OAKES Revised Ordinances

2025

OAKES, North Dakota

Updated by:

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OAKES, North Dakota

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Ordinances Adopted: August 12, 2025

Enacting Ordinance

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Otter Tail Power Co.

ENACTING ORDINANCE

ORDINANCE NO. 1

Adopting the Revised Ordinances of the City of OAKES, North Dakota.

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

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

Section 2. ENACTMENT. The Revised Ordinances of OAKES, consisting of Chapters One to Eighteen, both inclusive, an original copy of which has been authenticated by the original signatures of the City's chief executive officer and auditor and which original is on file in the office of the City Auditor, are hereby adopted as the Ordinances of the City of OAKES superseding any and all previous ordinances for the City of OAKES.

Section 3. EXISTING LICENSES AND PERMITS. All licenses and permits issued prior to the date on which this ordinance becomes effective shall continue in force for the remainder of the term for which the same were issued, without additional fees, but all licensees and permittees shall be governed by the provisions of the Revised Ordinances of OAKES for the remainder of the terms of said licenses and permits, in the same manner and to the same extent as if said licenses and permits had been issued under the provisions of the Revised Ordinances of OAKES.

Section 4. NEW LICENSES AND PERMITS. In the case of any license or permit not heretofore required and appearing for the first time in the Revised Ordinances of OAKES, such license or permit shall be secured on or before the first day of the first month following the effective date of this ordinance, and the first fee therefore shall be pro-rated for the remainder of that term thereof on a monthly basis, provided, that the minimum fee for any such new license or permit shall be one dollar ($1).

Section 5. INVALIDITY OF PART. If any section, subsection, sentence, clause or phrase of these ordinances is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause, phrase or portion thereof. The governing body hereby declares that it would have passed these ordinances and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases may be declared invalid or unconstitutional.

Section 6. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and approval, and without publication. (North Dakotan Century Code, hereafter N.D.C.C., Section, hereafter §, 40-11-09). (continued on to next page)

_____
MAYOR

ATTEST:

_____
CITY AUDITOR

CITY SEAL

First Reading:

Second Reading and Final Passage:

CHAPTER ONE

GOVERNMENT ORGANIZATION

ARTICLE 1

Jurisdiction

1.0101 Over Persons and Property

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

1.0102 Defining City Limits

There shall be included within the municipal limits of the City all areas duly platted and recorded as being within said City; all lots and blocks shall also include all streets, alleys and public ways included within the area and adjacent thereto which are defined as within the confines of the City limits. The City Council shall have jurisdiction within the corporate City limits and over any common or public grounds belonging to the City, and in and over all places within one mile of the municipal limits for the purpose of enforcing health and quarantine ordinances and police regulations and ordinances adopted to promote the peace, order, safety and general welfare of the municipality. (Source: N.D.C.C. § 40-06-01)

ARTICLE 2

Governing Body - City Council

1.0201 Regular Meetings

The City Council shall meet regularly at the City Hall on the second Tuesday of each month at the hour and place specifically fixed by the council. The council shall meet in addition thereto, as often as required by Section 40-08-10 of the North Dakota Century Code.

1.0202 Special Meetings

Special meetings may be called at any time by the mayor or any two (2) members of the governing body to consider matters mentioned in the call of such meetings. Notice of any special meeting shall be given to each member of the governing body at least three (3) hours before the time of the meeting.

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

All meetings of the governing body shall be open to the public, and a journal of its

proceedings shall be kept. Notice of the regular meeting time or of special meeting shall be given as provided by N.D.C.C. § 44-04-20 and amendments.

1.0204 Quorum

The provisions of N.D.C.C. § 40-06-03 and all subsequent amendment shall be and are hereby incorporated by reference in this ordinance.

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

1.0205 Reconsidering or Rescinding Votes at Special Meeting

The provisions of N.D.C.C. § 40-06-04 and all subsequent amendments shall be and hereby are incorporated by reference in this ordinance.

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

1.0206 Rules and Order of Business

Rules and order of business for the parliamentary government of the governing body shall be governed by Robert's Rules of Order. (Source: N.D.C.C. § 40-06-05). In addition Senate Bill 2180 passed during the 2025 legislative session enacts state law that allows the city to enact a resolution from time to time governing members of the public and their rights and limitations thereto regarding speaking at council meetings and the city reserves the right to act pursuant to said senate bill and subsequent statutes as amended from time to time. For informational purposes, the City passed a Resolution in the following form that may be amended from time to time by Resolution of the City Council:

1. Every regular meeting of a governing body of a city, county, township, school district, park district, or water resource district must include an opportunity for an individual to provide public comment.

   The undersigned public entity enacts the following policies regarding public comment:

2. An individual providing comment at a meeting shall provide to the governing body in writing the individual's name and address. The individual's address is an exempt record and is not therefore a public record for purposes of requests for documents by the public.

3. The governing body:
   a. Hereby limits all public comments from members of the public at public meetings as follows:
      i. Each speaker may speak for only the time allotted by the

governing body in each instance, but no longer than 3 minutes per speaker and the total time for public comment may not exceed 15 minutes, unless the governing body approves more time by majority vote.

ii. Any public comment shall be limited to the agenda topic item previously set by the governing body for said meeting or the immediately preceding meeting of the governing body as published in the agenda for the applicable meeting and identified in the individual public member's written request which written request must be received no later than 30 minutes prior to the commencement of the said meeting.

b. Hereby declares that this document is this public entity's developed policy regarding public comment rules for regular meetings.

4. A public comment:
   a. Must be pertinent to the public entity.
   b. May not interfere with the orderly conduct of the regular meeting.
   c. May not be defamatory, abusive, harassing, or unlawful.
   d. May be prohibited if an alternative procedure exists to bring that particular type of public comment before the public entity, the public comment includes confidential or exempt information, or the public comment is otherwise prohibited by law.

The governing body hereby declares that it may in its sole discretion determine on a case-by-case basis whether a member of the public is prohibited from providing a public comment during a public meeting if an alternative procedure exists to bring that particular type of public comment before the public entity, such as and not limited to submission of written statements or pre-recorded audio/visual statements to the governing body at or prior to the commencement of the said public meeting.

1.0207 Salaries

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

1.0208 President and Vice President – Election of

At the Organizational meeting (the first meeting following the municipal elections) in each even numbered year the City Council shall elect one of their members as president and one as vice president to hold office until their successors are elected.

ARTICLE 3

Elective Offices and Officers

1.0301 City Council - Who Constitutes

The governing body of the City shall be the City Council which shall be composed of the mayor and council members. The mayor and six council members shall be elected as provided by law. (Source: N.D.C.C. § 40-08-01, 03)

1.0302 Term of Office of Council Members

Council members shall hold office for four years and until their successors are elected and qualified. Terms of council members shall be arranged so that only one-half (1/2) of the council members shall be elected in any one (1) election.

1.0303 Mayor - Qualifications - Term

The chief executive officer of the City is the mayor. The mayor shall be a qualified elector within the City and shall hold office for four years and until a successor is elected and qualified. (Source: N.D.C.C. § 40-08-14)

1.0304 When President and Vice President of a Council are Elected

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

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

If a vacancy occurs in the office of council member by death, resignation or otherwise, City Council may call a special City Election to fill such vacancy for the unexpired term or may, after fifteen (15) days of the date of such vacancy appoint a person to fill such vacancy until the next City Election, at which election the unexpired term shall be filled. Upon petition of five percent of the electors, as determined by the total number of votes cast in the last general election, the council shall call a special election to fill a vacancy occurring more than six (6) months before the next City Election, provided such petition has been submitted with in fifteen (15) days and before four (4) p.m. of the fifteenth (15the) day of the date of such vacancy or of the vacancy being filled by appointment. If the petition is mailed, it shall be in possession of the council or its representative before four (4) p.m. on the fifteenth (15th) day after the vacancy occurs or after the vacancy was filled by appointment. (Source: N.D.C.C. § 40-08-08).

If a vacancy occurs in the office of mayor, the City Council may call a special City Election to fill such vacancy for the unexpired term or may, after fifteen days from the date of such vacancy, elect one of its members to act as mayor, the member so elected shall possess all of the rights and powers of the mayor until the next election and until a mayor is elected and qualified. Upon petition of five percent of the electors, as determined by the total number of votes cast in the City in the last General Election, the council shall call a special election to fill a vacancy occurring more than six months prior to the next

City Election, provided such petition is submitted within fifteen days of the date of such vacancy. During the interim between date when a vacancy occurs in the office of the mayor and election and qualification of a successor, the president of the City Council shall be acting mayor. (Source: N.D.C.C. § 40-08-12).

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

During the absence of the mayor from the City or during his temporary disability, the president of the City Council shall be the acting mayor and shall possess all of the powers of the mayor. In the absence or disability of the mayor and the president of the City Council, the vice president of the City Council shall be the acting mayor. (Source: N.D.C.C. § 40-08-13)

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

The mayor shall preside at all meetings of the City Council, but shall not vote except in case of a tie, when he shall cast the deciding vote. (Source: N.D.C.C. § 40-08-18)

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

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

1.0309 Mayor may Suppress Disorder and Keep Peace

The mayor may exercise within the City limits the powers conferred upon the sheriff to suppress disorder and keep the peace. (Source: N.D.C.C. § 40-08-20)

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

The mayor shall perform all duties prescribed by law or by the city ordinances, and shall see that the laws and ordinances are faithfully executed. (Source: N.D.C.C. § 40-08-22)

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

The mayor, at any time, may examine and inspect the books, records and papers of any agent, employee or officer of the City. (Source: N.D.C.C. § 40-08-23)

1.0312 Ordinance or Resolution Signed or Vetoed by Mayor

The mayor shall sign or veto each ordinance or resolution passed by the council. (Source: N.D.C.C. § 40-08-24)

1.0313 Message to Council

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

deem expedient. (Source: N.D.C.C. § 40-08-25)

1.0314 Mayor May Call on Male Inhabitants to Aid in Enforcing Ordinances

When necessary, the mayor may call on each male inhabitant of the City over the age of eighteen (18) years to aid in the enforcing of the laws and ordinances of the City. (Source: N.D.C.C. § 40-08-26)

1.0315 Police Chief and Policemen Appointed by Mayor

The mayor may appoint any number of policemen which he and the City Council may deem necessary to preserve the peace of the City, and he shall appoint one of the number as chief of police. Such appointment shall be subject to approval of the council. (Source: N.D.C.C. § 40-08-27)

1.0316 Mayor May Administer Oath

The mayor of the City may administer oaths and affirmations. (Source: N.D.C.C. § 40-08-28)

ARTICLE 4

Court Services

1.0401 District Judge to Hear Violation of Municipal Ordinances

Pursuant to Section 40-18-06.2 of the North Dakota Century Code, the City has, with the agreement of the governing body of Dickey County and State of North Dakota, arranged for the District Judge to hear all violation of the City's municipal ordinances. The City of Oakes agrees to transfer its municipal ordinance cases to the District Court of the State of North Dakota after January 2, 1995.

The County shall provide the prosecuting attorney, indigent defense counsel, pay for all jury and witness expenses, provide for detention facilities, and provide for the administration of the court activities.

The Court and State shall receive all fees, fines, costs, and forfeitures collected by the District Cour and said amounts must be transmitted to the Clerk of District Court on a quarterly basis.

The court services contract shall continue hereafter from year to year unless a party to the contract gives notice at least 90 days before the end of the annual contract period.

1.0402 Contracts with Dickey County for Court Services

The City Council is hereby authorized to enter into contracts with Dickey County, as it deems advisable from time to time, providing for the administration of prosecutions and adjudications of municipal ordinance violations. Such contracts shall be effective upon the

approval by resolution of the City Council.

1.0403 Dickey County Court Authorized to Exercise All Powers and Duties of Municipal Court

During all times when such contract between the City and Dickey County are in effect, the District Court of Dickey County is hereby authorized to exercise all powers and duties of the municipal court of the City of Oakes in the adjudications of Municipal Ordinance Violation cases.

ARTICLE 5

Appointive Offices

1.0501 Appointive Officers in the Council City

The following offices are appointive offices of the City of OAKES, North Dakota and are to be appointed by the City Council as outlined in this article:

1) City Auditor;
2) City Assessor;
3) City Attorney;
4) City Forester;
5) City Health Officer;
6) City Sexton;
7) City Supervisor, who shall also serve as the Water and Sewer Utility Superintendent, Street Superintendent, Public Works Superintendent, and the Building Inspector;
8) Such other officer(s) as the City Council deems necessary and expedient from time to time.

1.0502. Term of Appointive Officers, Oath and Bonds

The term of all appointive officers shall begin on the third Tuesday of the year in which he is appointed and shall continue for a term of two years and until their successors have been appointed and qualified. Any person appointed to fill a vacated position shall hold that office for the unexpired term unless he is appointed as an “acting officer.” An acting officer shall serve at the discretion of the Council. Before entering upon the duties of their office, appointed officers shall take oath and give bonds as required by Section 1.0506 of this article.

1.0503 Removal

Appointive officers may be removed from office and any vacancy may be filled by a majority vote of the City Council. “Acting Officers” may be removed at any time by the City Council.

Elected officials may be removed for failure to perform any duties listed in this chapter or

for any reasonable cause as determined by the City Council.

1.0504 Officers Commissioned by Warrant - City Auditor to Receive Certificate of Appointment

All officers elected or appointed, except the city auditor, council members and mayor, shall be commissioned by warrants signed by the auditor and the mayor or president of the City Council. The mayor shall issue a Certificate of Appointment to the auditor. (Source: N.D.C.C. § 40-14-06). The form of commission by warrant shall be in the following format:

Commission by Warrant
(Source NDCC 40-14-06)

As per NDCC 40-14-06, all elected and appointed officers within the City of Oakes, EXCEPT the city auditor, council members, and mayor, must be commissioned by warrant signed by the auditor and mayor or president of the city council. The mayor shall issue a certificate of appointment to the auditor.

Now, therefore, _____(insert name of elected or appointed officer) is hereby commissioned by this warrant after having been properly elected or appointed as the case may be. This warrant verifies the elected or appointed officer has been placed into the office of _____(insert name of position) for the City of Oakes, EFFECTIVE the ___ day of _____, 20_____.

_____
Mayor

Attest: _____
Auditor

1.0505 General Duties of City Auditor

It shall be the duty of the city auditor to issue the calls for all special meetings of the City Council when requested to do so by the mayor or any two (2) members of the City Council. (Source: N.D.C.C. § 40-08-10) He shall also keep a full and complete record of all meetings of the City Council and shall keep a book titled as the "Ordinance Book" and shall record therein at length all ordinances of the City. He shall also keep a book titled as the "Special Assessment Book" in which he shall keep all records of special assessments. All such books shall have full and complete indexes of the contents thereof. He shall report to the City Council at the end of every month a list of all warrants, interest coupons, bonds or other evidence of indebtedness which may have been redeemed or paid by him during the month and he shall duly give to the council a copy of his receipt therefore. He shall further handle all correspondence, permits and licenses and shall do and perform each, every and all duties and things prescribed for him to do by statutes of this state, or by an ordinance, resolution or proper instruction of the City Council. (Source: N.D.C.C. Chapter 40-12)

1.0506 Bonds

The following employees and officers of the city of OAKES shall be bonded in the sums as provided in N.D.C.C. § 40-13-02 and as hereinafter set forth:

The auditor, municipal judge, assessor, and the city manager of any city, and such other officers as the governing body may direct, before entering upon the discharge of the duties of their respective offices, shall execute and deliver to the city their separate bonds payable to the city, conditioned for the honest and faithful performance of their official duties. The bond must be in an amount fixed by the governing body of the city. The bond of the auditor must be set by resolution of the governing body of the city at a regular meeting in June of each year in an amount at least equal to twenty-five percent of the average amount of money that has been subject to the auditor's control during the preceding fiscal year, as determined by the total of the daily balances of the auditor for the calendar year divided by the figure three hundred or the sum of two hundred fifty thousand dollars whichever is least. All official bonds must be approved by the executive officer of the city and filed in the office of the city auditor. The bonds must conform to the law applicable to the bonds of state officers and employees except that no personal surety may be accepted on any bond. A city may not pay the premium on any bond except a bond written in the state bonding fund or a bond procured to replace a bond canceled by the state bonding fund. The governing body at any time may require new and additional bonds of any officer.

1.0507 Salaries

The salaries of city officials and appointive officers, except as otherwise provided by law, shall be in such sums and amounts as may be fixed by resolution of the governing body, from time to time.

1.0508 Administrative Policies and Procedures

Performance of Duties. Each officer shall:

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

(2) Be immediately responsible to the City Council for the effective administration of their duties, departments, and any activities related or assigned thereto.

(3) Remain well informed of the latest practices in their respective fields and inaugurate such changes in their practices as provided by the City Council.

(4) Submit reports of any and all activities under their control to the City Council upon the Council’s request.

(5) Maintain all city property and equipment used in his or her department.

(6) Establish and maintain operational reports of adequate detail to furnish the needed information for proper departmental control and to furnish the needed information for City Council approval in supervisional proceedings.

(7) Cooperate with other officials, employees, city council members and other departments of the city of OAKES.

(8) Have the authority to direct and supervise all employees under him or her.

1.0509 Obstructing a Public Official Prohibited

Every person who willfully delays or obstructs a public officer or city employee in the legal discharge or attempted discharge of any official duty shall have violated the provisions of this chapter and shall be punished as herein provided.

1.0510 Oaths of Municipal Officers

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

1.0511 Personal Interest in Contract by Public Officer - Prohibited

No contract for the furnishing of supplies to the City, or buying of property from the City shall be entered into by any officer of the municipality, provided, however, that such contracts may be entered into with an officer of the City, if such contract is unanimously approved by other members of the governing body of the City by a finding unanimously adopted by such other members, and entered in the official minutes of the governing body, to be necessary for the reason that the services or property are not otherwise available at equal cost. (Source: N.D.C.C. § 40-13-05)

1.0512 Retiring Officer to Turn Over Books

Any person having been an officer of the City shall, within five (5) days after notification and request, deliver to his successor in office, all property, books and effects of every description in his possession belonging to the City or appertaining to his office; and upon his refusal to do so, shall be liable for all damages caused thereby, and guilty of an infraction.

ARTICLE 6

Purchasing and Disposition of Property

1.0601 Competitive Bidding Requirements

Except as otherwise stated in this chapter, all purchases of, and contracts for supplies and contractual services and all sales of property shall be based on competitive bids if the value of the item or items to be sold is determined by majority vote of the council to be

two thousand five hundred dollars ($2,500) or more. Any time that this ordinance requires competitive bidding, the City Council may direct by majority vote that the sale be made by non-exclusive listing agreement(s) similar to N.D.C.C. § 40-11-04.2. The City Council may determine whether competitive bidding is in the interests of the City for certain contracts and may, by majority vote, dispense with competitive bidding if State Statutes permit the same. Garbage and utilities contracts and professional services contracts, etc. are examples of situations that are specifically excluded from the bidding process.

1.0602 Open Market Purchases - Emergency

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

1.0603 Conveyance, Sale, Lease or Disposal of Personal Property

Whenever any personal property is no longer required for a public purpose it may be offered for sale by the city Auditor if its value is determined to be de minimus or less than one hundred dollars ($100) in good faith by the city Auditor, who may exercise discretion in making such determination. Items with a valued in good faith by the city Auditor in excess of one hundred dollars ($100) shall be sold only after approval of the City Council. This provision shall not apply, however, to property traded in as part of a purchase already approved by the council. For the purpose of convenience and expediting of the performance and satisfactory completion of city construction contracts, appropriate city departments may re- sell to contractors for installation on city contract projects only, any on hand items including but not limited to water hydrants and meters. When specific statutory regulations contained in the North Dakota Century Code conflict with this section, this section shall not apply. See N.D.C.C. § 40-05-02 (20) for statutory procedures for the sale of abandoned personal property and unclaimed motor vehicles.

1.0604 Conveyance, Sale, Lease or Disposal of Real Property

Real property belonging to the municipality shall be conveyed, sold, leased or disposed of, only as approved of by a majority vote of the governing body. Instruments affecting such conveyance, sale, lease or disposal shall be valid only when duly executed by the mayor or the president of the city council and attested by the city auditor. For real property determined by majority vote of the City Council to be valued less than two thousand five hundred dollars ($2,500), it shall be at the discretion of the City Council as to whether the city shall advertise for bids or whether the sale shall be made without competitive bidding and those determinations shall be made by a majority vote of the City Council. Sales of real property shall be based on competitive bids if the value of the real estate to be sold is determined by majority vote of the council to be two thousand five hundred dollars ($2,500) or more, unless the real property has already been offered to be sold for a specific price by the City Council by majority vote – for example, when city owned real estate development lots are being listed at a pre-determined price as determined by the City Council, such lots may be sold without competitive bidding. Bids for the purchase or lease of real property belonging to the city shall be directed to the city council and submitted to the City Auditor for submission to the council at the next council meeting. When specific statutory provisions contained in the North Dakota Century Code provide for a procedure,

which is in conflict with this section, governing the conveyance, sale, lease or disposal of real property, this section shall not apply insofar as it is in conflict with such state law. Said statutory procedures include the following:

(1) Lease of airports or landing fields, or portions thereof shall be under authority granted in N.D.C.C. § 2-02-15. Said lease shall further be in compliance with regulations and directives appropriate federal agencies.

(2) Conveyance of right of way for any state highway shall be as provided in N.D.C.C. § 24-01-46.

(3) Leasing of oil and gas lands shall be as provided in N.D.C.C. § 38-09-02 through N.D.C.C. § 38-9-04 and N.D.C.C. § 38-09-14 through N.D.C.C. § 38-09-20.

(4) Conveyance of property to a municipal parking authority shall be as provided in N.D.C.C. § 40-61-05.

(5) Lease of public buildings or portions thereof shall be as provided in N.D.C.C. Chapter 48-08.

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

(7) Granting of right-of-way for a railway, telephone lines, electric light system or a gas or oil pipeline system shall be as provided in N.D.C.C. § 49-09-12.

ARTICLE 7

Penalties

1.0701 City Fines and Penalties Limited

The provisions of N.D.C.C. § 40-05-06 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

This section shall not be construed to prohibit the utilization of the sentencing alternatives, other than a fine or imprisonment, provided by N.D.C.C. § 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 N.D.C.C. Chapter 12.1-32.

1.0702 Administration

Penalties, costs of prosecution, hard labor, and sentencing shall be administered as provided in chapter two (2) of the OAKES Revised Ordinances sections 2.0107 through 2.0114 and all other applicable sections of the revised ordinances.

ORDINANCES

ARTICLE 1

Procedure

2.0101 Voting, Record of

The yeas and nays shall be taken by the City Council upon the passage of all ordinances and on all resolutions and on all propositions that would create any liability for the city of OAKES, and all measures that require the appropriation of municipal funds and any action of the council as requested by a member of the council. The vote shall be recorded and entered into the minutes of the council, which shall be made and kept by the city auditor. The concurrence of the majority of the members present shall be required for passage of any measure or decision to come before the council. A quorum of all the members elected is required before a vote can be taken. A member of the council who abstains or passes his or her vote or who remains silent in a voice or roll call vote, shall be deemed to have voted yea and a record of yea shall be entered into the record for that member's vote.

2.0102 Reconsideration or Rescinding Vote

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

2.0103 Procedure in Passing Ordinances

Ordinances passed shall take on the form of amendments to or additions to the OAKES Revised Ordinances. All ordinances shall be read twice. After the First (1st) Reading and before the second (2nd), the ordinances may be amended. All ordinances after first reading (1st), amendments, second (2nd) reading and final passage by the city council shall be considered for final approval by the mayor. When the mayor considers the ordinances the mayor shall sign them if the mayor approves and the mayor shall return them to the council at the next regular meeting with the mayor's written objections if the mayor has vetoed the ordinances. If the mayor fails to return the ordinance to the council at the next regular meeting the mayor shall be deemed to have approved the ordinance. The mayor may veto an entire ordinance or items or parts thereof. An ordinance vetoed in part or in whole may be reconsidered by the council and may be passed over the veto by a two-thirds (2/3) majority vote.

2.0104 Publication

The title and penalty clause of each ordinance imposing any penalty, fine or imprisonment for its violation, after its final adoption, shall be published in one issue of the official local newspaper.

2.0105 Effective Date of Ordinances

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

2.0106 Effect of Repeal

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

2.0107 Enactment and Revision of Ordinances

The provisions of N.D.C.C. § 40-11-09 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

2.0108 Action for Violation of Ordinance in Corporate Name - Previous Prosecution, Recovery or Acquittal - No Defense

The provisions of N.D.C.C. § 40-11-10 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

2.0109 Summons to Issue on Violation of Ordinance - When Warrant of Arrest to Issue

The provisions of N.D.C.C. § 40-11-11 and all subsequent amendments shall be and are

hereby incorporated by reference in this ordinance.

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

2.0110 Commitment of Guilty Person for Non-payment of Fines or Costs

The provisions of N.D.C.C. § 40-11-12 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Any person upon whom any fine or costs, or both, has been imposed for violation of a municipal ordinance may, after hearing, be committed upon order of the court to jail or other place provided by the municipality for the incarceration of offenders until the fine or costs, or both, are fully paid or discharged by labor as provided in N.D.C.C. § 40-18-12. The court may not commit a person under this section when the sole reason for his nonpayment of fine or costs, or both, is his indigence. An order of commitment under this section shall not be for a period in excess of thirty (30) days. As used in this section, "fine" does not include a fee established pursuant to N.D.C.C. § 40-05-06 (2).

2.0111 Costs of Prosecution

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

2.0112 Judgment of Conviction

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

2.0113 Hard Labor Authorized

When any person is convicted before the Municipal Judge for the violation of any provision of this ordinance, and is sentenced to imprisonment either on account of failure to pay the fine or otherwise, said Municipal Judge may order and sentence such offender to hard labor on the public streets of the City or any public works in said City for the full term of said imprisonment, and the said sentence shall be carried into execution under the discretion of the Chief of Police of this City, all as limited by N.D.C.C.§40-18-12.

2.0114 Refusal to Work

Any person refusing to perform manual labor in accordance with the sentence of the court

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

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

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

2.0116 No Remission of Fines

Under no circumstances shall the municipal judge remit fines or penalties or payments of costs.

2.0117 Deferring or Suspending Sentence

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

2.0118 Administrative Immunity

No officer, agent, employee, or other person acting in behalf of the City of OAKES shall render himself personally liable for any damage that may accrue to persons or property as a result of any act required or permitted or specifically or impliedly intended in the discharge of his or her duties, services, or other actions. Any such person acting on behalf of the city who has a suit brought against him or her shall be defended by the city attorney to be funded by the City of OAKES until the final determination of the proceedings therein or until the City Council decides to discontinue the defense at their expense, at which time the city attorney is released from his or her duties to the city in representing the said person.

CHAPTER THREE

PUBLIC PLACES AND PROPERTY

ARTICLE 1

Construction and Repair

3.0101 Supervision

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

3.0102 Construction and Repair - Permits

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

3.0103 Bond

The city council shall have the power to collect bonds with surety to be approved by the governing body conditioned to indemnify the City for any loss or damage resulting from the work undertaken or the manner of doing the same.

3.0104 Specifications

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

3.0105 Duty of Owner to Maintain

It shall be the duty of the owner of any property along which a sidewalk has been constructed to maintain the same in good repair and safe condition. Should any such owner fail so to maintain such sidewalks, the city engineer shall direct him to make such repairs as may be necessary to restore such sidewalk to a safe condition. Should he fail, within a reasonable time, to follow the directions of the city engineer, the city engineer shall report the facts to the governing body, which shall then proceed to take necessary actions to make the sidewalk safe. Any costs incurred shall be assessed against the property along which the sidewalk runs.

3.0106 Application for Permit

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

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

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

(3) Location of the work area.

(4) Attached plans or sufficient sketches showing details of the proposed alterations.

(5) Estimated cost of the alterations.

(6) Such other information as the city engineer shall find necessary to the determination whether a permit should be issued hereunder.

3.0107 Fees for Permits

A fee shall be due in an amount established from time to time by resolution of the City Council. This fee is not refundable under any circumstances.

3.0108 Standards for Issuance of Permit

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

1. That the work will be done according to the standard specifications of the City for public work of like character.

2. That the operation will not unreasonably interfere with vehicular and pedestrian traffic, the demand and necessity for parking spaces, and the means of ingress and egress to and from the property affected and adjacent properties.

3. That the health, welfare and safety of the public will not be unreasonably impaired.

4. The zoning ordinances are complied with.

3.0109 Sidewalks Built to Grade Specifications

All sidewalks shall be constructed in accordance with the elevations and grade therefore to be furnished by the city engineer and shall be constructed under his direction and supervision or under the direction and supervision of the street superintendent. All sidewalks shall meet the following requirements:

(1) All sidewalks shall be constructed of concrete.

(2) All sidewalks in residential areas shall be constructed not less than four (4) feet in width and not more than six (6) feet in width and shall have a minimum slope one-fourth (1/4) inch per foot from the inside edge toward the street.

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

(4) All sidewalks shall be laid out as follows:

(a) In locations where the right-of-way is sixty (60) feet or less the sidewalks shall

be constructed on the property line.

(b) In locations where the right-of-way is greater than sixty (60) feet the sidewalk shall be constructed eighteen (18) inches out from the property line.

(c) In no case in the residential district shall the sidewalk be constructed adjacent to the curb unless right-of-way and topographic features require it.

(d) Notwithstanding any other provision herein all sidewalks shall be set out so that they are in conformity with existing sidewalks to which they may attaché.

(5) All sidewalks in commercial and/or industrial districts shall be constructed from the property line to the back of the curb and the width of sidewalk shall be governed by the width of street section; provided however, in areas where commercial development is not complete the entire sidewalk need not be constructed, a section six (6) feet in width adjacent to the curb shall be constructed thus leaving an area for structural foundations.

3.0110 Materials and Manner of Construction

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

3.0111 City Contractor

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

All sidewalks, driveways, curb and gutter and alley returns lying between the property line and the abutting street hereafter constructed within the City must conform to this chapter, and the specifications filed with the city engineer, and approved by the governing body must specify the details with respect thereto. When any contract for the construction of sidewalks, driveways, curb and gutter, relaying of block walks and paving repairs is about to be entered into by the City in accordance with the provisions of the laws of this state, the contractor to whom any such contract shall be awarded shall be required, before such contract is entered into, to give in addition to the contract bond required by the laws of the state of North Dakota, an additional bond in an amount to be determined by the governing body, running to the City, conditioned that said contractor shall maintain and keep in good repair, for a period of two (2) years from date of final acceptance all sidewalks, driveways, curb and gutter and paving repairs so constructed by such contractor under the terms of such contract, and that in case of default under the part of such contractor to so maintain and keep such improvements in good repair made by him for the said period of two (2) years, or in case they shall within said time begin to crumble or disintegrate or become cracked or broken to such extent that, in the opinion of the city engineer or street commissioner, the same is not a satisfactory compliance with the specifications for the

construction thereof, then the city engineer or street commissioner may direct that such sidewalks, driveways, curb and gutters or paving repairs be immediately repaired or re-laid in whole or in part as he shall deem best, and the contractor shall immediately cause the same to be repaired or failure so to repair or to relay the same, the City at any time within said two (2) year period or thereafter, may cause the same to be repaired or re-laid, and the cost thereof whether done by the City directly or through a contract, may be recovered against said contractor and the surety upon such bond.

ARTICLE 2

Use and Care of Streets, Sidewalks and Public Places

3.0201 Obstructions - Penalty

It shall be unlawful for any person, firm or corporation to cause, create or maintain any obstruction of any street, alley, sidewalk or other public way, except as may be specified by ordinance or by the city engineer or street superintendent, or the police department for the city of OAKES.

Any person violating the provisions of this section shall be guilty of an infraction and upon conviction thereof, shall be fined not less than twenty-five dollars ($25.00) nor more than one thousand dollars ($1,000).

3.0202 Destruction of City Property - Prohibited - Penalty

It shall be unlawful for any firm, person or corporation to willfully and without just cause or excuse, to injure, deface or destroy any property owned by the City or held by the City for public use. Any person violating the provisions of this section shall be guilty of an offense, a misdemeanor or felony as the case may be under state law.

3.0203 Encroachments

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

3.0204 Openings

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

3.0205 Wires

It shall be unlawful to erect any poles or wires or maintain any poles or wires over any public place, street, alley or other public way without having first secured permissions from the governing body.

Any person or company which maintains poles and wires in the streets, alleys or other public places, shall, in the absence of provisions in the franchise concerning the subject, keep such wires and poles free from and away from any trees and shrubs in such places as far as may be possible, and keep all such trees and shrubs near such wires and poles properly trimmed, subject to the supervision of the Commissioner of Streets and Public Improvements, so that no injury shall be done either to the poles or wires or to the shrubs and trees by their contact.

3.0206 Littering - Prohibited

No person, firm or corporation shall throw or deposit or cause to be thrown or deposited any garbage, glass, bottles, boxes or rubbish of any kind upon any street, alley or public way in the City.

3.0207 Burning

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

3.0208 Distributing Hand Bills, Etc.

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

3.0209 Heavy Vehicles

No person, firm or corporation shall move, or cause to be moved over the paved streets, sidewalks, crosswalks, culverts, bridges and viaducts within the City any engine, tractor, wagon, truck or other vehicle, object or thing which will tend to injure the paving, sidewalks, crosswalks, culverts, bridges or viaducts over which the same are transported, or which exceeds in weight as stated in NDCC 39-22 or by determination of the public works director during road restrictions, or any vehicle to the wheels of which are attached spurs, bars, angle irons or cleats which will tend to mar or deface the paving, sidewalks, crosswalks, culverts, bridges or viaducts, except under the direction and permission of the governing body and, in addition thereto, shall pay or cause to be paid to said City, upon demand, any and all damages done to the paving, sidewalks, crosswalks, culverts, bridges or viaducts, provided that when the specified load limits herein contained will cause damage to the City's paved streets, the governing body by resolution adopted, and made public, may lower said load limits for such period of time it may deem necessary. Any vehicle exceeding the specifications above must use the established truck routes through the city and such routes shall be under the care of the street superintendent. The provisions of this section shall not apply to state and federal highways through the City.

3.0210 Snow Route—Notice Of

Annually, the city council and the street superintendent shall designate specific streets or other public ways in the city of OAKES, as a snow route. This shall be accomplished before November first of each year. The city council shall cause this snow route to be published once in the OAKES TIMES, the local newspaper, with a map showing the snow route.

3.0211 Street Cleaning and Removal

Whenever it becomes necessary to remove snow from the snow route because of snow storm or heavy accumulation of snow, then in that case, anyone who has a vehicle parked on the designated snow route, which shall include motorcycles and all wheeled vehicles, shall move their vehicles from the snow route prior to the beginning of the snow removal, and if they fail to do so they shall be subject to the sanctions as set out in Section 3.0212.

3.0212 Sanctions for not Removing Vehicles from Snow Route

Whenever any vehicle, including motorcycles or wheeled vehicles shall be found parking on the snow route streets or public ways as designated as snow route, at the time cleaning of said snow route is being carried on, said vehicle shall be impounded by the city at a place provided for the purpose of impoundment and it shall be unlawful for any person to attempt to remove or to remove any such impounded vehicle without paying the cost of removal plus a reasonable fee for impoundment of such vehicle. In addition to this, the city council hereby creates the position of snow crew warden, and that individual is hereby authorized and given the power to issue tickets for vehicles parked on the snow route when they should not be there, and in addition to the impoundment sanctions as set out above, there shall be a fine of twenty-five dollars ($25.00) imposed for this violation for each occurrence, and after the second (2nd) occurrence, meaning on the third occurrence, the fine shall be fifty dollars ($50.00), if it occurs within the same snow season.

3.0213 Removal of Snow and Ice from Sidewalk

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

3.0214 Removal of Snow and Ice by City

In case the owner of any lot in the City refuses or neglects to remove such ice from such sidewalk in front of or along a lot therein, the ice or snow therefrom within the same time above stated or refuses to sprinkle ashes or sand on the same within the time specified for removal in such manner as to make such sidewalk safe for travel of pedestrians thereon, the same may be removed by or under the direction of the city engineer or street commissioner of the City, or ashes or sand sprinkled thereon, and the necessary expenses

shall be charged against the abutting property by special assessment in the manner prescribed by law.

3.0215 Assessments by Street Superintendent When Work is Done by City

Whenever the street commissioner shall, pursuant to Section 3.0214 of this article, remove or cause to be removed any snow or ice from any sidewalk or sidewalks along or in front of any building, grounds or premises, he shall assess the cost of the same against said property, and on or before the first day of May in each year, make and file in the office of the city auditor a list of the property chargeable with such expense, the actual cost and expense of such removal and a description of the lot, lots or parcels of land along or in front of which is the sidewalk or sidewalks from which snow or ice has been removed. (Source: N.D.C.C. § 40-29-18)

3.0216 Snow and Ice Removal Assessments, Publication by Auditor, Hearing by City Governing Board

The city auditor shall give notice by publication in the official newspaper of the hearing and confirmation of such report and assessment at the regular June meeting of the City governing board, notifying all persons objecting thereto to appear and present their objections. The notice shall be published once each week for two (2) consecutive weeks, the last publication to be not less than eight (8) days before the time fixed for the hearing. At the June meeting of the City governing board or at such later meeting as the hearing and confirmation of such assessment may be adjourned to, the City governing board shall consider said assessment and shall hear any objections thereto or to any part thereof, and after revising and correcting the same, if necessary, it shall approve and confirm the list. The city auditor shall attach to such list his certificate that the same is correct as confirmed by the City governing board and shall file said assessment list in his office. The assessment shall be certified to the county auditor by the city auditor in the manner provided in N.D.C.C. § 40-24-11. (Source: N.D.C.C. §§ 40-29-19, 40-29-20)

3.0217 Street Cleaning - Snow Removal

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

3.0217.1 Snow Emergency Routs

Each year from November 1st to April 1st the following streets will be designated as Emergency Snow Routs. During those months, there will be No Parking from 2:00 a.m. until 6:00 a.m. on the following designated streets:

1. 7th Street (Hwy 1)
2. 2nd Street South

3. Grape Ave. from 7th Street to 10th Street
4. Main Ave. from 2nd Street to 10th Street
5. Ivy Ave. from 4th Street to 10th Street.
6. Nectarine Ave. from 2nd Street to 7th Street.

3.0218 Notice - Snow Removal or Street Cleaning

Whenever it becomes necessary to remove snow or ice or to sweep and clean streets, or to mark streets for traffic purposes in the City there shall be designated by the city engineer or street commissioner the area and streets to be cleared of snow or ice or cleaned as aforesaid and the time during which such snow or ice removal and street cleaning and marking of streets shall be done and posting of such information in the area affected.

3.0219 Impounding Vehicles and Equipment

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

3.0220 Blocking Streets

No driver of any vehicle shall stop the same on any street, avenue, lane or alley of the City in such a manner as to hinder or prevent other vehicles or persons from passing at all times, unless in case of absolute necessity, nor shall any driver of any vehicle stop the same at any regular crossing of said street, alley, lane or avenue, so as to prevent the free passage of persons traveling or passing on foot.

3.0221 No Throwing of Snow

No person shall throw, place or deposit snow or ice into or on any public streets, public sidewalk, and public way. Nor shall any person throw, place or deposit snow or ice into or on any private property belonging to another person without the express consent of the private property owner.

3.0222 Penalty

Except as otherwise specified, in the event that any person, firm or corporation violates Chapter 3, Article 2 shall be subject to a fine not to exceed one hundred dollars ($100) for each and every offense, and every day that a violation of this ordinance exists or continues shall be considered a separate offense. Any fine assessed against a person and any costs for removal of snow or ice that is involved pursuant to this section shall be collected from the violating person or charged against the abutting property by special assessment in the manner prescribed by law if the abutting property is owned, rented or occupied by the violating person.

Article 3

Excavations

3.0301 Excavations - Permit

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

3.0302 Guarding or Excavations and Openings

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

3.0303 Application for Excavation Permits

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

3.0304 Deposit - Excavations

No permit for excavation shall be issued unless and until the applicant therefore has deposited with the City Auditor a cash deposit or bond in the sum of ten thousand dollars ($10,000) conditioned to indemnify the City for any loss, liability or damage that might result or accrue from or because of the making, existence or manner of guarding or constructing any such excavation(s). Such bond shall have as a surety a corporation licensed to do business in the state as a surety company. The applicant shall return the affected area to a safe and at least as good condition as it was before the excavation. The public works superintendent shall be charged with the duty to determine the satisfactory compliance of the resurfacing and whether the City shall need to resurface above and beyond what the applicant has completed, if any, to maintain the public street, alley, lane, avenue or place in as safe a condition as it was precedent to the excavation or tunnel. After deducting such necessary expenses as outlined above, whether the City completed the resurfacing or caused the same to be done, the balance of the cash deposit shall be returned to the applicant without interest provided that at least thirty (30) days from the date of the application has expired.

3.0305 Reserved

3.0306 Making Excavations - Notice

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

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

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

3.0307 Restoration of Excavations

Any person, firm or corporation making any excavation or tunnel in or under any public street, alley or other public place in the City shall restore the surface to its original condition if there is no pavement there. Refills shall be properly tamped down, and any bracing in such tunnel or excavation shall be left in the ground.

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

The individual receiving the permit shall be responsible for maintaining the excavation for three years and shall bear all costs for repair, insuring that there is not any damage to the s treet due to the excavation. Should this individual fail to pay for the work done by the City, the City Auditor is authorized and directed to assess this sum on the real estate taxes of the owner with the County Auditor.

3.0308 Supervision of Excavation Work

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

3.0309 Demolition or Removal of Buildings

It shall be unlawful to demolish, raze, dismantle, move, or remove any building presently l ocated or hereafter constructed or established within the City, without first having secured a permit, therefore, unless the work is performed by the City. Applications for such permit shall be made to the City Auditor using the same form and procedure as Building Permit.

In addition to the foregoing, the application shall be accompanied by a statement from any person or firm providing electrical service, propane, or fuel oil that such service or substance will be disconnected or removed prior to such demolition or removal.

If it appears to the satisfaction of the City Auditor that the following provisions have been met, he/she shall issue such permit:

1. There are no delinquent taxes or assessments due on the premises including fees o wing to the City for utilities and/or other services.
2. All necessary electrical, fuel, propane, and water connections will be terminated s o as not to present a threat to the public health and welfare.
3. The demolition or removal will be adequately supervised.
4. Agreement by the applicant to remove the concrete, foundation, pipes, wires and o ther fixtures, completely fill in any excavation and level off the lot.
5. Agreement by the applicant that the fill will not include any rubbish or debris from demolished building and type of fill shall be approved by city engineer or his/her designee.

In all other instances, the application must be submitted to the City Council for its consider ation

After the removal or demolition of such building, any concrete, foundation, pipes, wires and other fixtures left at the site must be removed.

After the removal or demolition of such building, any excavation left or cause the removal of such building must be immediately filled in and the lot must be leveled off.

Whenever such an application may be filed with the City Auditor, the City Council shall decide from its examination of the application and from such other information as it may obtain the amount of the guaranty fund (minimum of $5,000) that shall be required for the ample protection of the City and public against probable damages and expenses that may be caused by the removal of such building, and are authorized to require the deposit of such sum as it may fix before granting a permit. Where a permit for moving any such building has been granted and the required guaranty fund deposited with the City Auditor, and after all damages for injuries to public or private property, including the expense of protection to electric, data and telephone wires caused or occasioned by the removal of such building, and including the cost of removing any concrete, foundation, pipes, wires and other fixtures and refilling any basement or other excavation left upon the premises after the removal of such building, have been paid and deducted from such guaranty fund, the balance remaining therein shall be refunded to the applicant.

Any person who shall violate any of the provisions of this section shall be guilty of a violation and be subject to a fine of fifty ($50.00) for the first violation and for each subsequent violation within 6 months from the first offense double the fine up to one thousand ($1000.00).

