a) Strict application of the zoning ordinance will produce undue hardship.

(b) Such hardship is not shared generally by other properties in the same zoning district and in the same vicinity.

(c) The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.

(d) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice.

(e) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable a general regulation to be adopted as an amendment to this Zoning Ordinance.

(f) The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of any Ordinance or Resolution.

2. Findings by Board. The Board of Adjustment shall make findings that the requirements of Section 39.12.011 (c.1) have been met by the applicant for a variance.

3. Conditions for Granting of Variance.

(a) In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the

terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 39.12.016.

(b) Under no circumstances shall the Board of Adjustment grant a variance to allow use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

c) No non-conforming use of neighboring lands, structures, or buildings in the same district and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

d. Board Has Powers of Building Official on Appeals: Reversing Decisions of Building Official

In exercising the above mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this Ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decisions, or determination as ought to be made, and to that end shall have the powers of the Building Official from whom the appeal is taken.

The concurring vote of four members of the Board shall be necessary to reverse any order, requirements, decision, or determination of the Building Official, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation in the application of this ordinance. (Ord. No. 1171 § 1.)

Section 39.12.012 Appeals From The Board of Adjustment

Any person or persons, or any board, taxpayer, officer, department, board or bureau of the city aggrieved by any decision of the Board of Adjustment may seek review of such decision by the City Commission in the manner provided by the laws of the State. (Ord. No. 1171 § 1.)

Section 39.12.013 Duties of Building Official, Board of Adjustment, City Commission, and Courts on Matters of Appeal

a. It is the intent of this ordinance that all questions of interpretation and enforcement shall be first presented to the Building Official, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Building Official, and that recourse from the decisions of Board of Adjustment shall be appealed to the City Commission.

b. Under this ordinance the City Commission shall have only the duties (1) of considering and adopting or rejecting proposed amendments, or the repeal of this ordinance as provided by law, (2) of establishing a schedule of fees and charges as stated in Section 39.12 of this Ordinance, and (3) of hearing any appeals from the Board of Adjustment. (Ord. No. 1171 § 1.)

Section 39.12.014 Severability Clause

Should any section or provision of this resolution be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the resolution as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid. (Ord. No. 1171 § 1.)

Section 39.12.015 Complaints Regarding Violations

Whenever a violation of this ordinance occurs, or is allowed to have occurred, any person may file a written complaint. Such complaints stating fully the causes and basis thereof shall be filed with the Building Official. He/she shall record properly such complaint immediately, investigate, and take action thereon as provided by this ordinance. (Ord. No. 1171 § 1.)

Section 39.12.016 Penalties for Violation

a. Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than $500.00 or imprisonment for not more than six months, or both, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

b. The owner or tenant of any building, structure, premises, or part thereof, any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

c. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation. (Ord. No. 1171 § 1.)

Section 39.12.017 Temporary Use Permits

Temporary Use Permits may be granted as provided in this Section.

(a) Application for Temporary Use Permit

Any applicant for a temporary use permit shall file an application for such permit with the Zoning Administrator, together with the following:

1. A completed application form as provided by the city;
2. Legal description of the property where the temporary use is to be located;
3. A map of the property where the temporary use is to be located depicting the location of any existing structures, parking spaces, and the temporary use itself;
4. A complete description of the proposed temporary use, including hours of operation, proposed method of merchandise display, proposed signage, list of all goods to be sold and material and equipment to be used in the proposed operations;
5. A letter of permission from the property owner pertaining to the authorized use of the site and any other facilities or services necessary to provide for the safe operation of the event;
6. For any use that includes the operation of a tent, a copy of the certificate of flame resistance;
7. For any use that involves the processing and/or sale of food products, a copy of the temporary food establishment permit issued by the State Health Department; and
8. Any other information deemed necessary to conduct a thorough analysis of the application.

(b) Temporary Uses, Performance Standards

All temporary uses shall comply with the following performance standards:

1. Temporary uses shall demonstrate the ability to display merchandise in a manner that does not create a nuisance, or adversely impact surrounding property or the visual quality of the city;
2. Signage for temporary uses shall be limited to one sign, not to exceed eight square feet. The sign shall be attached to a vehicle or structure associated with the special event;
3. No off-premise signs or attention attracting devices shall be allowed;
4. Special events shall be located in a manner that will not cause vehicular congestion or occupy required parking spaces for another uses;

5. Upon expiration of the permit, all associated materials and equipment shall be promptly removed from the property; and
6. Other reasonable conditions of approval may be imposed to ensure the protection of the public health, safety and general welfare. (Ord. No. 1423 § 1.)

Article 39.13 Crew Camp Housing

Sections:

39.13.001 Definition
39.13.002 Crew Housing Special Use Permit
39.13.003 Crew Housing Permit Fees
39.13.004 Minimum Design Standards
39.13.005 Application for Special Use Permit
39.13.006 Grant of Special Use Permit
39.13.007 Revocation of Permit
39.13.008 Prohibited Housing Types
39.13.009 Prohibited Activities
39.13.010 Posting of Reclamation Bond
39.13.011 Conditions – Reporting Requirements

Section 39.13.001 Definitions

As used in this Article:

1. "Crew housing facilities" means one or more lodging units or skid units, ordinarily designed for human living quarters or a place of business, on a temporary or permanent basis, which are not real property, as defined in section 57-02-04, and are not mobile homes, as defined in section 57-55-01. A group of crew housing facilities that are connected physically or by common ownership may be treated as a single crew housing facility for purposes of imposition of crew housing permit fees imposed under this chapter.