ARTICLE 4

House Numbering

3.0401 House Numbering Required

All lots, buildings and structures within the city of OAKES shall be numbered. All residential and commercial buildings shall take the number provided for the lot upon which they are situated. If the owner shall control more than one adjacent number, then the lowest one thereof shall become the official number of eh building whether residential or commercial. If the lot is un-numbered the city council shall take such necessary measures to provide same with such a number in a manner to fulfill the requirements of this article. In this manner no building or structure within the city of OAKES shall remain without a number, and no two buildings or structure shall share the identical, complete street address.

3.0402 Numbers on Buildings

It shall be the duty of the owner and occupants of every building whether residential, commercial or otherwise, in the city of OAKES to have placed thereon, in a place visible from the street, figures at least two and one-half (2 ½) inches high, showing the number of the house.

ARTICLE 5

Unclaimed and Abandoned Property

3.0501 Unclaimed and Abandoned Property - Defined

Personal property left upon the streets, alleys or other public ways in the City shall be deemed to be unclaimed or abandoned within the meaning of this article when the same is permitted to remain in any one place upon said streets, alleys or other public ways for a period of ten (10) days or more.

3.0502 Seizure of Unclaimed or Abandoned Property

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

3.0503 Holding of Personal Property - Notice of Sale

Abandoned personal property shall be held by the City for a period of not less than ninety days after its seizure as provided herein, and after the expiration of said ninety (90) days the city auditor shall cause notice to be published in the official newspaper of said City, said notice specifying and stating the description of the property so seized and held, the location of the place where the same was seized or taken by said City, and a further notice that said property will be sold at public auction, to the highest bidder for cash, not less than ten (10) days from and after the date of the publication of such notice and the hour, date and place where said sale will be held. If prior approval is obtained from the governing body such unclaimed or abandoned property may be sold at a community auction provided

that the chief of police or a police officer shall be responsible for the notice and reporting requirements of this article.

3.0504 Report of Abandoned Property Sale

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

3.0505 Bill of Sale - Abandoned Property

Upon the receipt of the report as specified in Section 3.0504 hereof, the city auditor shall prepare a bill of sale of the property sold conveying the same to such purchaser and the same shall be executed by the presiding officer of the governing body and attested by the city auditor and delivered to the purchaser.

3.0506 Proceeds of Sale - Abandoned Property

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

3.0507 Redemption of Personal Property

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

3.0508 Assessment of Costs

Any of the costs incurred by the City of OAKES pursuant to the enforcement of this Article not recovered and reimbursed to the City of OAKES from the sale or attempt to sell Abandoned Property may be charged against the real property where the property was removed from and treated as a special assessment to be collected in the manner provided elsewhere in the OAKES Revised Ordinances.

3.0509 Annual Report - Unclaimed and Abandoned Property.

Prior to June 1 of each year, City employees shall submit to the city auditor a written list of all unclaimed and abandoned property held by the City, which has not been sold pursuant to the provisions of this article. The city auditor shall bring such list to the attent ion of the City Council at the next regular meeting.

ARTICLE 6

Pipes and Conduits in Streets and Public Places.

3.0601 Prevention of Leaks

It shall be the duty of every owner of every pipe or conduit through which any substance is transmitted to maintain such equipment in good working order at all times, so as to protect the health, welfare and safety of the persons of the city. No leaks or bursted pipe or conduit which allows the transmitted substance to escape and thereby cause such substance to be upon or in the atmosphere of any public way or place shall be permitted.

3.0602 Repair of Breaks

It shall be the duty of every owner of every pipe or conduit through which any substance is transmitted to repair or shut off immediately after notice or knowledge thereof, any pipe or conduit which has ruptured or has developed leaks so that the substance transmitted is escaping into the air or upon any public way or place.

3.0603 Failure to Repair

If the owner fails to make such repairs or if he cannot be found within twenty four hours after the City has been notified through the City Auditor or otherwise, then the city engineer shall cause said repairs or other such measures to be taken so that the escape of the transmitted substance is halted. All costs incurred by the city in such actions shall be recovered from the owner of the pipe or conduit upon which said work was done.

ARTICLE 7: PARK DISTRICT

3.0701 Creation of Park District

All territory embraced within the corporate limits of the City of Oakes, North Dakota, as the same is now established or may hereafter be extended, be, and the same is hereby declared a park district of the State of North Dakota, to be known as the Park District of the City of Oakes, North Dakota.

3.0702 Board of Park Commissioners

There shall be an election called in accordance with the provisions of North Dakota Century Code for the election of members of the Board of Park Commissioners for said District, which election shall be called at the same time and place as the regular City election.

3.0703 City Parks - Hours

All City parks shall have established hours of public access. The hours shall be from 6:00 a.m. to 11:00 p.m. each day. Notice of the same may be published in the official newspaper or posted at the public parks. Any variance from the above hours of use, including overnight camping, shall be under special permission granted by the Park Board and notification given to City Hall. Overnight camping is permitted at Westside Park from May to August; notice must be given to Park Board and City Hall prior to use.

3.0704 City Parks – Allowed Uses

Smoking and use of alcohol is not permitted unless special permission is granted by the City Council by motion of the City Council at least 24 hours prior to the event. No loud music or concerts allowed unless permission is granted by the Park Board and notification given to the City Police Department.

CHAPTER FOUR

FIRE PROTECTION AND PREVENTION

ARTICLE 1

Organization and Regulation of the Fire Department

4.0101 Establishment of Fire Department -- REPEALED

4.0102 Supervision by Fire Chief -- REPEALED

4.0103 Volunteer Fire Department -- REPEALED

4.0104 Officers of Fire Department -- REPEALED

4.0105 Chief of Fire Department - Powers of --REPEALED

4.0106 Duties of Fire Chief -- REPEALED

4.0107 Police Powers of Fire Department

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

4.0108 Unlawful to Hinder Fire Department

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

4.0109 Right of Way - Fire Department Vehicles

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

4.0110 Driving Over Fire Hoses

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

4.0111 False Alarms of Fire

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

4.0112 Taking Fire Equipment

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

4.0113 Entering Fire Department -- REPEALED

4.0114 Fire Department Service Outside Corporate Limits -- REPEALED

ARTICLE 2

Fire Limits

4.0201 Fire Limits

All those parts of the City within the corporate limits of the City as the same are now established or may hereafter be extended shall be and is hereby defined as and shall be known as and constitute the fire limits of the City of Oakes. The Oakes Rural Fire District is authorized to provide fire protection services within the City of Oakes fire limits.

4.0202 Fire Limits - Erection of Buildings Within

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

4.0203 Alterations and Additions in Fire Limits

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

4.0204 Inspection of Premises, Materials, Discovery, Order

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

4.0205 Repairs to Damaged Buildings

It shall be unlawful to repair any existing frame building within the fire limits after the same has been damaged by any cause to fifty percent (50%) of its value. Any existing frame building damaged by fire otherwise over fifty percent (50%) of its value shall be torn down and removed.

ARTICLE 3

Fires in Public Places

4.0301 Smoking - Setting Fires

Any person who, by smoking or attempting to light or to smoke cigarettes, cigars, pipes or tobacco in any manner, in which lighters or matches are employed who shall in any careless, negligent or reckless manner whatsoever, whether willfully or wantonly or not, set fire to any furniture, curtains, drapes, household fittings or furnishings whatsoever in any hotel, public rooming house, tenement house or any public building, so as to endanger life to property in any way or to any extent shall be guilty of violating this article.

4.0302 Notice - Smoking Ordinance

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

4.0303 Hot Ashes and Other Dangerous Materials - Depositing of

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

4.0303.1 Bonfires Prohibited - Exception
No person shall kindle, maintain or assist in maintaining any bonfire or other exposed fire within the City except under the written permit of the chief of the fire department with jurisdiction within the City under proper safeguards as he/she may direct. Permits may be granted only on condition that such permit carries an obligation on the part of the grantee to keep a sufficient, safe control of said fire and to be responsible for all damages therefrom, and that all resultant embers shall be extinguished, and the hot ashes removed or wet down at the close of said fire. Such burning shall be done in a container approved by the chief of the fire district.

4.0304 Open Burning Prohibited

No garbage, refuse, or rubbish shall be burned within the city limits. This includes paper products, inert yard waste (leaves, branches, and other wood and organic properties) or an open burning fire of any nature. Burning is allowed only if there is an enclosed, approved UL certified outdoor fireplace or a special burn permit for large outdoor gatherings, such as a pit barbecue. Permits need to be approved by the Fire Chief and City Council. Fires must be attended at all times by a responsible adult until completely extinguished. If burning is prohibited by state law or proclamation, no person shall kindle, maintain or burn

any garbage or other refuse either openly or in containers. Any person who violates the burning prohibition of Ordinance 4.0305 shall be fined One Hundred Dollars ($100). Each and every violation of the provisions of Ordinance 4.0305 shall constitute a separate offense.

4.0305 Reports of Hotel or Apartment Fires

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

ARTICLE 4

Fire Prevention

4.0401 Adoption of Fire Codes

There is hereby adopted by the City of OAKES for the purposes of prescribing regulations governing conditions hazardous to life and property from fire or explosions, that certain code known as the Uniform Fire Code and the whole thereof, save and except such portions as are hereinafter deleted, modified or amended, of which code a copy is on file in the office of the city auditor and the same is hereby adopted and incorporated in full as if set out at length herein.

4.0402 Enforcement of Fire Prevention Code

The fire prevention code shall be enforced by the Building Inspector under the supervision of the chief of the fire department with jurisdiction within the City.

The chief of the fire department with jurisdiction within the City or the Building Inspector may appoint qualified and licensed inspectors as shall from time to time be necessary.

4.0403 Storage of Flammable Liquids

No new bulk plants or tanks for storage of flammable liquids shall be permitted within the limits of the City except as provided by exception granted by a resolution of the City Council.

4.0404 Modifications of Fire Code

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

the applicant.

4.0405 Appeals from Decisions of Building Inspector

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

ARTICLE 5

Penalty for Violation of this Chapter

4.0501 Penalty - Violations of Fire Protection and Prevention Chapter

Any person who shall violate any provisions of this chapter or fail to comply therewith or who shall violate or fail to comply with any order made thereunder or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder or any certificate or permit issued thereunder and from which no appeal has been taken or who shall fail to comply with such an order as affirmed or modified by the governing body or by a court of competent jurisdiction, within the time fixed herein, shall severally for each and every such violation and noncompliance respectively, be punishable by a fine of not more than One Thousand Five Hundred Dollars ($1,500) or by imprisonment for not to exceed thirty (30) days or by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each ten (10) days that prohibited conditions are maintained shall constitute a separate offense.

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

CHAPTER FIVE

BUSINESS REGULATIONS AND LICENSES

ARTICLE 1

General Provisions

5.0101 Licenses

Unless otherwise specifically provided, licenses and permits required for the carrying on of a business or trade within the City shall be applied for, issued, terminated and revoked according to the provisions of this article.

5.0102 Licenses - Application

Any person desiring a license or permit under any ordinance of the City shall make a written application to the City therefore upon application blanks furnished by the city auditor and shall file the same with the city auditor. The application shall state the purpose for which the license or permit is desired, for what length of time, the place where the business is to be carried on and the proposed sureties on any required bonds. If the applicant is required to file a bond before being licensed he or she shall also name the proposed sureties on the bond in the application.

5.0103 Licenses - Granting

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

5.0104 Licenses - Term

(1) No license or permit shall be granted for a longer period than one (1) year.

(2) All yearly licenses or permits shall commence on the first day of January in each year and expire on the last day of December in each year. All semi-annual licenses or permits shall commence on the first day of January and the first day of July and expire on the last day of June and the last day of December respectively.

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

(4) Each license shall be dated the day of issuance thereof; but if the applicant or applicants shall have been acting without a license, the license shall commence with the date business commenced. If the business calls for a yearly license, then a license shall commence on the first day of January in the year for which the license shall be issued.

(5) The date of issuance of the license, together with the time of commencing and expiration shall be given in the license and the license record.

5.0105 Licenses - Not Transferable

No license or permit shall be assignable or transferable except by permission of the governing body. No person other than the person to whom the license is granted shall be authorized to do business or act under such license or at any other than the place specified therein. The City may grant the continuance of the business licensed to any other portion of the City, such permission to be certified on the license by the city auditor. No license shall authorize any person to act under it at more than one (1) place at the same time, or at any other place than is therein specified. Whoever shall violate any of the provisions of

this section shall be deemed to be acting without a license and shall be subject to the same penalty as prescribed for acting without a license.

5.0106 Licenses - Revocation

All licenses granted shall be subject to ordinances in force at the time of issuing thereof or which may be subsequently passed by the City's governing body. Any person who shall violate any provision of this article relating to his license may be proceeded against for any fine or penalty imposed thereby, and his license may be revoked or forfeited in the discretion of the governing body or the court before which any action may be brought for the recovery of any fine or penalty.

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

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

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

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

(4) The death of a licensee.

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

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

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

5.0107 Licenses - Posting of

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

5.0108 Licenses - Short Term

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

5.0109 Licenses - Enforcement

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

5.0110 Licenses – Obligations to the City

No applicant shall be granted a license who is in default under the provisions of any city ordinance, or is indebted or obligated to the city, or is delinquent in the payment of any taxes in which the city shares.

ARTICLE 2

Transient Merchants

5.0201 Definitions

For the purpose of this article:

1. "Transient merchant" includes any person, individual, co-partnership or corporation, either as principal or agent, who engages in, does or transacts any temporary or transient business in the City limits, either in one locality or in traveling from place to place selling goods, wares and merchandise who does not intend to become and does not become a permanent merchant of the City and who, for the purpose of carrying on such business, hires, leases, occupies or uses a building, structure, lots, tract, railroad car or motor vehicles for the exhibition and sale of such goods, wares and merchandise. The person, individual, co-partnership or corporation so engaged shall not be relieved from complying with the provisions of this article merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer or by conducting such transient business in connection with, as a part of or in the name of any local dealer, trader, merchant or auctioneer, unless the local dealer, local trader, local merchant or local auctioneer has firs informed the City Council of the association and receives the City Council's approval made by a motion that passes, in which case such transient merchant shall not be considered a transient merchant for purposes of this Chapter.

   Exceptions: Local nonprofit groups including but not limited to all churches in Oakes, Boy Scouts, Girl Scouts, Cub Scouts, Teammakers, Oakes Athletics and Music and Arts, Active Arts, Friends of Arts & Academics, Red Cross, Historical Society, Hospice of Red River Valley, Local Fundraisers that support projects in the City of Oakes, ND.

2. "Merchandise" shall not include any livestock or agricultural product.

5.0202 License Required

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

5.0203 License Fee

The license fee to be required of all transient merchants for the transaction of such business within the City is hereby fixed at the sum of twenty-five dollars ($25) per day for each and every day during which any such transient merchants shall transact business in the City for a complete day or any portion thereof. (Source: N.D.C.C. § 51-04-09)

5.0204 License - Application for

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

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

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

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

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

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

(6) The kind of business to be conducted;

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

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

5.0205 Bond

Before any license shall be issued to a transient merchant for engaging in business in this City, the applicant therefore shall file with the city auditor a bond running to the City in

the sum of one thousand dollars ($1,000) executed by the applicant, as principal, and a responsible surety upon which service of process may be made in the State of North Dakota; said bond not to be revocable nor to terminate prior to passage of two (2) years' time after the expiration of the license issued pursuant thereto nor until due notice that the terms of the bond are to be canceled has been given to the city auditor. The bond is to be approved by the city attorney, conditioned that the applicant shall comply fully with all of the provisions of the ordinances of the City and the statutes of the State of North Dakota, regulating and concerning the sale of goods, wares and merchandise and will pay all judgments rendered against the applicant for any violation of said ordinances or statutes, together with all judgments and costs that may be recovered against him by any person or persons for damage growing out of any misrepresentation or deception practiced on any person transacting business with the applicant, whether misrepresentations or deceptions were made or practiced by the owners or by their servants, agents or employees, of any character whatsoever, printed or circulated with reference to the goods, wares and merchandise sold or any part thereof. Action on the bond may be brought in the name of the City to the use of the aggrieved person.

5.0206 Service of Process

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

5.0207 Exhibiting License

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

5.0208 Transfer

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

5.0209 Enforcement by Police

It shall be the duty of the police officers of the City to examine all places of business and

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

5.0210 Revocation

(1) Any license issued pursuant to this article may be revoked by their governing body of the City, after notice and hearing for any of the following causes:

(a) Any fraud, misrepresentation or false statement contained in the application for license;

(b) Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares or merchandise;

(c) Any violation of this article;

(d) Conviction of the licensee of any felony or of a misdemeanor involving moral turpitude; or

(e) Conducting the business licensed under this article in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

(2) Notice of hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five (5) days prior to the date set for the hearing.

5.0211 Expiration of License

All licenses issued under the provisions of this article shall expire at the expiration of the period for which application has been made and prepaid, to be renewable by the city auditor upon application and payment therefore.

ARTICLE 3

Hawkers and Peddlers

5.0301 Definitions

The word “person” as used herein shall include the singular and the plural and shall also mean and include any person, firm or corporation, association, club, co-partnership or society or any other organization. The words “hawker” and “peddler” as used herein shall include any person, whether a resident of the City or not, traveling by foot, wagon, automotive vehicle or any other type of conveyance from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares or

merchandise, offering and exposing the same for sale, or making sales and delivering articles to purchasers and/or offering or performing any services related to such activities. The words “hawker” and “peddler” also include any person who, without traveling from place to place, shall sell or offer the same for sale, or sell or offer for sale any services relating to the such activities from an automotive vehicle, railroad car or other vehicle or conveyance. One who solicits as a part of a scheme or design to evade the provisions of this article shall be deemed a hawker or peddler subject to the provisions of this article. The location of those who operate as a “hawker” or “peddler” must be in conformity to the existing zoning for such location.

5.0302 License Required

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

5.0303 Exceptions

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

5.0304 License - Application for

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

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

5.0305 Fees

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

5.0306 Exhibition of License

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

5.0307 Transfer

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

5.0308 Use of Streets

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

5.0309 Enforcement

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

5.0310 Revocation

1. Licenses issued under the provisions of this article may be revoked by the City Council after notice and hearing for any of the following causes:
    a. Fraud, misrepresentation or false statement contained in the application for license;
    b. Fraud, misrepresentation or false statement made in the course of carrying on his business;
    c. Any violation of this article;
    d. Conviction of any crime or misdemeanor involving moral turpitude;
    e. Conducting the business of hawking or peddling in an unlawful manner or in such a manner as to constitute a breach of peace or constitute a menace to the health, safety or general welfare of the public.
2. Notice of a hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five (5) days prior to the date set for the hearing.

ARTICLE 4

Runners, Solicitors and Canvassers-REPEALED

ARTICLE 5

Alcoholic Beverages

5.0501 Definitions

For the purpose of this article:

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

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

3. “Licensee” shall mean any person, firm, corporation, association or club which shall have secured a license pursuant to provisions of this chapter or their agent or employee.

4. “Liquor” shall mean any alcoholic beverage except beer.

5. “Person” shall mean and include any individual, firm, corporation, association, club, co-partnership, society or any other organization; and shall include the singular and the plural.

6. “Sale” and “sell” shall mean all manner or means of furnishing alcoholic beverages, including the selling, exchange, barter, disposition of and keeping for sale of such alcoholic beverages.

7. “Package” and “original package” shall mean and include any container or receptacle containing an alcoholic beverage, which container or receptacle is corked or sealed by the manufacturer thereof and which cork or seal has not been removed or broken prior to the sale of such package to the purchaser.

8. “Club” or “lodge” shall include any corporation or association organized for civic, fraternal, social or business purposes or the promotion of sports, which has at least 20 members at the time of application for license.

9. “Retail sale” shall mean the sale of alcoholic beverages for use or consumption and not for resale.

10. “Off-sale” shall mean the sale of alcoholic beverages in original packages for consumption off or away from the premises where sold, and an off-sale license shall authorize the person named therein to conduct such off-sales only at the place designated in such license and not elsewhere, and shall not permit the opening of the package sold on the premises where sold. Such sale must in each case be completed by delivery of the liquor sold to the actual purchaser thereof on the licensed premises.

11. “On-sale” shall mean the sale of alcoholic beverages for consumption only on the premises where sold, and an on-sale license shall authorize the licensee to conduct such on-sales only at the place designated in such license and not elsewhere.

5.0502 Exceptions

1. This article shall not apply to wines delivered to priests, rabbis and ministers for sacramental use.

2. This article shall not be construed to apply to the following articles, when they are unfit for beverage purposes:

a. Denatured alcohol produced and used pursuant to Acts of Congress and the regulations thereunder.

b. Patent, proprietary, medical, pharmaceutical, antiseptic and toilet preparations.

c. Flavoring extracts, syrups and food products.

d. Scientific, chemical and industrial products; nor to the manufacturer or sale of said articles containing alcohol.

3. Wine tasting and events in a non-licensed establishment is permissible as long as not offered for sale.

5.0503 License Required

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

5.0504 Establishing Off-sale Liquor and Beer Only

No person shall sell at retail, off-sale only, alcoholic beverages without first having obtained an off-sale liquor license for retail sale.

5.0505 Licenses - Classes of - Fees (North Dakota Century Code Section 5-02-03)

The City shall determine on a case by case basis if on- and off-sale beer and on- and off-sale liquor licenses shall be approved. Each applicant may be denied or granted base on the merits of each individual application to the City.

On & Off Sale Beer & Liquor License annual fee of $2500.00

(Beer License only annual fee of $500.00 and Liquor License only annual fee of $2000.00)

Off Sale Beer & Liquor License annual fee of $1250.00

(Beer License only annual fee of $250.00 and Liquor License only annual fee of $1000.00)

On Sale Beer & Liquor License annual fee of $1750.00

(Beer License only annual fee of $350.00 and Liquor License only annual fee of $1400.00)

5.0506 Special Permits

The City Council may, by special permit, authorize on-sale, off-sale, or on-or off-sale alcoholic beverage licensee to engage in the sale of alcoholic beverages at special events on licensed premises as may be designated by the permit. The city shall charge a special permit fee of $25.00. Any permit allowed by this ordinance shall not be valid for a period greater than three consecutive days. (North Dakota Century Code 5-02-01.1)

The City Council will decide on a case by case basis when a special permit is to be authorized. It will determine if the permit application is for a special event that falls within the intent of the law.

The City Council will entertain and act on special permit applications that are filed with the city auditor 30 days prior to the date of the schedule event. In addition hereto, the Council may hold a special meeting to determine whether a specific application should be granted if it is filed within that 30 day period. However, the Council will be under no legal obligation to hold said special meeting. The purpose of the 30 day limit is to allow adequate time for review of the application by the ND State Attorney General's Office.

All special permit authorizations shall be by an affirmative vote of no less than four City Council members.

5.0507 Licenses - Terms of

1. All licenses issued hereunder shall be for a period of not more than one (1) year and shall expire on the 30th day of June in each year. Where a license is granted for a period less than one (1) year, any subsequent renewal thereof must be made for the full annual term.

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

5.0508 License - Qualifications for

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

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

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

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

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

5. Building in which business is to be conducted must meet local and state requirements regarding sanitation and safety.

6. Taxes and City utilities on property for which application for license is made must not be delinquent.

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

5.0509 Application for Liquor License

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

1. The name and address of the applicant; if the applicant is a co-partnership, the name and address and place of residence of each member of said co-partnership; if the applicant is a corporation, the name and address of the officers of the corporation and the manager of the licensed premises.

2. Whether the applicant is a citizen of the United States, and if a naturalized citizen, the date and place of naturalization and place of residence of the applicant for a period of one year last preceding the date of application; if the applicant is a co-partnership the same preceding information for each member of said co-partnership; and if the applicant is a corporation, the date of incorporation, the state where incorporated, the purpose for which said corporation was incorporated and if such corporation is a subsidiary of any corporation, the name of the parent corporation.

3. The legal description and the address of the premises for which license is sought.

4. The date on which the applicant acquired title to the premises sought to be licensed, and if the applicant does not have title to said premises, the name and address of the owner of the premises together with a copy of the applicant's lease, if written, under which he holds possession of said premises.

5. Whether there are any delinquent taxes or delinquent utility bills against the premises sought to be licensed.

6. Whether the applicant has ever engaged in the sale or distribution of alcoholic beverages prior to this application, and if so, the date and type of business and place where so engaged whether within or without the State of North Dakota, the date the applicant first began to operate.

7. Whether the applicant has ever had a license revoked or cancelled by a municipal, state or federal authority, and if so, the date of such cancellation, the place and authority canceling the same and the reason for such cancellation.

8. Whether the applicant has ever been convicted of the violation of any law of the United States or of any state, or of the violation of any local ordinance with regard to the manufacture, sale, distribution or possession of alcoholic beverages, and if so, the dates, names of place and courts in which said convictions were had.

9. Whether the applicant has ever had a license for the sale of alcoholic beverages revoked for any violation of state laws or local ordinances, and if so, the names of the bodies revoking such license, the dates of such revocation and the reasons assigned therefore.

10. Whether the applicant has ever been convicted of any other crime than stated in subsections (8) and (9) hereof, in this state or any other state, or under any federal law, and if so, the date of such conviction, the name of the crime for which convicted, the amount and terms of sentence passed and the court in which convicted.

11. The name and address and the place of residence for a period of one year prior to the date of application of any person who will have charge, management or control of the establishment for which license is sought.

12. Whether any other person than the applicant has any right, title, estate or interest in the leasehold or in the furniture, fixtures or equipment in the premises for which license is sought, and if so, the name and address of such person together with a statement of the interest so held.

13. Whether the applicant has any interest whatsoever directly or indirectly, in any other establishment dispensing alcoholic beverages, either at wholesale or retail, within or without the State of North Dakota, and if so, the names and addresses of such establishments. This provision is meant to include the holders of capital stock in any corporation dealing in alcoholic beverages, either at wholesale or retail, within the borders of the United States.

14. The occupations that the applicant has followed during the past five years.

15. The names and addresses of at least three business references.

16. Whether the applicant is rated by any commercial agency, and if so, the name and address of said agency.

17. Whether the applicant is engaged in any other business or intends to be engaged in any other business than the sale of alcoholic beverages under the license for which application is made, and if so, the type of business, and if an employee, the name and address of the employer.

18. The classification of license applied for.

19. If the applicant is a lodge or a club, the date of organization, the number of members, the purpose for which organized and the purpose for which profits to be derived from the sale of alcoholic beverages are to be applied; and whenever required by the City Council a list of the members belonging to such lodge or club.

20. A statement by the applicant that he/she consents to entry and inspection of the premises for which license is sought or any part thereof at any time by any police officer, sheriff or any peace officer of this City or of the State of North Dakota.

5.0510 License - Application Fitness

The chief of police or such other person or officer as may be designated by the City Council shall, upon the filing of an application investigate the facts as stated in the application and the character, reputation and fitness of the applicant and shall report on said matters to the City Council.

5.0511 License - Location of

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

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

5.0512 License - Granting

After the City Council has received the application as provided herein, they shall meet and consider the same. If they find that the applicant meets the qualifications for a license and are satisfied as to the completeness and the accuracy of the information contained in the application, they may grant the license. If they find that the applicant does not meet with the qualifications or they are not satisfied as to the completeness or accuracy of the information, they may request that the applicant supply more verified information to the City Council or they may reject the application.

5.0513 License - Limit to One Applicant

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

5.0514 License - Posting of

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

5.0515 License - Transfer of

When licensee voluntarily ceases his/her business, the new licensee and owner shall upon the approval of the City Council assume the unused portion of the license fee for that year. In consideration for said assumption, the new licensee will pay to the City a transfer fee for the license in the amount of 10% of the value of the license fee previously paid to the City. (North Dakota Century Code 5-02-03)

5.0516 License Fees - Disposition of

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

5.0517 Hours and Time of Sale – Penalty

No person can dispense or permit the consumption of alcoholic beverages on a licensed premises on-sale/off-sale premises after two o'clock (2:00) a.m. on Sundays, before eight o'clock (8:00) a.m. on Mondays or between the hours of two o'clock (2:00) a.m. and eight o'clock (8:00) a.m. on all other days of the week.

A retail on-sale/off-sale license holder cannot dispense or sell or permit such consumption on the premises after one o'clock (1:00) a.m. on Thanksgiving Day, on Christmas Day, or after six o'clock (6:00) p.m. on Christmas Eve.

A violation of this ordinance is a violation of state law under ND Century Code Section 5-02-05 and is a Class A Misdemeanor that will be processed through District Court (North Dakota Century Code 5-02-05.1).

5.0518 Sunday Sale of Liquor

Anyone licensed by the City Council to sell alcoholic beverages may apply to the City Council for a permit to sell alcoholic beverages under that license during the hours from twelve noon on Sundays to 2:00 A.M. on Mondays. The authority for issuing the permit rests solely with the City Council. The cost of this permit shall be $25.00 per year and shall be paid at the same time the on/off sale beer/liquor permits are paid. This permit shall be for both on sale and off sale of liquor and beer. (North Dakota Century Code Section 5-02-05, 5-02-05.1)

Anyone who dispenses, sells or permits the consumption of alcoholic beverages in violation of this ordinance and ordinance 5.0517, or who furnishes false or misleading information in applying for a permit is guilty of a Class A Misdemeanor that will be processed through District Court. (North Dakota Century Code Section 5-02-05.1)

5.0519 Licensee's Responsibility

Every licensee is hereby made responsible for the conduct of his/her place of business and is required to maintain order and sobriety in such place of business,

permitting no disorderly conduct on the premises. Alcoholic beverages shall not be served to any intoxicated person nor shall any intoxicated person be permitted to remain upon the premises.

5.0520 Gambling Prohibited - Exceptions

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

Any eligible organization not required to be licensed by the Attorney General in the State of North Dakota, these being all eligible organizations which do not maintain a building for the use of its members and guests and offer meals or liquor or both as part of its operation shall apply in writing to the governing body of the city for permission to conduct games of chance at least 30 days prior to each occasion, stating the particular game of chance, time, place, and educational, charitable, patriotic, fraternal, religious, or other public comparable uses to which the proceeds will be devoted. The governing body may at its own discretion, and upon application by an eligible organization grant permission for such games for specifically designated times, places, and uses covering a period of one year. Fees for such pe6rmission or authorization shall be in the amount of $10 for one occasion, and in the amount of $25 for an authorization covering more than one occasion for a period up to and including one year. A copy of each resolution or permit granted by the city under this ordinance shall be sent to the Attorney General not later than 30 days after issuance.

Those establishments which are subject to Class A or Class B games of chance licenses by the State of North Dakota, as defined by North Dakota Century Code 53-06.1-03, shall be required to submit a license fee to the City of Oakes, not to exceed $100. Amount of said fee to be set by the City Council of Oakes.

All games of chance site whether Class A or Class B shall be subject to approval by the City Council of Oakes.

5.0520.1 Gaming Administration (Adopted 12/06/2017)

The City Auditor is responsible for providing application for gaming permits. Once an application is received, the City Auditor is authorized to approve if application meets all requirements set by the Attorney General and has a total prize value below $6,000.00. Approved applications will be submitted for official approval at the next Council meeting.

5.0521 Cashing Certain Checks Prohibited

No licensee hereunder shall cash any bank check, voucher, order or document of any kind drawn by a county welfare board or any state or federal agency in payment for wages made

for work done on any so-called work relief project, or for relief purposes, which by its terms authorizes or permits any person presenting such bank check, voucher, order or document to receive payment of money.

5.0522 Sales Prohibited - Persons

No licensee, his/her agent or employee shall sell any alcoholic beverages to a person under twenty-one (21) years of age, a habitual drunkard, an incompetent or an intoxicated person.

5.0523 Minors in Licensed Premises

No licensee shall permit any person under twenty-one (21) years of age to remain on the licensed premises while alcoholic beverages are being sold or displayed thereon, except that a person under twenty-one (21) years of age may remain in a restaurant where alcoholic beverages are being sold if accompanied by a parent or legal guardian. (North Dakota Century Code Section 5-02-06)

5.0524 Age Identification

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

5.0525 Consumption or Sale of alcoholic beverages prohibited on public streets or alleys

It shall be unlawful for any person to consume any alcoholic beverages, or to serve, sell, or possess an open container which contains alcoholic beverages, upon any public right-of-way, street, alley, highway or public sidewalk within the city, except when such public right-of-way, street, alley, highway, or public sidewalk, or portion thereof, is included within an area for which the City Council has granted authorization.

Any person who violates this Ordinance 5.0525 shall be fined Fifty Dollars ($50). Each And every violation of the provisions of Ordinance 5.0525 shall constitute a separate offense. The City Police Department shall issue citations to those persons in violation.

5.0526 Premises, Equipment of

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

5.0527 Closed or Screened Areas

No premises licensed for on-sale of alcoholic beverages shall contain any side rooms, closed booths or other screened enclosures nor shall any screen, partition, curtain, blind or obstruction of any kind prevent a clear view at all times of all parts of the

interior of the premises licensed. All booths located in such premises shall open directly into the main part of said premises and shall be accessible from the aisles therein.

5.0528 Purchase from Licensed Wholesaler

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

5.0529 Toilets Required

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

5.0530 Deliveries - Off Licensed Premises

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

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

5.0531 Termination or Revocation of Licenses

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

a. The death of the licensee unless upon application to the City Council by personal representative of the decedent, the City Council shall consent to the carrying on of the business by the personal representative.

b. When the licensee ceases business at the location licensed, unless a new location has been approved.

c. When the licensee be adjudged bankrupt.

d. When the licensee has been convicted of the violation of any provision of this article, or of the laws of the State of North Dakota pertaining to alcoholic beverages or of a felony under the laws of the United States, the State of North Dakota or of any other state of the United States.

e. When the licensee ceases to possess the qualifications required of an applicant for a license as set out in this article.

f. When the license or permit of the licensee from the United States Government or the State of North Dakota to sell alcoholic beverages at the location licensed has been terminated or been revoked.

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

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

a. When the licensee has been convicted of violating any of the provisions of this article.

b. When the business of the licensee at the location licensed shall be conducted in violation of health or sanitary regulations or other ordinances of the City.

c. When the licensee, if an individual, or one of the partners, if the licensee be a partnership, or one of the officers or the manager if the licensee be a corporation, be convicted in the municipal court of the City of drunkenness or disorderly conduct, or if any appeal be taken from such conviction then when such conviction be sustained by the higher court or courts.

3. Such causes as are hereinbefore detailed shall not be deemed to be exclusive and such license may also be cancelled and revoked or suspended at any time by the City Council for any cause deemed by said City Council to be sufficient cause and justified by reason of public health or public morals. Such termination shall be subject only to review by the courts of the State of North Dakota.

4. When any license is terminated or revoked for cause, or the licensee voluntarily ceases his/her business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through him/her.

5.0532 Penalties

Any person, firm, corporation or association violating any of the provisions of this article shall upon conviction thereof, be subject to a fine of not to exceed one-thousand five hundred dollars ($1500.00), or to imprisonment of not to exceed thirty (30) days; or in the discretion of the court to both such fine and imprisonment; and in addition to both such fine and imprisonment all powers, right and privileges given by any license granted under the terms of this article may be terminated or revoked in accordance with sections of this article.

5.0533 Special Event Permit

The City Council of OAKES may by special permit authorize any entity or person licensed as a North Dakota Domestic Winery as defined under N.D.C.C. § 5-01-17 to engage in the sale of wine produced by that winery at a special events designated by the permit. The fee for a special events permit shall be thirty dollars ($30) payable at the time the application is submitted. The permit is not valid for a period greater than three (3) consecutive days. The City Council of OAKES has the right to regulate and restrict the operation of a special events permit.

Application for permit: A North Dakota Domestic Winery desiring to obtain a special events permit must do so by submitting an application to the City Council no later than the last city council meeting scheduled prior to the special event. The application shall set forth the following in addition to any other information requested by the City Council:

1. Name of applicant;

2. The time period for which permit is desired;

3. The name of the event;

4. The place where such event is to be held and the location;

5. Agree to comply with all state and local laws by showing proof of:

    a. Domestic Winery License from the State Tax Commissioner;

    b. Registration with the U.S. Food and Drug Administration;

    c. North Dakota Sales and Use Tax Permit;

    d. Retail License obtained from the Attorney General's Office;

    e. Special events permit from the State Tax Commissioner allowing them to sell at no more than twenty special events per year;

6. The applicant must agree to comply with all state laws; and

7. The application must specify the area all sales and taste samples will be confined to and agree to confine all sales and samples within that confined area.

The City may, in its sole discretion and after review of an approved application, grant the special events permit to an entity or person to sell wine produced by a domestic winery, and shall restrict said winery to do so only in the area described in the application which may include the streets and or public ways in the City of OAKES. This special events permit is for the sale of bottles of wine produced by the winery on the application that are sealed and unopened. This special events permit does not allow the sale of wine by the glass. Small taste samples may be given of one ounce or less in non-glass containers, in compliance with state laws.

ARTICLE 6

Shows, Carnivals and Circuses -REPEALED

ARTICLE 7

Validity

5.0701 Validity

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

ARTICLE 8

Penalty

5.0801 Penalty

Any person, firm, corporation or association violating any of the terms, articles or provisions of this chapter, for which a specific penalty is not prescribed, shall upon conviction thereof, be punished by a fine not to exceed one thousand five hundred dollars ($1,500), or by imprisonment not to exceed thirty (30) days, or by both such fine and imprisonment in the discretion of the court. The court shall have the power to suspend such sentence and to revoke the suspension thereof. The court may, in addition thereto, revoke the permit of such violator, or terminate or revoke all powers, rights and privileges given by any license granted under the terms of this chapter. Each day or part thereof that a person shall be in violation of the provisions of this chapter shall be considered a separate violation thereof.

CHAPTER SIX

PLUMBING CODE

ARTICLE 1

Adoption of State Plumbing Code

6.0101 Adoption

To promote the protect the public health there is hereby adopted the State Plumbing Code,

which has been adopted by the State Plumbing Board and approved by the State Health Department, consisting of rules and regulations governing plumbing work, and the whole thereof, of which not less than on (1) copy is on file in the office of the city auditor, and the same is hereby adopted as fully as if set out at length herein and all plumbing work in the City shall comply with said code.

6.0102 Plumbing Code - Enforcement of Provisions

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

6.0103 Plumbing Code - Changes in Existing Installations

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

6.0104 Plumbing Code - New Installations

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

6.0105 When Plumbing Fixtures Required

It shall be unlawful for any person to construct any building intended for human habitation, including dwelling, tenements, apartments, hotels, lodging houses, dormitories, or club houses, or intended to be used as a theatre or assembly hall, or as an office building, shop or factory or to convert any building to such use, or to occupy any building for such purpose, unless the same be connected to both the sewer and water systems of the City, where such building or other structure is situated no more than two hundred (200) feet from such sewer system and not more than a like distance from such water system, and unless there are installed within the building or other structure, in accordance with the provisions of this article, the fixtures, together with the plumbing as may be required by

the laws of the United States or the State of North Dakota.

ARTICLE 2

General Penalty Provision

6.0201 Penalty for Violation of Chapter

Any person, firm or corporation violating any of the provisions of this chapter shall be guilty of an infraction and, upon conviction thereof by a court of competent jurisdiction, shall be subject to a fine of not exceeding five hundred dollars ($500) for each violation.

CHAPTER SEVEN

ELECTRICAL CODE

ARTICLE 1

Adoption of Electrical Code

7.0101 Electrical Code Adopted

There is hereby adopted the rules for electrical wiring and equipment as adopted by the State Electrical Board and any future updates, and amendments to those rules, one copy of which is on file in the office of the city auditor of the City, and the same is hereby adopted as fully as if it were set out at length herein.

ARTICLE 2

Permits

7.0201 Permit Required

No person shall begin any electrical work for which a permit is required until that person has made application for a permit to the city building inspector or city auditor and the permit has been granted. All electrical work shall be performed in strict compliance with the laws of the State of North Dakota, and the provisions of this article, together with such rules and regulations as the City shall make from time to time for the execution of the same.

7.0202 Permit - Application For

Any person desiring to perform any electrical work within the corporate limits shall make application for a permit to carry on such work. Application shall be in a form containing such information regarding the proposed work, as the City shall prescribe.

7.0203 Permit - Grant of

When, after due consideration and examination, it appears that the provisions of this article are complied with, the permit asked for shall be issued.

7.0204 Work by Licensed Electrician

All electrical work hereafter to be installed in any building within the corporate limits, shall be undertaken and executed only by persons holding a master electrician's license or a Class B electrician's license where applicable as provided in the laws of the State of North Dakota for the execution of all work in conformity with the laws of the State of North Dakota, and the provisions of this article.

7.0205 Work by Licensed Electrician, When Not Required

No permit or application for a permit shall be required for the installation of electrical wiring for electrical installations made upon their own property by public service corporations, which hold franchises from the City for the manufacture and distribution of electric power.

7.0206 Uses of License by Another

No person holding a master electrician's license or a Class B electrician's license shall allow the use of his name, or any permit granted to him, by any other person.

7.0207 Inspection of Work

Upon completion of the work, which has been authorized by the issuance of an electrical permit, it shall be the duty of the master electrician to request an inspection of his work by the city inspector. Such inspection shall be requested and conducted before the electrical work is covered by other building components.

In a case where such work includes a new or altered electrical service, the utility company shall not make any connection unless the service entrance bears a notice signed by the city inspector that said wiring has been inspected and approved by the city inspector.

ARTICLE 3

Supervision of Work

7.0301 Supervision of Work

All electrical installations now existing or hereafter to be made, altered or repaired in or upon any building in the City shall be under the supervision of the city inspector who shall require such work to comply with this article and City ordinances. (NOTE: N.D.C.C. § 43-09-13.2 requires a person employed by a political subdivision to inspect electrical installations to be licensed as a journeyman or master electrician.)

7.0302 Powers

The city inspector shall have the right during reasonable hours to enter any building in the discharge of duties, or for the purpose of making any inspection or test of the electrical installation or electrical equipment contained therein, and is hereby empowered to disconnect or order the discontinuance of electrical service to any electric wiring or equipment found to be defectively installed or otherwise not in conformity with the provisions of this article or equipment shall have been made safe.

7.0303 Existing Installations

All existing electrical installations and devices on any premises or upon any building or structure in the City shall be subject to inspection by the city inspector and if in the opinion of the city inspector a hazard exists the owner shall be notified with an order requiring that the hazard be corrected. In the case where the owner fails to comply with the city inspector's order, the service to the premises, structure or building shall be disconnected.

7.0304 Defective Work

The inspector is hereby given authority to order the removal and replacement, or the alteration of any installation or portion thereof for which a permit has been obtained, should be upon inspection of the same find it to have been executed in violation of any of the provisions of this article. It shall thereafter be unlawful for any person in any way to use such installation, or to supply the power thereto, until the same shall have been made to conform to the provisions of this article. No permit for any other work shall be issued to any applicant therefore who has executed any work in violation of the provisions of this article until such work shall have been made to conform thereto.

CHAPTER EIGHT

BUILDING CODE

ARTICLE 1

Building Permits Required

8.0101. Application for Building Permit – Fee

Any person, owner or authorized agent who intends to carry out new construction in a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit which application shall state:

1. Dimensions of building or extent of alteration or repairs.

2. Kind of material to be used in construction, alteration or repairs.

3. The estimated costs of construction, alteration or repairs.

4. Description of land upon which building is to be constructed, altered or repaired.

5. A plot plan, drawn to scale, with all dimensions figured, showing accurately the size and exact location of all proposed new construction and the relation to other existing or proposed buildings or structures on the same lot and other buildings or structures on adjoining property within fifteen (15) feet of the property lines.

And if the application is for a permit to move a building, it shall state:

1. Land on which building is located.

2. Land to which it is desired to move same.

3. Value of building.

4. Material of which building is constructed.

5. The proposed route along which building is to be moved.

Which application shall be filed with the City Auditor together with a fee as set forth herein the fee for building permits shall be established by resolution of the City Council from time to time, which fee schedule shall be kept at the City Auditor's Office and made available for inspection upon reasonable notice. If the building permit is not granted to the applicant by the City, any fee submitted for that permit or portion of permit not granted shall be refunded to the applicant.

8.0102. City Auditor to File Application

It shall be the duty of the City Auditor to file such application and to present the same to the City Building Official. The City Building Official is the review and approval authority on behalf of the City Council. The City Council shall receive an update each month as to new permits issued during the previous thirty (30) day period.

8.0103. City Auditor to Keep Record

The City Auditor shall keep a record of all applications filed with him and of all permits issued under the provisions of this ordinance in some suitable and convenient form for reference.

8.0104. What Application to Contain

If any building is to be erected or materially altered within the fire limits of the City of OAKES, then the owner, architect or builder shall in addition to the statement provided for

in Section 8.0101 hereof, submit for examination full specifications and plans of the proposed building or alterations.

8.0105. Applicant Must Sign Agreement.

Every applicant shall prior to the issuance of the permit herein provided for, sign an agreement that the proposed work shall be done in accordance with the description set forth in such plans, specifications and statement, and that all matters and things connected with such work shall be done in strict compliance with existing laws and ordinances in any way relating thereto.

8.0106. Inspection of Premises, Discovery, Order

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

8.0107. Penalty

Any and all persons who shall violate any of the provisions of this article or fail to comply therewith, or who shall violate or fail to comply with any order or regulation made thereunder, or who shall build in violation of any detailed statement of specification or plans submitted and approved thereunder or any certificate or permit issued thereunder shall severally for each and every such violation and non-compliance respectively forfeit and pay a penalty of not more than one hundred dollars. The imposition of one penalty for any violation of this article shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified each day that prohibited conditions are maintained shall constitute a separate offense. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions as provided in this Chapter.

This ordinance is to be construed as a strict liability ordinance.

ARTICLE 2

Construction of Buildings

8.0201. Construction, Approved Form

All buildings hereafter constructed in the City of OAKES must conform to some established and approved form of construction as to strength of foundation, walls and chimneys. No person shall construct, use or maintain any chimney or other conduit for smoke except the same be built or brick or other fireproof material other than sheet iron.

But smoke conduits for boilers, factories, mills and stove pipes leading from stoves to chimneys are not hereby prohibited if the same are approved by the Building Inspector or chief of the fire department with jurisdiction within the City. All brick flues shall have full joints and be smoothly plastered inside with mortar from top to bottom or some other approved form of lining and outside below the roofing and the walls and divisions of the flues shall not be less than four (4) inches thick.

8.0202. Quality of Materials

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

8.0203. Repairing Frame Building within Fire Limits

It shall be unlawful to repair any frame building within the fire limits of the City of OAKES, when such building shall have been damaged by fire, the elements, or decay to the extent of fifty percent (50%) of the value of such building, exclusive of the foundations hereof.

8.0204. Division or Exterior Walls

All exterior, or division walls of buildings hereafter erected of masonry or concrete shall be of sufficient thickness to support safely the load to be carried.

8.0205. Smoke Pipes

No smoke pipe shall be within twelve (12) inches of any woodwork, or any wooden lath and plaster partition, or ceiling unless the surface above the pipe be protected by metal lath and plaster.

Where smoke pipes pass through a wooden lath and plaster partition, they shall be guarded by galvanized iron ventilated thimbles at least twelve (12) inches larger in diameter than the pipes, or by galvanized iron thimbles built in at least eight (8) inches of brick work or other incombustible material.

No smoke pipe shall pass through any floor or a roof having wooden framework or covering.

8.0206. Roof Covering

Every roof hereafter placed on a building within the fire limits shall be covered with an approved roofing of brick, concrete, tile, slate, metal, asbestos, or built-up roofing finished with asphalt, slag or gravel, or with other approved material, except where roofing is of a character permitting attachment direct to steel framework, it shall be applied to a solid or closely fitted deck. Roofings which are classified as Class A or B under the test specifications of Underwriter's Laboratories, Inc., shall be accepted as meeting the requirements of this section; for buildings which are occupied as dwellings, for buildings which are of frame construction, or outside the fire limits, for other buildings which do not

exceed two (2) stories or thirty (30) feet in height nor twenty-five hundred (2,500) square feet in area and are not occupied as mercantile establishments, factories, or warehouses, roofings which are classified as Class C shall be accepted as meeting the requirements of this section.

8.0207 Chimneys

All chimneys shall be built of brick, concrete, stone, hollow tile or clay or concrete, concrete block, or of reinforced concrete, not less than eight (8) inches thick; provided that for stone masonry other than sawed or dressed stone in courses, properly bonded and tied with metal anchors, the thickness shall be no less than twelve (12) inches; and provided that in dwellings, brick or solid concrete chimneys used exclusively for ordinary stoves, ranges, furnaces, or open fireplaces, the thickness of the masonry may be reduced to not less than three and three-quarter (3 and 3/4) inches. The City Council may, in its discretion, satisfy itself as to any other method and means of chimney construction upon good and full showing made as to being proper and safe and in general conformity toward fire prevention.

8.0208. Fire Escapes

All school buildings more than one story in height and all other buildings except such as are used for private residences exclusively in the City of OAKES of three stories or more in height shall be provided with one or more metallic ladders or fire escapes extending from the ground to the upper stories of such building and above the roof and outside walls thereof in such location and numbers and of such material as the Building Inspector or fire chief of the fire department with jurisdiction within the City may determine.

After such determination by the Building Inspector or fire chief with jurisdiction within the City, he may at any time by notice in writing served upon the owner, lessee or occupant of such building (by leaving with such owner, lessee or occupant or at his or their residence or place of business a copy of such notice) require such owner, lessee or occupant or either of them to cause such metallic ladder or fire escape to be placed upon such building within thirty days after the service of such notice.

8.0209. State Building Code

The erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, uses, height, area and maintenance of buildings or structures in the City shall meet with the provisions of the rules and regulations of the North Dakota State Building Code and any future updates and amendments to that code, a copy of which is on file with the city auditor. That code is hereby adopted and made a part of this chapter by reference with the exception of the following sections affecting local conditions in the City.

8.0210. Duties of Enforcing Officer

The Building Inspector is hereby authorized and empowered:

1. To enforce all ordinances relating to the construction, equipment, management, and

condition of all property within said City;

2. To supervise the construction or reconstruction of all buildings;

3. To report monthly to the Mayor or City Council regarding the condition of the City on all matters pertaining to fire prevention.

8.0211. Authority to Enter Premises

The Mayor or the Building Inspector or agent designated by him as an inspector may, at all reasonable hours, enter any building or premises for the purposes of making any inspection which under the provisions of this chapter he or they deem necessary to be made.

ARTICLE 3

SUB-STANDARD BUILDINGS

8.0301. Sub-Standard Buildings or Structures Defined

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

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

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

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

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

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

6. Those having light, air, and sanitation facilities which are inadequate to protect the health, morals, safety, or general welfare of human beings who or may live therein.

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

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

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

10. Those buildings existing in violation of any provision of the Fire and Building Ordinances of this City, or other ordinances of this City.

8.0302. Standards for Repair, Removal or Demolition

The following standards shall be followed in substance by the Building Inspector in ordering demolition, repair or removal of any "sub-standard building or structure", to -wit:

1. If the "sub-standard building or structure" can reasonably be repaired so that it will no longer exist in violation of the terms of this ordinance it shall be ordered repaired.

2. If the "sub-standard building or structure" is in such condition as to make it dangerous to the health, morals, safety, or general welfare of its occupants it shall be ordered to be removed.

3. In any case where a "sub-standard building or structure" is fifty (50) percent damaged or decayed, or deteriorated from its original value or structure, it shall be demolished, and in all cases where a building cannot be repaired so that it will no longer exist in violation of the terms of this ordinance it shall be demolished, in all cases where a "sub-standard building or structure" is a fire hazard existing or erected in violation of the terms of this ordinance or any ordinance of this City of statute of the State of North Dakota, it shall be demolished.

8.0303. Sub-Standard Buildings or Structures – Nuisances

All "sub-standard buildings or structures" within the terms of Section 8.0301 of this chapter are hereby declared to be public nuisances, and shall be repaired, removed or demolished as hereinafter provided.

8.0304. Duties of Building Inspector

The Building Inspector shall:

1. Inspect or cause to be inspected semi-annually, all public buildings, schools, halls, churches, theaters, hotels, tenements, commercial, manufacturing, or lot buildings for the purpose of determining whether any conditions exist which render such places a "sub- standard building or structure" within the terms of Section 8.0301 of this chapter.

2. Inspect any building, wall or structure about which complaints are filed by any person to the effect that a building, wall or structure is or may be existing in violation of the terms of this ordinance.

3. Inspect any building, wall or structure reported (as hereinafter provided for) by the Fire or Police Departments of this City as probably existing in violation of the terms of this ordinance.

4. Make periodical inspections, at least once a year, of all sections of the City to determine whether or not there are any "sub-standard buildings or structures" within the terms of Section 8.0301 of this chapter.

5. Notify in writing the owner, occupant, lessee, mortgagee, agent and all other persons having an interest in said building or structure as shown by the land records of the of the Register of Deeds of DICKEY County, North Dakota, of any building or structure found by him to be a "sub-standard building or structure" within the standard set forth in Section 8.0301 of this chapter, that: (1) The owner must remove, or repair, or demolish said building or structure in accordance with the terms of this notice and this ordinance; (2) The occupant or lessee must vacate said building or may have it repaired in accordance with the notice and remain in possession; (3) The mortgagee, agent, or other person having an interest in said building as shown by the records in the office of the Register of Deeds of DICKEY County, North Dakota, may at his own risk repair, remove, or demolish said building or structure or have such work or act done. Provided, that any person notified under this sub-section to repair, remove, or demolish any building or structure shall be given such reasonable time, not exceeding thirty (30) days, as may be necessary to do, or have done, the work or act required by the notice provided for herein.

6. Set forth in the notice provided for in sub section (e) hereof, a description of the building or structure deemed unsafe, a statement of the particulars which make the building or structure a "sub-standard building or structure" and an order requiring the same to be put in such condition as to comply with the terms of this ordinance within such length of time not exceeding thirty (30) days, as is reasonable.

7. Report to the City Council any non-compliance with the "Notice" provided for in sub- sections (e) and (f) hereof.

8. Appear at all hearings conducted by the City Council and testify as to the condition of "sub-standard buildings and structures."

9. Place a notice on all "sub-standard buildings and structures" reading as follows:

10. "This building has been found to be a sub-standard building by the Building Inspector. This notice is to remain on this building until it is repaired, removed, or demolished in accordance with the notice which has been given the owner, occupant, lessee, mortgagee, or agent of this building, and all other persons having an interest in said building as shown by the records in the office of the Register of Deeds, DICKEY County, North Dakota. It is unlawful to remove this notice until

such notice is complied with."

8.0305. Where Owner Absent From the City

In cases where the owner, occupant, or mortgagee is absent from the city, all notices or orders provided for herein may be sent by registered mail to the owner, occupant, mortgagee, lessee, and all other persons having an interest in said building as shown by the records in the office of the Register of Deeds of DICKEY County, North Dakota, to the last known post office address of each as shown by the records in the office of the said Register of Deeds, and a copy of such notice shall be posted in a conspicuous place on the "sub-standard building or structure" to which it relates. Such mailing and posting shall be deemed adequate service.

8.0306. Duties of Fire Department

The employees of the fire department with jurisdiction within the City, or members thereof shall make a report in writing to the Building Inspector of all buildings or structures which are, may be or are suspected to be "sub-standard buildings or structures" within the terms of this ordinance. Such reports must be delivered to the Building Inspector within twenty four (24) hours of the discovery of such buildings by a member of the fire department.

8.0307. Duties of Police Department

All employees of the Police Department shall make a report in writing to the Building Inspector of any buildings or structures which are, or may be, or are suspected to be "sub-standard buildings or structures" within the terms of this ordinance. Such report must be delivered to the Building Inspector within twenty four (24) hours of the discovery of such building by any employee or member of the Police Department.

8.0308. State Fire Marshall, Not Limited In Power

This ordinance shall in no way limit or restrict any authority now existing in this municipality or any authority now vested in the State Fire Marshall for the regulation or control of such buildings or structures.

8.0309. Right of Appeal

Any person feeling aggrieved by any order issued by the City Council by virtue of this ordinance may appeal to the District Court of DICKEY County, North Dakota, within thirty (30)days from the service of such order upon him. He shall file an undertaking in the sum of at least five hundred dollars ($500) to be approved by the City Auditor, conditioned that the appellant will prosecute the appeal without delay and will pay all costs that may be adjudged against him in the District Court. Such undertaking shall be payable to the City of OAKES, North Dakota.

8.0310. Violations Penalty for Disregarding Notices or Orders

The owner of any "sub-standard building or structure" who shall fail to comply with the notice or order as provided for in Section 8.0305 herein within the time therein

provided for shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding twenty dollars ($20), or by imprisonment in the County Jail for not more than ten days, or by both said fine and imprisonment for each offense, and each day over the time set in the notice and order that such owner shall fail to comply therewith shall constitute a separate offense.

Any person removing the notice provided for in Section 8.0304, sub-section (i) hereof shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars ($500) or by imprisonment in the County Jail not more than thirty (30) days, or by both such fine and imprisonment.

8.0311. Assessment of Costs

Any of the costs incurred by the City of OAKES pursuant to the enforcement of this Article may be charged against the real property where the costs were incurred and/or its owner(s) and treated as a special assessment to be collected in the manner provided elsewhere in the OAKES Revised Ordinances and/or and North Dakota Century Code.

CHAPTER NINE

POLICE DEPARTMENT

ARTICLE 1 - ORGANIZATION AND REGULATIONS

9.0101 Establishment
The police department heretofore created for the City and by this chapter continued shall consist of the chief of police and as many police officers as may be authorized by the City Council.

9.0102 Additional Officers - Emergency
In case of riot or unusual or general disturbances of the peace, the chief of police shall have the power to appoint such other and additional police officers as deemed necessary for the preservation of the public peace.

9.0103 Duties of Chief
The chief of police shall be the keeper of any city jail and shall have custody of all persons incarcerated therein, providing a jailer at all times when there is somebody incarcerated therein. The chief of police shall keep such records and make such reports concerning the activities of the department as may be required by statute or by the City Council. The chief shall be responsible for the performance by the police department of its functions, and all persons who are members of the police department shall serve subject to the orders of the chief of police. The chief of police shall have the authority to administer oaths to police officers under the chief's supervision.

9.0104 Rules and Regulations
The chief of the police department may make or prescribe rules and regulations for the department. Such rules, when approved by the City Council, shall be binding on members of the department. Such rules and regulations may cover, besides the

conduct of the members, uniforms, and equipment to be worn or carried, hours of service and all other similar matters necessary or desirable for the better efficiency of the department.

9.0105 Duties of Police - General
It shall be the duty of the police department, and each and every member of the police force, to notice and diligently inquire into and report to the chief of police all violations of the city ordinances or the criminal laws of the state, to make complaint against the person or persons guilty thereof and to attend punctually all trials of offenses in regard to those complaints. Within the City limits and for a distance of one and one-half (1 ½) miles in all directions outside the City limits, police officers shall perform the duties and exercise the powers of peace officers as defined and prescribed by the laws of the State of North Dakota. (North Dakota Century Code Section 40-20-05).

9.0106 Duties of Police - Hot Pursuit - Defined
A police officer in "hot pursuit" may continue beyond the one and one-half (1 ½) mile limit to make an arrest, in obedience to a warrant or without a warrant under the conditions of Section 29-06-15 of the North Dakota Century Code, whenever obtaining the aid of peace officers having jurisdiction beyond that limit would cause a delay permitting escape. As used in this subsection, "hot pursuit" means the immediate pursuit of a person who is endeavoring to avoid arrest. (North Dakota Century Code Section 40-20-05).

9.0107 Duties of Police - Service of Process, Etc.
Police officers shall serve and execute any warrant, writ, process, order or notice issued to them by a municipal judge within the City in any civil or criminal action or proceeding in which the City is a party or is interested beneficially. In addition to the duties set out in this section, the police shall perform such other duties as may be prescribed by the chief of police and City Council. (Source: North Dakota Century Code Section 40-20-05).

ARTICLE 2 - POWERS AND DUTIES

9.0201 Money or Property of Arrested Persons
It shall be the duty of the police department, and of each and every member of the police force, to safely keep all moneys or property which may be found on the person, in possession of or claimed by any person arrested for crime and pay or deliver over the same by the order of the municipal judge or district court judge, and forthwith after taking the same, to report in writing the kind and amount thereof to the municipal judge or district court judge.

9.0202 Arrested Persons
Any police officer after making any arrest, with or without a warrant, for any violation of City ordinances, shall take the person or persons so arrested, without any unreasonable delay, before the municipal judge or district court judge to be dealt with according to law and the ordinances of the City.

9.0203 Stolen, Abandoned, Lost Property
The chief of police shall have the custody of all lost, stolen or abandoned property

recovered in the City and shall make a report concerning such property.

9.0204 Traffic Administration
The police department shall have such duties concerning enforcement, investigation, record keeping and other matters concerning traffic administration.

9.0205 Witness Fees and Mileage of Municipal Police Officers
Police officers of the City shall be entitled to be paid the witness fees and mileage expenses allowed by law for other witnesses while off duty when such officers are subpoenaed to testify in actions involving the City. Said police officers shall submit vouchers for the above payment in accordance with these ordinances.

ARTICLE 3 - MISCELLANEOUS

9.0301 False Alarms - Interference
No person shall give or cause to be given, or make, or place or cause to be given, any false report, call or communication of any kind to the police or any false police alarm with intent to deceive; or tamper with or set off any police alarm or signal box with like intent; or tamper, meddle or interfere with any such police alarm box or intentionally cut, break, deface or remove any such box, or any of the wires or supports thereof, connected with the police alarm system; or intentionally interfere with or injure any property of any kind belonging to or used by the police department; or hinder or delay any apparatus or equipment or vehicle belonging to the police department.

9.0302 Right of Way
Any motor vehicle or motorcycle of the police department shall, when going to or returning on business of the department, have the right-of-way upon giving an audible signal by bell, siren, exhaust whistle or flashing light. The driver of any other vehicle shall drive to the nearest right-hand curb or edge of the road, stop and remain until the police vehicle shall have passed.

CHAPTER TEN

TRAFFIC

ARTICLE 1

Definitions

10.0101 Adoption

The municipality of OAKES, North Dakota hereby adopts as its municipal traffic regulations the Title 39 of the North Dakota Century Code except as amended and added to and as shall be amended and added to in the ordinances of the City of OAKES and as shall be amended and added to as deemed necessary by the City Council of OAKES in future amendments to this chapter.

10.0102 Definitions

Words and phrases used in this chapter shall have the meaning and be defined as provided in the North Dakota Century Code in Title 39, and N.D.C.C. § 39-01-01 unless otherwise defined in this municipal code and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

ARTICLE 2

Traffic Administration

10.0201 Duty of Police Department

It shall be the duty of the police department to enforce the street traffic regulations of this City and all of the state vehicle laws, to make arrests for traffic violations, to investigate accidents and to cooperate with the city traffic engineer and other officers of the City in the administration of the traffic laws and in developing ways and means to improve traffic conditions, and to carry out the traffic ordinances of this City.

10.0202 Records of Traffic Violations

1. All records of traffic violations are kept with the Clerk of District Court.
2. All such records and reports shall be public record.

10.0203 Police Department to Investigate Accidents

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

Every law enforcement officer, who in the regular course of duty investigates a motor vehicle accident required to be reported as provided in Section 9.0309 either at the time and at the scene of the accident or thereafter by interviewing the participants, or witnesses, shall make and forward promptly a written report of such accident to the director of the North Dakota Department of Transportation.

ARTICLE 3

Enforcement and Obedience to Traffic Regulations

10.0301 Authority of Police and Fire Department Officials

1. It shall be the duty of the officers of the police department or such officers as are assigned by the chief of police to enforce all street traffic laws of this City and all of the state vehicle laws.

2. Officers of the police department or such officers as are assigned by the chief of police are hereby authorized to direct all traffic by voice, hand or signal in conformance with traffic laws, provided that, in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the police department may direct traffic as conditions may require notwithstanding the

provisions of the traffic laws.

3. Officers of the Fire Department, when at the scene of a fire, may direct or assist the police in directing traffic thereat or in the immediate vicinity.

10.0302 Obedience to Traffic Ordinances

It shall be unlawful for any person to do any act forbidden or fail to perform any act required by the provisions of this Chapter, and upon conviction of a violation of any of the provisions of this Chapter every person, firm or corporation shall be punished as provided in Article 19 of this Chapter.

10.0303 Obedience to Police Officers or Firemen

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

10.0304 Certain Non-motorized Traffic to Obey Traffic Regulations

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

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

10.0305 Use of Coasters, Roller Skates and Similar Devices Restricted

No person upon roller skates, a skateboard, 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 which is designated as such 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.

10.0306 Public Employees to Obey Traffic Regulations

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

10.0307 Written Report of Accident

1. Immediate notice of accident. The driver of a vehicle involved in an accident

resulting in injury to or death of any person or at least on thousand dollars, shall immediately give notice of the accident to the local police department if the accident occurs within a municipality, otherwise to the office of the county sheriff or the state highway patrol. The name of the motor vehicle insurance policy carrier and the policy number of the driver, or if the driver is not the owner of the vehicle, then the motor vehicle insurance policy carrier and the policy number of the owner of the vehicle, must be furnished to the law enforcement officer investigating the accident. If the driver does not have the required information concerning insurance to furnish to the investigating law enforcement officer, then within five (5) days of the accident the driver shall supply that information to the Driver's License Division in the form the division requires. (Source: N.D.C.C. § 39-08-09)

2. Officer to report. Every law enforcement officer, who in the regular course of duty investigates a motor vehicle accident required to be reported as provided in subsection 1 either at the time and at the scene of the accident or thereafter by interviewing the participants, or witnesses, shall make and promptly forward to the director of the Department of Transportation a report of the accident in a format prescribed by the director. (Source: N.D.C.C. § 39-08-10)

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

    a. 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.

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

4. Garages to report. The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in a reportable accident as provided in Section 10.0307 (1) or of being struck by any bullet, shall report or cause a report to be made to a police officer within twenty-four (24) hours after such motor vehicle is received, and before any repairs are made to such vehicle, giving the registration number and the name and address of the owner, operator, or person in control of such vehicle with a description of the location and type of damage to the vehicle, or any missing parts, if the vehicle does not have a sticker on a window thereof issued by a police officer, sheriff or highway patrolman bearing information to show that the accident in which the vehicle was involved had been investigated. The police officer investigating any reportable accident shall attach a sticker to the window of any damaged vehicle showing that the accident in which such vehicle was involved has been investigated. If the vehicle does bear such a sticker the garage or repair shop need not make the report this section requires and may begin repairs immediately. After repairs have been made and before the vehicle is released, the sticker provided

herein shall be removed. (Source: N.D.C.C. § 39-07-12)

5. Wrecker and towing services to report. The person in charge of the operator of any commercial towing or wrecker service which causes any motor vehicle to be transported to a private residence or business other than a garage or repair shop which show evidence of having been involved in a reportable accident as provided in N.D.C.C. § 39-08-09 or of being struck by any bullet shall report or cause a report to be made to a police officer within twenty-four (24) hours after such motor vehicle is transported. The report must give the registration number, and the name and address of the owner, operator, or person in control of such vehicle with a description of the location and type of damage to the vehicle, or any missing parts, along with the location such vehicle was transported to, if the vehicle does not have a sticker on a window thereof issued by a police officer, sheriff, or highway patrolman, bearing information to show that the accident in which the vehicle was involved has been investigated. If the vehicle does bear such a sticker the towing or wrecker service need not make the report this section requires. (Source: N.D.C.C. § 39-07-13)

ARTICLE 4

Traffic Control Devices

10.0401 Authority to Install

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

10.0402 Specifications for

All traffic-control signs, signals, and devices shall conform to the specifications approved by the director of the North Dakota Department of Transportation pursuant to N.D.C.C. § 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.

10.0403 Obedience to Traffic-Control Devices

The provisions of N.D.C.C. § 39-10-04 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. The driver of any vehicle shall obey the instructions of any official traffic- control device applicable thereto placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, subject to the exceptions

granted the driver of an authorized emergency vehicle in this chapter.

2. No provision of this chapter for which traffic-control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a state statute does not state that devices are required, such statute shall be effective even though no devices are erected or in place.

3. Whenever official traffic-control devices are placed in position approximately conforming to the requirements of state law, such devices shall be presumed to have been so placed by the official act or direction of lawful authority unless the contrary shall be established by competent evidence.

4. Any official traffic-control device placed pursuant to the provisions of state law and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of the chapter, unless the contrary shall be established by competent evidence.

10.0404 Unauthorized Signs

The provisions of N.D.C.C. § 39-10-07.2 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

2. No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

3. This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

4. Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice when located on highway right of way.

5. No person shall place, maintain, or display upon or within the right of way of any highway any sign, post, pole, mailbox, or signal which has a red lamp or red reflector visible to traffic. The provisions of this subsection shall not apply to official traffic devices, lamps, or reflectors on motor vehicles or bicycles, or railroad signals or signs.

10.0405 Interference with Official Traffic Control Device or Sign

The provision of N.D.C.C. § 39-10-07.3 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control device or any railroad sign or signal or any inscription, shield, or insignia thereon, or any other part thereof.

10.0406 Designation of Walks, Lanes, etc.

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

1. Designate and maintain, by appropriate devices, marks or lines upon the surface of the roadway, crosswalks at intersections where there is particular danger to pedestrians crossing the roadway, and at such other places as directed by the governing body.

2. Establish safety zones of such kind and character and at such places as may be deemed necessary for the protection of pedestrians as determined by the governing body.

3. Mark traffic lanes upon the roadway of any street or highway where a regular alignment of traffic is necessary. Where such traffic lanes have been marked, it shall be unlawful for the operator of any vehicle to fail or refuse to keep such vehicle within the boundaries of any such lane except when lawfully passing another vehicle or preparatory to making a lawful turning movement or performing other lawful traffic movements.

ARTICLE 5

Speed Regulations and Care Required

10.0501 Basic Rules – Penalty for Violation

The provisions of N.D.C.C. § 39-09 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

Any person who, by reason of careless driving as herein defined, causes and inflicts injury upon the person of an operator of snow removal equipment engaged in snow removal operations or causes damage in excess of one thousand dollars ($1000) to snow removal equipment engaged in snow removal is guilty of an infraction.

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

10.0502 Speed Limitations

The provisions of N.D.C.C. § 39-09-02 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

    a. Twenty (20) miles an hour when approaching within fifty (50) feet of a grade crossing of any steam, electric, or street railway when the driver's view is obstructed. A driver's view is deemed to be obstructed when at any time during the last two hundred (200) feet of the driver's approach to such crossing, the driver does not have a clear and uninterrupted view of such railway crossing and of any traffic on such railway for a distance of four hundred (400) feet in each direction from such crossing;

    b. Fifteen (15) miles an hour when in a designated school zone which includes and is not limited to Main Avenue, Ivy Avenue, and 9th Street South adjacent to school grounds and/or as otherwise demarked by signs in those areas or adjacent to those areas. Penalties for school zone violations shall be as set forth in NDCC 39-09-02(1)(b) and NDCC 39-06.1;

    c. Twenty (20) miles an hour when approaching within fifty (50) feet and in traversing an intersection of highways when the driver's view is obstructed. A driver's view is deemed to be obstructed when at any time during the last fifty (50) feet of the driver's approach to such intersection, the driver does not have a clear and uninterrupted view of such intersection and of the traffic upon all of the highways entering such intersection for a distance of two hundred (200) feet from such intersection;

    d. Twenty (20) miles an hour when the driver's view of the highway ahead is obstructed within a distance of one hundred (100) feet;

    e. Twenty-five (25) miles an hour on any highway in a business district or in a residence district or in a public park, unless a different speed limit is designated and posted by local authorities; and

f. Fifty-five (55) miles an hour under other circumstances, unless otherwise permitted, restricted, or required by conditions.

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

3. Except as provided by law, it is unlawful for any person to drive a vehicle upon a highway at a speed that is unsafe or at a speed exceeding the speed limit prescribed by law or established pursuant to law.

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

10.0503 When Local Authorities May or Shall Alter Maximum Speed – Limits – Signs Posted

The provisions of N.D.C.C. § 39-09-03 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

   a. Decreases the limit at intersections;

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

   c. Decreases the limit outside an urban district.

2. The City shall determine by an engineering and traffic investigation the proper maximum speed for arterial streets and shall declare a reasonable and safe maximum limit thereon which may be greater or less than the minimum speed permitted under this chapter for an urban district.

3. Any altered limit established as hereinabove authorized shall be effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice thereof are erected upon such street or highway.

4. Any alteration of maximum limits on state highways or extensions thereof in the municipality shall not be effective until such alteration has been approved by the director of the North Dakota Department of Transportation.

5. Not more than six (6) such alterations as hereinabove authorized shall be made per mile along a street or highway except in the case of reduced limits at intersections,

and the difference between adjacent limits shall not be more than ten (10) miles (16.09 kilometers) per hour.

10.0504 Speed Limitations Inapplicable to Whom – Liability of Exempt Driver for Reckless Driving

The provisions of N.D.C.C. § 39-09-06 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

10.0505 Minimum Speed Limits

The provisions of N.D.C.C. § 39-09-09 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

2. Whenever the state highway commissioner and the superintendent of the highway patrol, acting jointly, or the City, determine on the basis of engineering and traffic investigation that slow speeds on any highway or part of a highway impede the normal and reasonable movement of traffic, the commissioner and superintendent or the City may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law, and that limit shall be effective when posted upon appropriate fixed or variable signs.

10.0506 Regulations of Speed by Traffic Signals

The City traffic engineer or authorized person may regulate the timing of traffic signals so as to permit the movement of traffic in an orderly and safe manner at speeds slightly at variance from the speeds otherwise applicable within the district or at intersections and shall erect appropriate signs giving notice thereof.

10.0507 Exhibition Driving and Drag Racing – Definitions – Penalty

The provisions of N.D.C.C. § 39-08-03.1 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. No person shall engage in exhibition driving of any vehicle on a highway, street, alley, sidewalk, or any public or private parking lot or area, nor shall any person engage in a race, a speed competition, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration. Any person who violates this section by engaging in an act defined by subdivision b of subsection 2 must be assessed a fee of fifty dollars. Any person who violates this section by

engaging in an act defined by subdivision a or c of subsection 2 must be assessed a fee of one hundred dollars ($100).

2. As used in this section:

   a. “Drag race” means the operation of two or more vehicles from a point side-by-side by accelerating rapidly in a competitive attempt to cause one vehicle to out distance the other; or the operation of one or more vehicles over a common selected course from the same point to the same point for the purpose of comparing the relative speed or powers of acceleration of such vehicle or vehicles within a certain distance or time limit.

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

   c. “Race” means the use of one or more vehicles in an attempt to out-gain, outdistance, or to arrive at a given distance ahead or another vehicle or vehicles; or the use of one or more vehicles to willfully prevent another vehicle from passing the facing vehicle or vehicles, or to test the physical stamina or endurance of the persons driving the vehicles over a long distance driving route.

3. Nothing in this section shall be construed as prohibiting drag racing, exhibition driving, or similar events when carried out in an organized manner on a track or other privately owned area specifically set aside and used solely for such purposes by drivers of motor vehicles, including snowmobiles.

10.0508 Radar Evidence in Speed Violations

The provisions of N.D.C.C. § 39-03-15 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

10.0509 Care Required in Operating Vehicle

The provisions of N.D.C.C. § 39-09-01.1 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Any person driving a vehicle upon a highway shall drive the vehicle in a careful and

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

ARTICLE 6

Turning Movements

10.0601 Required Position and Method of Turning

The provisions of N.D.C.C. § 39-10 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

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

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

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

10.0602 Vehicle Turning Left

The provision of N.D.C.C. § 39-10 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

10.0603 Limitations on Turning Around

The provision of N.D.C.C. § 39-10-36 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

interfering with other traffic.

2. No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred (500) feet.

10.0604 Turning Movements and Required Signals

The provision of N.D.C.C. § 39-10-38 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. No person may turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety without giving an appropriate signal in the manner hereinafter provided;

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

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

4. The signals required on vehicles by subsection 2 or 9.0605 may not be flashed on one side only on a disabled vehicle, flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear, nor be flashed on one side only of a parked vehicle except as may be necessary for compliance with this section.

10.0605 Signals by Hand and Arm or Signal Lamps

The provisions of N.D.C.C. § 39-10-39 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Any stop or turn signal when required herein must be given either by means of the hand and arm or by signal lamps, except as otherwise provided in subsection 2.

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

10.0606 Methods of Giving Hand and Arm Signals

The provisions of N.D.C.C. § 39-10-40 and all subsequent amendments shall be and are

hereby incorporated by reference in this ordinance.

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

1. Left turn: hand and arm extended horizontally;

2. Right turn: hand and arm extended upward

3. Stop of decrease speed: hand and arm extended downward.

ARTICLE 7

Pedestrians' Rights and Duties-REPEALED

ARTICLE 8

Regulations for Motorcycles-REPEALED

ARTICLE 9

Regulations for Bicycles

10.0901 Effect of Regulations

1. It is a violation of this ordinance for any person to do any act forbidden or fail to perform any act required in this article. Any person who violates any of the provisions of this article may be assessed a fee not to exceed fifty dollars ($50).

2. The parent of any child and the guardian of any ward may not authorize or knowingly permit any such child or ward to violate any of the provisions of this ordinance.

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

4. For purposes of this Article 9 (Bicycles) any conveyance with weight of 150 pounds or less (excluding the operator, passenger, and cargo) propelled by energy which is not generated on a one-to-one ratio by human power shall also be considered a bicycle. Examples of such conveyances include and are not limited to electric bicycles, electric skateboards, electric scooters, etc. If a specific regulation applies only to such conveyances such conveyance shall be referred to as “artificially propelled lightweight conveyances” or “APLC” in the context of such regulation set forth in this Article 9.

10.0902 Traffic Ordinances Apply to Persons Riding Bicycles

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

10.0903 Obedience to Traffic Control Devices

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

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

10.0904 Riding on Sidewalks

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

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

3. Whenever any person is operating an artificially propelled lightweight conveyances ("APLC") on any sidewalk, such person shall not exceed a speed of 5 miles per hour.

10.0905 Riding on Roadways and Bicycle Paths

The provision of N.D.C.C. § 39-10.1-05 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

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

3. Whenever a usable path for bicycle riders has been provided adjacent to a roadway, bicycle riders shall use such path and may not use the roadway. Whenever any person is operating an artificially propelled lightweight conveyances ("APLC") on any such bicycle path, such person shall not exceed a speed of 5 miles per hour.

10.0906 Clinging to Vehicles

The provisions of N.D.C.C. § 39-10.4-04 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

No person riding upon any bicycle, coaster, roller skates, sled or toy vehicle may attach the same or the person's self to any vehicle upon a roadway, except a sled being pulled by a snowmobile.

10.0907 Carrying Articles

The provisions of N.D.C.C. § 39-10.1-06 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

No person operating a bicycle may carry any package, bundle or article which prevents the driver from keeping at least one hand upon the handlebars.

10.0908 Lamps and Other Equipment on Bicycles

The provisions of N.D.C.C. § 39-10.1-07 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Every bicycle when in use at nighttime must be equipped with a lamp on the front which emits a white light visible from a distance of at least five hundred (500) feet to the front and with a red reflector on the rear of a type approved by the North Dakota Department of transportation. A lamp emitting a red light visible from a distance of five hundred (500) feet to the rear may be used in addition to the red reflector.

2. Every bicycle must be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

10.0909 Riding on Bicycles

The provisions of N.D.C.C. § 39-10.1-03 and all subsequent amendments shall be and hereby incorporated by reference in this ordinance.

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

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

10.0910 Parking

No person may park a bicycle upon a street other than upon the roadway against the curb or upon the sidewalk in a rack to support the bicycle or against a building or at the curb, in such manner as to afford the least obstruction to pedestrian traffic.

10.0911 Cycle Racing Prohibited

It shall be unlawful for any persons to run or engage in or cause to be run or be engaged in any bicycle or motorcycle race on any street, alley, highway or public place within the City, except when officially sanctioned to do so by the chief of police.

10.0912 Point System Not Applicable for Some Bicycle Violations

The provisions of N.D.C.C. § 39-10.1-08 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

10.0913 Bicycle May be Impounded by Police

Any bicycle left abandoned upon the streets of the City and picked up by the city police shall be held by the police department and a ten dollars ($10) pick up fee shall be charged. If not licensed, the owner shall purchase a current year's license in addition to the pick up fee before the bicycle is returned to the owner.

ARTICLE 10

Stopping, Standing or Parking Prohibited in Specific Places

10.1001 Parking Prohibited - All Times

When signs are erected giving notice thereof, it shall be unlawful for any person, firm or corporation to park or leave standing either attended or unattended, any motor vehicle in or upon the streets or alleys of the City.

10.1002 Stopping, Standing or Parking Outside of Business or Residence Districts

The provisions of N.D.C.C. § 39-10-47 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Upon any highway outside of a business or residence district no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practicable to stop, park or so leave such vehicle off such part of said highway, but in every event an unobstructed width of the highway of not less than twelve (12) feet opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicles shall be available from a distance of two hundred feet in each direction upon such highway.

2. Sections 9.1402, 9.1404 and 9.1405 shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

10.1003 Officers Authorized to Remove Illegally Stopped Vehicles

The provisions of N.D.C.C. § 39-10-48 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Whenever any police officer finds a vehicle standing upon a highway in violation of any of the provisions of Section 9.1402, such officer is hereby authorized to move such vehicle, or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or main-traveled part of such highway.

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

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

    a. A report has been made that such vehicle has been stolen or taken without consent of its owner;

    b. The person or persons in charge of such vehicle are unable to provide for its custody or removal; or

    c. When the person driving or in control of such vehicle is arrested for an alleged offense for which the officer is required by law to take the person arrested before a proper magistrate without unnecessary delay.

10.1004 Stopping, Standing or Parking Prohibited in Specified Places

The provisions of N.D.C.C. § 39-10-49 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

1. On a sidewalk;

2. In front of a public or private driveway;

3. Within an intersection;

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

5. On a crosswalk;

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

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

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

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

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

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

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

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

14. At any place where official signs prohibit stopping.

No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.

10.1004 Additional Parking Regulations

The provisions of N.D.C.C. § 39-10-50 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Except as otherwise provided in this section, every vehicle stopped or parked upon a two-way roadway must be so stopped or parked with the right-hand wheels of such vehicle parallel to and within twelve (12) inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder.

2. Except where otherwise provided by ordinance, every vehicle stopped or parked upon a one-way roadway must be so stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right-hand wheels within twelve (12) inches of the right-hand curb or as close as practicable to the right edge of the right- hand shoulder, or with its left-hand wheels within twelve (12) inches of the left-hand curb or as close as practicable to the left edge of the left-hand shoulder.

3. The City may permit angle parking on any roadway, except that angle parking is not permitted on any federal-aid or state highway without first obtaining the written authorization of the director of the North Dakota Department of Transportation.

4. The North Dakota Department of Transportation with respect to highways under its

jurisdiction may place official traffic-control devices prohibiting or restricting the stopping, standing or parking of vehicles on any highway where in its opinion such stopping, standing or parking is dangerous to those using the highway or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic thereon. No person may stop, stand or park any vehicle in violation of the restrictions indicated by such devices.

10.1005 Stopping - Parking - Congested - Hazardous Places

The city engineer or other person designated by the governing body is hereby authorized to determine and designate by proper signs, places in which the stopping, standing or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic.

When official signs are erected at hazardous or congested places as authorized herein, no person may stop, stand or park a vehicle in any such designated place.

10.1006 Stopping - Parking - In Alleys

No person may park a vehicle within an alley, nor shall any person stop a commercial vehicle so as to leave available less than twelve (12) feet of the width thereof for free movement of vehicular traffic, nor shall any person stop in such a position as to block the driveway entrance to any abutting property.

10.1007 Parking Adjacent to Schools

1. The city traffic engineer or authorized person may erect signs indicating no parking upon either or both sides of any street adjacent to any school property when such parking would, in his opinion, interfere with traffic or create a hazardous situation.

2. When official signs are erected indicating no parking upon either side of a street adjacent to any school property as authorized herein, no person may park a vehicle in any such designated place.

10.1008 Parking Privileges for Mobility-Impaired - Certificate - Revocation

The provisions of N.D.C.C. § 39-01-15 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

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

3. If a law enforcement officer finds that a mobility-impaired certificate or insignia is being improperly used, the officer may report to the director of the North Dakota Department of Transportation. Any person who is not mobility-impaired and who exercises the privileges granted a mobility-impaired person under subsection 1 shall be guilty of an infraction.

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

5. A person may not stop, stand or park any vehicle in any designated parking space which is reserved for the mobility-impaired unless the vehicle displays a mobility-impaired identification certificate or insignia issued by the director of the North Dakota Department of Transportation. For a violation of this subsection, there will be a fee in the amount of one hundred dollars ($100).

ARTICLE 11

Reserved Parking Areas

10.1101 Reserved Parking Areas

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

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

ARTICLE 12

Time Limit Parking Zones

10.1201 Time Limit Parking Zones

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

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

10.1202 Stopping-Parking-Over 48 Hours

It shall be unlawful for anyone to park or leave standing on any public street or highway in the City or to park or leave standing on any private property outside an enclosed garage in the City any vehicle for a period of longer than forty-eight (48) hours consecutively, provided that this section shall not include any area where shorter time is provided for parking.

ARTICLE 13

Equipment of Vehicles

10.1301 Windshield - Must be Unobstructed and Equipped with Wipers - Tinted Windows

1. Every motor vehicle shall be equipped with a windshield. No person shall drive any motor vehicle with any sign, poster or other nontransparent material upon the front windshield, side wings or side or rear windows which obstructs the driver's clear view of the highway or any intersection highway.

2. The windshield on every motor vehicle must be equipped with a device for cleaning rain, snow or other moisture from the windshield, which shall be so constructed as to be controlled or operated by the driver of the vehicle.

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

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

compliance with the Federal Motor Vehicle Safety Standards.

10.1302 Child Restraint Devices - Evidence

1. If a child, under four (4) years of age, is present in any motor vehicle, that motor vehicle must be equipped with at least one (1) child restraint system for each such child. The child restraint system must meet the standards adopted by the United States Department of Transportation for those systems (49 CFR 571.213). While the motor vehicle is in motion, each such child must be properly secured in the child restraint system in accordance with the manufacturer's instructions. If a child who is at least four and at most seventeen (17) years of age is present in a motor vehicle, unless properly secured in an approved child restraint system, the child must be buckled in a seatbelt whenever the car is moving. Use of child restraint Systems and seatbelts is not required in motor vehicles that were not equipped with seatbelts when manufactured.

2. Violation of this ordinance is not, in itself, evidence of negligence. The fact of a violation of this section is not admissible in any proceeding other than one (1) charging the violation. (Source: N.D.C.C. § 39-21-41.2)

10.1303 Use of Safety Belts - Enforcement

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

A peace officer may not issue a citation for a violation of this section unless the officer lawfully stopped or detained the driver of the motor vehicle for another violation. (Source: N.D.C.C. §§ 39-21-41.4, 39-21-41.5)

10.1304 Drawbar or Connection Between Vehicles - Precautions Required

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

10.1305 Motorcycle Brakes—REPEALED

10.1306 Brakes on Motor-Driven Cycles

The City may require an inspection of the brake on any motor-driven cycle and may

disapprove any brake which is not so designed or constructed as to ensure reasonable and reliable performance in actual use. (Source: N.D.C.C. § 39-27-04.1)

10.1307 Exhaust Systems - Prevention of Noise

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

ARTICLE 14

Lighted Lamps Required

10.1401 When Lighted Lamps are Required

Subject to exceptions with respect to parked vehicles, every vehicle upon a highway within this state must display lighted lamps and illuminating devices as required in this chapter for different classes of vehicles as follows:

1. At any time from sunset to sunrise, and every farm tractor upon a highway within this state at any time from a half hour after sunset to a half hour before sunrise;

2. At any time when it is raining, snowing, sleeting or hailing or during other adverse driving conditions and these conditions do not render a person or vehicle on the highway clearly discernible at a distance of one thousand (1000) feet (304.8 meters) ahead; or

3. At any other time when visibility is impaired by weather, smoke, fog or other conditions or when there is insufficient light to render a person or vehicle on the highway clearly discernible at a distance of one thousand (1000) feet (304.8 meters) ahead.