2. "Crew housing permit" means a right granted by a city or county to locate crew housing facilities on property within the jurisdiction of the city or county under this chapter and to enjoy attendant services and facilities provided by the city or county.

3. "Skid unit" means a structure or group of structures, either single or multisectional, which is not built on a permanent chassis and is ordinarily designed for human living quarters or a place of business, on a temporary or permanent basis. (Ord. No. 1419 § 1.)

Section 39.13.002 Crew housing special use permit

Any person desiring to operate a crew housing facility shall first apply for a special use permit, as provided herein. Upon receipt of the completed application, the Board of City Commissioners shall have the obligation to (1) judge whether the person applying for the permit, and any owner, operator, or vendor associated with the applicant, is experienced and able to operate a crew camp in the best interests of the City of Dickinson and its citizens; and (2) judge whether the physical location and land sought to be used for a crew housing facility is appropriate for the use intended.

Any crew housing facility shall require a special use permit, and shall not be allowed in any zoning designation within the City of Dickinson or its extra-territorial zoning jurisdiction without such special use permit. Such special use permit shall be valid for a maximum period of five years from the date of final approval by the Board of City Commissioners. Any person granted a special use permit for a crew housing facility shall have the option to apply for an extension of the special use permit for an additional five years period. Any extension of the special use permit shall be at the sole discretion of the Board of City Commissioners. (Ord. No. 1419 § 2.)

Section 39.13.003 Crew housing permit fees

The City shall impose an annual crew housing permit fee, the amount of which shall be determined on the basis of the value of services and facilities provided to the crew housing facility by the city or county, or both, and incorporated into the City's fee schedule. (Ord. No. 1419 § 3.)

Section 39.13.004 Minimum Design Standards

All crew housing facilities permitted under this Article shall meet the following minimum design standards:

1) Provide all ordinary urban services, to include municipal water, municipal wastewater, and urban roads
2) Annexation of all real property containing the crew housing facility into city limits
3) Provide adequate parking for any and all crew housing facility residents
4) Provide for adequate fire suppression
5) Provide for adequate access to emergency vehicles
6) Provide for adequate security of the crew camp facility
7) Meet all design standards requires by any building code, fire code, subdivision code, or zoning code adopted by the City of Dickinson
8) The Board of City Commissioners may further require a minimum lot size or minimum acreage for the crew housing facility.
9) The Board of City Commissioners may further require the land on which the crew housing facility is located to be platted as a subdivision
10) The Board of City Commissioners may further require any condition or restriction that in the judgment of the Board is reasonable and necessary for the crew housing facility. (Ord. No. 1419 § 4.)

Section 39.13.005 Application for Special Use Permit

The application for a special use permit for crew housing facility shall be signed by the owner of the crew housing facility, as well as by the owner of the land on which the crew housing facility is to be located. The application shall include the following information:

(1) A complete statement of the type of business contemplated
(2) Consent to a background investigation of the owner of the crew housing facility
(3) Identify any vendors who are expected to provide services at the crew housing facility
(4) The applicant's history of residency, employment, and business ownership for five years prior to the date of the application. If the applicant is a partnership, this information shall be furnished for all the partners; and, if a corporation, whether such corporation is a subsidiary of any corporation, and, if so, the name of the parent corporation, the purposes for which the corporation was incorporated and the names and addresses of all officers, directors and managing agents and the names and addresses of all stockholders holding more than five percent of the capital stock of such corporation.
(5) Whether the applicant has ever engaged in the business of owning or operating a crew housing facility before; and, if so, the dates and locations of such ownership or operation.
(6) Whether during the five (5) years preceding the date of the application, the applicant has ever been convicted of a violation of any law of the United States or of any state; and, if so, the dates, names of places and courts in which such convictions were obtained.
(7) Whether the applicant has any agreement, understanding or intention to have any agreement or understanding with any person to obtain for any other person or to transfer to any other person the license obtained or to use the license for any other purpose other than the specific use of the

applicant; and, if so, the names and addresses of such persons and the conditions of such agreements.

(8) A description of the temporary housing units

(9) A description of how the proposed units are to be set and/or anchored to the ground

(10) A statement that roads to be constructed within the facility will meet city specifications

(11) A copy of the applicants deed and/or lease to the real property on which the crew housing facility would be located.

(12) A copy of plot plans, drawn to scale, showing the location of housing units, additional structures, setbacks, utilities, drainage, parking, ingress, egress, screens, buffers, and fencing

(13) A copy of the facility's house rules and regulations

(14) A copy of the facility's on-site security plan

(15) A copy of the facility's on-site emergency management plan, to include contingencies for fire, tornado, and other natural disaster

(16) Any additional information deemed necessary by the City Planner, City Engineer, Planning and Zoning Commission, or Board of City Commissioners (Ord. No. 1419 § 5.)

Section 39.13.006 Grant of Special Use Permit

Any application for a special use permit as provided under this Article shall be denied to any applicant who, in the discretion of the Board of City Commissioners, is a person of questionable character or for any other cause which would, in the opinion of the Board, render either the applicant or the premises to be licensed, improper or unfit for a crew housing facility, or which would, in the Board's judgment, make the granting of the permit contrary to the best interests of the City and its citizens. In granting any special use permit under this Article, the Board of City Commissioners shall have the authority to limit the number of living units or total number of persons to be housed in such units within the crew housing facility. The Board of City Commissioners shall further have the authority to limit the total acreage or land area that may be used for the crew housing facility. (Ord. No. 1419 § 6.)

Section 13.13.007 Revocation of Permit

The Board of City Commissioners may review the status of any permit issued pursuant to this Article, and take appropriate action to suspend or revoke the same, as provided herein:

(1) Suspension and Revocation for Cause. Any permit issued pursuant to this Article may be revoked or suspended for cause by the Board of City Commissioners for cause, which cause may include, among other grounds, the following:

a. When the applicant is adjudged bankrupt.

b. When the applicant has made any false statement or statements in an application for the issuance of such permit.

c. When the applicant, in the case of a corporation or other entity, manager of a licensee has been convicted of a violation of any felony crime under the laws of the United States or of any state.

d. When the business of the applicant at the location permitted has been conducted in violation of the health or sanitary regulations of the city or of the state.

e. When in the judgment of the Board of City Commissioners, the applicant has conducted his business or permitted his business to be conducted in a disorderly manner or in a manner that is dangerous or detrimental to the public welfare and morals.

f. When the applicant or an agent or employee of the applicant violates any term or condition of the permit or any provision of this Article.

(2) Notice – public hearing. Sanctions or penalties under this section may not be invoked without a public hearing if requested by the applicant. Upon written notification to the

applicant by the City Administrator that a penalty is being sought under this section, the applicant may notify the City Administrator's office within ten (10) days of the date of such written notification and request a hearing on the proposed penalty. Failure to notify the City Administrator within ten (10) days of the date of such written notification will be deemed acceptance of the penalty without hearing.

A hearing shall be set before the Board of City Commissioners specifying the time and place of the hearing, and shall be mailed to the applicant. A record of any hearing shall be made by electronic recording device.

If, upon such hearing, it appears to a majority of the Board of City Commissioners that sufficient cause exists for the penalty sanctions, the Board of City Commissioners shall make its order in accordance with the provisions of this Article. The Board of City Commissioners shall further issue its findings, conclusions and order which shall be mailed to the applicant.

(3) No Refunds on Revocation or Suspension. When any permit is revoked or suspended for any reason, no portion of the permit fee shall be returned to the applicant. (Ord. No. 1419 § 7.)

Section 39.13.008 Prohibited Housing Types

Recreational vehicles, campers, and mobile homes are prohibited units within a crew housing facility (Ord. No. 1419 § 8.)

Section 39.13.009 Prohibited Activities

No animals are allowed on the premises of a crew housing facility. No parking shall be allowed between units. The site is to be maintained free of garbage and junk. The operator of the crew housing facility shall be responsible for establishing and enforcing any restrictions related to possession or use of alcohol on the crew housing facility premises. (Ord. No. 1419 § 9.)

Section 39.13.010 Posting of Reclamation Bond

Prior to the start of any construction on the crew housing facility, or any occupancy thereof, the applicant shall post with the City of Dickinson a valid reclamation bond in an amount to be determined by the City Engineer based upon the engineer's estimate of the costs to return the property to its original condition, permanent improvements excepted, following termination of the use of the property for a crew housing facility. (Ord. No. 1419 § 10.)

Section 39.13.011 Conditions – Reporting Requirements

The Board of City Commissioners may attach any conditions or reporting requirements to the grant of the special use permit that it deems necessary and prudent. (Ord. No. 1419 § 1.)

Article 39.28 Lighting

Sections:

39.28.060 Repealed by 1175

Chapter 40 OIL, GAS AND MINERAL REGULATIONS

Last updated December 2013

Articles:

40.01 Oil and Gas Drilling
40.02 Oil and Gas Pipelines

Articles 40.01 Oil and Gas Drilling

Sections:

40.01.010 Declaration of policy.
40.01.015 Title.
40.01.020 Oil, gas and other minerals.
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40.01.035 Inspections.
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40.01.065 Distance limitations and spacing requirements.
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40.01.076. Plat Recording Required.
40.01.080 Penalty.
40.01.100 Oil, Gas and Other Mineral Leases

Sections 40.01.010 Declaration of policy

It is hereby declared to be in the public interest to foster, to encourage, and to promote the development, production, and utilization of natural resources of oil and gas in the City of Dickinson in such a manner as to prevent waste; to authorize and to provide for the operation and development of oil and gas property in such a manner that a greater ultimate recovery of oil and gas be had and that the correlative rights of all owners be fully protected; and to encourage and to authorize cycling, recycling, pressure maintenance and secondary recovery operations in order that the greatest possible economic recovery of oil and gas be obtained within the City to the end that the land owners, the royalty owners, the producers, and the general public realize and enjoy the greatest possible good from these vital natural resources. It is further hereby declared to be in the public interest and for the health, wealth and safety of the citizens of the City to avoid unpleasant incidents of oil and gas production, such as dangerous fire hazards, disquieting noise of drilling machinery, unpleasant odor, annoyance from unsightly structures, and other conditions that seriously affect the surrounding land, but at the same time, to not deprive mineral owners of enjoyment of their valuable mineral rights. (Ord. No. 1122 § 1.)