4. Stoplights, turn signals and other signaling devices must be lighted as prescribed for the use of such devices. N.D.C.C. §. 39-21-01

ARTICLE 15

Regulating the Kinds and Classes of Traffic on Certain Roads

10.1501. Definitions.

For the purpose of this ordinance, the following terms, phrases and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

1. "City" is the City of OAKES, DICKEY County, North Dakota.

2. "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.

3. "Truck" is any vehicle designed or operated for the transportation of property, and whose body weight or whose combined body and load weight exceeds twelve thousand (12,000) pounds.

4. "Truck Route" is a way over certain streets, as designated herein, over and along which trucks coming into and going out of the City must operate.

5. "Officer", "Law enforcement officer" is any city, county, state or federal law enforcement personnel authorized in the state of North Dakota to act as a law enforcement officer.

10.1502. Application of Regulation.

All trucks within the City shall be operated only over and along the truck routes herein established.

10.1502.1. Exceptions.

Emergency vehicles - the operation of emergency vehicles upon any street in the City.

Public utilities - the operation of trucks owned or operated by the City, public utilities, any contractor or material man, while engaged in the repair, maintenance or construction of streets, street improvements, or street utilities within the City.

10.1503. Truck Routes Established.

There is hereby established within the City the following "Truck Routes". The City shall, from time to time, as the City Council sees fit, establish truck routes and make and keep a truck route map within the city at the City Auditor's office for the public to refer to. The truck routes shall be clearly sign posted to give notice that this ordinance is in effect. Additionally, the following applies: the City Council has designated the following streets and avenues to be utilized as truck routes for and within the City of Oakes.

- 7th Street running north and south through Oakes, in its entirety, which is also known as ND State Highway No. 1;
- Fir Avenue from 4th Street east to 7th Street North (ND Hwy 1)
- Ivy Avenue from 4th Street east to 7th Street (ND Hwy 1)

- 3rd Street South from Main Avenue to Nectarine Avenue
- 4th Street South from Fir Avenue to Nectarine Avenue
- 5th Street South from Nectarine Avenue to Oak Avenue
- 6th Street South from Oak Avenue to Quince Avenue
- Nectarine Avenue 3rd Street South east to 7th Street (ND Hwy 1)
- Oak Avenue from 5th Street South east to 7th Street (ND Hwy 1)
- Pine Avenue from 6th Street South east to 7th Street (ND Hwy 1)
- Quince Avenue from 6th Street South east to 7th Street (ND Hwy 1)
- Industrial Park Avenue from 7th Street North east to boundary of Oakes City Limits
- 14th Street North from Industrial Park Avenue south to Industrial Park Avenue C
- Main Avenue from 4th Street west to boundary of Oakes City Limits
- Main Avenue from 7th Street (ND Hwy 1) east to 15th Street--Trucks shall not be allowed at the times of 8:00 AM – 9:00 AM and 3:00 PM – 4:00 PM--Speed Limit shall be 10mph on Main Avenue from 7th Street to 9th Street

All local trucking businesses, including but not limited to companies, individuals, partnerships and trucking corporations shall have access to their homes and businesses within the city from the designated truck routes by using the shortest route thereto.

For the purpose of this ordinance, the definitions of the following terms are set forth (NDCC 39-01):

1. Road tractor shall mean every motor vehicle designated 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 for loads so drawn;
2. Semi-trailer shall include every vehicle of the trailer type so designated and used in conjunction with the motor vehicle that some part of its own weight and that part of its own load rests upon or is carried by a motor vehicle;
3. Trailer shall include every vehicle without motor power designed to carry property or passenger holding 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 term shall mean a vehicle as defines which is designed and intended for use as living or sleeping quarters for people and which was not used for commercial hauling of passengers;
4. Truck shall include every motor vehicle designed, used or maintained primarily for transportation of property, except that for purposes of this ordinance the commonly known vehicle which is commonly designated as a pick-up truck is specifically excluded except at herein set forth;
5. Truck tractor shall include every motor vehicle designed and used primarily for drawing other vehicles and not so construed as to carry a load other than a part of the weight of the vehicle and load so drawn.

The purpose of this ordinance is:

1. To restrict truck traffic to designated truck routes
2. To keep the downtown business area free from congestion
3. To keep needless truck traffic off the streets and avenues in the residential areas of the city
4. To provide safe routes for pedestrians and students

5. To restrict truck traffic in School Zones

All road tractors, semi-trailers, trailers, trucks and tractors does not include what is commonly known as pickup truck. Deviation from the use of the truck route is permitted when the vehicle is being used to either deliver cargo or freight, or to pick up cargo or freight, using the shortest available route to nd from the truck routes. The parking of the above designated vehicles is also restricted to parking in an area adjacent to the designated truck route or on private property.

PENALTY:
Any violator of this Through Streets and Truck Route ordinance shall be subject to a fee of $100.00.

10.1504. Special Permit For Vehicle Of Excessive Of Excessive Size And Weight-Issued—Contents—Fees.

The City may issue a special monthly, seasonal or yearly permit for trucks, as trucks are defined herein, whose weight, including the transporting vehicle, shall not exceed one hundred and five thousand five hundred (105,500) pounds. GVW. The permit, if issued, shall only be issued for each vehicle for those occurrences when that vehicle is on an approved city roadway and shall not be valid outside city limits or on state roadways. The fee and requirements shall be established by the City Council. Violation of the conditions of the permit shall void the permit.

10.1505. City Council May Limit Use Of Vehicles On Highways.

Whenever any road will be seriously damaged or destroyed by reason of deterioration, rain, snow, or other climatic conditions unless the use of vehicles is prohibited or the weight of the vehicle therein is limited, the Council, by ordinance or resolution, may prohibit the operation of vehicles upon such highway or may impose restrictions as to the weight of vehicles. The City Council making such order or enacting any such ordinance or resolution shall erect or cause to be erected and maintained signs designating the provisions or the order, ordinance, or resolution.

Such signs must be erected and maintained at each end of that portion of any road affected thereby, and such order, ordinance, or resolution is not effective until such signs are erected and maintained. The operation of trucks or other commercial vehicles or limitations as to the weight thereof on designated roads may be prohibited or limited in the same manner.

10.1506. Width, Height, And Length Limitations On Vehicles—Exceptions.

Vehicles operated in the City of OAKES may not exceed the following width, height, or length limitations:

1. A total outside width, including load thereon, of eight feet six (6) inches (2.59 meters). This limitation does not apply to:

a. Construction and building contractors' equipment and vehicles used to move such equipment which does not exceed ten (10) feet (3.05 meters) in width when being moved by contractors or resident carriers.

b. The City Council may adopt reasonable rules for those vehicles exempted from the width limitations as provided for in this subsection.

2. A height of fourteen (14) feet (4.27 meters), whether loaded or unloaded.

3. A length as follows:

a. A single unit vehicle with two (2) or more axles including the load thereon may not exceed a length of fifty (15) feet (15.24 meters).

b. A combination of two units including the load thereon may not exceed a length of seventy five (75) feet (22.86 meters).

c. A combination of three (3) or four (4) units including the loan thereon may not exceed a length of seventy-five (75) feet (22.86 meters), subject to any rules adopted by the director that are consistent with public highway safety. The rules do not apply to a three-unit combination consisting of a truck tractor and semi-trailer drawing a trailer or semi-trailer.

d. Length limitations do not apply to:

i. Building moving equipment

ii. Emergency tow trucks towing disabled lawful combinations of vehicles to a nearby repair facility.

iii. Vehicles and equipment owned and operated by the armed forces of the United States or the national guard of this state.

iv. Structural material of telephone, power, and telegraph companies.

v. Truck mounted haystack moving equipment, provided such equipment does not exceed a length of fifty-six (56) feet (17.07 meters).

e. The length of a trailer or semi-trailer, including the load thereon, may not exceed fifty-three (53) feet (16.16 meters) except that trailers and semi-trailers titled and registered in North Dakota prior to July 1, 1987, and towed vehicles may not exceed a length if sixty (60) feet (18.29 meters).

10.1507. Weight Limitations For Vehicles On City Roads-Vehicles.

Operating on a roadway in this city may not exceed the weight limitations as set out hereunder:

1. The City hereby adopts the weight limitations for city roads, being the same as set out under N.D.C.C. § 39-12-05.3 (1) and (2), as amended from time to time, but specifically excluding N.D.C.C. § 39-12-05.3 (3),(4), (5) and (6).

2. The gross weight limitations in subsection 1 does not apply to equipment the City Council approves for exemption. The exemption may not exceed one hundred and five thousand five hundred (105,500) pounds (47,854.00 kilograms). For every vehicle approved for exemption the City Council shall issue a nontransferable permit valid for thirty (30) days. The charge for this permit shall be determined by City Council by resolution and can be issued by the City Auditor of the Sheriff's Department.

3. An exemption granted under this subsection shall have no effect on special permits as provided elsewhere in this chapter and the one hundred and five thousand five hundred (105,500) pound limitation shall not be applicable if a special permit has been granted as provided for elsewhere in this chapter.

10.1508. Limitations On Extending Of Load Beyond Side Of Motor Vehicle.

No motor vehicle carrying any loan beyond the lines of the left fenders of such vehicle nor extending more than twelve (12) inches (30.48 centimeters) beyond the line of the fenders on the right side of such vehicles may be operated on the roadways, except as permitted by this chapter. The City Council, its agents or peace officers, shall have authority to revoke permits when such holder violates or abuses the privilege or conditions of permit.

10.1509. Peace Officers May Weigh Vehicle To Determine Load—Decreasing Gross Weight Of Vehicle.

Every police officer, including members of the state highway patrol, having reason to believe that the weight of a vehicle and the load carried thereon is unlawful, may weigh such vehicle and load or have the same weighed either by means of portable or stationary scales, and for that purpose he may require the vehicle to be driven to the nearest scales. Such officer may require the driver of such vehicle immediately to unload such portion of the load as may be necessary to decrease the gross weight to the maximum allowed by the provisions of this ordinance.

10.1510. Arrest.

A peace officer may arrest the driver of a motor vehicle if the peace officer has probable cause to believe that the driver has operated the vehicle in violation of this chapter within the past four (4) hours.

10.1511. Identification Of Driver.

A person who owns or leases a motor vehicle that a police officer has probable cause to believe has been operated in violation of this chapter must identify the driver of the motor vehicle upon request of the police officer. Violation of this subdivision is a misdemeanor.

10.1512. Unlawful To Violate Provisions Governing Size, Weight, Or Construction

Of Vehicle—Penalty.

It is unlawful for any person to drive or move, or for the owner to cause or knowingly to permit to be driven or move, on any roadway, any vehicle or vehicles of a size or weight exceeding the limitations stated in this chapter, or any vehicle or vehicles which are not constructed as required in this ordinance nor according to the rules and regulations of the City adopted pursuant to the provisions of this ordinance. The maximum size and weight of vehicles specified in this chapter are lawful throughout the City, except as they may be limited by virtue of specifications made pursuant to the other provisions of this chapter. Any person who violates any of the provisions of this section must be assessed a fee of twenty dollars ($20).

10.1513. Impounding Overweight Vehicle.

Any vehicle found to have been moved or used upon any road in the City at a weight exceeding the limitations as specified in any order, ordinance, rule or resolution allowed in this chapter, may be impounded by any peace officer and taken to a warehouse or garage for storage.

10.1514. Impounding Receipt—Information.

A receipt must be given by the officer 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 the vehicle.

10.1516. 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 risk of loss or damage to such perishables must be upon the owner, operator, or lessee of such vehicle.

10.1517. Civil Complaint.

The City attorney of the City may, if no settlement is made under Section 10.1518, immediately prepare and file a civil complaint on behalf of the authority having jurisdiction of the road whereon the violation occurred, for the purpose of recovering charges for the extraordinary use of the roads of the City.

10.1518. Voluntary Settlement Of Extraordinary Road Fee.

Before the complaint is issued pursuant to Section 10.1517, the owner, or the owner's driver or agent, may voluntarily pay the amount of the road use fee, provided proof of surety coverage to ensure payment of the road use fee, provided under N.D.C.C. § 39-12-17, 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 road use fees must be remitted to the City Auditor to be credited to the City

Fund.

10.1519. 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.

10.1520. Cash Bond--Holding.

Unless a cash bond is furnished in an amount sufficient to cover the charges for use of roads, as provided in Section 10.1507, together with the costs which may be collectible under any subsequent settlement made pursuant to Section 10.1518, said vehicle must be held until a trial of the case can be had before the district court.

10.1521. 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 roads of this City at a weight in excess of the limitations imposed under the provisions of this chapter, charges for the extraordinary use of the 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 according to the schedule set forth in N.D.C.C. § 39-12-17, as said section exists at the adoption of this ordinance, and as that the North Dakota Century Code may change from time to time by amendment.

10.1522. Payment Of Charges—Confiscation--Sale.

If the charges and costs as provided in Section 10.1521 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 or the city at a public sale to the highest bidder and the proceeds applied to the payment of the charges and costs assessed under provisions of this chapter.

10.1523. Payment--Effect.

The payment of charges may not be construed as a payment for the future use of highways, streets, or roads by vehicles carrying excess loads.

10.1524. Proceeds Of Sale.

The proceeds of sale must be applied first to the payment of the costs of the proceedings, including attorneys and witness fees and costs, and next to the payment of the charges assessed. Such charges must be remitted to the City Auditor to be credited to the City. The balance of the proceeds of any sale after the payment of costs and charges must be paid over to the person entitled thereto as determined by the court, or must be deposited with the clerk of court for such payment.

10.1525. Penalty.

Any driver of a vehicle who refuses to stop and submit the vehicle and load to a weighing when directed to do so by any police officer or any agent of the state having police power relating to motor vehicles is guilty of a Class B Misdemeanor.

10.1526. Permissible Loads—Exceptions.

When any motor truck, truck tractor, or trailer is operated upon the public roads of the city carrying a load in excess of the maximum prescribed under the provisions of this ordinance or other maximum weight limitations prescribed by law, the load must be reduced or shifted to within such maximum limitations before being permitted to operate on any road of the city, provided, however, that any law enforcement personnel or officer may direct the truck, motor truck, truck tractor, and/or trailer to the nearest appropriate unloading site to be immediately unloaded to the extent necessary to reduce the weight to within the maximum legal limitations set forth in this chapter, and provided that any such vehicle carrying a load of livestock is exempt from the limitations prescribed in this ordinance relating to the carrying capacity of any wheel, tire, axle, or group of axles when excessive weight is caused by a shifting of the weight of the livestock. All material unloaded as required by this section must be cared for by the owner or operator of such vehicle at the risk of such owner or operator.

10.1527. Governor's Order Authorizing Excess Limits.

The operation of such vehicles, in accordance with the governor's order under N.D.C.C. § 39-12-23, does not constitute a violation of this chapter relative to limitations on sizes and weights.

10.1528. City Council May Establish Rules.

The City Council may make such administrative rules as are necessary to implement this ordinance.

10.1529. Receipt Of Certain Overweight Loads.

Evidence. A record kept and maintained as provided in this chapter that shows that a vehicle has exceeded a gross weight limit imposed by this chapter is relevant evidence of a violation of this chapter. The foregoing provisions do not limit the introduction of other competent evidence bearing upon the question of whether or not there is a violation of the prescribed maximum weight limitation permitted by this chapter.

10.1530. Penalty For Shipment Of Overloaded Trucks And Fines And Fees Therefor.

Any person who ships or tenders goods for shipment in a single truck or combination vehicle that exceeds weight or size limits imposed under this chapter shall be charged the amounts set forth in N.D.C.C. § 39-12-17, as amended from time to time, and this shall be in addition to any such charges which are charged to and paid for by the driver in violation of the weight and size restrictions of this chapter. Said shipper of goods who is in violation

of this section shall also be guilty of a Class B Misdemeanor.

10.1531. Shippers Good Faith Exception.

The penalty imposed in the preceding subsection shall not be imposed on a shipper who in good faith ships goods or tenders goods for shipment in a vehicle that does not exceed the maximum gross weight or size for which the truck is licensed. For the purposes of this subsection, "good faith" means that:

1. The vehicle is licensed for the weight which the shipper loads the truck;

2. The operator of the vehicle is not under the control of the shipper;

3. The operator has requested that the vehicle be loaded to the maximum gross weight or size for which the vehicle is licensed, and;

4. The road leaving from the shipper's immediate place of shipment may be legally used for the allowed gross weight or size of the vehicle with its legally maximum load.

Unless otherwise stated in Chapter 10, Article 15, any person in violation of any section of Chapter 10, Article 15 is civilly liable for any violations of Chapter 10, Article 15 and shall be fined not less than twenty dollars ($20) and that person is also criminally liable for any violation of any terms of Chapter 10, Article 15 and guilty of a Class B Misdemeanor for any such violation, with a fine not less than one hundred dollars ($100).

10.1531 ADDITIONAL PARKING RULES

10.1531.1 Angle Parking
The city engineer or other person authorized by the governing body may mark or sign streets upon which angle parking will be permitted (other than federal aid or state highways). Upon those streets which have been signed or marked for angle parking, no person may park or stand a vehicle other than at the angle to the curb or edge of the roadway indicated by such signs or markings.

10.1531.2 Angle Parking - Where
Angle parking shall also be permitted on the following streets: Main Avenue, 4th S tree t to 7th Street5th Street & 6th Street, 1 block north and 1 block south of Main Avenue

10.1531.3 Close to Curb
No person may stand or park a vehicle in a street other than on the roadway and parallel with the edge of the roadway headed in the direction of lawful traffic movement and with the right hand wheels of the vehicle within eighteen (18) inches of the curb or edge of the roadway except as otherwise provided in this article.

10.1531.4 Method of Parking - Penalty
A violation of the provisions of this article in respect to the method of parking is punishable by a fine of not to exceed twenty-five dollars ($25.00)

ARTICLE 16

Criminal Traffic Violations

10.1601 Operation of Snowmobiles

1. The provisions of N.D.C.C. Chapter 39-24 and all subsequent amendments shall be and are hereby incorporated by reference in this Ordinance

2. In addition to the provisions of N.D.C.C. Chapter 39-24, the following rules and regulations shall govern the operation of snowmobiles within the City limits as follows:

    a. Because operators of snowmobiles will have to drive on public streets for ingress and egress to the City, all operators must be licensed motor vehicle drivers within the State of North Dakota or qualify under the existing permit law to operate a snowmobile within the city limits.

    b. All operators or riders on snowmobiles must wear helmets within the city limits of OAKES, North Dakota.

    c. Snowmobiles may be operated within the City of OAKES only for the purposes of leaving the City, or entering the City, and no snowmobile may be operate within the City of OAKES for any other purposes except emergency situations.

    d. That the designated streets as set out below may be used form the hours of seven (7) a.m. to eleven (11) p.m. for ingress and egress only, during any day, except that on Sunday the designated streets may be used from twelve (12) p.m., otherwise known as noon, until eleven (11) p.m. for purpose of ingress and egress only.

    e. That the streets designated as streets upon which snowmobiles may enter the city and leave the city are as follows:

        i. ***

        ii. ***

        iii. ***

        iv. ***

    f. Operators of snowmobiles leaving the city must go from their parking spot directly to the designated streets and leave the city immediately on the shortest route.

g. Snowmobiles returning to the city must use a designated street and may depart from that street to go directly to their parking place at their residence, and they are to take the shortest route to do so.

h. The speed limit for snowmobiles within the city is fifteen (15) miles per hour.

i. Every person leaving a snowmobile on a public place shall lock the ignition, remove the key and take the same with him or her.

j. Notwithstanding any prohibitions in this Ordinance a snowmobile may be operated on public thoroughfares in an emergency during the period of time when and at locations where snow upon the road way renders travel by automobile impracticable.

k. It is unlawful to intentionally drive, chase, run or kill any animal with a snowmobile.

l. During the hours from eleven (11) p.m. to seven (7) a.m. it is unlawful to operate a snowmobile engine within the city limits, except for repair purposes or emergency.

3. Penalties – Every person convicted of a violation of any of the provisions of this Ordinance shall be guilty of a Class B Misdemeanor.

10.1602 Operation of Off-highway Vehicles (OHVs)

1. The provisions of N.D.C.C. Chapter 39-29 and all subsequent amendments shall be and are hereby incorporated by reference in this Ordinance

2. In addition to the provisions of N.D.C.C. Chapter 39-29, as allowed in N.D.C.C. § 39-29-08 (4) and subsequent amendments, the following rules and regulations shall govern the operation of OHVs within the City limits as follows:

   a. Operation of OHVs must be licensed motor vehicle drivers within the State of North Dakota or qualify under existing permit law to operate an OHV within city limits.

   b. All operators or riders on OHVs must wear helmets within the city limits of OAKES, North Dakota.

   c. OHVs that meet the requirement of the North Dakota Century Code. that the designated streets as set out below may be used form the hours of seven (7) a.m. to eleven (11) p.m. for ingress and egress only, during any day, except that on Sunday the designated streets may be used from twelve (12), otherwise known as noon, until eleven (11) p.m. for purpose of ingress and egress only.

   d. That operators of OHVs and atvs may only enter the city and leave the city

by going to or leaving their parking spot and travelling along the most direct and shortest route while complying with all other applicable laws.

e. Operators of OHVs and atvs may not travel from one place to another within the city limits and must either be entering or leaving the city while being operated within the city limits.

f. The speed limit for OHVs within the city is fifteen (15) miles per hour.

g. Every person leaving an OHVs on a public place shall lock the ignition, remove the key and take the same with him or her.

h. Notwithstanding any prohibitions in this Ordinance an OHV may be operated on public thoroughfares in an emergency during the period of time when and at locations where conditions upon the road way renders travel by automobile impracticable.

i. It is unlawful to intentionally drive, chase, run or kill any animal with an OHV during the hours from eleven (11) p.m. to seven (7) a.m. and it is unlawful to operate an OHVs engine within the city limits, except for repair purposes or emergency or while travelling out of city limits or through city limits directly to the owner's parking spot.

3. Penalties – Every person convicted of a violation of any of the provisions of this Ordinance shall be guilty of a Class B Misdemeanor.

10.1603 Golf Carts on City Streets

1. In addition to the provisions of North Dakota Century Code Section 40-05-22, as amended, and subsequent amendments thereto, the following rules and regulations shall govern the operation of golf carts within the City limits as follows:
   a. Because operators of golf carts will have to drive on public streets within the City, all operators must be licensed motor vehicle drivers within the State of North Dakota.
   b. Golf carts may be operated within the City of OAKES only for the purposes of daytime travel and may not be operated within the City at night.
   b. The speed limit for golf carts within the city is 15 miles per hour.
   c. Golf carts may not be operated on any federal, state, or county highways in the city, except for the perpendicular crossing of those roadways.
   d. Golf carts that are operated on the city streets in accordance with this ordinance are exempt from the title, registration, and equipment provisions of title 39 of the N.D.C.C. However, all golf carts operated upon the city streets shall be insured and the operator shall provide proof of the same upon request by law enforcement. No golf cart shall have upon it more people than the golf cart is designed to carry as determined by the manufacturer and there is a presumption that every

golf cart is limited to 3 human passengers which presumption may be rebutted by the person cited with violation of this ordinance by presenting a manufacturer's certified statement regarding the same.

2. Penalties – Every person convicted of a violation of any of the provisions of this Ordinance shall be guilty of a Class B Misdemeanor.

10.1604: REPEALED
10.1605: REPEALED
10.1606: REPEALED
10.1607: REPEALED

10.1608 Operation of Motor Vehicle, Tractor or Other Vehicle Prohibited on Flood Protective Works - Exception - Penalty

1. Unless authorized by the authority in charge thereof, no person shall operate a motor vehicle, tractor or other vehicle upon or across any flood protective works, including but not limited to, any dike or flood protective works constructed by a state or federal agency or by any municipality or local subdivision of the state.

2. Any person violating the provisions of this section shall be liable to any person suffering injury as a result of the violation; and in addition, shall be guilty of a class B misdemeanor. (Source: N.D.C.C. § 30-10-65)

10.1609 Driving Without a License

No person shall drive any motor vehicle upon a highway in this City unless such person has a valid license as an operator, or is expressly exempted from licensing requirements, by the laws of this state.

10.1610 License to be Carried and Exhibited on Demand

The provisions of N.D.C.C. § 39-06-16 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Every licensee shall have the licensee's operator's license or permit in the licensee's immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of any district court, municipal court, a patrolman, peace officer or a field deputy or inspector of the State Highway Department. However, no person charged with violating this section may be convicted or assessed any court costs if the person produces in court, to the chief of police or in the office of the arresting officer an operator's license or permit theretofore issued to that person and valid and not under suspension, revocation or cancellation at the time of the person's arrest.

10.1611 Penalty

The provisions of N.D.C.C. § 39-12-21 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Any driver of a vehicle who refuses to stop and submit the vehicle and load to a weighing when directed to do so by any police officer or any agent of this state having police powers relating to motor vehicles is guilty of an offense.

10.1612 General Penalty for Violation of Chapter

The provisions of N.D.C.C. § 39-07-06 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Any person violating any of the provisions of this chapter for which another criminal penalty is not provided specifically is guilty of an infraction as defined in N.D.C.C. § 12.1-32-01. As used in this section, the phrase "another criminal penalty" includes provision for payment of a fixed fee for violating another section of this chapter but does not include other administrative sanctions which may be imposed.

10.1613 Notification of Parents or Guardians of Juvenile Traffic Offenders

The municipal judge or municipal court clerk shall notify the parent or guardian of any juvenile appearing before the court on a traffic offense of the charge as contained in the citation, the penalty attached to the offense and the time and place of any court hearing on the matter.

ARTICLE 17

Sections Not Adopted

10.1701 Sections Not Adopted.

The sections of N.D.C.C. Title 39 not expressly adopted in ARTICLE 1 through ARTICLE 16, inclusive, are not adopted by reference.

ARTICLE 18

Severability Clause

10.1801 Severability Clause

If any provision of this ordinance or its application to any person, or circumstances is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

ARTICLE 19

Penalties

10.1901 Penalties

Any person who is convicted of violating or of failing to comply with any of the provisions of this ordinance may be punished by a fine of not more than One Thousand Five Hundred Dollars ($1,500) or by imprisonment not to exceed thirty (30) days, or both.

CHAPTER ELEVEN

OFFENSES

ARTICLE 1

In General

11.0101 Criminal Contempt

1. The Municipal Court has power to punish for contempt of its authority for the following offenses:

    a. Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

    b. Misbehavior of any of its officers in their official transactions; or

    c. Disobedience or resistance to its lawful writ, process, order, rule, decree or command.

2. A criminal contempt proceeding under this section is not a bar to subsequent prosecution for a specific offense if the court certifies in the judgment of conviction of criminal contempt, or the order terminating the proceeding without acquittal or dismissal, that a summary criminal contempt proceeding was necessary to prevent repetition of misbehavior disruptive of an ongoing proceeding and that subsequent prosecution as a specific offense is warranted.

3. This section shall not be construed to deprive a court of its power, by civil contempt proceedings, to compel compliance with its lawful writ, process, order, rule, decree or command or to compensate a 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.

11.0101.1 Adoption of State Criminal Offenses As Allowed

To the extent that N.D.C.C. Title 12.1, as amended from time to time, does not conflict with the Chapter and Sections of the City of OAKES Ordinances, as amended from time to time and to the extent that Municipalities are allowed to prosecute infractions and up to and including class B misdemeanors, N.D.C.C. Title 12.1, as amended from time to time, is hereby adopted by reference and made a part of the ordinances of OAKES, North

Dakota.

11.0102 Hindering Proceedings by Disorderly Conduct

A person is guilty of an offense if the person recklessly or intentionally hinders an official city proceeding by noise or violent or tumultuous behavior or disturbance.

11.0103 Fleeing or Attempting to Elude a Police Officer

Any driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police vehicle, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a class B misdemeanor. A signal complies with the section if the signal is perceptible to the driver and the police officer giving such signal is in uniform, prominently displaying the officer's badge of office, and the vehicle is appropriately marked showing it to be an official police vehicle. (Source: N.D.C.C. § 39-10-71).

11.0104 Interference with Officers

No person in the City shall resist any police or fire officer, any member of the police or fire departments, or any person duly empowered with police or fire authority, while in the discharge or apparent discharge of duty, or in any way interfere with or hinder in the discharge of duty.

11.0105 False Alarms or False Reports

No person in the City shall intentionally make, turn in, or give a false alarm of fire, or of need for police or ambulance assistance, or aid or abet in the commission of such act. No person in the City shall make to, or file with, the police department of the City any false, misleading or unfounded statement or report concerning the commission or alleged commission of any crime occurring in the City.

11.0106 Bows and Arrows

1. No person, except for law enforcement in the discharge of his/her lawful duties, and except as authorized by law, shall fire off, discharge, or activate any bow, bow and arrow, crossbow and arrow or other similar device in any place, private or public, within the limits of the city.

2. Violations of this Section 11.0106 shall be a Class B Misdemeanor.

ARTICLE 2

Offenses Against Persons

11.0201 Simple Assault

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

a. Willfully causes bodily injury to another human being; or

b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.

2. Consent to the conduct causing bodily injury by all persons injured by the conduct is a defense if:

a. Neither the injury inflicted nor the injury threatened is such as to jeopardize life or seriously impair health;

b. The conduct and the injury are reasonable foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or

c. The conduct and the injury are reasonable foreseeable hazards of an occupation or profession or of medical or scientific experimentation conducted by recognized methods and the persons subjected to such conduct or injury, having been made aware of the risks involved, consent to the performance of the conduct or the infliction of the injury.

3. Assent does not constitute consent, within the meaning of this ordinance, if:

a. It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense and such incompetence is manifest or known to the actor;

b. It is given by a person who by reason of youth, mental disease or defect, or intoxication, is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature of harmfulness of the conduct charged to constitute the offense; or

c. It is induced by force, duress or deception. (Source: N.D.C.C. § 12.1-17-01,08)

11.0202 Sexual Assault

1. A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense if:

a. That person knows or has reasonable cause to believe that the contact is offensive to the other person;

b. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders that other person incapable of understanding the nature of that other persons conduct;

c. That person or someone with that person's knowledge has substantially

impaired the victim's power to appraise or control the victim's conduct, by administering or employing without the victim's knowledge, intoxicants, a controlled substance as defined in N.D.C.C. Chapter 19-03.1, or other means for the purpose of preventing resistance;

d. The other person is in official custody or detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over that other person;

e. The other person is a minor, fifteen (15) years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare; or

f. The other person is a minor, fifteen (15) years of age or older, and the actor is an adult. (Source: N.D.C.C. § 12.1-20-07).

11.0203 Harassment

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

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

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

4. Communicates a falsehood by telephone and causes mental anguish. (Source: N.D.C.C. § 12.1-17-07(1) (b), (c), (d).)

ARTICLE 3

Offense Against Property

Division 1. Property Destruction and Criminal Intrusion

11.0301 Criminal Mischief – Penalty

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

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

   b. Willfully damages tangible property of another.

2. Conduct is punishable as criminal mischief under this ordinance when pecuniary loss, if intentionally caused, is not in excess of one hundred dollars ($100.00); if recklessly caused, is not in excess of two thousand dollars ($2,000.00); and if the damages to tangible property of another are not by means of an explosive or a

destructive device.

3. The penalty for the offense of criminal mischief may not exceed a fine of One Thousand Five Hundred Dollars ($1,500), imprisonment from thirty (30) days, or both such fine and imprisonment. (Source: N.D.C.C. §§ 12.1-21-05 and 40-05-06)

11.0302 Tampering with or Damaging a Public Service

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

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

2. Incapacitating an operator of such service; or

3. Negligently damaging the tangible property of another by fire, explosive or other dangerous means. (Source: N.D.C.C. § 12.1-21-06).

11.0303 Consent as a Defense and Definition of "of another" for Criminal Mischief or Tampering with or Damaging a Public Service

For prosecution of criminal mischief under Section 11.0301 or tampering with or damaging a public Service under Section 11.0302.

1. Whenever it is an element of the offense that the property is of another, it is a defense to a prosecution under those sections that the other has consented to the actor's conduct with respect to the property.

2. Property is that "of another" if anyone other than the actor has a possessory or proprietary interest therein. (Source: N.D.C.C. §§ 12.1-21-07 and 12.1-21-08(2)).

11.0304 Criminal Trespass

A person is guilty of an offense if, knowing that the person is not licensed or privileged to do so, that person, enters or remains in any place as to which notice against trespass is given by actual communication to the actor by the person in charge of the premises or other authorized person or by posting in a manner reasonably likely to come to the attention of intruders. (Source: N.D.C.C. § 12.1-22-03 (3)).

Division 2. Theft and Related Offenses

11.0305 Consolidated Theft Offenses

1. Conduct denominated theft in Section 11.0306 to Section 11.0308 constitutes a single offense designed to include the separate offenses heretofore known as larceny, stealing, purloining, embezzlement, obtaining money or property by false pretenses, extortion, blackmail, fraudulent conversion, receiving stolen property, misappropriation of public funds, swindling and the like.

2. A charge of theft under Section 11.0306 to Section 11.0308, which fairly apprises the defendant of the nature of the charges against the defendant, shall not be deemed insufficient because it fails to specify a particular category of theft. The defendant may be found guilty of theft under such charge if the defendant's conduct falls under Section 11.0306 to Section 11.0308, so long as the conduct proved is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case that must be met. (Source: N.D.C.C. § 12.1-23-01).

11.0306 Theft of Property

1. A person is guilty of theft if that person:

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

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

    c. Knowingly receives, retains or disposes of property of another which has been stolen, with intent to deprive the owner thereof. (Source: N.D.C.C. § 12.1-23-02).

11.0307 Theft of Services

1. A person is guilty of theft if:

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

    b. Having control over the disposition of services of another to which the person is not entitled, the person knowingly diverts those services to his own benefit or to the benefit of another not entitled thereto.

2. 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: N.D.C.C. § 12.1-23-03).

11.0308 Theft of Property Lost, Mislaid or Delivered by Mistakes

1. A person is guilty of theft if the person:

    a. Retains of disposes of property of another when that person knows it has been lost or mislaid; or

b. Retains or disposes of property of another when that person knows it has been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property; and with intent to deprive the owner of it, he fails to take readily available and reasonable measures to restore the property of a person entitled to have it. (Source: N.D.C.C. § 12.1-23-04).

11.0309 Thefts Punishable Under City Ordinances

1. Theft under 11.0306 to 11.0308 may be punished as an offense against the City ordinances if the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that he was stealing, or which the actor could reasonably have anticipated to have been the property or services involved, does not exceed two hundred fifty dollars ($250) and if:

   a. The theft was not committed by threat;

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

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

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

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

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

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

   h. The property stolen does not consist of livestock taken from the premises of the owner;

   i. The property stolen does not consist of a key or other implement uniquely suited to provide access to property the theft of which would be a felony or was not stolen to gain such access.

   j. The property stolen is not a card, plate, or other credit device existing for the purpose of obtaining money property, labor, or services on credit, or is a debit card, electronic fund transfer card, code or other means of access to an account for the purpose of initiating electronic fund transfers. (Source:

N.D.C.C. § 12.1-23-05).

11.0310 Defrauding Secured Creditors – Penalty

A person is guilty of an offense if he destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with intent to prevent collection of the debt represented by the security interest or if he makes false statements at the time of sale as to the existence of security interests.

11.0311 Retail Theft – Shoplifting

1. Presumption. Any person concealing upon that person's person or among that person's belongings, or causing to be concealed upon the person or among the belongings of another, unpurchased merchandise displayed, held, offered or stored for sale in a retail mercantile establishment and removing it to a point beyond the last station for receiving payments in that retail mercantile establishment shall be prima facie presumed to have so concealed such merchandise with the intention of permanently depriving the merchant of possession or of the full retail value of such merchandise.

2. Detention of Suspect – Procedure. Any peace officer or merchant who reasonably believes that a person has committed, or is in the process of committing theft may detain such person, on or off the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:

    a. To require the person to identify himself;

    b. To verify such identification;

    c. To determine whether such person has in the person's possession unpurchased merchandise and, if so, to recover such merchandise;

    d. To inform a peace officer of the detention of the person and surrender custody of that person to a peace officer;

    e. In the case of a minor, to inform a peace officer, the parents, guardian or other private person interested in the welfare of that minor of this detention and to surrender custody of said minor to the person informed.

3. Definitions. As used in this section, unless the context requires otherwise:

    a. An item is "concealed" within the meaning of this section if, even though there is some notice of its presence, the item itself is not visible through ordinary observation.

    b. "Full retail value" means the merchant's stated or advertised price of the merchandise.

c. “Merchandise” means any item of tangible personal property and specifically includes shopping carts.

d. “Merchant” means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, franchise or independent contractor or such owner or operator.

e. “Person” means any natural person or individual.

f. “Premises of a retail mercantile establishment” includes, but is not limited to, the retail mercantile establishment, any common use areas in shopping centers, and all parking areas set aside by a merchant, or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of said retail mercantile establishment.

g. “Retail mercantile establishment” means any place where merchandise is displayed, held, offered or stored for sale to the public.

h. “Shopping cart” means those push carts of the type or types which are commonly provided by grocery stores, drugstores or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store.

4. Theft of unpurchased merchandise, displayed, held, offered or stored for sale in a mercantile establishment from that establishment when open for business is “shoplifting” for which the offender may be assessed a penalty upon conviction not exceeding one thousand dollars ($100), imprisonment of thirty (30) days, or both such fine and imprisonment. (Source: N.D.C.C. §§ 51-21-01, 51-21-02, 51-21-03 and 40-05-06).

11.0312 Defenses and Proof as to Theft and Related Offenses

1. It is a defense to a prosecution under this article that:

   a. The actor honestly believed that he had a claim to the property or services involved which he was entitled to assert in the manner which forms the basis for the charge against him; or

   b. The victim is the actor’s spouse, but only when the property involved constitutes household or personal effects or other property normally accessible to both spouses and the parties involved are living together.

2. The term ‘spouse’, as used in this section includes persons living together as husband and wife.

3. It does not constitute a defense to a prosecution for conducts constituting an offense in violation of this article that:

a. Stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed;

b. A facility or an opportunity to engage in such conduct, including offering for sale property not stolen as if it were stolen, was provided; or

c. Mere solicitation that would not induce an ordinary law-abiding person to engage in such conduct was made by a law enforcement officer to gain evidence against a person predisposed to engage in such conduct.

4. It is a prima facie case of theft under this article if it is shown that a public servant or an officer, director, agent, employee of, or a person connected in any capacity with a financial institution has failed to pay or account upon lawful demand for money or property entrusted to him as part of his official duties or if an audit reveals a shortage or falsification of his accounts.

    a. Proof of the purchase or sale of stolen property at a price substantially below its fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.

    b. Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business, or without the usual induce of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen. (Source: N.D.C.C. §12.1-23-09).

11.0313 Definitions

In this article:

1. "Dealer in property" means a person who buys or sells property as a business.

2. "Deception" means:

    a. Creating or reinforcing a false impression, including false impressions as to fact, law, status, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not substantially perform the promise unless it is part of a continuing scheme to defraud; or

    b. Preventing another from acquiring information which would affect his judgment of a transaction; or

    c. Failing to correct a false impression which the actor previously created or reinforced, or which he knows to be influencing another to whom he stands in fiduciary or confidential relationship; or

    d. Failing to correct an impression which the actor previously created or

reinforced and which the actor knows to have become false due to subsequent events; or

e. Failing to disclose a lien, adverse claim, or other impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained or in order to continue to deprive another of his property, whether such impediment is or is not valid, or is or is not a matter of official record; or

f. Using a credit card, charge plate or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer (i.) where such instrument has been stolen, forged, revoked or canceled, or where for any other reason its use by the actor is unauthorized, and (ii.) where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument; or

g. Any other scheme to defraud. The term "deception" does not, however, include falsifications as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares in communications addressed to the public or to a class or group.

3. "Deprive" means:

   a. To withhold property or to cause it to be withheld either permanently or under such circumstances that a major portion of its economic value, or its use and benefit, has, in fact, been appropriated; or

   b. To withhold property or to cause it to be withheld with the intent to restore it only upon the payment of a reward or other compensation; or

   c. To dispose of property or use it or transfer any interest in it under circumstances that make its restoration, in fact, unlikely.

4. "Fiduciary" means a trustee, guardian, executor, administrator, receiver or any other person acting in a fiduciary capacity, or any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

5. "Financial institution" means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

6. "Obtain" means:

   a. In relation to property, to bring about a transfer or purported transfer of an interest in the property, whether to the actor or another; or

b. In relation to services, to secure performance thereof.

7. "Property" means any money, tangible or intangible personal property, property (whether real or personal) the location of which can be changed (including things growing on, affixed to, or found in land and documents although the rights represented thereby have no physical location), contract right, chose-in-action, interest in or claim to wealth, credit or any other article or thing of value of any kind. "Property" also means real property, the location of which cannot be moved if the offense involves transfer or attempted transfer of an interest in the property.

8. "Property of another" means property in which a person other than the actor or in which a government has an interest without consent, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person or government might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another that has a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement. "Owner" means any person or a government with an interest in property such that it is "property of another" as far as the actor is concerned.

9. "Receiving," means acquiring possession, control or title, or lending on the security of the property.

10. "Services" means labor, professional service, transportation, telephone, mail or other public service, gas, electricity and other public utility services, accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or other property.

11. "Stolen" means property which has been the subject of theft or robbery or a vehicle which is received from a person who is then in violation of N.D.C.C. § 12.1-23-06.

12. "Threat" means an expressed purpose, however communicated, to:

    a. Cause bodily injury in the future to the person threatened or to any other person; or

    b. Cause damage to property; or

    c. Subject the person threatened or any other person to physical confinement or restraint; or

    d. Engage in other conduct constituting a crime; or

    e. Accuse anyone of a crime; or

    f. Expose a secret or publicize an asserted fact, whether true or false, tending to subject a person living or deceased, to hatred, contempt or ridicule or to impair another's credit or business repute; or

g. Reveal any information sought to be concealed by the person threatened; or

h. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

i. Take or withhold official action as a public servant, or cause a public servant to take or withhold official action; or

j. Bring about or continue to strike, boycott or other similar collective action to obtain property or deprive another of his property which is not demanded or received for the benefit of the group which the actor purports to represent; or

k. Cause anyone to be dismissed from his employment, unless the property is demanded or obtained for lawful union purposes; or

l. Do any other act which would not in itself substantially benefit the actor or a group he represents but which is calculated to harm another person in a substantial manner with respect to his health, safety, business, employment, calling, career, financial condition, reputation or personal relationship. Upon a charge of theft, the receipt of property in consideration for taking or withholding official action shall be deemed to be theft by threat regardless of whether the owner voluntarily parted with his property or he initiated the scheme.

13. "Traffic" means:

a. To sell, transfer, distribute, dispense or otherwise dispose of to another person; or

b. To buy, receive, possess or obtain control of, with intent to sell, transfer, distribute, dispense or otherwise dispose of to another person. (Source: N.D.C.C. § 12.1-23-10)

10.314 Making or Uttering Slugs

1. A person is guilty of an offense if that person makes or utters a slug or slugs which do not exceed fifty dollars ($50) in value with intent to deprive a supplier of property or service sold or offered by means of a coin machine or with knowledge that he is facilitating such a deprivation by another person.