Sections 40.01.015 Title

This Article shall be known and may be cited as the City of Dickinson Oil Code. "Code", as referred to in this Article, unless the context clearly indicate otherwise, shall mean the City of Dickinson Oil Code. (Ord. No. 1122 § 2.)

Sections 40.01.020 Oil, gas and other minerals

It shall be unlawful and an offense for any person, firm, corporation or association hereafter to do or perform, or cause to be done or performed, any work or labor of any kind upon or in connection with the drilling, mining, or producing of oil, gas, or other minerals within the corporate limits or the extraterritorial zoning jurisdiction of the City of Dickinson, North Dakota, except as permitted under the provisions of this Ordinance, and by the Laws of the State of North Dakota and the Rules and Regulations prescribed by the State Industrial Commission. (Ord. No. 1122 § 3; Ord. No. 1152 § 1.)

Sections 40.01.025 Definitions

1. Blow-out Preventer - a mechanical, hydraulic, or pneumatic or other device, or combination of such devices secured to the top of a well casing, including valves, fittings and control mechanisms connected therewith which can be closed around the drill pipe, or which completely closes the top of the casing and is designed for preventing blow-outs.

2. City Inspector - all officers of the City of Dickinson who have responsibility for enforcing this code, or their duly authorized representatives.

3. City Commission - the City Commission of Dickinson, North Dakota.

4. City Planning Staff - shall include, but not be limited to the Community Development Director, The Fire Chief, The Building Official, City Engineer, the City Attorney, and the Director of Inspections.

5. Energy Committee - a committee consisting of at least five persons, appointed by the City Commission.

6. Industrial Commission - shall mean the State Industrial Commission of the State of North Dakota.

7. Service Well - any well drilled or actually used for injection of saltwater or other substances into the earth.

8. Drilling - digging or boring a hole in the earth for purposes of exploring for, developing or producing petroleum. Drilling includes all operations through the completion of a well.

9. Drilling Site - the premises used during the drilling, maintaining, operating and producing of a well or wells located thereupon.

10. Oil or Gas Well - any well drilled, operated, or maintained for the production of oil, gas, casinghead gas, or any of them, or their by-products or derivations.

11. Planning Commission - the Planning Commission of the City of Dickinson, North Dakota.

12. Board of Adjustment - the Board of Adjustment of the City of Dickinson, North Dakota.

13. Well – any oil well, gas well, or service well, including the wellheads, tank batteries and on-site production equipment associated with the same.

(Ord. No. 1122 § 4; Ord. No. 1152 § 2; Ord. No. 1525 § 1.)

Sections 40.01.030 Conditional use permit, site plan

Subsequent to the effective date of this Article, it shall be unlawful and an offense for any person, firm, corporation or association to drill or to maintain and operate any oil, gas, or disposal well within the corporate limits or the extraterritorial zoning jurisdiction of the City of Dickinson, North Dakota, without first having secured a conditional use permit to do so as hereinafter provided.

A. Permit application - Every person, firm, corporation or association hereafter desiring to drill or to maintain and operate any oil, gas or disposal well within the zoning jurisdiction of the City of Dickinson, North Dakota, shall file an application therefor in writing upon the form required by the Director of Inspections and signed by the applicant or his agent authorized to sign the same. The applicant shall be required to provide copies of the permit application which has been submitted to the North Dakota Industrial Commission with said application. Such application shall specify the quarter section, township, and range, and the location site within the quarter section thereof. The application shall also contain a site plan which must contain the following information:

(a) Written legal description.
(b) Scale drawing of the property and appropriate dimensions.
(c) Scale, north arrow, date, and legend.
(d) Name, address, and telephone number of property owner and applicant.
(e) Location and size of existing easements, utilities, and right-of-ways, closest distances to buildings.
(f) Location and dimension of all vehicular entrances, exits, and drives.
(g) General drainage system.

(h) Size of site.

(i) Location of all physical facilities to include proposed wells, structures, portable toilets, and relationship to all buildings within a 660 foot radius.

(j) The site plan shall contain a statement describing all pollution prevention equipment to be utilized; it shall be the policy of the City of Dickinson to require blow-out prevention devices on every drilling operation covered hereunder.

(k) Location of all mud pits and/or closed systems.

(l) General location of tank batteries and size of tank battery site

(m) Any oil, gas or water lines to be utilized.

(n) Location of ingress and egress to be utilized by applicant and to include all vehicular entrances, exits and drives.

(o) Type of screening devices or construction to be utilized around the pumping site, which screening shall be required to be of such type so as to discourage access, entry, or climbing so as to endanger life and security; all screening shall be required to meet the minimum screening standards of the City of Dickinson zoning code.

(p) Adequate proof of insurance.

(q) Location of all public streets to be utilized.

B. The completed application shall be submitted to the Energy Committee for review. The Energy Committee shall review the application and submit its recommendations to the City Commission prior to the public hearing. The Energy Committee may require the applicant to appear before said committee to provide additional information or explanation in support of the application.

C. The City Commission shall hold an official public hearing, giving at least fifteen (15) days' notice of said public hearing, the purpose of which public hearing shall be for review and consideration of approving or denying the plan as submitted. The City shall also provide written notice of the public hearing, at least five (5) days prior to the public hearing, to residents or occupants of all occupied buildings within one thousand feet (1,000') of the proposed site. Said notice shall be sent by regular mail to the last known address of said residents or occupants. The City Commission shall act on any application within 30 days following the public hearing. All publication and notice requirements contained in Chapter 39 of the Dickinson Municipal Code for conditional use permits shall be applicable.

D. The Applicant shall pay, at the time of the application, an application fee in an amount to be determined by the Dickinson City Commission.

E. A Conditional Use Permit granted pursuant to this ordinance shall be valid provided the well proposed to be drilled in the application is completed within one year of the date of Commission approval of said application. If such well is not completed within one year, the conditional use shall be automatically revoked, and the applicant shall have no rights thereunder. (Ord. No. 1122 § 5; Ord. No. 1152 § 3.)

Sections 40.01.035 Inspections

For purposes of this article, the City of Dickinson, or its authorized representatives, may inspect any well location at any time after issuance of a conditional use permit for purposes of insuring conformance with the requirements of this Ordinance. Any applicant for a permit hereunder shall be deemed to have granted the agents of the City of Dickinson the right of entry onto those properties covered by the permit for the purposes of carrying out the inspections as required by the City of Dickinson. (Ord. No. 1122 § 6.)

Sections 40.01.040 Pollution

A. The premises upon which any oil, gas, or disposal well is drilled, operated, or maintained shall be kept free of all accumulations of rubbish, litter, or discarded materials, and other wastes insofar as the same may be reasonably done in the conduct of operations covered by this Ordinance.

B. The permittee shall take special precautions using equipment available which meets current industry standards to avoid fire hazards, disquieting noise, unpleasant odors, annoyance from unsightly structures and other conditions that may cause pollution to the citizens of the City. In conjunction with the development plans required under this Ordinance, the applicant shall submit a detailed summary of all anti-pollution devices and equipment to be used by the applicant in the drilling and development of the site, specifically including any precautionary measures that will be taken by the applicant to prevent the emission of any hydrogen sulphide gas or similar odors from the well site. (Ord. No. 1122 § 7; Ord. No. 1152 § 4.)

Sections 40.01.042 Reclamation

A. All lands upon which a drilling operation is or has been operated shall within a reasonable length of time, not to exceed one (1) year, be returned, as nearly as practicable to the previous original topography and natural state interests of abating erosion thereof.

B. All mud pits shall be reclaimed within thirty (30) days after completion of the well. (Ord. No. 1152 § 9.)

Sections 40.01.045 Zoning

Oil, gas, or service wells shall be permitted in all zoning districts as a conditional use only, as provided for in this Ordinance and in the City of Dickinson Zoning Ordinance provided, however, that the Board of City Commissioners shall have the power to refuse any application for a conditional use permit by reason of the location of the proposed well and the character and value of the permanent improvements already erected on the drilling property in question or adjacent thereto, or because of the use to which the land and surroundings are adapted for civic purposes, or if, for sanitary reasons, the drilling of the well will be a serious disadvantage to the City and its inhabitants as a whole. (Ord. No. 1122 § 8.)

Sections 40.01.050 Additional conditions and requirements

A. In addition to the conditions applying to oil well drilling operations contained herein, the City Commission hereby declares that in the interest of protecting the people of the City of Dickinson and the use and enjoyment of their property and providing for their comfort, health and safety, and general welfare, the following conditions and restrictions are adopted:

(1) That all well operations which are placed upon the pump shall be powered by electricity so long as electricity is available. If electricity is not available, hospital grade muffled engine will be used. All permanent equipment shall be painted, where possible, and kept in a neat condition. All production operations shall be as free from noise as possible with modern operations.

(2) That all power operations other than drilling and pulling units shall at all times be carried on only by means of electrical power, which power shall not be generated on the drilling site.

(3) That an internal combustion engine or electrical equipment may be used in the drilling or pumping operations of the well and if an internal combustion engine is used, that mufflers be installed on the mud pumps and engine so as to reduce noise to levels allowed under Dickinson City Code Article 24.12.

(4) That no sign shall be constructed, erected, maintained or placed on the premises or any part thereof, except those required by law or this code to be displayed in connection with the drilling, maintenance, or operation of the well.