2. In this section:

a. "Slug" means a metal, paper or other object which by virtue of its size, shape or any other quality is capable of being inserted, deposited or otherwise used in a coin machine as an improper but effective substitute for a genuine coin, bill or token;

b. "Coin machine" means a coin box, turnstile, vending machine, or other

mechanical or electronic device or receptacle designed (i.) to receive a coin or bill of a certain denomination or a token make for the purpose; and (ii.) in return for the insertion or deposit thereof, automatically to offer, provide, assist in providing, or permit the acquisition of property or a public or private service.

c. "Value" of the slugs means the value of the coins, bills or tokens for which they are capable of being substituted.

ARTICLE 4

Offenses Against Public Order, Health, Safety and Sensibilities

Division 1. Riot

11.0401 Engaging in a Riot

1. A person is guilty of an offense if that person engages in a riot.

2. "Riot" means a public disturbance involving an assemblage of five (5) or more persons, which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government function. (Source: N.D.C.C. §§ 12.1-25-01(2) and 12.1-25-03)

11.0402 Disobedience of Public Safety Orders Under Riot Conditions

A person is guilty of an offense if, during a riot as defined in 11.0401-(2) or which when one is immediately impending, he disobeys a reasonable public safety order to move, disperse or refrain from specified activities in the immediate vicinity of the riot. A public safety order is an order designated to prevent or control disorder, or promote the safety of persons or property, issued by the senior law enforcement official on the scene. (Source: N.D.C.C. § 12.1-25-04).

Division 2. Disorderly Conduct

11.0403 Disorderly Conduct

1. An individual is guilty of violating the ordinances of this City, if with intent to harass, annoy or alarm another person or in reckless disregard of the fact that another is harassed, annoyed or alarmed by the individual's behavior, the individual:

    a. Engages in fighting or in violent, tumultuous or threatening behavior;

    b. Makes unreasonable noise;

    c. In a public place, uses abusive or obscene language, or makes an obscene

gesture;

d. Obstructs vehicular or pedestrian traffic, or the use of a public facility;

e. Persistently follows a person in or about a public place or places;

f. While loitering in a public place for the purpose of soliciting sexual contact, the individual solicits such contact;

g. Creates a hazardous, physically offensive, or seriously alarming condition by any act that serves no legitimate purpose; or

h. Engages in harassing conduct by means of intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person. (Source: N.D.C.C § 12.1-31-01).

11.0404 Defense When Conduct Consists of Constitutionally Protected Activity

Ordinance 11.0403 does not apply to constitutionally protected activity. If an individual claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim, as a matter of law, and, if found valid, shall exclude evidence of the activity. (Source: N.D.C.C. § 12.1-31-01 (2)).

Division 3. Gambling

11.0405 Gambling

1. It shall be an infraction to engage in gambling.

2. "Gambling" means risking any money, credit, deposit or other thing of value for gain, contingent, wholly or partially, upon lot, chance, the operation of gambling apparatus, or the happening or outcome of an event, including an election or sporting event, over which the person taking the risk has no control. Gambling does not include:

    a. Lawful contests for skill, speed strength or endurance in which awards are made only to entrants or to the owners of entries; or

    b. Lawful business transactions or other acts or transactions now or hereafter expressly authorized by law.

3. "Gambling apparatus" means any devise, machine, paraphernalia or equipment that is used or usable in playing phases of any gambling activity, whether that activity consists of gambling between persons, or gambling by a person involving the playing of a machine. Gambling apparatus does not include an amusement game or device as defined in N.D.C.C. § 53-04-01, or an antique "slot" machine twenty-five (25) years old or older which is collected and possessed by a person as a hobby and is not maintained for the business of gambling.

4. This ordinance shall not apply to gambling or games of chance conducted by a licensee under the authority of a valid license issued by the State of North Dakota.

Division 4. Sexual Offenses

11.0406 Prostitution

1. A person is guilty of the offense of prostitution if that person:

    a. Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business;

    b. Solicits another person with the intention of being hired to engage in sexual activity.

2. Testimony of a person against his or her spouse shall be admissible to prove offenses under this section involving the spouse's prostitution.

3. In this section:

    a. A "house of prostitution" is any place where a person under the control, management or supervision of another regularly carries on prostitution.

    b. An "inmate" is a prostitute who acts as such in or through the agency of a house of prostitution.

    c. "Sexual activity" means sexual act or sexual contact as those terms are defined in N.D.C.C. § 12.1-20-02. (Source: N.D.C.C. §§ 12.1-29-03, 12.1-29-0304, 12.1-29-05)

Division 5. Regulation of Minors

11.0407 Curfew, General Regulations – Penalty

It shall be unlawful for the parent, guardian, custodian or other adult person having custody or control of any child under the age of seventeen (17) to suffer or to permit or by inefficient control thereof to allow such child to be upon the streets, sidewalk or on/in any public place or property within the city of OAKES between the hours of twelve (12) a.m. and six (6) a.m. on week days and on Friday and Saturday nights between the hours of twelve (12) a.m. to six (6) a.m.

The provisions of this section, however, do not apply to a child accompanied by his or her parent, guardian, custodian, or other adult person having the care, custody and control of the child; or if the child is on an emergency errand; or if the child is on an appropriate errand of business for which he has the previous consent from his or her parent, guardian, custodian, or other adult person having the care, custody and control of the child, and for

which he is proceeding directly pursuant to that proper errand; or if the child has been reported as missing to the appropriate local authorities by his parent, guardian, custodian, or other adult person having the care, custody and control of the child. Any special function or activity involving persons under the age of seventeen (17) which involves the presence of such under ages personages restricted to such persons under this section must first receive special acknowledgement from the police or the facility acting in the functions thereof to be exempt from the provisions of this section.

It shall be unlawful for any firm, corporation, proprietor, or person s who operates or has charge of any place open to public patronage, to knowingly permit or suffer the presence of minors under the age of seventeen (17) between the hours heretofore set out.

Any peace officer upon finding a child in violation of curfew shall ascertain the name and address of the child that he is in violation of curfew and the officer shall then direct the child to proceed at once to his or her home or place of abode. The peace officer shall then make an effort to notify his or her parent, guardian, custodian, or other adult person having the care, custody and control of the child that the child under such person's care of control is in violation the city of OAKES's curfew ordinance. A reasonable attempt to notify the parent, guardian, custodian, or other adult person having the care, custody and control of the child of the violation shall be deemed to satisfy the provisions of this section provided that the officer note the time and means used in attempt to contact such persons. If the child should shall refuse to immediately go home, then the officer may take the child home or take the child to the law enforcement office and the parent, guardian, custodian, or other adult person having the care, custody and control of the child shall be notified that the child is to be retrieved. If the parent, guardian, custodian, or other adult person having the care, custody and control of the child cannot be located or if such person fails to take charge of the child, the child shall be released to the juvenile authorities.

When any child under the age of seventeen (17) years of age is cited by law enforcement for violation of the curfew, the parent, guardian, custodian, or other adult person having the care, custody and control of said child shall be assessed a fine of one hundred dollars ($100).

11.0408 Firearms

It shall be unlawful for any person, firm or corporation to sell or rent firearms to minors within the limits of this City. It shall be unlawful for any person or persons to fire or discharge within the city limits of this City, any cannon, gun, fowling piece, pistol or other firearms or dangerous weapon of any description without the written permission of the City governing board which permit shall limit the time of such firing and be subject to revocation by the City governing board at any time after being granted. Provided, however, that nothing in this section shall be construed to apply to the firing of any gun or other firearms when done in cases of actual necessity or in the performance of lawful duty or by militia companies or veterans' organizations when on parade or ceremony. (Reference North Dakota Century Code 62.1-02-06). No person except a licensed dealer shall manufacture, use, sell or keep for sale within the City any blank cartridges, pistols, blank cartridge revolver or other blank cartridge firearms, blank cartridge caps containing dynamite or firecrackers exceeding three (3) inches in length and exceeding one-half (1/2) inch in diameter.

ARTICLE 5

Penalties

11.0501 Penalties

Any person who is convicted of violating or of failing to comply with any of the provisions of the ordinances contained in this chapter for which a penalty is not specifically set forth, may be punished by a fine of not more than one thousand dollars ($1,000.00) or by imprisonment not to exceed thirty (30) days, or both. (Source: N.D.C.C. § 40-05-06)

CHAPTER TWELVE

ANIMALS AND FOWL

ARTICLE 1 – GENERAL REGULATIONS

12.0101 Cruelty – Penalty

No person shall cruelly treat any animal in the City in any way. Any person who inhumanly beats, underfeeds, overloads or abandons any animal shall be deemed guilty of an offense for which the maximum penalty shall be a fine of one-thousand five-hundred dollars ($1500.00), thirty (30) day imprisonment, or both such fine and imprisonment. (North Dakota Century Code Section 36-21.2)

1. It is an offense for any person to:
   a. Overdrive, overload, torture, cruelly beat, neglect or unjustifiably injure, maim, mutilate or kill any animal, or cruelly work any animal when unfit for labor;
   b. Deprive any animal over which he/she has charge or control of necessary food, water or shelter;
   c. Keep any animal in any enclosure without exercise and wholesome change of air;
   d. Abandon any animal;
   e. Allow any maimed, sick, infirm or disabled animal of which he/she is the owner, or of which he/she has custody, to lie in any street, road or other public place for more than three (3) hours after notice;
   f. No person shall willfully instigate, or in any way further, any act of cruelty to any animal or animals, or any act tending to produce such cruelty.
   g. Cage any animal for public display except as allowed by North Dakota Century Code Section 36-21.2-11);
2. The word “animal” includes every living animal except the human race; the word “torture” or “cruelty” includes every act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering or death is cause or permitted. (Source: North Dakota Century Code Section 36-21.2-03)

12.0102 Dangerous Animals

It shall be unlawful to permit any dangerous animal of any kind to run at large within the City. A "dangerous animal" shall be defined as an animal that has caused damage to property or injury to a person, or which animal, by its actions, exhibits a propensity for causing imminent danger to person. Exhibitions or parades of wild animals which are ferae naturae in the eyes of the law may be conducted only upon securing a permit from the Chief of Police. It shall also be unlawful to keep or harbor within the City any dangerous animal without first having obtained permission to keep or harbor such animal from the City's police officer or other designated officer as designated by the City Council.

Permission may be granted through a written request stating the description of the animal, the name of the owner or person in charge, the purpose for which the animal is kept, and such other pertinent information as the Chief of Police shall determine.

12.0103 Permit – When Issued

The Chief of Police shall have discretion as to whether or not to issue a permit pursuant to Section 12.0102. If the Chief of Police shall refuse to issue a permit, the decision may be appealed to the governing body. Any dangerous animal kept or allowed to run at large without the owner or keeper having first obtained a permit in compliance with this section is hereby declared a nuisance and the owner or keeper shall be guilty of a violation of this article.

12.0104 Killing Dangerous Animals

The members of the police department or any other person in the City are authorized to kill any dangerous animals of any kind when it is necessary for the imminent protection of any person or property.

12.0105 Diseased Animals

No domestic animal afflicted with a contagious or infectious disease shall be allowed to run at large, or to be exposed in any public place whereby the health of human or beast may be affected; nor shall such diseased animal be shipped or removed from the premises of the owner thereof, except under the supervision of the Chief of Police or the County Health Officer.

It is hereby made the duty of the County Health Officer to secure such disposition of any diseased animal and such treatment of affected premises as to prevent the communication and spread of the contagion or infection, except in cases where the state department of health is empowered to act.

12.0106 Housing

No person shall cause or allow any stable or place where any animal is or may be

kept to be unclean, or unwholesome.

12.0107 Keeping of Certain Animals Prohibited

It shall be unlawful to keep any live sheep, swine or pigs, cattle, chickens or other poultry, or goats in the City. This section shall not apply to any person, partnership or corporation keeping or handling such animals under consignment in the course of regular business or to a licensed livestock auction market.

12.0107a Service Animals

Service animals engaged in recognition and response are welcome. "Service animals" are defined as dogs that are individually trained to do work or perform tasks for people with disabilities. The service animal must be required for the disability and trained for the specific work and task required. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals. This definition does not affect or limit the broader definition of "assistance animal" under the Fair Housing Act or the broader definition of "service animal" under the Air Carrier Access Act.

12.0108 Animals and Fowl; Keeping, Nuisance, Defined and Prohibited

1. The keeping of any animal or fowl which causes annoyance, disturbance or offense to persons residing in, or passing through the neighborhood, either by reason of:
    a. Barking, howling, braying, crowing, or other sound common to its species; or
    b. Biting, threatening, chasing or molesting persons upon the public sidewalks or streets, or the property of persons other than the owner; or
    c. By reason of the failure of the owner to maintain all structures, pens, coops or yards wherein any animal or fowl is kept, in a clean and sanitary condition devoid of rodents and vermin, and free from all objectionable odors; or
    d. Keeping any animal or fowl in violation of any provision of this section is hereby declared to be a nuisance and the keeping or maintaining of such nuisance is hereby prohibited. Each day's continuance of such nuisance shall be a separate offense.
2. No live swine or pigs, cattle, horses, mules, sheep, goats, or other hard-hoofed animals or chickens, ducks, geese, turkeys, doves, pigeons, or other fowl shall be kept by any person within the City. This section shall not apply to any person, partnership or corporation keeping or handling such animals under consignment in the course of regular business or to a licensed livestock auction market
3. Except as otherwise provided in this article, it shall be unlawful for any owner, keeper, or custodian of chickens, ducks, geese, turkeys, doves, pigeons, or other fowl to permit or allow the same to be maintained, kept, housed or at large within the limits of the city.

Penalty Section: Any person who shall violate any provisions of this section shall be guilty of an offense and subject to a fine of fifty dollars ($50.00) for the first violation and one hundred dollars ($100.00) for the second and each subsequent offense up to a maximum of one-thousand dollars ($1000.00).

12.0109 Noises

It shall be unlawful to harbor or keep any animals, which habitually disturbs the peace by loud noises at any time of the day or night.

12.0110 Penalty

Any person who violates this chapter shall be assessed a fee of twenty-five ($25.00) for the first violation and for each subsequent violation within 6 months from the first offense double the fine up to five-hundred ($500.00). The owner of any animal impounded pursuant to the provisions of this article shall pay all costs and charges assessed for such impoundment before such animal shall be released to the owner. Any person may request a hearing with the District Court within 14 days notice of issue of citation.

ARTICLE 2 – DOGS AND CATS

12.0201 License Required

No dog or cat shall be permitted to be or remain in the City without being licensed as herein after provided if over one month of age. It shall be the duty of the owner or keeper of any dog or cat kept within the City to have the dog or cat inoculated against rabies and proof thereof is shown to the person issuing the license.

12.0202 Licensing Procedure and Terms

All dogs and cats shall be registered as to sex, breed, name, date of rabies inoculation and addresses of owner and name of dog. Licenses shall be issued by the chief of police or authorized agent within thirty
(30) days of obtaining possession of the dog or cat. The person paying the license fee shall receive a receipt therefore and a metal tag or badge with which to mark the animal. It shall be the duty of the owner or keeper to cause such license tag or badge to be securely attached around the animal's neck and kept there at all times during the license period.

The provisions of this section shall not apply to dogs whose owners are non-residents, temporarily within this City, nor to dogs brought into this City to participate in shows. In case a tag is lost or destroyed, a duplicate will be issued by the City Auditor upon presentation of a receipt showing the payment of his/her license fee. Tags shall not be transferable from one animal to another, and no refund shall be made on license fees because of the death of an animal or because of the owner of the animal leaving the City before expiration of the license period.

12.0203 License Fee

The license fee shall be a one-time, lifetime fee of $15.00 (or amount set by resolution of the governing body), payable to the City Auditor for any dog or cat.

12.0204 License: When Due and Payable

The license fee provided herein shall become due and payable within thirty (30) days of obtaining the cat or dog in one's possession.

12.0205 Dog or Cat Running at Large Prohibited

It shall be unlawful for the owner or keeper of any dog or cat to permit the same to run at large in the City at any time. A dog or cat shall not be considered running at large if attended and on a leash or when in the confines of the owner's or keeper's premises.

12.0206 Disposition of Unlawful Dogs or Cats

Any unlicensed dog or cat or any dog or cat running at large may be taken up by any police officer or other designated officer as designated by the City Council and impounded at such place as may be designated by the City Council. The dog or cat shall not be released to any person until such dog or cat is licensed (if unlicensed); a fee of twenty-five ($25.00) for the first violation and for each subsequent violation within 6 months from the first offense double the fine up to five-hundred ($500.00) be paid for the taking of each animal, and all pound charges are paid directly to the facility where the dog or cat is housed by the owner, if known.

12.0207 Disposition of Unclaimed Dogs or Cats

The owner or keeper shall be notified of the taking of the dog or cat. If the owner or keeper fails to pay the charges (including license if necessary) and does not claim the animal within three days of notification the animal may be destroyed. If the owner or keeper is unknown, the Chief of Police shall give public notice of the taking of the animal before it is destroyed or otherwise disposed of.

Public notice shall be given through the City's social media pages for three (3) days if owner is unknown and dog or cat has been impounded. Any licensed or unlicensed dog or cat which appears to be suffering from rabies, hydrophobia, mange or other infectious or dangerous diseases shall not be released but may be forthwith destroyed.

12.0208 Return to Owner if Known

Notwithstanding the provisions of Section 12.0206, if a dog or cat is found at large and its owner can be identified and located, such dog or cat need not be impounded but may, instead, be taken to the owner. In such case the policeman or other officer or such other officer as designated by the City Council may proceed against the owner or keeper for violation of this article.

12.0209 Noisy Dog or Cat Prohibited

It shall be unlawful to keep or harbor within the City any dog or cat that disturbs the peace by habitually howling, barking, whining, meowing or making other disagreeable noise. Any person wishing to file a complaint shall be required to give his name and address and sign a written complaint to submit to the City Auditor.

12.0210 Nuisance – When

Any licensed dog or cat, any dog or cat running at large, any dog or cat disturbing the peace, or any dog or cat molesting passersby, chasing vehicles or trespassing upon private property is hereby declared to be a nuisance.

12.0211 Breeding Kennels for Dogs Prohibited

A kennel for breeding dogs shall be construed to mean any place where a female dog is kept for breeding purposes, where the enterprise of breeding dogs is carried on for commercial purposes, or profit, and the maintaining within the City of Oakes of a kennel is hereby prohibited.

12.0212 Muzzling

Whenever it becomes necessary to safeguard the public from the dangers of rabies, the Chief of Police or County Health Officer, if any of them deem it necessary, shall request the Mayor to issue a proclamation ordering every person owning or keeping a dog, cat, or other animal to confine it securely on his/her premises unless such dog, cat or other animal shall have a muzzle of sufficient strength to prevent its biting any person. Any unmuzzled dog or cat running at large during the time of proclamation shall be seized and impounded, unless noticeably infected with rabies. All dogs or cats so noticeably infected with rabies and displaying vicious propensities shall be killed by the Police Department without notice to the owner. Dogs or cats impounded during the first two days of such proclamation shall, if claimed within three
(3) days, be released to the owner, unless infected with rabies, upon payment of the impounding charges. If unclaimed after that period, such dog or cat may be destroyed.

12.0213 Rabies-Notice

If a dog or cat is believed to have rabies or has been bitten by any animal suspected of having rabies, such dog or cat shall be placed under the observation of a veterinarian, at the expense of the owner, for a period of 14 days. The owner shall notify the Chief of Police of the fact that his/her dog or cat has been exposed to rabies and at his/her discretion, the Chief of Police is empowered to have such animal removed from the owner's premises to a veterinary hospital and there placed under observation for a period of 14 days at the expense of the owner.

It shall be unlawful for any person knowing or suspecting a dog or cat has rabies to allow such dog or cat to be taken off his/her premises or beyond the limits of the City without the written permission of the Chief of Police. Every owner, or other person, upon ascertaining a dog or cat is rabid, shall immediately notify the police who shall either impound the animal or destroy it.

12.0214 Vicious Dog Defined

A vicious dog is hereby defined as being a dog which has bitten or threatened any person while the person bitten or threatened was not at the time trespassing upon the property of said dog.

12.0215 Keeping Vicious Dog Prohibited

No person shall keep, harbor, or shelter a vicious dog, as herein defined, within the City of Oakes.

12.0216 Seizure and Impounding of Vicious Dogs

Whenever any person makes a complaint in writing and verified under oath before the Chief Police that any dog is a vicious dog within the terms of this section, having bitten a person under the circumstances herein set forth, the owner shall forthwith surrender such dog to the Police Department, and failure to do so shall constitute a violation of this section. In the event the owner fails to surrender said dog, such dog shall be seized by the police. Whether the dog is surrendered or seized, the dog shall be impounded at such place as may be designated by the City Council for a period of fourteen (14) days during which time the owner of the dog may, if he/she chooses, make arrangements to remove said dog from the City, and if he/she fails to do so within said time, then such dog may be destroyed or otherwise disposed of by the City, unless the owner of the dog has requested a hearing with the District Court pursuant to Section 12.0219.

12.0217 Vicious Dogs: Release to Police Upon Demand

It is hereby declared unlawful for the owner or keeper of any vicious dog within the City to refuse to deliver the same up to any police officer, whenever requested, and any owner or keeper of any dangerous or vicious dog, who, after demand by the police officer, shall refuse or neglect to surrender the same shall, be subject to the penalty as hereafter defined.

12.0218 Severability

If any section, sentence, clause or phrase of this ordinance is for any reason held invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article.

12.0219 Penalty

Any person who violates this chapter shall be assessed a fee of twenty-five ($25.00) for the first violation and for each subsequent violation within 6 months from the first offense double the fine up to five-hundred dollars ($500.00). The owner of any animal impounded pursuant to the provisions of this article shall pay all costs and charges assessed for such impoundment before such animal shall be released to the owner. Any person may request a hearing with the District Court within 14 days' notice of issue of citation.

In addition to the foregoing penalties, any person who violates this ordinance shall pay all expense, including shelter, food, handling, veterinary care, any witness fees and costs necessitated by enforcement of this ordinance.

CHAPTER THIRTEEN

HEALTH

ARTICLE 1

Board of Health

13.0101. Board of Health – How Constituted

The Health Officer and the Health and the Sanitation Committee of the City Council of four members shall, constitute the Board of Health, and shall have and exercise the powers conferred upon such Boards by law and this article, with the assistance and approval from the City Council as the circumstances may require.

13.0102. Board of Health – Meeting of

The Health Officer shall meet with the City Council as circumstances require or anytime at the order of the City Council.

13.0103. Same – Jurisdiction of

The Health Officer and the Board of Health shall exercise a general supervision over the health of the City with full power to take all steps and use all means and measures necessary to promote the cleanliness and salubrity thereof; to prevent the introduction into the City of malignant, contagious, or infectious diseases, and to remove or otherwise take care of any person attacked by any such disease, and to adopt in reference to such person any regulation, restrictions, or measures deemed advisable, and to have such powers and duties conferred upon them as are provided by State Law.

13.0104. Same – To Provide Books

It shall be the duty of the Health Officer to provide the necessary books for keeping the record of all transactions of said department.

13.0105. Health Officer – Appointment, Term of, Qualifications

A local health officer shall serve a term of five years, subject to removal for cause by the governing body or the district board of health. The health officer must be a physician licensed to practice medicine in this state and need not be a resident of the public health unit. The appointee shall qualify by filing the constitutional oath of office in the manner provided for the members of the board of health. If the state health officer finds a local health officer is failing to perform the duties of the position, the state health officer may report the case to the governing body. At the next meeting of the governing body or district board of health, the governing body or district board of health, and the board shall declare the office vacant and promptly shall appoint another physician to fill the unexpired term.

13.0106. Same – to Have Supervision of Sanitation

The Health Officer shall have and exercise a general supervision over the sanitary condition of the City.

13.0107. Same – to Give Professional Advice to Whom

He shall give the Mayor and City Council all such professional advice and information as they may require with a view to the preservation of the public health, and whenever he shall hear of the existence of any malignant, contagious, or pestilential disease he shall investigate the same and adopt measures to arrest its progress.

13.0108. Same – to Report to Council, When

The Board of Health shall at the end of each quarter submit to the City Council a full report comprising everything connected with the workings of the Health Department during the Quarter. At the end of each official year the officer shall report to the Mayor and City Council a full and concise statement of the Health Office in classified and tabular form, comprising the report of the mortuary tables financial report, and a full statement of the sanitary condition of the City, together with any special observations, recommendations, or facts that may be conducive to the health, and improve sanitary condition of the City, together with any special observations, recommendations, or facts that may be conducive to the health, and improve the sanitary conditions of the City.

13.0109 Persons to Obey Regulations of Board of Health

Every person shall observe and obey each and every special regulation and every order of the Board of Health that is or may be made for the carrying into effect any of the provisions of this chapter or powers or any law of this state or otherwise, as if the same had been here inserted at length.

ARTICLE 2.

Contagious Diseases

13.0201. Contagious Diseases: Duty Health Officer.

It shall be the further duty of the Health Officer to visit and examine or cause to be visited and examined all sick persons who shall be reported to him as afflicted with or supposed to be afflicted with any diphtheria, smallpox, cholera, or infectious or pestilential disease and cause all such infected persons to such other proper place as he may think proper, and cause them to be provided with suitable nurses and medical attendance, at their own expense, if they are able to pay for the same, but if not, then at the expense of the City.

13.0202. Same – Notice to Be Posted on Houses

It shall be in the discretion of the Health Officer to cause a notice to be placed upon or near any house in which any person may be affected or sick with any disease named or provided for in this article upon which shall be written or printed the name of such disease, and if said notice is so placed no person or persons shall remove, deface, mutilate, or interfere in any way with the said notice without permission from the Health Officer.

13.0203. Same – Children Afflicted with, Not to Attend School

No child, minor, or person from any house where any person or persons are sick or infected with any of the contagious or infectious diseases named and provided for herein shall attend any public, private, or sectarian school in this City until the recovery or death of said sick person or persons and in either event the aforesaid child, minor, or person shall be provided with a written statement by the attending physician, if any, or if not, then by the Health Officer, certifying to their non-contagiousness, which statement must be presented to the principal or teacher of said public or private school before said child, minor, or person will be allowed to return.

13.0204 Same – Duty of Physician to Instruct Parents Upon Discovery of

It shall be the duty of all physicians, upon the discovery of any contagious or infectious disease, to instruct the parents or guardian of any child or minor who may be residing at the infected premises of the provisions of 13.0203, and it shall be the duty of any principal or teacher of any public, private, or sectarian school in the City, to report at once to the Health Officer in writing any violation of 13.0203.

13.0205. Same – Health Officer to Visit Schools

The Health Officer is hereby empowered to visit any and all public or private schools in the City and to make or cause to be made an examination of the children and minors in attendance therein as often as he may deem necessary to secure compliance with the provisions of this article.

13.0206. Same – Teachers, Liable When

Any principal or teacher of a public school, or principal or teacher of any private or other school who shall violate any of the provisions of this chapter, or shall in any way prevent or attempt to prevent a Health Officer from exercising the power conferred upon him by this chapter, shall upon conviction be liable to the penalty hereinafter prescribed.

13.0207 Room to Be Disinfected

Upon the death or convalescence of any person affected or sick with any of the contagious or infectious disease named or provided for herein, the Health Officer shall at once cause the room or rooms used by and those in the immediate vicinity of said person or persons, together with the contents of said room or rooms, to be thoroughly disinfected, cleansed, fumigated, or whatever in his discretion may be deemed necessary in order to prevent a further spread of the disease, even in extreme cases to destroy the contents of said rooms, all this to be done at the expense of the owner when he or she is able, and when he or she is not, then at the expense of the City.

13.0208. Same – Report to Be Made of

Every person shall report to the Health Officer of the City, in writing, every person having a contagious, infectious, or other disease, herein enumerated, such as cholera, yellow fever, scarlet fever, typhus fever, small-pox, varioloid, diphtheria, or any of the grades of all such diseases, typhoid fever, pneumonia, influenza, pulmonary tuberculosis, chicken

pox, measles (and the state of his or her disease, and his or her place of dwelling and the name if known) which such physician had prescribed for or attended for the first time since having such disease during any part of the preceding twenty-four (24) hours. Not more than one report shall be required in one (1) week concerning the same person, but every attending or practicing physician there must, at his peril, see that each report has been made by some attending physician.

13.0209. Same – Physician to Report Deaths From

It shall be the duty of each and every practicing physician to report in writing to the Health Officer the death of any of his patients who shall have died in said City of contagious, infectious, or any other diseases mentioned in 13.0208 within twenty-four (24) hours thereafter, and to state in such report the specific name and type for such disease.

13.0210. Same – Duty of Keeper of Boarding House, Etc., to Make Report of

Every keeper of every boarding house or lodging house and innkeeper and hotel keeper shall within twenty-four (24) hours report in writing, to the Health Officer the same particulars in 13.0209 required of any physician, concerning any person being at any aforesaid houses or hotels and attacked with or suffering from any contagious or infectious disease.

13.0211 Same – Managers of Public Institutions to Make Report of

The commissioner, manager, principal, or other proper head officer of each and every public or private institutions in said City shall once in each week report in writing (or cause such report by some proper person to be made once in each week) to the Health Officer, and state therein the names, if known, and condition and the disease of any and every person being thereat and sick of any contagious or other disease.

13.0212. Same – Duty in Case of Epidemic Disease.

In case of pestilence or epidemic disease or danger from anticipated or impending pestilence or epidemic disease, or in case the sanitary condition of the City should be of such character as to warrant it, it shall be the duty of the Health Officer to take such measures, and to do and order and cause to be done, such acts for the preservation of the public health (though not herein or elsewhere or otherwise authorized) as he may in good faith declare the public safety and health to demand.

13.0213 Same – Vaccination, When

The Health Officer may take such measures as he may from time to time deem necessary to prevent the spreading of smallpox by issuing an order requiring all persons in the City or at any part thereof requiring vaccination, to be vaccinated, within such time as he shall prescribe; and all persons refusing or neglecting to obey such order shall be liable to the penalty hereinafter specified; provided, that it shall be the duty of the Health Officer to provide for the vaccination of such persons as are unable to pay for the same, at the expense of the City.

13.0214 Same – To Disinfect Houses

The Health Officer shall have power to cause any house or any premises to be cleansed, disinfected, or closed to visitors, and to prevent persons from resorting thereto while any person is afflicted with any pestilential or infectious disease, and he may by an order in writing direct any nuisance to be abated, or any unwholesome matter or substance, dirt, or filth, to be removed from any house or premises, and may prescribe the time and mode of doing so, and shall take any other measures he may deem necessary and proper to prevent the spread of any infectious, pestilential, or epidemic disease.

13.0215 Same – to Make rules for Quarantine Station

The Health Officer shall make such rules and regulations for the government of the quarantine or health of the City as from time to time he shall deem necessary, and the physician or Health Officer in charge of any quarantine station or place shall have power to make and enforce such regulations as may be necessary for the proper conduct and management thereof; and it shall be the duty of all persons in quarantine and all agents, officers, policemen, or others employed by the City in or about said quarantine stations or places to carry out and obey the same.

13.0216 To Make Circuit of City Monthly

It shall be the duty of the Health Officer to make a circuit of observation once in each month to every part of the City and its environs which from the location or from any collateral circumstances may be deemed the cause or location of disease, and in all cases where he may discover the existence of any agent, the presence of which will or may prove dangerous to the health of the City, and there is no ordinance competent for the correction of the evil, he shall immediately report the same to the City Council, accompanied with his opinion of the necessity of extraordinary or particular action.

13.0217 Same – To Keep Vaccine Virus

Said Health Officer shall also have on hand as far as practicable a sufficient quantity of vaccine virus, and he shall vaccinate and re- vaccinate all persons who may apply to him for that purpose, and give certificates to children who have been vaccinated, and require such certificate for admissions to the public school.

13.0218 Report Concerning Persons Needing Help

It shall be the duty of every person knowing of any individual in said City, sick of any contagious disease (where such person shall have reason to regard such individual as neglected or not properly cared for to avoid giving said disease to others) and the duty of every physician hearing of any such sick person whom he shall have reason to think requires the attention of the Board of Health, to at once report the facts to said Board of Health in regard to the disease, condition, and dwelling place or location of such sick person.

13.0219 Regulations Upon Death of Persons Infected With Contagious Disease

Upon the death of any person affected or sick with a contagious or pestilential disease named or provided for in this article, the following regulations must be observed:

The remains of said person must be thoroughly disinfected and be exposed to the view of no one except those absolutely necessary in preparing the body for burial, and be placed in a hearse which must not be accompanied by more than two (2) vehicles, and shall be taken directly from the place of death to the place of burial.

13.0220. Infected Article or Persons Not Brought into City

No person shall bring into this City from any infected place, or from any railroad car or building in which there has lately been any person sick of a contagious or infectious disease, any article or person whatsoever, nor shall any person come into the City without the permit of the Board of Health. It shall be no excuse that such person or article so offending or the occasion of offense has passed through quarantine, or has a permit from any other source than the said Board of Health.

13.0221. Infected Persons Not to Be Moved About in City

No person shall within the City without a permit from the Health Officer carry or remove from one building to another any person sick of any contagious disease, nor shall any person by any exposure of any individual sick of any contagious disease, or of the body of such person, or by any negligent act connected therewith, or in respect of the care and custody thereof, or by the needless exposure of himself, cause or contribute to or promote the spread of disease from any such person or from any dead body.

13.0222. Persons Not to Leave Quarantine Without Permission of Health Officer

No person who has been affected or sick with any of the contagious or infectious diseases named and provided for herein who has been quarantined or isolated in any place within the jurisdiction of the City shall be allowed to leave such quarantine without permission of the Health Officer.

13.0223 Health Officer – To Enforce Sanitary Regulations

It shall be the further duty of the Health Officer to enforce all the Laws of the State and ordinances of the City in relation to the sanitary regulations of the City, and cause all nuisances to be abated with all reasonable promptness.

13.0224 City Council to Report Nuisances to Health Officer

It shall be the duty of the city council to report to the Health Officer the existence of any nuisances whatever in the City, and perform such other acts relative to the same according to the general or special regulations thereto.

13.0225.01 Definition.

1. As used in this ordinance, unless the context otherwise indicates, the following definitions shall apply:

a. “Body Art” means the practice of physical body adornment by permitted establishments and operators using, but not limited to, the following techniques: body piercing, tattooing, cosmetic tattooing, branding, and scarification.

b. “Body Art Establishment” means any place or premise where the practices of body art, whether or not for profit, are performed, except where such practices are performed by a physician or surgeon who has a current license for the practice of medicine issued by the State of North Dakota pursuant to N.D.C.C. Chapter 43-17.

c. “Body Piercing” means puncturing or penetration of the skin of a person with pre- sterilized single-use needles and the insertion of pre-sterilized jewelry or other adornment thereto in the opening, except that puncturing the outer perimeter or love of the ear with a pre-sterilized sing-use-stud-and – clasp-ear-piercing system shall not be included in this definition.

d. “Department” or “commission” or “Board” means OAKES City Council, or its authorized representatives.

e. “Ear Piercing” means the puncturing of the non-cartilaginous perimeter or lobe of the ear with a pre-sterilized single-use stud and-clasp ear-piercing system following manufacturer’s instructions.

f. “Operator” means any person who controls, operates, manages, conducts, or practices body art activities at a body art establishment. The term includes an assistant or technician who performs body art activities and who works under the supervision, control or authority of somebody else who is an operator.

g. “Person” means an individual, any form of business or social organization or any other non-governmental legal entity, including but not limited to corporations, partnerships, limited-liability companies, trust or unincorporated organizations.

h. “Physician” means a person currently licensed by the state of North Dakota to practice medicine pursuant to the provisions of N.D.C.C. Chapter 43-17.

i. “Tattooing” means any method of placing ink or other pigment into or under the skin or mucosa by the aid of needles or any other instrument used to puncture the skin, resulting in permanent coloration of the skin or mucosa. This term includes all forms of cosmetic tattooing.

13.0225.02 To Operate Body Art Establishment Without Permit -- Exemption.

It shall be unlawful to operate a body art establishment unless a permit is first obtained from the OAKES City Council. The provisions of this article do not apply to physicians nor to individuals who pierce only the non-cartilaginous perimeter and lobe of the ear with

a pre-sterilized single- use stud-and-clasp ear-piercing system are exempt from these regulations: provided, however, that such individuals shall not be exempt from the applicable U.S. Food and Drug Administration requirements.

13.0225.03 Permit to Operate Body Art Establishment Issued Annually--Fee--Application Form--Display of Permit Required--Health Department to Enforce Regulations.

The permit described in Section13.0225.02 hereof may be issued annually, January 1st, by the OAKES City Council (upon application being re-submitted by applicant prior to that annual deadline) after an inspection and approval of the proposed body art establishment by the city health officer or his designee. The fee thereof shall be five hundred dollars ($500) per year per premium for fixed locations and two hundred and fifty dollars ($250) per three (3) days for mobile units. Applicants shall fill in and sign an application form furnished by the OAKES City Auditor along with an applicant-supplied scale drawing and floor plan of the proposed body art establishment. The permit shall be non-transferable. The permit shall be displayed prominently in the body art establishment where it may be readily observed by clients. Permit applications shall be accompanied by a certificate of insurance or a copy of the deck page showing that the applicant is insured for the time period in the application for claims of malpractice or other liability covering the acts of body art establishment.

13.0225.04 Inspections of Permitted Premises.

The members of the OAKES City Council, their agents, the Sheriff of DICKEY County, or any officer of the health or Sheriff's department may, at any time, enter upon any permitted premises for the purpose of inspection or to determine whether the permitted premises are incompliance with any and all ordinances of the city and regulations promulgated by the Department. A copy of the inspection report must be furnished to the permit holder or operator of the body art establishment.

13.0225.05 Licenses—Termination, Suspension, Revocation.

All permits issued under the provisions of this article, unless otherwise specifically provided, shall terminate on December 31st following the date of issuance; provided, however, that any license issued under the provisions of this article may, under certain circumstances, be terminated, suspended or revoked by the commission.

1. The commission, may, in its discretion, suspend or revoke for cause any permit issued under the provision of this article. The grounds fir suspension or revocation shall, among others, include the following:

    a. The permittee has filed a petition in bankruptcy.

    b. An individual permittee, one of the partners in a partnership permittee, or one of the officers in a corporation permittee, or any individual in active management of the permitted business is convicted of violating any of the provisions of this article.

c. The permittee has been convicted of a felony under the laws of the United States or under the laws of one of the several states.

d. The permittee has made any false statement in his application for a permit.

e. The permittee has violated one or more of the regulations created pursuant to Section 13.0225.03.

2. The grounds enumerated in subsection (A) of this section shall not be deemed to be exclusive and any permit issued under the provisions of this article may be exclusive and any permit issued under the provisions of this article may be suspended or revoked by the commission for any other reason deemed by the commission to be sufficient in order to promote and protect the health, safety, and welfare of the public. When any permit is suspended or revoked by the commission pursuant to the provisions of this section, or when the permittee voluntarily ceases business, no portion of the permit fee previously paid shall be returned to the permittee or to anyone claiming under or through him.

3. No permit issued under the provisions of this article shall be suspended or revoked for cause by the commission without a public hearing unless the commission first decides that an emergency exists. In the event that the commission first decides that an emergency exists. In the event that the commission intends to consider the suspension or revocation of any permit for cause, it shall direct the City Auditor to notify the permittee of its intention to consider the same, The notice shall specify the time and place of the suspension or revocation hearing and shall be served upon the permitee or his managing agent in the same manner as provided by law for the service of a summons in a civil action. No suspension or revocation hearing shall be held before the expiration of fifteen (15) days after the date of the service of the notice upon the permittee.

13.0225.06 Unlawful Practices.—In Addition to Such Other |Prohibitions as Are Contained in This Article:

(1) No person shall perform body art on any body part of a person under the age of eighteen (18) without the written consent of the parent or legal guardian of such minor and without said parent or legal guardian being present during the entire duration of such procedure.

(2) No person shall obtain or attempt to obtain any body art establishment permit by means of fraud, misrepresentation or concealment.

(3) No person shall perform body art procedures unless such procedures are performed in a body art establishment with a current permit.

(4) No person shall perform body art procedures unless they are at least eighteen (18) years of age.

(5) No person shall interfere with a City official, members of the OAKES City Council, the Sheriff of DICKEY County, or any officer of the health or Sheriff's department

in the performance of an inspection or I the performance of any other of his duties.

(6) Willful failure by the permittee to post regulations which are required to be posted pursuant to Section 13.0225.03 of this article shall be unlawful.

13.0225.07 Definitions.

The following terms used in these regulations shall be defined as follows:

(1) “Aftercare” means written instructions given to the client, specific to the body art procedure(s) rendered, about caring for the body art and surrounding area. These instructions will include information about when to seek medical treatment, if necessary.

(2) “Antiseptic” means an agent that reduces disease-causing micro-organisms on human skin or mucosa.

(3) “Body Art” means the practice of physical body adornment by permitted establishment and operators using, but not limited to the following techniques: body piercing, tattooing, cosmetic tattooing, branding, and scarification. This definition does not include practices that are considered medical procedures by the State Board of Medical Examiners, such as implants under the skin, which the State Board of Medical Examiners, such as implants under the skin, which shall not be performed in a body art establishment. Nor does this definition include, for the purposes of this Article, piercing of the non-cartilaginous outer perimeter or lobe of the ear with pre-sterilized single-use stud-and clasp ear-piercing systems.

(4) “Body Art Establishment” means any place or premise where the practices of body art, whether or not for profit, are performed, except where such practices are performed by a physician or surgeon who has a current license for the practice of medicine issued by the State of North Dakota pursuant to N.D.C.C. Chapter 43-17.

(5) “Body Piercing” means puncturing or penetration of the skin of a person with pre-sterilized single-use needles and the insertion of pre-sterilized jewelry or other adornment thereto in the opening, except that puncturing the outer perimeter or lobe of the ear with a pre-sterilized single-use stud-and-clasp-ear-piercing system shall not be included in this definition.

(6) “Contaminated Waste” means any liquid or semi-liquid blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling; sharps and any wastes containing blood and other potentially infectious materials, as defined in 29 Code of Federal Regulations Part 1910.1030 (latest edition), known as “Occupational Exposure to Blood-borne Pathogens.”

(7) ”Cosmetic Tattooing” see “Tattooing”.

(8) “Department” means OAKES City Council, or its authorized representatives.

(9) “Disinfection” means the reduction of disease-causing micro-organisms on inanimate objects or surfaces, thereby rending these objects safe for use or handling.

(10) “Ear Piercing” means the puncturing of the non-cartilaginous perimeter or lobe of the ear with a pre-sterilized single-use-stud-and-clasp ear-piercing system following manufacturer’s instructions.

(11) “Equipment” means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks, and all other apparatus and appurtenances used in connection with the operation of a body art establishment.

(12) “Hand Sink” means a lavatory equipped with hot and cold running water under pressure, used solely for washings hands, arms, or other portions of the body.

(13) “Hot Water” means water that attains and maintains a temperature of at least one hundred degrees (100°) Fahrenheit.

(14) “Instruments Used For Body Art” means hand pieces, needles, needle bars, and other instruments that may come in contract with a client’s body or may be exposed to bodily art procedures.

(15) “Invasive” means entry into the body either by incision or insertion of an instrument into or through the skin or mucosa, or by any other means intended to puncture, break, or compromise the skin or mucosa.

(16) “Jewelry” means any personal ornament inserted into a newly pierced area, which must be made of surgical implant-grade stainless steel: solid fourteen carat (14k) or eighteen carat (18k) white or yellow gold, niobium, titanium, or platinum; or a dense, low-porosity plastic, which is fee of nicks, scratches, or irregular surfaces and has been properly sterilized prior to use.