B. Based upon the specific site characteristics set forth above, nature of the proposed activity, and its proximity to surrounding development, and type and intensity of the noise emitted, additional noise abatement measures may be required. The level of required mitigation may increase with the proximity of the well and well site to existing residences and platted subdivision lots, and/or the level of noise emitted by the well and well site. One or more of the following additional noise abatement measures may be required:

(1) Acoustically insulated housing or cover enclosing the motor or engine, or compressor.

(2) Vegetative screen consisting of trees and shrubs.
(3) Solid wall or fence of acoustically insulating material surrounding all or part of the facility.
(4) Noise management plan identifying and limiting hours of maximum noise emissions, type, frequency, and level of noise to be emitted, and proposed mitigation measures.
(5) Requirement for electric motors only. (Ord. No. 1122 § 9; Ord. No. 1152 § 5.)

Sections 40.01.055 Special mitigation measures

Where a well or tank battery does not comply with the required setback or other portions of this ordinance, or in areas of increased visual sensitivity determined by the City, the applicant shall submit a Visual Mitigation Plan including one or more of the following standards shall include but not be limited to:

A. Exterior lighting shall be directed away from residential areas, or shielded from said areas to eliminate glare.

B. Construction of buildings or other enclosures may be required where facilities create noise and visual impacts non-mitigable because of proximity, density, and/or intensity of adjacent residential land use.

C. One or more of the following landscaping practices may be required, on a site specific basis:

(1) Establishment and proper maintenance of adequate ground covers, shrubs, trees.
(2) Shaping cuts and fills to appear as natural forms.
(3) Cutting rock areas to create irregular forms.
(4) Designing the facility to utilize natural screens.
(5) Construction of fences or walls such as woven wood or rock for use with or instead of landscaping.

D. Safety Measures. Any well shall be equipped with blowout preventers during drilling. (Ord. No. 1122 § 10.)

Sections 40.01.060 Exploration and production on publicly owned lands

Any person engaged in the drilling for and production of oil and natural gas within the corporate limits or the extraterritorial jurisdiction of the City shall comply with the provisions of Chapter 38-09, N.D.C.C., with regard to the exploration and production on publicly owned lands. (Ord. No. 1122 § 11; Ord. No. 1152 § 6.)

Sections 40.01.065 Distance limitations and spacing requirements

In all areas within the zoning jurisdiction of the City of Dickinson the following shall apply:

A. No well shall be located less than 100 feet from any building or structure not necessary for the operation of the well. No well shall be located less than less than 300 feet from any building or structure of any residential use, educational use, institutional use commercial office or retail use, or other place of assembly.

In the event of a pre-existing well, no building shall be constructed, and the City shall not issue a building permit or certificate of occupancy, for any building or structure not in conformance with this Section.

B. Wellheads, tank batteries and associated on-site production equipment shall be located not less than 100 feet from the edge of any public right-of-way.

C. The requirements of this section may be waived, in sole discretion of the Board of City Commissioners, as part of the Conditional Use Permit upon finding by the Board that such waiver is consistent with public health, safety and welfare. (Ord. No. 1122 § 12; Ord. No. 1152 § 7; Ord. No. 1467 § 1)

Sections 40.01.070 Access roads

All private roads used to access the tank battery and the well head shall be improved and maintained according to the following standards:

1. ACCESS ROADS. Access roads to tank batteries shall, at a minimum, be:
   - A. A graded gravel roadway at least twelve (12) feet wide and with a minimum unobstructed overhead clearance of thirteen feet six inches (13'6"), having a prepared subgrade and an aggregate base course surface a minimum of six (6) inches thick compacted to a minimum density of 95 percent of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures approved by the Engineering Department.
   - B. Graded so as to provide drainage from the roadway surface and constructed to allow for cross drainage of waterways (i.e., roadside swells, gulches, rivers, creeks, etc.) by means of an adequate culvert pipe. Adequacy of the pipe shall be subject to approval of the Engineering Department.

2. No mud or gravel, except minor and nominal amounts, shall be carried onto the city streets. If mud or gravel is carried onto the city streets, the owner or operator shall insure that the streets are promptly cleaned. With the permission of the Street Department the owner or operator may make arrangements for the Street Department to clean the streets at the sole cost of the owner or operator.
3. No public facilities such as curbs, gutters, pavement, water or sewer lines, etc., shall be damaged by vehicles entering or leaving the site. In the event of damage the owner and operator, jointly and severally, shall indemnify the City for any reasonable repair costs.
4. All tank battery and wellhead access roads which intersect a paved City street or alley shall be paved to standards determined by the City Engineer from the existing paved roadway to the edge of the public right-of-way. (Ord. No. 1122 § 13.)

Sections 40.01.075 Oil and gas production damage compensation

In addition to complying with all of the requirements of this Ordinance, and in the event of any damages, any person engaged in the drilling for and production of oil and natural gas within the corporate limits or the extraterritorial jurisdiction of the City of Dickinson, shall fully comply with the provisions of Chapter 38-11.1, N.D.C.C., entitled "Oil and Gas Production Damage Compensation". (Ord. No. 1122 § 14; Ord. No. 1152 § 8.)

Sections 40.01.076. Plat Recording Required

Any person reclaiming a reserve pit after the completion of an oil and gas drilling operation shall record an accurate plat certified by a registered surveyor showing the location of the well and notice that an abandoned reserve pit may be on location within 6 months of completion of the reclamation. The plat must specify the exact legal description of the reserve pit, including the lot, block and subdivision if the well is located within a platted subdivision. (Ord. No. 1152 § 10.)

Sections 40.01.080 Penalty

Any violation of this Article shall subject the offender, upon conviction, to a fine not exceeding Five Hundred Dollars ($500.00), a jail sentence not to exceed thirty (30) days or both such fine and jail commitment. Each day any violation of any provision of this Oil Code shall continue shall constitute a separate offense. (Ord. No. 1122 § 15.)

Sections 40.01.100 Oil, Gas and Other Mineral Leases

The City of Dickinson shall comply with the provisions of Chapter 38-09, NDCC pertaining to leasing oil, gas and other mineral interest, except as follows:

Non-operative oil and gas leases may be executed through private negotiation where the acreage or mineral rights owned by the City is one hundred sixty acres or less.

Such non-operative leases may be made upon such terms and conditions as the Board of City Commissioners deems advisable. (Ord. No. 1204, § 1.)

Articles 40.02 Oil and Gas Pipelines

Sections:

40.02.010 Oil, gas and other pipelines.
40.02.020 Conditional use permit for pipelines.
40.02.030 Inspections.
40.02.040 Zoning.
40.02.050 Conditions and requirements.
40.02.060 Distance limitations and spacing requirements.
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Sections 40.02.010 Oil, gas and other pipelines

It shall be unlawful and an offense for any person, firm, corporation or association hereafter to do or perform, or cause to be done or performed, any work or labor of any kind upon or in connection with any pipes, pipelines or other facilities for the transmission of gas, oil, or other petroleum products, which are buried beneath the surface, within the corporate limits or the one mile zoning jurisdiction of the City of Dickinson, North Dakota, except as permitted under the provisions of this Ordinance, by the Laws of the State of North Dakota and the Rules and Regulations prescribed by the State Industrial Commission, and by all federal laws, rules and regulations. This ordinance shall not apply to any pipeline or other facility owned or operated by a utility which provides service to residential and commercial customers in the City of Dickinson. (Ord. No. 1145 § 1.)

Sections 40.02.020 Conditional use permit for pipelines

Subsequent to the effective date of this Ordinance, it shall be unlawful and an offense for any person, firm, corporation or association to install or to maintain and operate any pipes, pipelines or other facilities for the transmission, storage, or processing of gas, oil, or other petroleum products, which are buried beneath the surface, within the corporate limits or the one mile zoning jurisdiction of the City of Dickinson, North Dakota, without first having secured a conditional use permit to do so as hereinafter provided.

A. Permit application - Every person, firm, corporation or association hereafter desiring to install or to maintain and operate any pipes, pipelines or other facilities for the transmission of gas, oil, or other petroleum products, which are buried beneath the surface, within the zoning jurisdiction of the City of Dickinson, North Dakota, shall file an application therefor in writing upon the form required by the Director of Inspections and signed by the applicant or his agent authorized to sign the same. Such application shall specify the quarter section, township, and range, and the location site within the quarter section thereof. The application shall also contain a site plan which must contain the following information:

(a) Written legal description.
(b) Scale drawing of the easement and horizontal dimensions of the pipeline.
(c) Scale, north arrow, date, and legend.
(d) Name, address, and telephone number of property owners and applicant.
(e) Location and size of existing easements, utilities, and right-of-ways.
(f) Preliminary plat identifying the route of said pipeline and all property owners.
(g) Description of all pipe to be buried, including type of pipe, length of each section of pipe, and the type and location of all valves.
(h) Location of all physical facilities.
(i) Adequate proof of insurance.

B. The Director of Inspections shall, after reviewing said application, recommend approval or denial of the application, and shall publish a notice of public hearing before the Board of Adjustment.

C. The Board of Adjustment shall hold an official public hearing, giving at least seven (7) days' notice of said public hearing, the purpose of which public hearing shall be for review and consideration of approving or denying the plan as submitted. The Board of Adjustment shall act on any application within 30 days following the public hearing. All publication and notice requirements contained in Chapter 39 of the Dickinson Municipal Code for conditional use permits shall be applicable.

D. The Applicant shall pay, at the time of the application, an application fee in an amount to be determined by the Dickinson City Commission.

E. Any decision of the Board of Adjustment may be appealed to the Dickinson City Commission and subsequently to district court, as provided in North Dakota Century Code section 40-47-11. (Ord. 1145 § 2.)

Sections 40.02.030 Inspections

For purposes of this section, the City of Dickinson, or its authorized representatives, may inspect any pipeline location at any time after issuance of a conditional use permit for purposes of insuring conformance with the requirements of this Ordinance. The Applicant shall, within 45 days after completion of the pipeline, provide written certification that said pipeline has been installed in compliance with the provisions of this Chapter. Any applicant for a permit hereunder shall be deemed to have granted the agents of the City of Dickinson the right of entry onto those properties covered by the permit for the purposes of carrying out the inspections as required by the City of Dickinson. (Ord. 1145 § 3.)