(17) “Liquid Chemical Germicide” means a disinfectant or sanitizer registered with the U.S. Environmental Protection Agency or an approximately 1:100 dilution of household chlorine bleach made fresh daily and dispensed from spray bottle-ppm, quarter (¼) cup per gallon or two (2) tablespoons per quart of tap water).

(18) “Operator” means any person who controls, operates, manages, conducts, or practices body art activities at a body art establishment. The term includes an assistant or technician who performs body art activities and who works under the supervision, control or authority of somebody else who is an operator.

(19) “Permit” means written approval issued by the OAKES City Council to operate a body art establishment.

(20) “Person” means an individual, any form of business or social organization or any other non-governmental legal entity, including but not limited to corporations, partnerships, limited –liability companies, trusts or unincorporated organizations.

(21) “Physician” means a person currently licensed by the state of North Dakota to practice medicine pursuant to the provision of N.D.C.C. Chapter 43-17

(22) “Procedure Surface” means any surface of an inanimate object that contacts client’s unclothed body during a body art procedure, skin preparation of the area adjacent to and including the body art procedure, or an associated work area which may require sanitizing.

(23) “Sanitization Procedure” means a process of reducing the number of micro-organisms on surfaces and equipment to a safe level as judged by public health standards and which has been approved by the Department.

(24) “Sharps” means any objects (sterile or contaminated) that may purposefully or accidentally cut or penetrate the skin or mucosa, including, but not limited to, pre- sterilized, sing-use needles,; and scalpel blades.

(25) “Sharp Container” means puncture-resistant, leak-proof container that can be closed for handling, storage, transportation, and disposal and that is red in color and labeled with the International Biohazard Symbol.

(26) “Single Use” means products or items that are intended for one-time, one-person use and are disposed of after use on each client, including , but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary covering, razors, piercing needles, scalpel blades, stencil cups, and protective gloves.

(27) “Sterilization” means a very powerful process resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores.

(28) “Tattooing” means any method of placing ink or pigment into or under the skin or mucosa by the aid of needles or any other instrument used to puncture the skin, resulting in permanent coloration of the skin or mucosa. This term includes all forms of cosmetic tattooing.

(29) “Universal Precautions” means a set of guidelines and controls, published by the Centers for Disease Control and Prevention (CDC), as “Guidelines for Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health-Care and Public-Safety Workers” in Morbidity and Mortality Weekly Report) (MMWR), June 23, 1989, Vol. 38, No. S-6, and as “Recommendations for Preventing Transmission of Human Immunodeficiency Virus and Hepatitis 8 Virus to Patients During Exposure- Prone Invasive Procedures”, in MMWR, July 12, 1991, Vol. 40, No. RR-8. This method of human blood and specified human body fluids are infectious for HIV, HBV, and other blood pathogens. Precautions include hand washing; gloving; personal protective equipment; injury prevention; and proper handling and disposal of needles, other sharp instruments, and blood-and body fluid-contaminated products.

13.0225.08 Premises Requirements.

The following are the requirements for construction, materials and conditions of a body art establishment:

(1) All walls, floors, ceilings, and procedure surfaces of a body art establishment shall be smooth, free of open holes or cracks, light-colored, washable, and in good repair. Walls, floors, and ceilings shall be maintained in a clean condition. All procedure surfaces, including client chair/benches, shall be of such construction as to be easily cleaned and sanitized after each client. All body art establishments shall be completely separated by solid partitions or by walls extending floor to ceiling, from any room used for human habitation, any food establishment or room where food is prepared, any hair salon, any retail sales, or any other such activities that may cause potential contamination of work surfaces.

(2) Effective measures shall be taken by the body art operator to protect against entrance into the establishment and against the breeding or presence on the premises of insects, vermin, and rodents. Insects, vermin, and rodents shall not be present in any part of the establishment, its appurtenances, and appertaining premises.

(3) There shall be adequate floor space for each operator in the establishment. Each establishment shall have an area that may be screened from public view for clients requesting privacy. Multiple stations shall be separated by dividers or partitions, at a minimum.

(4) The establishment shall be well-ventilated and provided with an artificial light source equivalent to at least twenty (20) foot-candles at a height of three (3) feet off the floor, except that at least one hundred (100) foot-candles shall be provided at the level where the body art procedure is being performed, and where instruments and sharps are assembled.

(5) No animals of any kind shall be allowed in a body art establishment except service animals used by person with disabilities (e.g., seeing-eye dogs). Fish aquariums shall be allowed in waiting rooms and nonprocedural areas.

(6) A separate, readily accessible hand0-sink with hot and cold running water, under pressure, preferably equipped with wrist-or-foot-operated controls and supplies with liquid soap, and disposable paper towels shall be readily accessible within the body art establishment. One hand-sink shall serve no more than three operators. In addition, there shall be a minimum one lavatory, excluding any service sinks, and one toilet in a body art establishment.

(7) At least one (1) covered waste receptacle shall be provided in each operator area and each toilet room. Receptacles in the operator area shall be emptied daily, and solid waste shall be removed from the premises at least weekly. All refuse containers shall be lidded, cleanable, and kept clean.

(8) All instruments and supplies shall be stored in clean dry, and covered containers.

(9) Reusable cloth items shall be mechanically washed with detergent and dried after

each use. The cloth shall be stored in a dry, clean environment until used.

13.0225.09 Body Art Operator Requirements And Professional Standards.

The following information shall be kept on file on the premises of a body art establishment and available for inspection by the Department:

1. Information about each employee of a body art establishment

   1.1 Employee's full name and exact duties;

   1.2 date of birth;

   1.3 gender;

   1.4 home address;

   1.5 home and work telephone numbers;

   1.6 Identification photos of all body art operators.

2. Information about the body art establishment:

   2.1 establishment name;

   2.2 Name and address of each person who has an ownership interest in body art establishment.

   2.3 A complete description of all body art procedures performed.

   2.4 An inventory of all instruments and body jewelry, all sharps, and all inks used for any and all body art procedures, including names of manufactures, lot numbers and dates of manufacture unless such information is not available on the packaging of such product, in which case such information as will otherwise identify the product must be inventoried, such as copies of invoices or orders.

3. A copy of these regulations.

13.0225.10 Preparation And Care Of The Body Art Area.

A body Art Establishment shall maintain the body art area in conformance with the following practices:

1. Before a body art procedure is performed, the immediate skin area and the areas of skin surrounding where the body art procedure is to be placed shall be washed with soap and water or an approved surgical skin preparation, depending on the razors or safety razor with single-service blades shall be used. Blades shall be discarded after each use, and reusable holders shall be autoclaved after use. The washing pad shall be discarded after a single use.

2. In the event of blood flow, all products used to check the flow of blood or to absorb blood shall be single use and disposed of immediately after use in appropriate cover containers, unless the disposal products meet the definition of contaminated waste (see definition).

13.0225.11 Education and Information Requirements.

Body Art Establishments and all operators shall provide information and education to prospective clients and to gather information from them as follows:

1. All clients requesting body art shall be given educational information about body art procedures by the body art establishment both verbally and in writing prior to the commencement of any such procedure. Written educational information shall be approved by the Department. Verbal and written instructions, approved by the Department, for the aftercare of the body art procedure site shall be provided to each client by the operator upon completion of the procedure. The written instructions shall advise the client to consult a physician at the first sign of infection and shall contain the name, address, and phone number of the establishment. These documents shall be signed and dated by both parties, with a copy given to the client and operator retaining the original with all other required records. In addition, all establishment shall prominently display a Disclosure Statement, provided by the Department, which advises the public of the risk and possible consequences of body art services. The facility permit holder shall also post in public view the name, address and phone number of the local/state Department that has jurisdiction over this program and the procedure for filing a complaint. The Disclosure Statement and the Notice for filing a Complaint shall be included in the establishment Permit Application Packet.

2. So that the operator can properly evaluate the client's personal history before receiving a body art procedure and not violate the client's right or confidential medical information, the operator shall ask for the information as follows:

    a. In order for proper healing of your body art procedure, we ask that you disclose if you have or have had any of the following conditions which would require written approval from a licensed physician before any body art will be performed.

        i. diabetes;

        ii. history of hemophilia (bleeding);

        iii. history of skin diseases, skin lesions, or skin sensitivities to soaps, disinfectants, etc.;

        iv. history of allergies or adverse reaction to pigments, dyes, or other skin sensitivities;

        v. history of epilepsy, seizures, or fainting;

vi. use of medications other than routine antibiotics, allergy medication or birth control pills

vii. Hepatitis

viii. HIV positive

ix. High blood pressure, heart disease

x. Pregnancy

xi. Contagious diseases

xii. Immune system disorders

xiii. Serious physical or mental health problems

3. The operator should ask the client to sign a Release Form confirming that the above information was obtained or that the operator attempted to be obtained. The client should be asked to disclose any other information that would aid the operator in evaluating the client's body art healing process.
4. Nothing in these Regulations shall be construed to require the operator to perform a body art procedure upon a client.

13.0225.12 Body Art Operator Professional Standards.

Body art operators shall comply with the following practices:'

1. No person shall perform body art on a person who the operator knows is under the influence of alcohol or drugs, or has reason to believe may be otherwise legally incapacitated or incompetent.

2. Body art operators must be at least eighteen (18) years of age.

3. Smoking, eating and drinking is prohibited in the body art procedure area.

4. An operator shall refuse service to any person who, in the opinion of the operator has reasonable ground to believe is legally incapacitated.

5. The operator shall maintain a high degree of personal cleanliness, conform to hygienic practices, and wear clean clothes when performing body art procedures. Before performing a body art procedure, the operator must thoroughly wash his or her hands in hot running water with liquid soap, rinse hands and dry them with disposable paper towels. This shall be done as often as necessary to remove contaminates.

6. The operator shall be vaccinated against the Hepatitis B virus.

7. The operator shall be certified in CPR.

8. In performing body art procedures, the operator shall wear disposable medical gloves. Gloves must be changed if they become contaminated by contact with any non-clean surfaces or objects or contact with a third person. The gloves shall be discarded, at a minimum, after the completion of each procedure on an individual client, and hands shall be washed before the next set of gloves is donned. Under no circumstances shall a single pair of gloves be used on more than one person. The use of disposable medical gloves does not preclude or substitute for hand washing procedures as part of a good personnel hygiene program.

9. If, while performing a body art procedure, the operator's glove is pierced, torn, or otherwise contaminated, the procedure delineated in subparagraph 6.8 shall be repeated immediately. The contaminated gloves shall be immediately discarded, and the hands washed thoroughly (see 6.8 above) before a fresh pair of gloves is applied. Any item or instrument used for body art that is contaminated during the procedure shall be discarded and replaced immediately with a new disposable item or a new sterilized instrument or item before the procedure resumes.

10. Contaminated waste, as defined in this code, that may release liquid blood or body fluids when compressed or may release dried blood or body fluids when handled must be placed in an approved "red" bag marked with the International Biohazard Symbol. It must then be disposed of by a waste hauler approved by the department or, at a minimum, in compliance with 29 CFR Part 1910.1030, "occupational Exposure to Blood-borne Pathogens". Sharps ready for disposal shall be disposed of in approved sharps containers. Contaminated waste that does not release liquid blood or body fluids when compressed or does not release dried blood or body fluids when handled may be placed in a covered receptacle and disposed of through normal, approved disposal methods. Storage of contaminated waste on site shall not exceed the period specified by the department or more than a maximum of thirty (30) days, as specified in 29 CFR Part 1910.1030, whichever is less.

11. No person shall perform any body art procedure upon a person under the age of eighteen (18) years without presence, written consent, and proper identification of a parent, legal custodial parent, or legal guardian. Nothing in this section is intended to require an operator to perform any body art procedure on a person under eighteen (18) years of age with parental or guardian consent.

12. Any skin or mucosa surface to receive a body art procedure shall be free of rash or any visible infection.

13. The skin of the operator shall be free of rash or infection. Unless an impermeable cover such as a bandage, finger cot, and medical glove protects the lesion, no person or operator affected with boils, infected wounds, open sores, abrasions, weeping dermatological lesions or acute respiratory infection shall work in any area of a body art establishment in any capacity in which there is a likelihood that that person could be contaminate body art equipment, supplies, or working surfaces with body substances or pathogenic organisms.

14. All infection, complications, or diseases resulting from any body art procedure that become known to the operator shall be reported to the Department by the operator within twenty-four (24) hours.

15. Under no circumstances shall ear piercing studs and clasps be sued anywhere on the body other than the non-cartilaginous perimeter and lobe of the ear.

13.0225.13 Sanitation And Sterilization Procedures.

All body art establishments and operators shall comply with the following sanitation and sterilization procedures:

1. All non-single-use, non-disposable instruments used for body art shall be cleaned thoroughly after each use by scrubbing with an appropriate soap or disinfectant solution and hot water or by following the manufacturer's instructions, to remove blood and tissue residue, and shall be placed in an ultrasonic unit also operated in accordance with manufacturer's instructions.

2. After being cleaned, all non-disposable instruments used for body art shall be packs individually in peel-packs and subsequently sterilized (see 7.3). All peel-packs shall contain either a sterilized indicator or internal temperature indicator. Peel-packs must be dated with an expiration date not to exceed six (6) months.

3. All cleaned, non-disposable instruments used for body art shall be sterilized in a steam autoclave or dry-heat sterilizer (if approved by the Department). The sterilizer shall be used, cleaned, and maintained according to manufacturer's instruction. A copy of the manufacturer's recommended procedures for the operation of the sterilization unit must be available for inspection by the Department. Sterile equipment may not be used if the package has been breached or after the expiration date without first repackaging and re- sterilizing. Sterilizers shall be located away from work stations or areas frequented by the public. If the body art establishment uses only single-use, disposable instruments and products, and uses sterile supplies, an autoclave shall not be required.

4. Each holder of a permit to operate a body art establishment shall demonstrate that the sterilizer used is capable of attaining sterilization by weekly spore destruction tests. These test shall be verified through an independent laboratory. The permit shall not be issued or renewed until documentation of the sterilizer's ability to destroy spores is received by the Department. These test records shall be retained by the operator for a period of three (3) years and made available to the Department upon request.

5. All reusable needles used in tattooing and cosmetic tattooing shall be cleaned and sterilized prior to use and stored in peel-packs. After sterilization, the instrument used for tattooing/body piercing shall be stored in a dry, clean cabinet or other tightly covered container reserved for the storage of such instruments.

6. All instruments used fir tattooing/body piercing shall remain stored in sterile packages until just prior to the performance of a body art procedure. When

assembling instruments used for body art procedures, the operator shall wear disposable gloves and use medically recognized techniques to ensure that the instruments and gloves are not contaminated.

7. All inks, dyes, pigments, needles, and equipment shall be specifically manufactured for performing body are procedures and shall be used according to manufacture's instructions. The mixing of inks, dyes, or pigments or their dilution with sterile water is acceptable. Immediately before a tattoo is applied the quantity of the dye to be used shall be transferred from the dye bottle and placed into single-use sterile paper cups or plastic cups. Upon completion of the tattoo, these single cups or caps and their contents shall be discarded.

13.0225.14 Requirements For Single Use Items.

Single-use items shall not be used on more than one client for any reason. After use, all single-use needles, razors and other sharps shall be immediately disposed of in approved sharps containers. All products applied to the skin, including body art stencils, shall be single use and disposable. If the Department approves, acetate stencils shall be allowed for reuse if sanitization procedures (see definition in subpar 1.23 of Section I, above) are performed between uses. Petroleum jellies, soaps, and other products used in the application of stencils shall be dispended and applied on the area to be a tattooed with sterile gauze or in a manner to prevent contamination of the original container and its content.

The gauze shall be used only once and then discarded.

13.0225.15 Maintenance and Retention of Client Records.

Each body art establishment shall maintain and retain records of all body art procedures administered, which records must include the following:

1. name, date of birth, and address of the client
2. date of procedure
3. time of day of procedure
4. Identification of the materials used (jewelry, inks, etc.)
5. location on the client's body of the body art procedure(s) performed
6. full name of the operator who performed the body art
7. signature of the client; and,
8. if the client is a minor, signature of the client's parent or legal guardian

The body art establishment shall keep such records confidential. All client records shall be retained for a minimum of three (3) years. All client records shall be confidential, except

that they shall be made available to the Department upon request by the Department.

13.0225.16 Notice Required to Be Posted.

The public notices entitled “tattooing Disclosure Statement” and “Body Piercing Disclosure Statement”, both of which have been approved by the Department, and a copy of Section 13.0225.07 through 13.0225.27, shall be posted in a prominent location in the body art establishment where they may be read by clients. A copy of each such Public Notice is attached hereto and incorporated herein by reference.

13.0225.16 Mobile Body Art Establishment.

In addition to complying with all of the requirements of this code, mobile body art vehicles and operations/technicians working from a mobile body art establishment shall also comply with all of the following requirements.

13.0225.17 Mobile Body Art Establishments—When Allowed

Mobile body art establishments are permitted for use only at special events, lasting three (3) calendar days or less. Permits must be obtained at least fourteen (14) days prior to the event, and no body art procedure are to be performed before a permit is issued. Permit holders are responsible for ensuring that all other local agency regulations are complied with, such as, but not limited to, zoning and business license requirements.

13.0225.18 Body Art to Be Performed Inside Enclosed Vehicle.

Body art performed pursuant to this section shall be done only from an enclosed vehicle such as a trailer or mobile home. No body art procedures shall be performed outside of the enclosed vehicle.

13.0225.19 Establishment Must Be Maintained and Sanitary.

The mobile body art establishment shall be maintained in a clean and sanitary condition at all times. Doors shall be self-closing and tight-fitting. Open able windows shall have tight-fittings screens.

13.0225.20 Equipment Must Be Sterilized.

Mobile body art establishment must have approved sterilization equipment available, in accordance with all requirements of 13.0225.13, “Sanitation and Sterilization Procedures”.

13.0225.21 Only For The Purpose of Performing Body Art Procedures.

The mobile body art establishment shall be used only for the purpose of performing body art procedures. No habitation or food preparation is permitted inside the vehicle unless the body art work station is separated by walls, floor to ceiling, from culinary or domicile areas.

13.0225.22 Sink Required.

The mobile body art establishment shall be equipped with an equipment- washing sink and a separate hand-sink for the exclusive use of the operator/technician for hand washing and preparing the client for the body art procedures. The hand-sink shall be supplied with hot and cold running water under pressure to a mixing type faucet, and liquid soap and paper towels in dispensers. An adequate supply of potable water shall be maintained for the mobile body establishment at all times during operation. The source of the water and storage (in gallons) of the tank(s) shall also be identified. Tuberculocidal single-use hand wipes, approved by the Department, to augment the hand washing requirements of this section, must be available.

13.0225.23 Storage of Liquids.

All liquids wastes shall be stored in an adequate storage tank with a capacity at least fifty (50) percent greater than the capacity of the on-board potable water supply. Liquid wastes shall be disposed of at a site approved by the Department.

13.0225.24 Restrooms Must Be Available.

Restroom facilities must be available within the mobile body art establishment or within one hundred (100) feet of the mobile establishment. A hand-sink must be available inside the restroom cubicle. The hand-sink shall be supplied with hot and cold running water under pressure to a mixing type faucet, as well as liquid soap and paper towels in dispensers. Restroom doors must be self-closing, and adequate ventilation must available.

13.0225.25 Permit Required.

All body art operators/technicians working in a mobile body art establishment must have an operator permit and comply with the operator requirements of this code.

13.0225.26 No Animals Allowed.

No animals, except service animals of clients shall be allowed in thee mobile body art establishment at any time.

13.0225.27 Inspection Required.

Mobile body art establishment must receive an initial inspection at a location specified by the Department prior to use to ensure compliance with structural requirements. Additional inspections will be performed at every event where the mobile art establishment is scheduled to operate.

13.0225.28 Permits and Notice Must Be Visible.

All mobile body art establishment and operator permits, as well as the disclosure notice, must be readily seen by clients.

13.0225.29 Penalty.

Every person, firm, or corporation violating 13.0225.01 through 13.0225.28 of this chapter shall, upon conviction thereof, be punished by a fine not to exceed one thousand ($1,000) or by imprisonment not to exceed thirty (30) days, or by both such fine and imprisonment, in the discretion of the Court, the Court to have power to suspend said sentence and to revoke the suspension thereof. Said violation is a Class B Misdemeanor.

13.0226 Adoption of North Dakota Administrative Code.

The City of OAKES hereby adopts North Dakota Administrative Code Chapter 33-29- 01 as it existed on January 1, 2013. The City of OAKES specifically does not adopt any county ordinance relating to the regulation of pools and the City of OAKES is not subject to any such county ordinances, rules or regulations.

ARTICLE 3

Sanitary Disposal of Human Excreta

13.0301 Privies: Unlawful, Exception

It shall be unlawful to maintain or use within the City of OAKES any residence, place of business or other building or place where persons reside, congregate, or are employed which is not provided with means for the disposal of human excreta, either by a flush toilet connected with a sewerage system approved by the City Health Officer and the State Department of Health, or by a privy which meets the requirements of construction and maintenance hereinafter described.

13.0302 Same – Connections Required to Sewer and Water

1. Every building where persons reside, congregate, or are employed which abuts a street, avenue, or alley in which there is a public sanitary sewer, or which is within two hundred (200) feet of a public sanitary sewer, shall be connected to the sewer, and with a separate connection for each house or building. This shall also apply to water connections.

2. No residence or establishment connected to the city sewerage system shall be allowed to build and maintain a privy of any description provided that this does not apply where special permission is obtained from the City Health Officer.

3. Each connection and each fixture emptying through the connection shall be installed in the manner prescribed by the Plumbing Code of the City of OAKES, North Dakota.

4. Buildings which are not habitable, as determined by the City Building Inspector, shall not be connected to the city water and sewerage systems.

    a. The Building Inspector shall notify the Superintendent of Waterworks and Sewage of any houses on such list which are not habitable and considered to be substandard.

b. The Superintendent of Waterworks and Sewage shall issue no permit for connection to sewer and water for any structure on such list as being an uninhabitable structure.

13.0303 Enforcement by Health Officer

It shall be the duty of the City Health Officer to enforce the provisions of this article, and in the performance of this duty the City Health Officer or his duly authorized agent is hereby authorized to enter, at any reasonable hour, any premises as may be necessary in the enforcement of this article.

ARTICLE 4

Slaughtering animals and poultry for food.

13.0401 Killing of Animals and Poultry for Food Permitted

That the holding, killing and processing of animals for food within the City of OAKES, is hereby permitted under the terms, conditions, regulations and restrictions as hereinafter set forth.

13.0402 Same - Definitions

The term “holding room” shall mean the room in which animals or fowls are held prior to being killed and processed for food for human consumption; the term “killing room” shall mean the room in which the actual killing and rough-dressing of animals and fowls is done; the term processing shall mean the cutting, curing, storing or otherwise preparing meat for sale or actual use by the person or persons who will be the consumer.

13.0403 Same – Killing

All killing of animals and fowls under the terms, conditions and regulations of this ordinance shall be done in a humane manner and without any noise or disturbance in any manner whatsoever.

13.0404 Same – Killing Place

Each killing place shall have a holding room in connection therewith in which surplus animals may be kept until actual killing takes place and it is further provided that no animal or fowl shall be held in any holding room for a period of more than four (4) hours before killing.

13.0405 Construction

The holding and killing rooms must be of sound proof construction with concrete floors of a smooth finish and such as can be easily cleaned and drained. The walls and ceilings must be of a waterproof, washable substance of a smooth finish and easily cleaned and not

likely to gather or retain dirt of any nature. There must be an unloading room which shall be enclosed abutting on the holding or receiving room in which all trucks and other vehicles shall be placed while livestock is being unloaded.

13.0406 Doors and Windows

All doors and windows must be screened so as not to admit insects. Windows in holding and killing rooms must be at least five (5) feet above the floor level to sill. All doors having an exit to the outside of the holding or killing rooms must be tightly closed at all times except for the admission of animals or fowls. All doors and window casings and frames must be metal covered facing the inside of plant. Nontransparent glass must be used in the doors and windows of the holding and killing rooms.

13.0407 No Parking

Animals must be unloaded from conveyance immediately upon arrival on the premises and conveyances hauling animals or fowl will not be allowed to park on premises or alleys near premises, either with or without animals or fowls.

13.0408 Sewage and Water Regulations

Each killing plant must be equipped with a sewer outlet and drain in the killing room to connect to an adequate sewer system. There must be an adequate supply of water for use that cleanliness can be assured. No blood from the killing of animals or fowls will be allowed to enter into the sewer and no residue from animals or fowls will be allowed to enter the sewerage system of the City. All blood and solid matter must be disposed of in a manner as designated by the Health Department of the City of OAKES. No sewer drain or outlet shall be allowed in while the holes or openings shall be of a diameter of over three-eights (3/8ths) of an inch.

13.0409 Washing and Disinfecting

The holding and killing rooms must be washed and thoroughly cleaned each day after holding and killing for the day has been completed. A disinfectant must be used liberally to insure the best possible sanitation of the plant and particularly of the holding and killing rooms.

13.0410 Outside of Premises

The outside of premises must be kept clean and wholesome and no offal, residue, straw or other refuse shall be permitted or allowed to gather, collect or to remain on or about the premises.

13.0411 Disposal or Residue

All offal, residue and waste matter from animals, or fowls, or anything not immediately usable for human consumption, shall immediately be hauled out and disposed of in a sanitary manner by the operator of the plant, which hauling shall be done in tightly closed containers.

13.0412 No Basement Entrances

No openings other than sewer shall be made through the floors of the holding and killing rooms. All floors must be solid and there must be no seepage of water or other matter from either the holding or killing rooms through the floors.

13.0413 Conformity to Laws.

All regulations for holding, killing and processing of animals an fowls, in addition to the terms, conditions and regulations contained in this ordinance shall also be in strict conformity with any and all regulations as laid down by the rules and regulations now in force or that may at any time hereafter be laid down by the Board of Health of the City, by the State Board of Health and by the National Health Authorities.

13.0414 No Rendering

No rendering of non-edibles, such as lard, tallow, bones, skins, etc., shall be permitted in any form whatsoever.

13.0415 Enforcement

The health officer or any police officer in the City of OAKES shall be charged with the strict enforcement of this ordinance. The Health Officer, or any member of the Board of Health and any police officer of the City of OAKES and any state Health Officer or national Health Officer shall have authority to enter upon the premises and any part thereof at any time, for the purposes of inspection and the enforcement of any provision of this ordinance.

ARTICLE 5

Sanitation and the collection and disposal of refuse.

13.0501 Utility Established

There is herewith created a Public Utility of the City of OAKES to be known as Waste Collection and Disposal utility. Such utility shall be responsible to carry out the provisions of this ordinance and shall supervise and arrange for a refuse collection system, disposal grounds, and landfill disposal system. The utility shall have the power and authority to purchase or lease in the name of the City of OAKES such lands as are necessary for disposal or refuse and to purchase or lease such equipment as may be necessary.

13.0502 Refuse Defined

The term “refuse”, as used in this ordinance, is defined to be all manner of kitchen and household garbage and rubbish, all offal including both animal and vegetable matter, metal, plastic, paper and glass, food containers from which food has been removed, waste paper, and all other waste material and things produced or accumulated in the operation of

kitchen or places where food is served or sold, produced, or consumed, including all waste matter from homes, stores or places of business of any nature, and including rubbish, lumber, concrete, leaves, branches of trees, appliances, machinery, car bodies, ashes, which may constitute a menace to public health or create a fire hazard or an unsightly condition.

13.0503 Supervision

The collection, removal and disposal of garbage and rubbish under the provisions of this article, shall be under the supervision, direction and control of the street superintendent with the assistance of the city health officer. The street superintendent shall appoint such employees as shall be necessary to carry out the purposes of this article, which appointments shall be subject to the approval of the city council.

13.0504 Rules and Regulations

The health officer of the city shall prescribe such reasonable rules and regulations in connection with the preparation, handling and disposition of garbage and rubbish as may be necessary to regulate, enforce and carry out the provisions of this chapter. He or she may direct that the city garbage and rubbish collection crews shall collect garbage and rubbish from any premises where such rules and regulations are not complied with and the failure to collect the same shall not relieve the owner or occupant of the premises from the payment of fees nor from the enforcement of the penalties of this code.

13.0505 Commercial Haulers

All rubbish, ashes and other wastes, including kitchen garbage not collected and removed by the city garbage haulers, until such time as the city shall provide for the collection and disposal thereof by contract or by municipal employees, may be collected, remove, transported and disposed of by commercial haulers as hereinafter provided.

13.0506 Commercial Haulers – License

No person shall engage in the business of removing, collecting, transporting or disposing of rubbish, ashes and other wastes in the city for compensation or hire without first securing a license thereof from the city.

13.0507 Commercial Haulers – Application

Application for the license required by this article shall be made to the city auditor upon forms provided by him or her and such application shall contain, among other things, the following information: the name, place of residence of the applicant and a description of the vehicle in which such wastes are to be hauled and a general description of the particular areas or premises in the city where such applicant expects to obtain the wastes to be hauled.

13.0508 Commercial Haulers – Fee

Upon approval of the application and approval of the vehicle and the payment of an annual

license fee in an amount determined by resolution of the city council for each vehicle used by the applicant, the city auditor shall issue a license which shall describe such vehicle and shall contain the name of the licensee.

13.0509 Commercial Haulers – Duration

The license required by this article shall be valid until such time as the city shall provide for the collection of such wastes by contract or by municipal employees.

13.0510 Commercial Haulers – Suspension/Revocation

The license required by this article may be temporarily suspended by the city health officer for the violation of any of the provisions of this article or any regulations issued him hereunder. Such license may also be revoked by the city health officer for the same causes. No such revocation shall be effective until notice shall be given to the holder thereof by registered mail, stating the reasons for such revocation.

Such revocation shall become final, unless within five days from the date of mailing of such notice the holder of such permit shall, in writing, request a hearing thereon. The hearing shall be held within five days thereafter and the decision of the city health officer shall be final.

13.0511 Disposal Grounds

The city health officer is hereby authorized to designate the location or places to which all wastes referred to in this article shall be hauled, deposited or disposed of by commercial haulers.

13.0512 Unlicensed Haulers

It shall be unlawful for any person or any agent or employee thereof to collect or transport or carry on or convey through, along or upon any public street, alley or sidewalk within the city, any rubbish, ashes and other wastes, except such person as may be authorized, licensed or permitted so to do under the provisions of this article.

Nothing herein contained shall be construed as prohibiting the hauling of such wastes by authorized city employees or by persons from their own premises and not for hire or compensation; provided, however, that all such wastes shall be hauled and disposed of in accordance with such regulations as may from time to time be issued by the city health officer or the city council.

13.0513 Commercial Haulers – Regulations

The city health officer is hereby authorized from time to time to issue regulations governing the type of vehicle and equipment used, the hours of collection, sanitary provisions and such other regulations which he may deem necessary to regulate, enforce and carry out the provisions of the article with regard to commercial haulers.

13.0514 Accumulation of Refuse Prohibited

No person shall permit or suffer to accumulate in or about any yard, lot, place or premises; or upon any street or sidewalk, adjacent to or abutting upon any lot or block or place or premises owned and occupied by him or for which he may be an agent, within the city limits, any and all refuse, nor suffer such yard, lot, place or premises to be or remain in such condition.

13.0515 Billing

The City Auditor of the City of OAKES is hereby authorized to add the refuse disposal charges provided herein to its charge for water service and submit the same on a bill in connection with said water service bills and said City Auditor shall be authorized to discontinue services if the entire bill shall not be paid. In all places where water service is provided, the monthly charges set forth shall be added to and collected as a part of the water bill. In all places where water service is not provided, the charge above set forth shall be paid to the City Auditor upon monthly bills from the said department.

13.0516 Refusal of Service Prohibited

No person within the City of OAKES shall be permitted to refuse to accept such refuse service and the failure to receive such service shall not exempt him from payment of charges hereinbefore set forth save and except only those persons residing in areas in which no refuse collection service is provided, and in such areas no charges shall be made.

13.0517 Refuse Containers

Refuse containers shall be made of metal, be watertight, have close-fitting covers, and adequate handles to facilitate collection. Such containers shall be not less than twenty (20) gallons nor more than fifty (50) gallons in capacity. Containers provided by or through the municipal garbage collector for large volume collections shall be exempt from the capacity limits and will be deemed to comply with this section so long as the remainder of the restrictions listed hereafter are complied with. All containers for garbage and rubbish shall be kept clean and continuously closed by a tight fitting lid or cover and shall be protected against the access of flies and rodents.

13.0518 City Collection

All garbage and rubbish as defined herein shall be collected by the city as frequently as is necessary to maintain and preserve community cleanliness and sanitation, except that this section shall not require the collection of garbage and rubbish where streets and alleys are in a temporary condition which makes it impossible so to do and in the case of the failure to collect such garbage and rubbish, such failure shall not relieve the occupant of the premises from the payment of the garbage and rubbish collection fees hereinafter proved for.

13.0519 Throwing of Refuse in Streets – Prohibited

It shall be unlawful for any person, firm, or corporation to throw, place, or deposit or permit to be thrown, placed, or deposited, any refuse as defined in Section 2 hereof, upon

any street, alley, public way, or public place, or on any private lot, piece or parcel of ground within the corporate limits of the City of OAKES except in the place hereinafter provided.

13.0520 Hauling and Disposal of Refuse

No refuse shall be hauled on the streets of the City of OAKES unless the same is contained in such metal receptacles as hereinbefore described, with covers tightly fitted thereon, or unless hauled in trucks, trailers, or vehicles which are covered in such manner as to prevent the scattering of such refuse upon the streets. All refuse shall be disposed of in the place provided by the City of OAKES for such purpose and no such refuse as herein defined shall be disposed of at any other place.

13.0521 Burning of Refuse Prohibited

It shall be unlawful to burn refuse as defined in Section 1 herein, within the City Limits.

13.0522 Garbage Rates - Established

Rates for collection of garbage fees in the city of OAKES shall be assessed according to resolution of the City governing body from time to time. All fee rates listed as part of such a resolution and set as a minimum charge per month and shall not be construed to represent otherwise. Exceptions to the minimums hereinafter listed required city council approval after reasonable explanation of same exception has been presented to the city council for their consideration in the final determination of whether or not to allow the exception. Such requests for exception may be made through or by the municipally contracted garbage and rubbish collector.

13.0523 Disposal of Refuse not Collected by the City.

All other wastes as defined, and not included under garbage, rubbish, and ashes, may be disposed of by the person creating such waste, by hauling such waste for disposal to such points as are designated or approved by the city health officer; or, such person may arrange with some person not in their employ to collect or haul such wastes to such points as are designated by the city health officer.

13.0524 Fees – Payment – Collection

In all places where water service is provided, the monthly charge set forth in the preceding section shall be added to and collected as part of the water bill. Garbage and rubbish collection bills shall be due and payable at the same time as the water bill.

All utility payments are due and payable on the 15th day of the month in which they are billed. Those not paying by the 15th day of the month in which they are billed shall pay a late fee or late charge on their unpaid bill at the rate of ten dollars ($10) per month applied to the total arrears due if the amount owing is over ten dollars ($10). No late fee or late charge shall apply to any unpaid bill or balance owing of ten dollars ($10) or less. Those bills which are not paid by the 15th of each month shall have the water shut off on the 28th of that month and there shall be a fifty dollars ($50) reconnection fee, plus the unpaid

balance of the bill, due and payable and paid before the water shall be turned back on by the city. The city auditor shall cause a notice to be sent out on all unpaid bills on the 16th of each month which notice shall inform them that their water will be cut off on the 28th of said month if not paid in full by then. In addition, any individual who tampers with or turns the water back on without the authority of the city to do so, shall be assessed a fine of seventy-five dollars ($75) and costs of twenty-five ($25).

The city utility is authorized to disconnect water service to the customer's residence. It shall be the duty of the city attorney to pursue as is necessary the amount owed by any customer after termination of service. Wastewater-sewer bills shall be combined with the water and garbage bills of the city of OAKES and shall be enforceable for payment against the owner or tenant, individually or severally.

ARTICLE 6

Parking and Locating Trailers

13.0601. Definitions

Whenever used in this article unless a different meaning appears from the context:

1. An "Automobile Trailer, Trailer Coach, or Trailer" means any vehicle or structure so designed and constructed in such manner as will permit occupancy thereof as sleeping quarters for one or more persons, or the conduct of any business or profession, occupation or trade (or use as a selling or advertising device), and so designed that it is or may be mounted on wheels and used as a conveyance on highways or city streets, propelled or drawn by its own or other motive power, excepting a device used exclusively upon stationary rails or tracks.

2. "Trailer Camp" means any park, trailer park, trailer court, court, camp, site, lot, parcel, or tract of land designed, maintained, or intended for the purpose of supplying a location or accommodations for any trailer coach or trailer coaches and upon which any trailer coach or trailer coaches are parked and shall include all buildings used or intended for use as part of the equipment thereof whether a change is made for the use of the trailer camp and its facilities or not. "Trailer Camp" shall not include automobile or trailer sales lots on which unoccupied trailers are parked for purposes of inspection and sale.

3. "Tourist Camp" means any park, tourist park, tourist court, camp, court, site, lot, parcel, or tract of land upon which one or more camp cottages or cabins are located and maintained for the accommodation of transients by the day, week, or month whether a charge is made or not

4. "Unit" means a section of ground in a trailer camp of not less than eight hundred (800) square feet of unoccupied space in an area designated as the location for only one (1) automobile and one (1) trailer.

13.0602 Parking of Trailers – When and Where Permitted

1. It shall be unlawful, within the limits of the City of OAKES, for any person to park any trailer on any street, alley, or highway, or other public place, or any tract of land owned by any person, occupied or unoccupied, within the City of OAKES, except as provided in this article.

2. Emergency or temporary stopping or parking is permitted on any street, alley, or highway for not longer than one hour subject to any other and further prohibitions, regulations, or limitations imposed by the traffic and parking regulations or ordinances for that street, alley, or highway.

3. No person shall park or occupy any trailer on the premises of any occupied dwelling or on any lot which is not a part of the premises of any occupied dwelling either of which is situated outside an approved trailer camp; except, the parking of only one unoccupied trailer in an accessory private garage building, or in a rear yard in any district is permitted providing no living quarters shall be maintained or any business practiced in said trailer while such trailer is so parked or stored.

13.0603 Visitors Permit

The owner of any lot outside the fire limits of the City of OAKES may receive a "Visitors Permit" to park a trailer on such lot for a period of not to exceed two (2) weeks. A "Visitors Permit" may be granted upon the written request accompanied by written consent of adjoining property owners to the granting thereof and providing that the trailer is parked not less than ten (10) feet from either side lot line and eight feet from any building and not within the setback area of the front of said lot. Visitors permit may be renewed for an additional two week period only upon the same terms and conditions.

13.0604 Trailer Camps and Parks

Trailer camps and parks, as defined in Chapter 13, Article 6, may be established in commercial zones only and must be duly licensed and approved and constructed as hereinafter provided or as set forth in Chapter 13.

13.0605 Enforcement

The Health Officer of the City of OAKES together with the Chief of Police and the Chief of any fire department that has jurisdiction within the city are hereby designated as the Board to enforce all of the provisions of this article. The City Auditor of the of the City of OAKES shall be secretary for said Board.

ARTICLE 7

Dangerous Buildings

13.0701 Dangerous Buildings Defined

For the purpose of this chapter, any building or structure which has any or all of the

conditions or defects hereinafter described shall be deemed to be a dangerous building: Those whose interior walls or other vertical structural members lean, list, or bucket to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.

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

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

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

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

5. Those having light, air, and sanitation facilities which are inadequate to protect the health, morals, safety, or general welfare of human beings who live or may live therein.

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

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

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

9. Those buildings existing in violation of any provision of the Building Code, zoning ordinances, any provision of the Fire Prevention Code or other ordinances of this city.

13.0702 Standards for Repair, Vacation or Demolition

The following standards shall be followed in substance by the governing body in ordering repair, vacation or demolition:

1. If the “dangerous building” can be reasonably repaired so that it will no longer exist in violation of the terms of this article it shall be ordered repaired.

2. If the “dangerous building” is in such condition as to make it dangerous to the

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

3. In any case where a "dangerous building" is fifty percent (50%) damage, decayed, or deteriorated from its original value or structure, it shall be demolished, and in all cases where a building cannot be repaired so that it will no longer be in violation of the terms of this article, it shall be demolished. In all cases where a "dangerous building" is a fire hazard existing or erected in violation of the terms of this article or any ordinance of this city or statute of the state of North Dakota, it shall be demolished .

13.0703 Dangerous Buildings – Nuisances

All "dangerous buildings" within the terms of Section 13.0701 of this article are hereby declared to be public nuisances and shall be repaired, vacated or demolished as provided in this ordinance or under state law.

13.0704 Duties of Building Inspector

The building inspector, as designated by the City governing body, shall:

1. Inspect or cause to be inspected periodically, all public buildings, schools, halls, churches, theaters, hotels, tenements, commercial, manufacturing or loft buildings for the purpose of determining whether any conditions exist which render such places a "dangerous building" within the terms of Section 13.0701 of this article.

2. Inspect any building, wall or structure about which any person to the effect files complaints that a building, wall, or structure is or may be existing in violation of this article.

3. Inspect any building, wall or structure reported by the fire or police departments of this City as probably existing in violation of the terms of this article.

4. Notify in writing the owner, occupant, lessee, mortgagee and all other persons having an interest in said building, as shown by the records in the office of the County Register of Deeds, of any building found by the building inspector to be a "dangerous building" within the standards set forth in Section 13.0701 of this article that: (a) the owner must vacate, or repair, or demolish said building in accordance with the terms of the notice and this article; (b) the owner or occupant must vacate said building or may have it repaired in accordance with the notice and remain in possession. Provided, that any person notified under this subsection to repair, vacate, or demolish any building shall be given such reasonable time, not exceeding thirty (30) days as may be necessary to do, or have done, the work or act required by the notice provided for herein.

5. Set forth in the notice provided for in subsection 4 hereof a description of the building or structure deemed unsafe, a statement of the particulars which make the building or structure a "dangerous building", and an order requiring the same to be put in such condition as to comply with the terms of this ordinance within such length of time, not exceeding thirty (30) days, as is reasonable.

6. Report to the City governing body any noncompliance with the "notice" provided for in subsection 4 and 5 hereof.

7. Appear at all hearings conducted by the City governing body and testify as to the conditions of "dangerous buildings".

8. Place a notice on all "dangerous buildings" reading as follows: "This building has been found to be a dangerous building by the building inspector. This notice is to remain on this building until it is repaired, vacated, or demolished in accordance with the notice which has been given the owner, occupant, lessee or mortgagee of this building and all other persons having an interest in said building as shown by the records of the County Register of Deeds. It is unlawful to remove this notice until such notice is complied with."

13.0705 Duties of the City Governing Body

The City governing body shall:

1. Upon receipt of a report of the building inspector as provided for in Section 13.0704, subsection 6 hereof, give written notice, as provided in Rule 4 of the North Dakota Rules of Civil Procedure, to the owner, occupant, mortgagee, lessee and all other persons having an interest in said building as shown by the records of the County Register of Deeds, to appear before it on the date specified in the notice to show cause why the building or structure reported to be a "dangerous building" should not be repaired, vacated or demolished in accordance with the statement of particulars set forth in the building inspector's notice provided for herein in Section 13.0704, subsection 5.

2. Hold a hearing and hear such testimony as the building inspector or the owner, occupant, mortgagee, lessee or any other person having an interest in said building as shown by the records of the County Register of Deeds shall offer relative to the "dangerous building".

3. Make written findings of fact from the testimony offered pursuant to subsection 2 as to whether or not the building in question is a "dangerous building" within the terms of section 13.0701 hereof.

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

5. If the owner, occupant, mortgagee, or lessee fails to comply with the order provided for in subsection (4) hereof or fails to appeal as provided hereinafter, within thirty (30) days after being served with the order as provided in Rule 5 of

the North Dakota Rules of Civil Procedure, the City governing body shall cause such building or structure to be repaired, vacated, or provided for in section 13.0702 of this article, and shall, with the assistance for the city attorney, cause the costs thereof to be assessed back against the property in the manner provided by law or in the alternative, cause the costs of such repair, vacation, or demolition to be recovered in a suit at law against the owner or other property party.

6. Report to the City attorney the names of all persons not complying with the order provided for in subsection (4) of this section.

13.0706 Violations – Penalty for Disregarding Notices or Orders

The owner of any "dangerous building" who shall fail to comply with any notice or order to repair, vacate to demolish said building given by any person authorized by this article to give such notice or order shall be guilty of an infraction and upon conviction thereof shall be fined not exceeding five hundred dollars ($500.00) for each offense and every day subsequent to such notice in which the said owner shall fail to comply with any notice or order as above stated shall be deemed a separate offense.

The occupant or lessee in possession who fails to comply with any notice to vacate or who fails to repair said building in accordance with any notice given as provided for in this article shall be guilty of an infraction and upon conviction thereof shall be fined not exceeding five hundred dollars ($500.00) for each offense and every day subsequent to such notice in which the said occupant or lessee shall fail to comply with any notice or order as above stated, shall be deemed a separate offense.

Any person removing the notice provided for in Section 13.0704, subsection 8 thereof shall be guilty of an infraction and upon conviction shall be fined not exceeding five hundred dollars ($500.00) for each offense.

13.0707 Duties of the City Attorney

The city attorney shall:

1. Prosecute all persons failing to comply with the terms of the notices provided for herein in Section 13.0704, subsections 4 and 5 and the order provided for in Section 13.0705, subsection 4.

2. Appear at all hearings before the City governing body in regard to "dangerous buildings".

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

13.0708 Where Owner Absent from the City

In cases, except emergency cases, where the owner, occupant, lessee or mortgagee is absent from the City, all notice or orders provided for herein shall be sent by registered or certified mail to the owner, occupant, mortgagee, lessee and all other persons having an

interest in said building as shown by the land records of the County Register of Deeds to the last known address of each, and a copy of such notice shall be posted in a conspicuous place on the "dangerous building" to which it relates. Such mailing and posting shall be deemed adequate service.

13.0709 Duties of Fire, Police and Health Departments.

All employees of the fire, police and health departments shall make written reports to the building inspector of all buildings or structures which are, may be or are suspected to be “dangerous buildings” as herein defined.

13.0710 Appeal.

The City governing body shall serve upon the owner, occupant, mortgagee, lessee and all other persons having an interest in any building ordered to be repaired, vacated or demolished, a copy of its order as provided in Rule 5 of the North Dakota Rules of Civil Procedure. The owner, occupant, mortgagee or lessee shall thereafter have thirty (30) days from the date of the service of such order in which to appeal from such order to the District Court or to take such other legal steps to enjoin the enforcement of such order as he may deem proper. Any person desiring to appeal from any order issued by the City governing body under and by virtue of this article shall file an undertaking in the sum of at least five hundred dollars ($500) to be approve by the city auditor and conditioned that the appellant will prosecute the appeal without delay and will pay all costs that may be adjudged against him in district court. Such undertaking shall be payable to the city of OAKES.

13.0711 Assessment of Costs

Any of the costs incurred by the City of OAKES pursuant to the enforcement of this Article may be charged against the real property where the costs were incurred and/or its owner(s) and treated as a special assessment to be collected in the manner provided elsewhere in the OAKES Revised Ordinances and/or the North Dakota Century Code.

ARTICLE 8

Regulation of anhydrous ammonia.

13.0801 Definitions

For the purpose of this article:

1. The term “vehicle” shall include any vehicle, trailer, or semitrailer propelled by mechanical, motor, or muscular power.

2. Tank truck: Any motor vehicle used for the transportation of Anhydrous Ammonia, which for such purpose is provided with a tank or tanks mounted on the frame or chassis of such vehicle.

3. Tank trailer: Any vehicle without its own motive power but drawn by a motor

vehicle, used for the transportation of Anhydrous Ammonia, and which for such purpose is provided with a tank or tanks mounted thereon.

4. Tank semitrailer: A vehicle of the trailer type having one or more axles and two or more wheels, so designed and used in conjunction with a motor-vehicle that some parts of its own weight and that of its own load rests upon or is carried by another vehicle; used for the transportation of Anhydrous Ammonia and for which purpose is provided with a tank or tanks mounted thereon.

5. Anhydrous Ammonia Tank: Any vehicle, tank truck, tank trailer, tank semitrailer or storage mechanism which can be used to store, haul or dispense Anhydrous Ammonia.

6. Storage Unit: Any object and/or mechanism which may be stationary or movable, which is capable of storing Anhydrous Ammonia.

13.0802 Transportation of Anhydrous Ammonia

The city council shall have the power from time to time to regulate the transportation of anhydrous ammonia within the city limits and within the one (1) mile curtilage to which it has jurisdiction by passing city ordinances similar to the one that follows below and/or by filling in the appropriate missing information as it determines proper and passing such as an ordinance.

The following approved routes and rules shall pertain to any vehicle, tank, truck, tank trailer, tank semitrailer, or Anhydrous Ammonia tank, or Anhydrous Ammonia storage mechanism which is carrying or storing Anhydrous Ammonia.

1. Any vehicle, tank truck, tank trailer, tank semi-trailer and Anhydrous Ammonia tank which has been loaded or filled with Anhydrous Ammonia shall be allowed to traverse or be within the city limits, only upon the following approved routes, which routes are also shown in map form and held at the City Auditor's Office:

    a. If traveling through city limits from North Dakota Highway ***: From North Dakota Highway *** go southerly onto ***, next turn left onto ***, next turn left onto ***, next turn right onto ***, finally to *** in a ____erly direction out of city limits.

    b. If traveling through city limits from _____: From **** onto ***, next turn left onto ***, next turn right onto ***, next turn right onto ***, finally to North Dakota Highway ***.

    c. Along any other route described in writing or shown pictorially in the form of a map and held by the City Auditor at City Hall or marked by street signs.

2. Except as otherwise stated in this chapter, NO Anhydrous Ammonia and NO Anhydrous Ammonia storage mechanism/tank shall be parked or permitted to stand anywhere in the city limits and/or within the one mile curtilage over which the City

has jurisdiction, provided that the standing of such vehicle made necessary by mechanical trouble, necessary repair, traffic conditions, accident, or in obedience to the direction of a policeman or traffic signals shall not be considered a violation of this section.

3. Except when on or at the storage site of _____, all Anhydrous Ammonia tanks in city limits and/or in the one (1) mile curtilage over which the City has jurisdiction shall be attended by some person or his agent responsible for the transportation of such tank. Upon 365 days from the effective date of this ordinance, this exception shall expire and no Anhydrous Ammonia tanks shall be allowed in city limits and/or in the one (1) mile curtilage over which the City has jurisdiction except as otherwise allowed by this chapter.

4. Any Anhydrous Ammonia and Anhydrous Ammonia storage tanks stored in city limits and/or within the one mile curtilage over which the City has jurisdiction, which is stored there at the time of the effective date of this ordinance shall have 365 days from the effective date of this ordinance to remove said Anhydrous Ammonia from those areas, after which time no exceptions shall apply except as otherwise allowed by this chapter. Any Anhydrous Ammonia not stored at _____ that has not been reported in writing within thirty (30) days from the effective date of this ordinance to the City Auditor as being stored in city limits and/or within the one mile curtilage over which the City has jurisdiction, shall not qualify for the 365 day time period to remove the storage tanks and said tanks if present in the city or curtilage will be considered to be in violation of this chapter if not otherwise allowed to be in the city or curtilage by this chapter.

13.0803 Regulation of Vehicles

1. Every tank truck, tank trailer and tank semitrailer operated within the corporate limits of the city and/or the one mile curtilage over which the City has jurisdiction shall be in good repair, clean, and free from leaks.

2. If a vehicle is required to be lighted pursuant to the applicable laws of the State of North Dakota, then every tank truck, tank trailer, and tank semitrailer operated within the corporate limits of the city and/or the one mile curtilage over which the City has jurisdiction shall be equipped with electric lights, and lighting circuits shall have suitable over-currant protection with fuses and automatic circuit breakers, and the wiring shall have sufficient carrying capacity and mechanical strength and shall be suitably secured, insulated and protected against physical damage.

13.804 Regulation on Sale and Storage of Anhydrous Ammonia

1. It shall be unlawful to store, handle or offer for sale Anhydrous Ammonia within the City Limits and/or within the one mile curtilage over which the City has jurisdiction unless authorized by this chapter, but no storage, handling or sale of Anhydrous Ammonia within the City Limits and/or within the one mile curtilage over which the City has jurisdiction shall be authorized on and after 365 days from the effective date of this ordinance

2. It shall be unlawful to store, sell or dispense Anhydrous Ammonia on railroad cars, which are located on rails within the city limits and/or within the one mile curtilage over which the City has jurisdiction.

13.0805 Officer Power to Remove

Any peace officer/deputy of any jurisdiction that observes violation of any of the sections of this chapter shall have the power to physically remove the violating vehicle, tank truck, tank trailer, tank semitrailer, Anhydrous Ammonia tank or Anhydrous Ammonia storage mechanism to an area outside the city limits and one (1) mile city curtilage and to hold the same by force until any fines associated with the violation are paid.

13.0806 Peace Officers May Inspect To Determine Contents of Storage Tank.

Every police officer, including members of the state highway patrol, having reason to believe that the unlawful storage or transport of Anhydrous Ammonia occurring, may inspect such vehicle, tank truck, tank trailer, tank semitrailer, Anhydrous Ammonia Tank or Anhydrous Ammonia Storage Mechanism, and for that purpose he/she may physically remove or require removal of the violating storage or transport unit to a convenient place of inspection.

13.0807 Arrest

A peace officer may arrest the driver of a motor vehicle if the peace officer has probable cause to believe that the driver has operated the vehicle in violation of this chapter within the past four (4) hours.

13.0808 Impounding

Any vehicle or storage unit found to have been moved or stored anywhere in the City or in the one mile curtilage over which the City has jurisdiction in violation of this chapter, may be impounded by any peace officer and taken outside the City limits and one (1) mile curtilage for storage.

13.0809 Impounding Receipt

A receipt must be given by the officer impounding the vehicle or storage unit, to the driver or person in charge of such vehicle or storage unit. Such receipt must identify as nearly as possible, the owner of the vehicle or storage unit and cargo, the driver or person in charge of the vehicle or storage unit.

13.0810 Identification of Driver

A person who owns or leases a motor vehicle that a police officer has probable cause to believe has been operated in violation of this chapter must identify the driver of the motor vehicle upon request of the police officer. Violation of this subdivision is a misdemeanor.

13.0811 Cash Bond-Holding

Unless a cash bond is furnished in an amount sufficient to cover the fines and/or charges associated with violation of this chapter, said vehicle or storage unit must be held until a trial of the case can be had before the district court.

13.0812 Police Powers Defined

This ordinance is declared to be an exercise of the police power directly affecting and designed to promote the peace, safety, public health and well-being of the people of this city.

ARTICLE 9

Penalty

13.0901 Savings Clause

Should any section, paragraph, sentence, clause, or phrase of this chapter be declared unconstitutional or invalid for any reason, the remainder of said chapter shall not be affected thereby.

13.0902 Injurious Actions Not Expressly Forbidden

Every person who willfully and wrongfully commits any act which grossly injures the person or property of another, or which grossly disturbs the public peace or health, or which openly outrages public decency, and is injurious to public morals, although no punishment is expressly prescribed therefore by this compilation, is guilty of a misdemeanor.

13.0903 Penalty for Violation of Chapter

Any person, firm or corporation violating any of the terms or provisions of this chapter shall upon conviction be punished by a fine not to exceed One Thousand ($1,000.00) dollars, or imprisonment not to exceed thirty (30) days or both such fine and imprisonment in the discretion of the court; the court to have power to suspend said sentence and to revoke suspension thereof.

ARTICLE 10

13.1001 Tobacco and Nicotine

(1) North Dakota Century Code sections 12.1-31-03, 21.1-31-03.1, 23-12-09 to 23-12-11, and 50-11.1-02.2 are incorporated herein by reference.

(2) In addition, it is a non-criminal violation for any person to sell or furnish to a minor, or procure for a minor, tobacco products or products containing nicotine, in any form which may be taken into the body, ingested, smoked, heated, chewed,

absorbed, dissolved, inhaled, or taken into the body by any other means, including specifically e-cigarettes, e-cigars, or any other type of electronic smoking or ingesting device.

(3) In addition it is a non-criminal violation for any minor to possess tobacco product or products contain nicotine, in any form which may be taken into the body, ingested, smoked, heated, chewed, absorbed, dissolved, inhaled, or taken into the body by any other means, including specifically e-cigarettes, e-cigars, or any other type of electronic smoking or ingesting device.

(4) Any person violating subsection 2 or 3, in addition to any other penalties imposed by law or that may be imposed by law, shall be deemed to have committed a non-criminal violation and shall pay a fee as follows:

(a) First Offense - $100

(b) Second Offense - $200

(c) Third or Subsequent Offense - $300

(5) The failure to post a required bond or pay an assessed fee by an individual found to have violated this ordinance is punishable as contempt of court, except a minor may not be imprisoned for the contempt.

APPENDIX 13-1

IN THE MATTER OF "DANGEROUS BUILDINGS' LOCATED
AT IN OAKES, NORTH DAKOTA UNDER ARTICLE 7, CHAPTER THIRTEEN

NOTICE OF HEARING

You are hereby notified that the building inspector of OAKES, North Dakota, has filed with the city council body a report that you have not complied with a Notice and Order That buildings located at were dangerous buildings and were to be demolished by you prior to , 20 .

You are further notified to appear before the city council body at on the day of , 20 , at the hour of o'clock m., to show cause as to why the building reported to be "dangerous building", should not be demolished in accordance with the statement of particulars set forth in the Building Inspector's Notice.

Dated , 20 .

THE CITY OF OAKES, NORTH DAKOTA

By Mayor

ATTEST:

City Auditor

APPENDIX 13-2

IN THE MATTER OF A "DANGEROUS BUILDING" LOCATED IN THE CITY OF OAKES, NORTH DAKOTA,
WITH AN ADDRESS OF

NOTICE AND ORDER

You are hereby notified that the undersigned, building inspector of the City of OAKES, North Dakota, acting pursuant to Article 7, Chapter 13 of the Ordinances of the City of OAKES, has made an inspection of the following described building in which you are, or appear to be, interested:

_____

_____

You are further notified that the undersigned building inspector deems the foregoing described building to be dangerous within the meaning of Section 13.0701 of said Ordinances in the following particulars:

_____

_____

YOU ARE THEREFORE ORDERED TO

_____

_____

_____

the said building on or before this day of , 20 .

_____

_____
Building Inspector

Dated this day of , 20 .

APPENDIX 13-3

This is a suggestion as to the warning sign that should be printed in red.

WARNING

Whereas it has been determined by appropriate inspection that the dwelling or building to which this notice is attached does not comply with Ordinances of the City of OAKES, all persons are hereby warned that it is unlawful to rent, lease, let, occupy or permit the use or occupancy of this dwelling or building, for dwelling purposes or as a place of employment for human beings, or to remove or molest this notice.

_____

City Health Officer OAKES, North Dakota

CHAPTER FOURTEEN

Article 1. Definitions

ZONING—PLANNING

14.0101 General Definitions

Words used in the present or past tense shall include the future, and singular words shall include the plural as well as plural including the singular.

The word person shall include a firm, partnership, association, corporation, individual, or any other association of any kind. The word shall be mandatory.

14.0102 List of Definitions.

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

1. For the purpose of this chapter the following words and phrases shall have the meanings herein given:
2. “Accessory Use or Building” is a subordinate use or building or portion of the main building, customarily incident to and located on the same lot with the main use or building.
3. “Alley” means any public way intersecting a City block or portion thereof and recorded with the City Auditor’s office.
4. “Alteration” as applied to a building or structure, is a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.
5. “Building” is a structure designed, built or occupied as a shelter or roofed enclosure for persons, animals or property, including tents, lunch wagons, dining cars, camp cars, trailers and other roofed structure on wheels or other supports used for residential, business, mercantile, storage, commercial, industrial, institutional, assembly, educational or recreational purposes. For the purposes of this definition, “roof” shall include an awning or other similar covering, whether or not permanent in nature.
6. “Building Line” is the line between which and the street line or lot line no building or other structure or portion thereof, except as provided in this Code, may be erected above the grade level.
7. “Curb Level” means the level established for the curb in front of a building, measured at the center of such front, and where no curb level has been established, the City engineer shall establish such curb level or its equivalent for the purpose of this article;

8. “Depth of Rear Yard” refers to the mean distance between the rear line of the building and the center line of the alley, if an alley exists, otherwise to the rear lot line;
9. “Depth of Lot” refers to the mean distance between the front street line and the rear lot line;
10. “Dwelling” is a building designed or used as the living quarters for one or more families.
11. “Dwelling House” is a detached house designed for and occupied exclusively as the residence of not more than two families each living as an independent housekeeping unit.
12. “Dwelling Unit” is one or more rooms providing complete living facilities for one family, including equipment for cooking, or provisions for the same, and including room or rooms for living, sleeping and eating.
13. “Dwelling, Multi-Family” is a dwelling or group of dwellings on one plot containing separate living units for three or more families, but which have joint services or facilities for both.
14. “Family” is a group of two (2) or more people related by blood, marriage, or adoption.
15. “Garage, Private” is a building or part thereof accessory to a main building and providing for the storage of automobiles and in which no occupation or business for profit is carried on.
16. “Grade” means the surface of the ground, court, lawn, yard or sidewalks adjoining a building; the established grade is the grade of the street curb lines fixed by the City of Oakes; the natural grade is the undisturbed natural surface of the ground; the finished grade is the surface of the ground, court, lawn, or yard, after filling or grading to desired elevation or elevations around a building or structure; but where the finished grade is below the level of the adjoining street, the established grade shall be deemed the finished grade;
17. “Half Story” means the portion of a building immediately under a sloping roof which has the point of intersection of the top line of the rafters and the face of the walls not to exceed three (3) feet above the top floor level;
18. “Height of Building” means the vertical distance from the top of the curb at the middle of the building or the ground level at the front of the building to the average height of the roof; in case of a mansard roof, to the top of the deck; in case of a flat roof, to the top of the highest enclosure wall;
19. “Hotel or Motel” means a building where lodging is provided for transient guests and having ten (10) or more sleeping rooms;
20. “Lot” is a parcel of land occupied or capable of being occupied by one building, and the accessory buildings or uses customarily incident to it, including such open spaces as are required by this chapter.
21. “Mobile Home” is a designed or manufactured home to be used with wheels that will be set upon and be located on a foundation. The footings of the foundation will be four feet underground, and the footings themselves will be 16 inches wide, six inches deep with two #4 rebars and an underground depth of four feet.”
22. “Non-conforming Use” is a building, structure or use of land existing at the time of the enactment of this chapter and which does not conform to the regulations of the district in which it is located.
23. “Property Line” is the line beginning and ending at the distance equal to half the measurement of the plotted street or alley or the pinned markers.
24. “Setback Building Line” is a building line back of the street line. Distance a structure can be located in adjacent to property lines.
25. “Street” means a public highway designated as a street, avenue, boulevard, place, court or road on the official records on file with the County Registrar or by prescription.

26. “Structure” is anything constructed or erected which requires location on the ground or attached to something having a location on the ground, including signs and billboards, but not including fences or walls used as fences.
27. “Structural Alterations” means any change in the supporting members of a building such as bearing walls or partitions, columns, beams, or girders, excepting such alteration as may be required for the safety of the building.
28. “Use” is the purpose for which land or a building is arranged, designed or intended or for which either land or a building is or may be occupied or maintained.
29. “Yard” is an open space other than a court, on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in this chapter.

Note: All other terms are operationally defined.

Article 2

General Provisions

14.0201 Jurisdiction

The provisions of this ordinance shall apply to all structures and land within the city limits of OAKES, North Dakota plus one half (½) mile. N.D.C.C. Chapter 40-47.

14.202 Compliance

Except as stated in this ordinance, no land shall be used and no building or structure shall be erected or repaired except in conformance with these regulations.

14.0203 Interpretation

In interpreting and applying this ordinance, the provisions shall be held to be the minimum requirements. Where this ordinance imposes a greater restriction than existing law, the provisions of this ordinance shall govern where such is permitted by the United States Constitution and the Constitution of North Dakota.

14.0204 Non-Conforming Uses

1. Any lawful use existing at the time of the adoption of this ordinance of any building or premises may be continued subject to the provisions hereof, although such use does not conform to the provisions of this ordinance for the district in which such use is situated. It shall be unlawful to enlarge the area occupied by a non-conforming use, whether by enlarging the building for the purpose of extending such area or by extending the area of such use within a building already partially occupied by a non-conforming use.

2. A building designed, arranged, intended or devoted to a use not permitted by this ordinance in the district in which such use is located may be repaired, or reconstructed without structural alteration, to an extent not greater than fifty (50)

per cent of the assessed value of the building exclusive of foundations, for the purpose of continuing therein without an extension thereof a use existing therein at the time this ordinance took effect, though such use does not conform to the regulations relating to such district; provided, however, that the combined cost of alterations and repairs in any ten (10) year period shall not exceed the assessed valuation of the building at the time the last allowable building permit was applied for.

3. If a non-conforming use is discontinued, any future use of such building or premises shall conform to the provisions of this ordinance, if a building housing non-conforming use is destroyed to the extent of fifty (50) percent or more of its assessed value, such use shall be discontinued.

4. A non-conforming use shall not be changed except to a higher use, and a non-conforming use in the Residential District shall not be changed except to a conforming use. When a nonconforming use of a building or premises has been changed to a conforming use or a more restricted use, such use shall not thereafter be changed to a less restricted use.

14.0205 Residential Development

1. No lot shall contain more than one principle residential building.

2. No dwelling unit shall be built on a lot which does not abut on a dedicated public road.

3. No residential dwelling unit shall exceed thirty-five (35) feet in height. This regulation is to include apartments, sleeping rooms, and owner-occupied residences situated above commercial service and trade establishments.

4. Accessory buildings shall be limited to fifteen (15) feet in height and be located at least eight (8) feet from all lot lines.

14.0206 Traffic Visibility

In any district, no fence, structure, or plantings shall be erected or maintained that interfere with traffic visibility across a corner.

In any district, without first obtaining a variance or conditional use permit, which may be denied in the discretion of the Coty Council, the following limitations shall apply: no fence shall be erected or maintained that is less than five (5) feet from any property boundary; no fence shall be erected or maintained that is greater than six (6) feet in height.

Setbacks established by this chapter shall be applicable to structures other than fences and this section shall apply to fences.

14.0207 Water and Sewage Facilities

To protect the subsurface water supply from pollution and to protect the public health and

abate nuisance and odor, construction of privies and cesspools shall be prohibited in the corporate limits of the City of OAKES unless otherwise permitted by the OAKES City Council.

14.0208 Residential Areas not Serviced by Sewer and Water.

Residential development conducted in areas not served by public sewers and water systems shall require three (3) lots (minimum of ½ acre) as defined in the R and R1 districts if a private on-site sewage disposal system is used. The residential development shall be concentrated on one lot so that in the future event of sewer and water extensions servicing the development, the adjoining two lots can be sold and developed.

14.0209 Amending the Ordinance

1. Should the need arise for an amendment to the zoning ordinance or zoning district map, the applicant submits the proposed zoning change to the Planning Commission. The Planning Commission itself may change the ordinance text or map.

2. The Planning Commission will publish a notice in a local newspaper for the public prior to the hearing. A notice shall also be posted in a conspicuous place of a public building such as the post office as well as on the property in question.

3. If the zoning map is proposed to be changed, the applicant must notify by registered mail adjoining property owners at least fifteen (15) days prior to the public hearing. Adjacent property owners are all property owners fronting or within one hundred (150) feet of the property in question.

4. At the hearing, the applicant presents his proposal for amending the zoning ordinance or zoning map. Also at the hearing, the public may comment and the adjacent property owners may state their opinion for the record.

5. The planning commission then presents its findings and recommendations to the city council who may either approve or disapprove the amendment to the zoning ordinance or zoning map. If the city council disapproves, the applicant may appeal to a court of law.

6. If there is a protest to the amendment by more than twenty (20) percent of the adjacent property owner, a three-quarter vote of approval is required by the city council prior to passing the amendment.

Article 3

District Regulations

14.0301 Classes of Districts

For the purpose of this ordinance, the city is hereby divided into the following classes of

districts:

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

R-1 Residential Districts, Single-Family, and Two-Family
R-1A Residential Districts, Mobile Homes
C Commercial Districts
I Industrial Districts
U Unplatted

14.0302 R-1 - Residential Districts – Single-Family and Two-Family

R-1 Use:

In a single-family district, all new buildings, and alterations to existing buildings, shall be used exclusively, and exclusively constructed, designed and arranged for, one or more of the following purposes:

1. Dwelling houses occupied by single and two-family (duplex) buildings.
2. Publicly owned and operated buildings including fire and police stations and other public service facilities.
3. Churches and parish houses.
4. Public and private schools.
5. Hospitals, clinics, nursing and rest homes, and homes for the aged.
6. Playgrounds, parks, golf courses and other public recreation facilities.
7. Cemeteries.

R-1 Conditional Use:

The City Council may authorize the following conditional uses in the R-1 – Residential Districts:

1. Mortuary, funeral homes
2. Multi-family dwellings

R-1 Accessory Use and Buildings:

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

1. Professional office for a physician, clergyman, architect, engineer, attorney or similar professional person residing in such main building.
2. Home Occupation (Cottage Industry). Customary home occupation for gain carried on in the main building or a building accessory thereto requiring only home equipment and employing no more than 5 non-residents help, and no trading in merchandise is carried on.
3. Gardens.
4. Any other accessory use customarily incident to a use authorized in a residential district.
5. Private garages and Accessory Buildings, (measurements are from overhang of roof)

   a. A garage which has an entrance on a side street must be at least ten (10) feet from the side of the lot line, and the side of the garage must be at least than ten (10) feet from the alley line.

   b. A garage which has an entrance from an alley must be at least 20 (twenty) feet from the alley line.

   c. An accessory building must be located at least five (5) from any other lot line.

   d. No separate accessory building shall be erected within five (5) feet of any other building

   e. The height of the detached building shall not exceed one story of 12 (twelve) feet tall and shall not exceed a height of 25 (twenty-five) feet.

Anything exceeding these limits will require a variance from the Oakes City Council.

g. In all instances, such measurements shall be made from the eaves.

h. No accessory building shall be allowed on any utility easement.

i. An accessory building or garage must match the color of the residential dwelling.

R-1 Area and Density Regulations:

In any use district no residential abuilding shall hereafter be erected, established or altered on a lot having a lot area of not less than the square feet as required as follows:

1. No structures shall occupy more than fifty (50) percent of an inside lot nor more than sixty (60) percent of a corner lot.
2. There shall be no more than three (3) accessory buildings.
3. No window well shall extend further than 3 feet from the sidewall of the building.

R-1 Building Height:

1. No single dwelling shall exceed two and one-half (2 ½) stories or 35 feet.

R-1 Yard Requirements:

1. Measured from the front property line, a front yard of not less than twenty (20) feet.
2. Measured from the rear property line, a rear yard of not less than twenty (20) feet.
3. Measured from the side property line, a side yard on each of not less than five (5) feet.
4. In all instances, such measurements shall be made from the eaves.

R-1 Parking Requirements:

1. Each single or two-family (duplex) dwelling shall have off-street parking spaces for two (2) automobiles. All parking stalls shall be completely within the confines of the lot.

2. Off-Street Parking—See Section 14.03.102

R-1 Supplementary Regulations:

1. Visibility at intersections--On a corner lot in any residential district, nothing shall be erected, placed, or allowed to grow in such a manner as to materially impede vision.

2. It is recommended that all new residential development have underground electrical hookups.

3. Those listed in Section 14.03.101- Supplementary District Regulations.

14.0303 R-1A, Residential District (Mobile Homes):

R-1A Use:

It is the purpose of the R-1A District to set aside areas wherein mobile homes can be placed in a safe and healthful environment with due regard to their necessity as a residential dwelling unit.

1. All uses permitted in the R-1, Residential District

2. Mobile Home Parks. Mobile homes shall only be permitted in the R1-A District unless otherwise specified in the provisions of this ordinance. No new mobile home park may be established, or no existing mobile home park may be expanded or modified unless zoned.

Mobile Home District (R-1A).

a. All mobile home parks are required to have underground electrical hookups.

R-1A Conditional Uses:

1. Home occupation

R-1A General Rules:

1. Accessory structures such as a storage shed, windbreak, or entryway shall be at least 10 feet from the nearest adjoining mobile home.
2. No mobile home shall be parked closer than 10 feet to a private interior roadway, and it must have clear access to said roadway.
3. Primary entrance and exit roadways shall connect to a dedicated public right-of-way and shall not be less than 36 feet wide from flow line to flow line
4. Off-street parking shall be provided for each mobile home lot
5. Service and utility buildings, garbage and trash containers, racks and rack locations, rodent and insect control, water and sewer provisions, shall meet the approval of the State Health Department.

R-1A Accessory Use and Buildings:

1. Same as applied in R-1, Residential District

R-1A Area and Density Requirements:

1. Minimum lot area shall be 3500 square feet with a minimum lot width of 35 feet
2. Minimum front yard of the lot (this shall mean the entry side of the mobile home) shall be 10 feet.
3. Minimum end yard setback of lots for yards with double frontage (these are considered as the front and rear of the mobile home) shall be 8 feet at each end
4. Minimum side yards – 10 feet along the street side of interior roadways or driveways

R-1A Building Height Limits:

1. Same as applied in R-1 Residential District.

R-1A Yard Requirements:

1. Measured from the front property line, a front yard of not less than twenty-five (25) feet.
2. Measured from the rear property line, a rear yard of not less than fifteen (15) feet except where the rear yard abuts a dedicated public right-of-way in which case the rear yard shall follow the requirements of front yard minimums.
3. Measured from the side property line, a side yard on each of not less than ten (10) feet along interior lot lines, fifteen (15) feet along public side streets.

R-1A Parking Requirements:

1. Same as applied in R-1 Residential District.

R-1A Supplementary Regulations:

1. Same as applied in R-1 Residential District.

R-1A Requirements for Mobile Home Parks:

1. When applying for this use, there shall be provided to the Zoning Administrator a plot plan by a registered engineer, architect, or qualified planner, complete in detail, meeting and showing
the following requirements:
    a. The minimum free-standing area shall be at least two acres, and the density or mobile homes shall not be greater than eight to the net acres. Net acreage is defined as the acreage remaining after the deduction of the areas set aside for storage, recreation, clothes drying, garbage and trash collection points, utility and service building areas and spaces, roadways, driveways, walkways and off-street parking areas.
    b. Location and legal description.
    c. Entrance to and exit from the park.

d. Vehicular driveways, roadways, and pedestrian walk.
e. Plans showing signs and arrangement of mobile home lots and stands, location of roadways, service and utility buildings.
f. Topography map showing original and final contours and provisions for drainage.
g. Areas set aside for recreation, clothes washing and drying, storage and off-street parking.
h. Fencing and screen planting on the premises.
i. Provisions for trash and garbage storage and removal.
j. Plans for water supply and distribution.
k. Plans for sewage collection and disposal.
l. Typical lot plan.

14.0304 R-2 - Residential Districts - Multi-Family (Repealed February 2012)

14.0304 CG – Recreational Vehicle Park/Campground (Adopted 04/27/2017)

CG Use: The recreational vehicle park/campground provides for the temporary parking of a recreational vehicle and/or camper on a parcel of land for recreational purposes.

The following are uses permitted in this district:

1. Recreational Vehicles and Campers, tents only allowed with recreational vehicle or camper.
2. Customary accessory structures located on the same parcel limited to toilets, washroom and bathing facilities. All structures and facilities must be constructed and installed pursuant to ND Department of Health regulations as codified in Chapter 23-10 and applicable Administrative Regulations. The site plan showing location of all facilities, streets, and campsites must be approved the City Council.

CG Regulations:

1. All campgrounds must be licensed by the North Dakota Department of Health.
2. All fuel supplies, including but not limited to propane and compressed natural gas containers, must be secured to a fixed object unless the supply is intended by its manufacturer to be a freestanding fuel source such as 250 or 500 gallon tank.
3. Water and sewer connections and facilities must meet the requirements of the ND Department of Health.
4. No fish or game processing.
5. All grounds shall be maintained and shall be kept free of accumulated debris, junk, trash, garbage and non-licensed/nonfunctional vehicles.
6. A solid frame wall, privacy fence or landscaped buffer area shall be provided between the campground and any adjoining property zoned for residential purposes. The fence or wall must be six feet high. The owner of park/campground shall be responsible for the maintenance of the fence or wall or landscaped buffer area.

CG Area and Density Regulations:

1. Campground shall be located on a well-drained site, properly graded to insure proper drainage and freedom form stagnant pools of water.
2. Each recreational vehicle space shall be at least 40 feet wide and clearly defined.
3. Recreational vehicles shall be so located on each space that there shall be at least ten feet of clearance between recreational vehicles; provided however that with respect to recreational vehicle parked end-to-end, the end-to-end clearance

may be less than ten feet but shall not be less than five feet. No recreational vehicle shall be located closer than twenty-five feet from any building within the park or from any property line bounding the park.

CG Parking and Street Requirements:

1. Access to campground shall be directly from a city street or highway and such access be of a design that will minimize traffic congestion per either city or state regulations.
2. All entrance and exit lanes within such park shall be lighted.
3. Non recreational vehicle parking space must be provided within each space.

CG Supplementary Regulations:

1. The owner of the park/campground, or a duly authorized attendant or caretaker, shall be in charge at all times to keep the campground, and its facilities and equipment in a clean, orderly and sanitary conditions. The owner shall be answerable for the violation of any provision of the regulations in the campground.
2. The City shall have the authority to have the park/campground inspected by the proper City regulating authority, and if it shall be found that the owner of said park/campground has made any false or misleading statements or has placed or caused to be placed more RV's in said park/campground than provided for, or that the owner of the park/campground has violated or has caused a violation of any provision of this Article, the City Council shall have the power to either rezone property back to its former zoning district classification or to revoke the permit.

14.0305 Commercial District

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

1. Retail stores and shops, automobile, truck and farm implement sales, and services.
2. Service establishments, automobile service and repair stations, and car washes.
3. Business and professional offices. Financial institutions, churches, nursery for flowers or plants, animal hospitals, and kennels.
4. Eating and drinking establishments, hotels, and motels.
5. Funeral homes and mortuaries.
6. Transportation services.
7. Amusement and recreational uses.
8. Wholesale businesses.
9. Apartment dwelling units.
10. Storage buildings.
11. Any other building or use similar to the uses herein listed in the type of services or goods sold.
12. Multi-family dwellings.
13. Private clubs.
14. Lodges or social buildings.
15. Hotels, motels, boarding and lodging houses.
16. Automobile parking lots.
17. Any accessory uses customarily incident to a use herein listed including the use of containers for the purpose of storage of merchandise or goods used in the normal operation of the business.

C Prohibited Use:

1. Dwelling units, except for housing for the elderly, and apartments above commercial uses.
2. Manufacturing, except for the production of products for sales at retail

such as jewelry, eyeglasses, hearing aids or products which create no odor, noise, vibration or dust when they are manufactured.

3. Storage of goods except in completely enclosed buildings.

C Conditional Use:

The City Council may authorize conditional uses in the C-Commercial District including but not limited to the following:

1. Warehouses.

C Accessory Use and Buildings:

The City Council may regulate accessory uses and buildings in the C-Commercial District.

C Area and Density Regulations:

There shall be a minimum lot area of 3,000 square feet with a minimum width of twenty-five (25) feet. Uses such as hotels, motels, eating and drinking establishments shall be connected to public sewer and public water.

C Building Height:

1. No structure shall exceed three (3) stories or 45 feet.

C Yard Requirements:

1. A front yard shall conform with the existing measurements in that area.

2. Measured from the rear property line, a rear yard of not less than (ten) 10 feet.

3. Measured from the side property line, a side yard on each of not less than five (5) feet or ten (10) feet on each side of the lot.

C Parking Requirements:

1. There shall be adequate provisions for off-street parking by each of the activities within the district. See Section 14.03.102

C Supplementary Regulations:

1. Those listed in Section 14.03.101 Supplementary District Regulations.

14.0306 I - Industrial

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

1. All uses permitted in a C-Commercial District.

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

I Prohibited Uses:

1. No dwelling or dwelling unit.

I Conditional Uses:

1. The City Council shall review all the permits for the future industrial development to ensure adequate measures are provided for the welfare and safety of the public.

I Parking Requirements:

1. There shall be adequate provisions for off-street parking by each of the activities within the district. See Section 14.03.102

I Supplementary Regulations:

1. Those listed in Section 14.03.101 – Supplementary District Regulations.

14.0307 U - Unplatted

U Use:

The predominant use of land within the U-Unplatted District is agriculture and undeveloped land, for one or more of the following purposes:

1. Grain and crop farming, nurseries, greenhouses, and roadside stands for the sale of products which are grown on the premises.

2. Single and two-family (duplex) buildings.

3. Churches and facilities related to religious institutions.
4. Golf courses, public parks, facilities, playgrounds, and other recreational uses.
5. Public and private schools.
6. Utility lines and public service facilities.
7. Home occupations.

U Conditional Use:

The City Council may authorize the following conditional uses in the U - Unplatted Districts:

1. Airports and landing strips.
2. Cemeteries.
3. Radio and television towers and accessories.
4. Processing of agricultural products provided:
    A. Side yards of not less than fifty (50) feet.
    B. Rear yard of not less than fifty (50) feet.

U Accessory Use and Buildings:

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

1. An accessory building, or any enclosure, group or run, or any part thereof shall be located at least fifteen (15) feet from any rear or side lot line, and at least twenty (20) feet from any building used for dwelling purposes on an adjoining lot.

U Area and Density Regulations:

The City Council may regulate area and density regulations in the Unplatted District.

U Yard Requirements:

1. Measured from the front property line, a front yard of at least (twenty) 20 feet. Lots outside the city limits shall have a front yard of not less than fifty (50) feet.
2. Measured from the rear property line, a rear yard of not less than twenty (20) feet.
3. Measured from the side property line, a side yard on each of not less than five (5) feet.

U Parking Requirements:

1. There shall be adequate provisions for off-street parking by each of the activities within the district. See Section 14.03.102

U Supplementary Regulations:

1. Those listed in Section 14.03.101- Supplementary District Regulations.

ARTICLE 3.1 – AREA REGULATIONS

14.03.101 Area Regulations - Supplementary District Regulations

1. Overcrowding
    a. Dwelling units shall not be occupied by more than four person per unit unless they are a family by definition.
2. Fences
    a. Notwithstanding any provisions of this ordinance, fences, walls, and hedges may be permitted in yards, or along the edge of any yard, provided that no fence, wall, or hedge along the sides or front edge of any front yard shall be over six (6) feet in height.
3. Erection of more than one principal structure on a lot
    a. Is not permitted unless yard and other dimension requirements are met for each structure.
4. Exceptions to height regulations

a. The height limitations contained in the schedule of district regulations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other accessory usually required to be placed above the roof level and not intended for human occupancy.

5. Structures to have access

a. Every building erected or moved shall be on a lot adjacent to a public street, or with access to an approved private street, and all structures shall be located on lots as to provide safe and convenient access to servicing, fire protection, and off-street parking.

6. Signs. The following regulations shall govern the location, area and type of signs permitted within the City.

a. General requirements:

i. All signs shall be structurally safe and shall be securely anchored or otherwise fastened, suspended, or supported so that they will not be a nuisance to the safety of persons or property.

ii. No sign, outdoor commercial advertising device or lighting device constituting a nuisance to an adjacent residential district because of lighting glare, focus, animation or flashing of a sign, lighting or advertising device shall be erected or continued in operation.

iii. No "revolving beacon" or "fountain" signs shall be permitted in any district.

iv. No sign in any district shall conflict in any manner with the clear and obvious appearance of public devices controlling public traffic.

v. Ground signs shall not be located on public property except by specific approval of the City Council.

vi. Temporary signs or banners on or over public property may be authorized by the City Council for a period not to exceed ten (10) days.

vii. Signs projecting over a street, alley, or other public space shall project not more than ten (10) feet and be no closer than two (2) feet to a plumb line from curb line; clearance below such signs shall be a minimum of nine (9) feet.

viii. Roadside market signs advertising produce grown and sold on the premises on which they are located. Said signs shall not remain continuously erected more than six (6) months of any calendar year.

b. Residential Districts:

i. One (1) identification sign shall be permitted per residential use provided such sign does not exceed two (2) square feet in area; said sign may be wall, pedestal, ground or projecting type (but not projecting over public property)

ii. One sign of a temporary nature, such as "for sale" or "for rent", shall be permitted per residential use provided such sign does not exceed six (6) square feet and is not lighted; said sign may be a wall, pedestal or ground type.

iii. Home occupation. No sign or display other than a nameplate not more than two (2) square feet in area shall be used to indicate from the exterior that the building is being utilized in part of any purpose other that than of a dwelling.

c. Unplatted District:

i. Highway billboards or other such highway oriented advertising devices shall be permitted, provided such signs and devices are located at least

one thousand (1,000) feet from any existing advertising sign or device, regardless of political boundaries, width of rights-of-way, existing highways, streets, roads, or easements.

ii. Prior to construction of any highway billboard or other such highway oriented advertising device, a building permit shall be obtained. If the building inspector judges any sign to be in poor repair, not properly located, obstructing public rights-of-way, or in any way adjudged to constitute a public hazard or nuisance, any sign may be removed by the building inspector. Costs for removal and storage or disposal shall be paid by the permittee.

d. Public or Semi-public uses:

i. One identification sign shall be permitted per public or semi-public use provided such sign does not exceed twenty (20) square feet in area; said sign may be wall, pedestal, ground or projecting type.

e. Commercial, Highway Service, Industrial Districts:

i. No restrictions except the general sign requirements of Section 8-A above.

14.03.102 Off-Street Parking Regulations

1. No building shall be erected, enlarged or changed in use unless there is provided on the lot or tract of land used, space for the parking of automobiles or trucks in accordance with the following minimum requirements:

a. Residential-Two (2) parking spaces for each dwelling unit

b. Church or School-One (1) parking space for every (5) seats in the principal gathering room plus one (1) space for each employee

c. Private Club or Lodge-One (1) parking space for each normal attendance at club or lodge functions

d. Hospitals-One (1) space for each two (2) patient beds (excluding bassinets) plus one (1) additional space for each doctor, plus one (1) additional space for each (2) employees, and loading and unloading space for hospital ambulance

e. Convalescent or Nursing Home-One (1) space for each four (4) residents or patients, plus one (1) space for each two (2) employees, plus one (1) space for emergency vehicles

f. Offices or Clinics-One (1) parking space for each one hundred (100) square feet of floor area

g. Mortuary or Funeral Home-One (1) space for each one hundred fifty (150) square feet of floor area

h. Theatres-One (1) space for each four (4) seats

i. Wholesale Establishments and Business Services-One (1) space for every three hundred
(300) square feet of floor area

j. General Retail-Four (4) spaces for every one thousand (1,000) square feet of floor area

k. Restaurants or Bars-One (1) space for each two hundred (200) square feet of floor area

l. Hotel, Motel, or Tourist Cabin-One (1) space for each room plus two (2) additional spaces for each three (3) employees

m. Commercial, Entertainment, and Recreation-One (1) space for each one hundred (100) square feet

n. Industrial Uses-One (1) space for each one and one halve (1 ½) employee on the shift of the greatest employment, plus one (1) truck space for each 7,500 square

feet of gross floor area

o. Core Commercial District-One (1) parking space shall be provided on the same lot for each six hundred (600) square feet of constructed building on the lot

p. Mixed Uses-In cases of mixed uses, the parking spaces required shall be the sum of the requirements for the various individual uses computed separately

2. Exceptions

a. Variance approved by the City Council

14.03.103 Shipping Container Regulations

The erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion and/or occupancy of any metal storage shed as defined within this Section within the City of Oakes shall conform to the requirements of this Section.