Sections 40.02.040 Zoning

Gas or other pipelines shall be permitted in all zoning districts as a conditional use only, as provided for in this Ordinance and in the City of Dickinson Zoning Ordinance provided, however, that the Board of Adjustment shall have the power to refuse any application for a conditional use permit by reason of the location of the proposed pipeline and the character and value of the permanent improvements already erected on the property in question or adjacent thereto, or because of the use to which the land and surroundings are adapted for civic purposes, or if, for sanitary reasons, the installation of the pipeline and appurtenances will be a serious disadvantage to the City and its inhabitants as a whole. (Ord. 1145 § 4.)

Sections 40.02.050 Conditions and requirements

In addition to the conditions applying to oil and gas pipelines contained herein, the City Commission hereby declares that in the interest of protecting the people of the City of Dickinson and the use and enjoyment of their property and providing for their comfort, health and safety, and general welfare, the following conditions and restrictions are adopted:

(1) All pipelines must be buried with a minimum of 54" of cover;

(2) The pipe must be a minimum of SDR 13.5 (130 psi) or its equivalent, and must be rated at least 2½ times the working pressure of the pipeline;

(3) The application must identify the location of all valves which are capable of shutting off the pipeline. The City reserves the right to require additional shutoff devices if it determines that such devices are necessary to protect the City and its citizens.

(4) The location of all pipelines must be consistent with the Master Plan, and must be located within the existing or proposed right of way;

(5) For all street crossings, a profile must be provided prior to construction. City may require other pre-construction profile drawings depending on location. All hard-surfaced crossings must be bored;

(6) All buildings must comply with the building code;

(7) The pipeline company shall install a continuous locator tape and/or cable directly above the pipeline for the purpose of determining the location of the pipe after it has been buried. The locator tape and/or cable shall be compatible to magnetic and/or electronic sensing devices capable of accurately determining the location of the pipeline within a two (2) foot tolerance.

(8) The pipeline company shall monitor all pipelines for leaks according to the Office of Pipeline Safety.

(9) The pipeline company shall provide the City with reproducible drawings showing the "as-built" location of the constructed pipeline. The as-built drawing shall be at a scale not less than 1" = 100' and shall depict pipeline size and material type; centerline stationing of angle points, street crossings, section line intersections and valve locations; horizontal ties to permanent survey monuments of the public Land System at least every one-half mile (or pipeline location based on the North Dakota State Coordinate System); and name, address and phone number of the pipeline company. As-built drawings shall be submitted within 90 days of construction completion and shall also be filed in the office of the Stark County Register of Deeds.

(10) Signage to depict the location of the pipeline must be installed pursuant to federal Department of Transportation guidelines.

Additional restrictions may be imposed in the permit if the City Commission determines that such restrictions are necessary to protect the citizens of the City of Dickinson. (Ord. 1145 § 5.)

Sections 40.02.060 Distance limitations and spacing requirements

In all areas within the zoning jurisdiction of the City of Dickinson, all pipelines must be located at least 15 feet from water mains, sanitary sewer mains and storm sewer mains (unless otherwise approved in writing by the Engineering Department). The requirement of this section may be waived as part of the Conditional Use Permit at the request of the surface owner if such request is consistent with public safety. (Ord. No. 1145 § 6.)

Sections 40.02.070 Notice of Pipelines--Filing Required

Any person or entity who receives a permit under the provision of this chapter shall, within 45 days after completion of construction of the pipeline, file a notice with the City Engineer and the Stark County Register of Deeds which specifies the following:

a) name, address and telephone number of the owner having control of the facilities;

b) description of the location of the facilities by township number, section number, quarter section, together with the lot and block description if the property is platted;

c) as-built drawings which identify the exact location of the pipeline or other facilities. (Ord. 1145 § 7.)

Sections 40.02.080 Excavation Requirements

All excavations for pipelines or other facilities authorized under the provisions of this Article shall comply with the requirements of Article 33.12 of the Dickinson City Code entitled "Excavations", and the Requirements for Excavation & Installation of Underground Sewer and Water, which requirements shall be in addition to the requirements of this section. (Ord. No. 1145 § 8.)

Sections 40.02.090 Reclamation

If a pipeline or other facility permitted herein is abandoned or ceases to be in use for more than 12 months, it shall be purged and capped at least three (3) feet below ground and inspected by the City of Dickinson. The surface shall be restored to the condition it was in prior to the pipeline excavation. (Ord. No. 1145 § 9.)

Sections 40.02.100 Penalty

Any violation of this Ordinance shall subject the offender, upon conviction, to a fine not exceeding Five Hundred Dollars ($500.00), a jail sentence not to exceed thirty (30) days or both such fine and jail commitment. Each day any violation of any provision of this Oil Code shall continue shall constitute a separate offense. (Ord. No. 1145 § 10.)