Regardless of the permitted uses outlined in these ordinances regarding Zoning and districts, it shall be unlawful to permanently or temporarily place on any property within city limits any metal storage shed classified as an intermodal freight transport container sometimes referred to as a standard shipping container or ISO container or isotainer or any similar style of metal shed or container without first obtaining a conditional use permit from the city along with the permit fee which may be set by resolution of the City Council from time to time and this Section shall supersede all contrary ordinances found in the city's ordinances.

14.0308: Special Flood Hazard Areas and Insurance Relating Thereto

1.1 STATUTORY AUTHORIZATION

The Legislature of the State of North Dakota has in North Dakota Century Code, Chapters 40-47, 11-33 and 58-03, delegated responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

Therefore, the City of OAKES, North Dakota, by and through its governing body (hereafter the governing body shall be referred to as "Governing Body"), does ordain as follows:

1.2 **FINDINGS OF FACT**

(1) The flood hazard areas of OAKES are subject to periodic inundation which can endanger life, result in loss of property, create health and safety hazards, disrupt commerce and governmental services, cause extraordinary public expenditures for flood protection and relief, and impair the tax base, all of which adversely affect the public health, safety, and general welfare.

(2) Flood losses caused by the cumulative effect of obstructions in the special flood hazard areas cause increases in flood heights and velocities. Inadequately floodproofed, elevated or otherwise unprotected structures also contribute to the flood loss.

1.3 **STATEMENT OF PURPOSE**

It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

(1) To protect human life and health;

(2) To minimize expenditure of public money for costly flood control projects;

(3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) To minimize prolonged business interruptions;

(5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in special flood hazard areas;

(6) To help maintain a stable tax base by providing for the second use and development of special flood hazard areas so as to minimize future flood blight areas;

(7) To ensure that potential buyers are notified that property is in a special flood hazard area;

(8) To ensure that those who occupy the special flood hazard areas assume responsibility for their actions.

1.4 METHODS OF REDUCING FLOOD LOSSES

In order to accomplish its purposes, this ordinance includes methods and provisions for:

(1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

(2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

(4) Controlling filling, grading, dredging, and other development which may increase flood damage; and,

(5) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

SECTION 2.0
DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

"Appeal" means a request for a review of the Governing Body's interpretation of any provision of this ordinance or a request for a variance.

"Base flood or 100-year flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

"Base Flood Elevation" (BFE) means the height of the base flood or 100-year flood usually in feet, measured in the same datum (either NAVD88 or NGVD29) as the FIRM.

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Best Available Information" (BAI) means water elevation information from any source used to estimate or determine a base flood elevation (i.e. high water mark).

"Community" means any political subdivision that has the authority to zone, or any Indian tribe or authorized tribal organization, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.

"Conveyance or hydraulic conveyance" means a geometric characteristic of a river or watercourse at a given point that determines the flow-carrying capacity at that point.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the special flood hazard area.

"Existing Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

"Expansion to an Existing Manufactured Home Park or Subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Flood Insurance Rate Map" (FIRM) means the official map issued by the Federal Emergency Management Agency where special flood hazard areas are designated as Zone A, AE, AO, AH, A1-A30 or A-99.

"Flood Insurance Study" (FIS) means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Map, and the water surface elevation of the base flood.

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters and/or; from the unusual and rapid accumulation or runoff of surface waters from any source.

"Floodproofing" (Dry) means protection provided a structure, together with attendant utilities and sanitary facilities, which is watertight two feet above the base flood elevation with walls that are substantially impermeable to the passage of water.

"Floodway or regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Lowest floor" means the lowest floor of a structure including the basement.

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle" but does include "mobile home".

"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"New construction" means structures for which the "start of construction" commenced on or after the effective date of this ordinance.

"New Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

"Person" means any person, firm, partnership, association, corporation, limited liability company, agency, or any other private or governmental organization, which includes any agency of the United States, a state agency, or any political subdivision of the state.

"Reasonably safe from flooding" means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area, and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

"Recreational vehicle" means a vehicle which is:

(a) built on a single chassis;
(b) 400 square feet or less when measured at the largest horizontal projection;
(c) designed to be self-propelled or permanently towable by a light duty truck;
(d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use; including, but not limited to;
(e) travel trailers, trailers on wheels, park-model trailers, and other similar vehicles.

"Special Flood Hazard Area" (SFHA) means an area of land that would be inundated by a flood having a one percent chance of being equaled or exceeded in any given year.

"Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

"Structure" means a walled and roofed building, including manufactured homes and gas or liquid above-ground storage tanks.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the building to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

1) Before the improvement or repair is started; or

2) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

1) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or

2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"Watercourse" means only the channel and banks of an identifiable watercourse, and not the adjoining floodplain areas. The flood carrying capacity of a watercourse refers to the flood carrying capacity of the channel, except in the case of alluvial fans, where a channel is not typically defined. The definition of watercourse in N.D.C.C. § 61-01-06 is not applicable in this ordinance.

"Variance" means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

"Violation" means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by the community's floodplain management ordinance is presumed to be in violation until such time as that documentation is provided.

SECTION 3.0 GENERAL PROVISIONS

3.1 LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all special flood hazard areas within the jurisdiction of The City of OAKES.

3.2 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS

The special flood hazard areas identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for the City of OAKES, dated June 18, 2025," with an accompanying
Flood Insurance Rate Map is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file at City Hall.

3.3 COMPLIANCE

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations.

3.4 GREATER RESTRICTIONS

This ordinance is not intended to repeal, remedy, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

3.5 INTERPRETATION

In the interpretation and application of this ordinance, all provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the governing body; and,

(3) Deemed neither to limit nor repeal any other powers granted under state statutes.

3.6 WARNING AND DISCLAIMER OR LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This ordinance does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of City of OAKES, any officer or employee thereof, or the Federal (local unit) Emergency Management Agency, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

3.7 SEVERABILITY

If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.

SECTION 4.0
ADMINISTRATION

4.1 ESTABLISHMENT OF DEVELOPMENT PERMIT

A development permit shall be obtained before construction or development begins within any special flood hazard area established in Section 3.2. Application for a development permit shall be made on forms furnished by the City of OAKES and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill storage materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

(1) Elevation in the same datum (either NAVD88 or NGVD29) as the FIRM, of the lowest floor of all structures;

(2) Elevation in the same datum (either NAVD88 or NGVD29) as the FIRM to which any structure has been floodproofed;

(3) Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in Section 5.2-2; and,

(4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

4.2 **DESIGNATION OF THE CITY OF OAKES.**

The CITY OF OAKES is hereby appointed to administer and shall implement this ordinance by granting or denying development permit applications in accordance with its provisions.

4.3 **DUTIES AND RESPONSIBILITIES OF THE CITY OF OAKES.**

Duties of the CITY OF OAKES shall include, but not be limited to:

4.3-1 Permit Review

(1) Review all development permits to determine that the permit requirements of this ordinance have been satisfied.

(2) Approve or deny all applications for development permits required by adoption of this ordinance.

(3) Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.

(4) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment

provisions of Section 5.4 are met.

4.3-2 Use of Other Base Flood Data

When base flood elevation data has not been provided in accordance with Section 3.2, BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS, the CITY OF OAKES shall obtain, review, and reasonably utilize
any base flood elevation data and floodway data available (known as best available information) from any other federal, state, or other source, as criteria for requiring that new construction, substantial improvements, or other development in the floodplain are administered in accordance with Section 5.2, SPECIFIC STANDARDS.

4.3-3 Information to be Obtained and Maintained

(1) Obtain and record the actual elevation (in the same datum (either NAVD88 or NGVD29) as the FIRM), of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

(2) For all new or substantially improved floodproofed structures:

(i) obtain and record the actual elevation (in the same datum (either NAVD88 or NGVD29) as the FIRM), to which the structure has been floodproofed;

(ii) maintain the floodproofing certifications required in Section 4.1(3).

(3) Maintain for public inspection all records pertaining to the provisions of this ordinance.

4.3-4 Alteration of Watercourses

The responsible person shall:

(1) Notify nearby communities, water resource districts, and the North Dakota Department of Water Resources, as necessary, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished; and,

(3) Notify the appropriate water resource district prior to removal or placement of fill within two hundred feet of the bank of a body of water during normal flow or stage.

4.3-5 Interpretation of Flood Insurance Rate Map (FIRM) Boundaries

Make interpretation where needed, as to the exact location of the boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 4.4.

4.3-6 Encroachment Analysis

When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community first applies for and receives a Conditional Letter of Map Revision (CLOMR) through FEMA.

4.4 VARIANCE PROCEDURE

4.4-1 Appeal Board

(1) The VARIANCE APPEAL BOARD consisting of three residents of the CITY OF OAKES, as established By CITY OF OAKES FROM TIME TO TIME BY APPOINTMENT shall hear and decide appeals and requests for variances from the requirements of this ordinance.

(2) The VARIANCE APPEAL BOARD shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the CITY OF OAKES in the enforcement or administration of this ordinance.

(3) Those aggrieved by the decision of the VARIANCE APPEAL BOARD, or any taxpayer, may appeal such decision to the District Court, as provided in N.D.C.C. §§ 40-47-11, 11-33-12, or 58-03-14.

(4) In passing upon such applications, the VARIANCE APPEAL BOARD shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance; and:

(i) the danger that materials may be swept onto other lands to the injury of others;

(ii) the danger to life and property due to flooding or erosion damage;

(iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(iv) the importance of the services provided by the proposed facility to the community;

(v) the necessity to the facility of a waterfront location, where applicable;

(vi) the availability of alternative locations, for the proposed use which are not subject to flooding or erosion damage;

(vii) the compatibility of the proposed use with existing and anticipated development;

(viii) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;

(x) the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

(xi) the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(5) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre to less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xi) in Section 4.4-1(4) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(6) Upon consideration of the factors of Section 4.4-1(4) and the purposes of this ordinance, the VARIANCE APPEAL BOARD may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

(7) The CITY OF OAKES shall maintain the records of all appeal actions the report any variances to the Federal Emergency Management Agency upon request.

4.4-2 Conditions for Variances

(1) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.

(2) Variances shall not be issued within the identified floodplain if any increase in flood levels during the base flood discharge would result.

(3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(4) Variances shall only be issued upon:

(i) a showing of good and sufficient cause;

(ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and,

(iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, cause fraud on or victimization of the public as identified in Section 4.4-1(4), or conflict with existing local laws or ordinances.

(5) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

SECTION 5.0
PROVISIONS FOR FLOOD HAZARD REDUCTION

5.1 GENERAL STANDARDS

In all special flood hazard areas the following standards are required:

5.1-1 Anchoring

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

(2) All manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

5.1-2 Construction Materials and Methods

(1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(2) All new and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(3) All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

5.1-3 Utilities

(1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,

(3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

5.1-4 Subdivision Proposals

(1) All subdivision proposals shall be consistent with the need to minimize flood damage;

(2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

(3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,

(4) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or 5 acres (whichever is less).

5.2 SPECIFIC STANDARDS

In all special flood hazard areas where base flood elevation data have been provided as set forth in Section 3.2 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS or Section 4.3-2, Use of Other Base Flood Data, the following provisions are required:

5.2-1 Residential Construction

(1) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to at least one foot above the base flood elevation.

5.2-2 Nonresidential Construction

Construction and substantial improvement of any nonresidential structure shall either have

the lowest floor, including basement, elevated to at least one foot above the base flood elevation or, together with attendant utility and sanitary facilities shall:

(1) Be floodproofed to at least two feet above the base flood elevation, so that below this elevation the structure is watertight with walls substantially impermeable to the passage of water.

(2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(3) Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Section 4.3-3(2).

5.2-3 Manufactured Homes

(1) Require all manufactured homes placed within Zone A shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

(2) Require all manufactured homes placed or substantially improved within Zones A 1-30, AH, or AE on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision which has incurred substantial damage, be elevated on a permanent foundation so the lowest floor of the manufactured home is elevated one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.

(3) Require that manufacture homes placed or substantially improved on sites in an existing manufacture home park or subdivision within Zones A 1-30, AH, or AE not subject to other requirements of this section be elevated so that either:

(i) the lowest floor of the manufacture home is one foot above the base flood elevation, or
(ii) the manufacture home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36” in height above grade and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.

5.2-4 Recreational Vehicles

In A1-30, AH, and AE Zones, all recreational vehicles to be placed on a site must

(i) be elevated and anchored to meet the requirements in 5.2-3; OR
(ii) be on the site for less than 180 consecutive days; AND
(iii) be fully licensed and highway ready

5.3 Shallow Flooding AO and AH Zones (Section 5.3 is only required if the community has Flood Zones AO and/or AH on the effective FIRM)

Located within the areas of special flood hazard established in Section 3.2, are areas designated as shallow flooding. 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 where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

(1) All new construction and substantial improvements of **residential** structures have the lowest floor (including basement) elevated one foot above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).

(2) All new construction and substantial improvements of **non-residential** structures;

(i) have the lowest floor (including basement) elevated one foot above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or;

(ii) together with attendant utility and sanitary facilities be completely floodproofed to that level to meet the floodproofing standard as specified in Section 5.2-2.

(3) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

5.4 **FLOODWAYS**

Located within the special flood hazard areas established in Section 3.2 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

(1) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge. Any increase, as is used in this section, means any modeled impact greater than 0.00 feet.

(2) If Section 5.4 (1) is satisfied, all new construction and substantial

improvements shall comply with all applicable flood hazard reduction requirements of this ordinance.

(3) Under the provisions of 44 CFR Section 65.12 of the NFIP Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in BFEs, provided that the community first applies for and receives a Conditional Letter of Map Revision (CLOMR) through FEMA.

5.5 **ENCLOSURES**

New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall 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 meet or exceed the following minimum criteria:

(1) 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.

(2) The bottom of all openings shall be no higher than one foot above grade.

(3) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they allow the automatic entry and exit of floodwaters.

SECTION 6.0
VIOLATIONS

6.1 PENALTIES FOR VIOLATIONS

(1) Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violations on conditions and safeguards established in connection with grants or variances or conditional uses, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be punished by a fine not exceeding $500 or by imprisonment not to exceed 30 days or by both such fine and imprisonment for each such offense, and in addition shall pay costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

(2) Nothing herein contained shall prevent the GOVERNING BOARD from taking such other lawful action as is necessary to prevent or remedy any violation.

14.0401 Planning Commission / Zoning Commission

The administration and enforcement of this chapter is hereby invested in the zoning/planning commission ("commission") consisting of 5 members appointed by the Mayor, with approval of the City Council and the Mayor, the engineer and city attorney shall be ex-officio members thereof with terms and compensation and meeting per NDCC 40-48-03). All actions of the Commission and the building inspector are subject to the final approval of the OAKES City Council before they are valid. The planning commission shall also serve as the zoning commission and hold hearings, make reports and recommendations as to the boundaries of the various original districts and appropriate regulations to be enforced therein, and for changes in or supplements thereto per NDCC 40-47-06).

14.0402 Authority and Duties

The zoning/planning commission shall have the following duties:

1. Report the following to the city council:

    a. all complaints stemming from this zoning chapter

    b. all zoning violations

    c. applications for amendments

    d. applications for conditional uses

    e. applications for variances

2. Establishing rules, regulations and procedures for the purpose of administering this chapter.

3. Initiate and review from time to time a study of the provisions of these regulations and make recommendations to the city council.

4. Appoint an administrative official.

    a. Administrative Official. Except as otherwise provided herein, the building inspector shall administer and enforce the provisions of this chapter, including the receiving of applications, the inspections of premises and the issuance of building permits. No building permit or certificate of occupancy shall be issued by such officer except where the provisions of this chapter have been fully complied with.

    b. Building permit required. No building or structure shall be erected, added to, or structurally altered until a permit therefore has been issued by the building inspector. All applications for such permits shall be in accordance with the requirements herein and, unless upon written order of the

zoning/planning commission, no such building permit or certificate of compliance shall be issued for any building where said construction, addition, or alteration or use thereof would be in violation of any of the provisions of this chapter.

c. Matter Accompanying Application. There shall be submitted with all applications for building permits two (2) copies of a layout or plot drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected and such other information as may be necessary to determine and provide for the enforcement of this chapter.

d. Payment of Fee. One (1) copy of such layout or plot shall be returned when approved by the building inspector with such permit to the applicant upon the payment of the fees as established hereafter in the schedule of rates and charges.

5. Certificate of Compliance.

a. No land shall be occupied or used and no building hereafter erected, altered or extended shall be used or changed in use until a certificate of compliance shall have been issued by the building inspector, stating that the building or proposed use complies with the provisions of this chapter.

b. No nonconforming use shall be maintained, renewed, changed or extended without a certificate of compliance having first been issued.

c. All certificates of compliance shall be applied for coincident with the application for a building permit. Said certificate shall be issued within fifteen (15) days after the erection or alteration shall have been approved.

d. The building inspector shall maintain a record of all certificates and copies shall be furnished, upon request, to any person having proprietary or tenancy interest in the building affected.

e. No permit for excavation or the erection or alteration of or repairs to any building shall be issued until an application has been made for the certificate of compliance

f. Under such rules any regulations as may be established by the planning commission and filed with the zoning administrator, a temporary certificate of occupancy for not more than thirty days for a party of a building may be issued by him.

6. Conditional Uses – Procedure

a. The applicant for a conditional use permit applies to the planning commission for a building permit.

b. The planning commission holds a public hearing.

c. The planning commission prepares a written statement for the city council concerning the proposed conditional use. This statement shall include how the proposed conditional use complies with the rules governing conditional use. No conditional use shall be granted unless the following conditions have been met.

i. The entrance and exit to the property comply with or facilitate public safety, traffic flow and convenience.

ii. Parking and loading requirements of the specific use are met.

iii. There is general compatibility with the surrounding property with due consideration for noise, odor or other adverse effects.

iv. There are required yards and open spaces.

v. There are adequate utilities, access roads, drainage and other necessary improvements have been made or are provided.

7. Every application for a conditional use shall include a plot plan showing:

a. Legal dimensions of the tract to be used;

b. Location of all structures and all existing and proposed improvements, including curb cut access, off-street parking and other such facilities;

c. Building setback from all property lines;

d. Location and type of planting, screening or walls;

e. A timing schedule indicating the anticipated starting and completion dates of the development; names and addresses of adjacent property owners; and

f. Any additional information the planning commission deems necessary.

14.0403 City Council – Board of Adjustments

For the purposes of this ordinance, the city council is hereby designated as the Board of Adjustment.

1. Authority: Powers of the city council acting as the Board of Adjustment shall include:

a. All amendments to the text of the zoning ordinance and zoning district map shall be approved or disapproved by the city council after a public hearing.

b. Establish rules, regulations and procedures for administering this ordinance.

c. Interpret district boundaries on the zoning district map.

d. Publish notice of public hearings in the official newspaper at least fifteen (15) days prior to a public hearing.

2. Appeals:

a. Any person who claims to have been aggrieved by a decision of any official, department or board of the city may petition for a hearing to the city council. Petitions for appeal must be initiated within fifteen business days after the notice of the action in question was made.

b. The appeal shall be presented in writing to the city council and it shall specify the grounds for the appeal

c. The hearing shall be held within reasonable time of the filing of the appeal.

d. Within fifteen (15) days after the hearing, the city council shall take action and send their decision by registered mail to the petitioner.

e. A concurring vote of (four) 4 is required by the city council to reverse any order, requirement, or decision made by any official, department or board of the city.

3. Variance:

a. In a situation which would require a variance prior to construction or alteration of a building or structure because of unusual lot conditions, the applicant applies to the planning commission for a variance.

b. The planning commission will refer the application to the city council for review. The city council will take into consideration any comments or findings presented by the planning commission as well as the plans of the applicant.

c. The city council can refuse the variance if the lot proves to be of such dimension or condition as to be unsuitable for building or modification and it can refuse approve the variance if the variance would prove to be contrary to the interests of the public

14.0404 Schedule of Fees and Charges

1. A fee of twenty dollars ($20) shall be paid to the city council by the applicant upon filing an application for any amendment to the zoning ordinance or zoning map or for any other activity which requires a public hearing.

2. The following schedule shall be used for issuing said permits. The fee shall be paid by the applicant to the planning commission prior to receiving the permit. The fee is determined by the estimated market value of improvements.

    a. Zero dollars ($0.00) - one thousand dollars ($500) market value of improvements = fee of zero dollars ($0.00) due by applicant

    b. More than five hundred dollars ($501) to twenty thousand dollars ($20,000) market value of improvements = fee of twenty five dollars ($25) plus one dollar ($1.00) for each additional one thousand ($1,000) of value of improvements to be payable by applicant

    c. Re-Application fee is twenty dollars ($20).

14.0405 Penalties for Article 4

Anyone who violates the provisions of this ordinance or fails to comply with any of its requirements, upon conviction, shall be fined not more than two hundred dollars ($200) per day. Each day that a violation continues shall constitute a separate offense.

14.0406 Penalties for Chapter

Unless otherwise explicitly, expressly, and specifically provided for, any violation of this chapter shall be subject to a fine of not less than one dollar ($1) and not more than One Thousand ($1,000) dollars and/or imprisonment not to exceed thirty (30) days. Each violation and each day of violation shall constitute a separate offense.

ARTICLE 5 – PRIVATE DEVELOPMENT

14.0501-Private Development

Private Consultant Development of Public Facilities
Private Funding of Public Facilities

New development of public infrastructure (utilities, paving, street lights, etc.) in the City of Oakes is typically engineered by the Appointed City Engineer hereafter called ‘ City Engineer’, and financed through special assessment. In- house engineering is done according to City Ordinances.

Periodically the City is requested to approve development designed or funded privately. The City may desire to utilize a private consultant to design and administer specific projects. Projects that are engineered by the private sector nevertheless require City staff involvement to verify compliance to City standards of design and construction, maintenance of proper construction records, and posting of construction information into the City’s computerized record system. City staff oversight is important since the privately installed public facilities are turned over to the City for ownership and maintenance. New development areas place increased demand on all City services from utility cleaning to street maintenance, snow removal (this listing is not exemplary but illustrative), which require City involvement in the design of the infrastructure.

The City of Oakes supports the concept of privately designed and funded infrastructure development. To address the costs incurred by City staff (including the City Engineer) in review and oversight of these improvements, the City will require payment of a design oversight fee, set and charged by the City Engineer through auspices of the City Auditor. The City has specific requirements regarding consultant design and administration standards.

I. CONSULTANT SELECTION

A. Privately Funded Improvements

The developer shall select their engineering consultant. The City Engineer will charge a project review and oversight fee.

B. Publicly Funded (Special Assessed) Projects

1. City Consultant Selection

Due to staff or project timing constraints, and when determined by the City to be in their best interest, the City may elect to hire a consultant (other than the City Engineer) to complete all or portions of specific projects. The City will select the consultant through the standard Request for Proposal (RFP) process. All engineering costs may be special assessed. The standard engineering and administration fees will be charged to the project.

2. Developer Consultant Selection

The developer may select their engineering consultant to complete design and administration within the development. The City Engineer will be involved in reviewing the design, plans, specification, contract administration, inspection and as-builts (project oversight).

II. STANDARDS

A. Design & Construction by Private Consultant

1. City Engineer shall coordinate area plan development and approve all plans and specifications to verify adherence to City standards.

2. City Engineer shall provide consultant inspection oversight to ensure conformance in construction and record keeping. The City Engineer will conduct inspections as necessary.

3. City Engineer, Public Works and other City departments will provide final project inspection prior to public acceptance of maintenance and ownership.

B. Warranty

1. Standard one-year warranty shall apply to all construction.

2. Deficiencies shall be reported directly to project engineer and City Engineer for repair within 60 days. Failure to remedy project deficiencies will result in City directed repairs special assessed against the project area or developer.

III. REVIEW AND OVERSIGHT FEES

The City Engineer will charge a project review and oversight fee for projects privately funded or engineered by developer selected consultants.

A. Fee

1. Fee Establishment Criteria

Generally based on level of involvement required by City Engineering staff. This local involvement is impacted by the following criteria:

- Consultant experience with municipal construction techniques.
  - No experience
  - Considerable experience
- Level of consultant computer automation and compatibility with City Engineer's CAD and GIS Systems.
  - Fully compatible
  - Submit as-built drawings in Auto CAD DWG or DFX format utilizing City standards for symbology, layering, line types, etc.
  - Manually drafted as-built plans
- Area Plan Status.
  - Construction fits within present utility area plan.
  - Proposed construction requires staff development of utility area plan to serve the area or adjacent areas.
- Project Complexity and Coordination Required.
  - Coordination among multiple City departments required on complex projects.
  - Simple projects requiring nominal involvement by Engineering Staff.
- Construction to Normal Standards
  - Oversight fees shall be based on construction to normal City standards.
  - Construction to higher standards (example: Concrete pavement in lieu of asphalt pavement) will be assessed an oversight fee based on the required standard, not the higher standard selected.

2. Evaluation

a) Each project shall be evaluated on an individual basis with the above-listed criteria to establish oversight fee. The City Engineer will review the above-listed criteria with the developer and consultant for fee rate recommendation to the City. Normally the fee will be approximately 4% of the construction cost. The cost for any construction observation during construction will be on an hourly basis. Full time inspection will be required on sewer, water and street project and as necessary on others.

b) Payment

Payment of the review and oversight fee as set by the City Engineer will be made in advance of project construction or be paid through a special assessment district once bonds are sold.

c) Agreement

The developer/owner shall enter into an agreement with the City regarding the conditions listed pertaining to the design and oversight of public facilities as a condition of development on public right-of-way. This agreement shall be in place prior to final approval of any work undertaken by City staff (or appointed

staff).

CHAPTER FIFTEEN

WATER AND SEWERS

ARTICLE 1

Utility Established

15.0101 Water and Sewer Department Established

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

15.0102 City Water and Sewer Department to be Independent Agency

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

15.0103 Scope of Utility

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

15.0104 Service Charges - Use of

The City Water and Sewer Department shall at all times be so operated and maintained, and rates and charges for its services, facilities, products and by-products shall be such, as to make the utility self-supporting and self-perpetuating. Such charges from time to time imposed and collected shall be made and kept adequate to pay as incurred all costs of operation and maintenance of said utility and to establish and maintain reasonable operating reserves; to produce net revenues which shall be sufficient at all times to pay promptly the principal and interest due on all obligations of the City incurred for the improvement, extension and enlargement of said utility, to the extent that such obligations are according to their terms payable from said net revenues, and to establish and maintain adequate reserves for the security of said obligations. Charges may be set to produce surplus net revenues, over and above current principal, interest and reserve requirements, in amounts sufficient to provide reasonable allowances for depreciation and replacement of the utility plus a reasonable return on the City's capital investment therein which surplus net revenues, when actually on hand, and to the extent that they are not required as a reserve for depreciation and replacement, may from time to time be appropriated by the governing board to pay or contribute to the cost of any other City functions, subject to the limitations now or hereafter prescribed by law.

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

15.0105 Policy on Improvements - Extensions

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

1. Where water mains not exceeding six inches or sanitary sewer mains not exceeding

eight inches in diameter are installed adjacent to residential properties, and where water mains not exceeding eight inches or sewer mains not exceeding ten (10) inches in diameter are installed adjacent to commercial properties, the total cost thereof shall be assessed against the properties abutting on such improvements, in sums proportionate to and not exceeding the total benefits determined to be derived therefrom by the respective properties. Water and sewer mains of the dimensions above described are referred to herein as “lateral” mains and other mains are referred to as “trunk” mains.

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

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

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

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

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

7. Where due to any error or omissions or to any special circumstances a special assessment is not levied against any property benefited by an improvement at the time of the construction thereof in accordance with the program described in this section, the City reserves the right to levy a supplemental special assessment upon such property or to impose and collect a special charge for the connection of such property with the utility system in such amount as shall be required to pay its just share of the assessable cost of such improvement.

15.0106 Utility Fund - Separate Accounts

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

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

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

3. Revenue Bond Account. The net revenues of the utility are herein defined as the aggregate of all sums on hand in the Water and Sewer Utility Fund from time to time in excess of the current requirements defined in (1) and (2) above. The entirety of the said net revenues shall be credited each month to the Revenue Bond Account of the Water and Sewer Fund until there shall have been credited within said account, and thereafter so much of the net revenues as shall be necessary to maintain at all times, a reserve in an amount at least equal to the sum of the principal and interest payments due within each next succeeding twelve (12) month period upon all revenue bonds of the City heretofore or hereafter issued and made payable from said accounts. After this reserve has been created, there shall continue to be credited out of the net revenues to the Revenue Bond Account each month, over and above sums required to maintain such reserve, an amount not less than one-twelfth (1/12) of the sum of the principal and interest to become due on all such revenue bonds within the then next succeeding twelve (12) months. Moneys in said account shall be used only for the payment of principal and interest as it becomes due on said revenue bonds, and the reserve shall be used for such purpose only when other moneys in the account are insufficient. All revenue bonds

heretofore and hereafter issued and made payable from said account, subject to the limitations upon such issuance contained in Section (6) hereof, shall constitute a first lien and charge on the net revenues of said utility without preference or priority of one bond over any other. However, if at any time the moneys in the Revenue Bond Account should be insufficient to make all payments of principal and interest due on such revenue bonds, and cannot be made sufficient by transfer of moneys from the other accounts described below, the moneys available shall be first used to pay interest then accrued on all bonds payable from said account, and any excess moneys available shall be used to pay matured principal of such bonds in order of their maturity dates, provided that moneys available for payment of bonds maturing on the same date shall be prorated equally among such bonds.

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

5. Replacement and Depreciation Account. There shall be maintained a Replacement and Depreciation Account, into which there shall be credited and paid as received, except as otherwise stated below, all net revenues in excess of the current requirements of the other accounts above described. In said account there shall be maintained such balances as the governing body shall from time to time determine to constitute an adequate reserve for depreciation and replacement of the utility, which reserve may be used to redeem prior to maturity obligations payable from the net revenues as and when the same become pre-payable according to their

terms, or to replace worn out or obsolete properties of the utility, or to make extensions, enlargements or improvements thereto. Any moneys in said account determined to be surplus to the immediate requirements therefore may be invested or may be transferred to other City funds in the discretion of the Board, in the manner and subject to the limitations set forth in N.D.C.C. § 40-33-12; and any acts amendatory thereof or supplemental thereto.

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

7. Additional Accounts. The City also reserves the right to create additional accounts within the Water and Sewer Utility Fund for the purpose of segregating any surplus net revenues which may be pledged and appropriated to the payment of obligations hereafter issued to finance improvements, enlargements or extensions of said utility, other than the obligations made payable from the Revenue Bond Account and the Improvement Warrant Account, pursuant to the authority for such issuance reserved in Section 15.0107 hereof. Moneys on hand in any such account shall at all times be available for and used to the extent necessary to meet the current requirements of all of the foregoing accounts except the Replacement and Depreciation Account.

15.0107 Provisions for Financing Capital Improvements

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

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

2. Except as provided in parts (3) and (4) below, no obligations shall be issued and made payable from the Revenue Bond Account or the Improvement Warrant Account at any time unless the net revenues of the utility, as defined in Section 15.0106 (3) hereof, received during the then next preceding fiscal year, shall have been in an aggregate amount at least equal to one hundred twenty five percent (125%) of the average annual principal and interest payments due on all bonds payable from the Revenue Bond Account which are then outstanding or then to be issued, plus such percentage of the average of the annual principal and interest payments due on each issue of improvement warrants then outstanding or then to

be issued as shall be payable from said net revenues, which averages shall be computed on the basis of the principal and interest payments due in the fiscal years of the then remaining term of all such revenue bonds and improvement warrants then outstanding. For the purpose of such computation, whenever rates for water and sewerage service have been changed in the course of any fiscal year, the net revenues for such year shall be deemed to be those which would have been received if such amended rates had been in effect during the entirety of such year, based upon the actual quantities of service furnished to each class of customers and the actual expenses of the utility during such year; provided that in no case shall the net revenues so computed be deemed to exceed one hundred twenty five percent (125%) of the net revenues actually received during such year.

3. Refunding revenue bonds may be issued for the purpose of prepaying and refunding bonds payable from the Revenue Bond Account when and as they become pre- payable according to their terms, in the manner and to the extent permitted by law, provided that such refunding revenue bonds shall be subject to the requirements set forth in part (2) hereof, as applied to the past net revenues and future principal and interest requirements as of the date of the issuance of such refunding revenue bonds. However, the City shall and does hereby also reserve the right and privilege of issuing refunding revenue bonds, when permitted by law, for the maturities of any bonds payable from the Revenue Bond Account which have matured and for the payment of which the moneys in the Revenue Bond Account are insufficient, and cannot be made sufficient by transfer of moneys from other accounts, and such refunding revenue bonds shall be payable from the Revenue Bond Account on a parity as to interest with all then outstanding bonds payable therefrom, but the maturities of such refunding revenue bonds shall be subsequent to the maturities of all such outstanding bonds. Nothing herein shall be deemed to require the holder of any revenue bond to accept a refunding revenue bond in exchange therefore.

4. The City also reserves the right and privilege of issuing refunding improvement warrants in the manner and to the extent provided in Chapter 40-27 of the North Dakota Century Code and acts amendatory thereof and supplemental thereto. The lien and charge of such refunding warrants on the net revenues appropriated to the Improvement Warrant Account shall be the same as that in favor of the improvement warrants refunded thereby; provided that for the purpose of the computations directed to be made in this section, the maturities and the rate or rates of interest payable on such refunding warrants shall be substituted for the maturities and interest rates of the improvement warrants refunded thereby.

5. Nothing herein shall be deemed to affect the obligation of the City, under the laws of the State of North Dakota, to levy ad valorem taxes upon all taxable property within its corporate limits for the purpose of paying a deficiency, if any, in the fund of any improvement district, at the time of the maturity of the last warrant drawn thereon, or at such earlier time as may be hereafter directed by such laws; provided that it shall be the policy of the City that the amounts of any deficiency tax levies so made shall be restored to the general funds of the City out of any surplus net revenues thereafter received, over and above the requirements of the several

accounts of the Water and Sewer Utility Fund as stated in Section 15.0106 hereof.

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

15.0108 Agreements with Bond and Warrant Purchasers

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

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

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

3. It will at all times maintain a schedule of rates, charges and rentals for all services, facilities, commodities and benefits furnished by said utility and will impose and collect the same in amounts at least sufficient to make the minimum payments into the respective accounts of the Water and Sewer Utility Fund as specified in Section 15.0106 hereof, and will revise such schedules in such manner and as often as needed to perform this covenant.

4. Under each such schedule, the City shall be obligated to pay and will pay from its other funds to the Water and Sewer Utility Fund a fair and equitable amount for any and all services, facilities, commodities and benefits furnished to the City or any of its departments by the utility.

5. It will at all times maintain books of account adequate to show all receipts and disbursements of the City respecting the utility, and application of such receipts to the purposes of the several accounts described in Section 15.0106 hereof, which books of account shall be open to inspection by the holder of any obligation payable from the Revenue Bond Account or the Improvement Warrant Account at any reasonable time. The City will furnish a certified transcript therefrom of any information which any such bond or warrant holder may request, upon payment of a reasonable fee therefore.

6. It will cause the annual financial statement of the City required by the provisions of N.D.C.C. § 40-16-05 to include a statement as to the financial condition and the

receipts and disbursements of the Water and Sewer Utility Fund and of its several accounts during each fiscal year, and will furnish a copy of such statement to the original purchaser of each issue of bonds or warrants upon request.

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

8. It will at all times keep the properties of said utility insured in reasonable amounts against loss or damage by fire, tornado and other risks for which similar properties are customarily insured by prudent owners, and will carry adequate public liability insurance, insuring against any claim of personal injury of property damage which is or may become a charge against the revenues of the utility. The City will also cause all persons handling funds of the utility to be bonded in suitable amounts for the protection of the City and the holders of obligations of the utility, and the expense of all such insurance and bonds shall be accounted for as an operating cost of the utility. The City will use the proceeds of any such insurance and bonds to restore the loss or damage compensated thereby.

9. The City and its governing body and each and all of its officers will punctually perform all duties with reference to said utility and the revenues thereof and the obligations issued hereunder which are imposed by the ordinances and resolutions of the City in force on the date upon which any such obligations are issued. All provisions of the Constitution and laws and of such ordinances and resolutions which are provide security for the holders of bonds issued hereunder are acknowledged to be a part of the City's contract with the holders of such obligations; provided that nothing herein shall be deemed to preclude the City from modifying the policies set forth in Section 15.0105 hereof with reference to any improvements constructed and financed after the effective date of such modification.

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

ARTICLE 2

Water Service

15.0201 Water System

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

15.0202 Superintendent of City Water and Sewer Department

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

15.0203 Application for Water Service and Service Connection Charge

Any party desiring water and sewer service from said utility for premises not heretofore connected with the system, and not subject to the provisions of Section 15.0204 set forth below, shall apply for a connection on a form provided by the City. Such application shall state an exact description of the premises to be served, and the uses, both general and special, to which the water is to be put, the nature of sewage to be discharged, and the estimated amount of water to be used for a quarter-annual period. Such application shall be filed with the city auditor, and the applicant shall thereupon pay to the city auditor, as a connection charge, the sum of twenty five dollars ($25) dollars for a residential building, commercial building or multiple dwelling.

Any person desiring to construct, repair and maintain new and or existing water and sewer lines must notify the City Supervisor, who shall be the same person that is appointed as the water and sewer utility superintendent, prior to any excavation within at least 48 hours of beginning the work. In addition, the person shall notify the City supervisor and the city auditor of the time and place where excavation will take place. Furthermore, said

person shall pay to the city at the city auditor's office an inspection fee of twenty-five dollars ($25.00). No person shall excavate for water or sewer lines within the City without having complied with the ordinances in this chapter. Any person who fails to abide by this ordinance shall pay an administration fine to the city in the amount of five hundred dollars ($500.00). Failure to pay such fine if levied upon the contractor, shall be assessed against the property owner of the real estate in which the excavation work is being done.

15.0204 Water Service - To Property Not Previously Assessed

No permit shall be issued for the making of any connection between any water or sewer line on any property which has not previously been benefited by existing water and/or sewer lines or whenever the owners of such property have not been assessed for such water and sewer lines, unless and until such person shall have paid or made a written statement with the City to pay in monthly installments within a maximum of two (2 years an amount of money as may be therefore determined by the governing body. The amount of the payment shall be based on the area served and benefit resulting to the property involved. Within thirty (30) days of the receipt of such application, the governing body shall determine the amount of money required to be paid before such connection shall be made and shall advise the applicant property owner of such determination. All such money paid and received pursuant to the provisions of this section shall be placed in the water and sewer utility fund and shall be expended in accordance with the purposes of such fund.

15.0205 Subsequent Connection to Premises

Any party, other than the original applicant, desiring service for premises where a connection has been made pursuant to Sections 15.0203 and 15.0204 hereof shall make written application therefore as in cases described in Section 15.0204 hereof, and if the connection charge for such premises has not been fully paid at such time, the applicant shall pay or agree to pay the remainder thereof in like manner and time as described in Section 15.0203 and 15.0204 hereof.

15.0206 Separate Connections for each Premise - Exception

Unless special permission is granted by the water and sewer utility superintendent, each premise shall have a separate and distinct water service connection and sewer service connection, and where permission is granted for branch service systems, each unit on the branch shall pay the fees as set in 15.0222.

Any building located within two hundred (200) feet from any public water or sewer main must be connected to the system (See Uniform Plumbing Code 2000 Edition Section 713.4), unless specifically stated by resolution adopted by the City Council.

No application for water and/or sewer service outside the city limits of the City shall be approved and no person outside the corporate limits of the City shall hook up to or make connection with the city water and/or sewer system whether the same now is outside or inside the incorporated limits of the City. Water service outside the corporate limits of the City may be permitted pursuant to contractual agreement of the City Council

arising in limited and extraordinary circumstances but shall be permitted only upon a resolution adopted by the City Council. (Source: North Dakota Century Code Section 40-33-13, 14) Water services may be contracted with Rural Water Districts pursuant to North Dakota Century Code 61-35-12.24.

No application for water and/or sewer service shall be approved and no person shall hook up to or make connection with the City water and sewer system unless the area to be served by said water and/or sewer connection has been duly platted and the plat approved by the City Council and recorded in the County Register of Deeds Office. The City may be permitted pursuant to contractual agreement of the City Council arising in limited and extraordinary circumstances but shall be permitted only upon a resolution adopted by the City Council.

15.0207 Water Service - Construction of - Maintenance of by Owner

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

The cost of the installation of all plumbing between the city main and curb stop (including the curb stop), as well as repairs to and from the city main up to and including curb stop, shall be the legal responsibility of the City of Oakes, unless specifically stated otherwise by resolution of the City Council.

The cost of the installation of all plumbing from the curb stop to any service hook up to the customer's residence or other structure, including all extensions made to such p lumbing, as well as well repairs to and from the curb stop to the residence or other structur e, shall be the legal responsibility of the consumer, and not the City of Oakes, unless spec ifically stated otherwise by resolution of the City Council.

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

15.0208 Unlawful to Use Water Not Metered - Unlawful to Tamper with Curb Cock

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

15.0209 Meter Required

Meters shall be firmly and substantially set in a workmanlike manner in a convenient and readily accessible location for reading and inspection. No tap or withdrawal of water by the consumer for any purpose shall be permitted ahead of the city meter, or between the meter and the main line. The consumer shall not, after original installation of a meter, make any alterations or additions, which will interfere with the repair, maintenance, reading, or operation of the meter. Meters shall at all times be sealed and such seals shall not be broken. Meters shall be removed only by authorized employees of the waterworks department. There shall be a two dollars ($2) per month per meter charge which shall be deemed a maintenance fee and shall be charged against each meter in the city of OAKES and the charge shall be added to the monthly billing for each meter.

15.0210 Frozen Water/Sewer Line Policy

In the event of frozen or potentially frozen service lines, the City will give public announcements advising property owners of potential issues regarding the service line, along with advice to run a constant trickle of water to avoid freezing water lines. During such times, the City may adjust water billing rates based on average usage. If a property owner experiences a frozen water or sewer line, the property owner should first contact City Hall to report the issue. After reporting the issue to City Hall, the property owner should contact a licensed plumber and inform the plumber to work with City employees to deal with the frozen line issue. The property owner and the City will each be responsible for half of all expenses incurred to thaw the frozen water line up to the water main or the frozen sewer line up to the sewer main, with the City's maximum responsibility being $500. The City will provide equipment and assistance to the plumber, if necessary, at no cost to the property owner.

15.0211 Defective Service - Consumers Duty to Report

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

15.0212 Users Consent to Regulations

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

15.0213 Regulations Governing Service

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

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

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

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

4. Shutting Off Water - Charge for. The water department shall make a charge of forty-five dollars ($45) each for shutting off or turning on services. Entrance and Access to Premises by Waterworks Employees. Authorized employees of the water and sewer department shall have free access to any premises supplied with water, at proper times, to inspect and ascertain the condition of the meters and fixtures, or for reading meters, and no owner or occupant shall refuse such employees such access. The water department shall have the right to enter any premises and remove the meter for the purpose of examination and test after first notifying the owner or occupant, and to shut off the water to premises where free access is prevented.

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

15.0214 Connection to be Supervised by City Employees

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

may be.

15.0215 Service Pipes Specifications

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

15.0216 Curb Cock Specifications

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

15.0217 Check Valves Required When Necessary

Check valves are hereby required on all water connections to stem boilers or any other connection deemed by the water and sewer utility superintendent to require one. Safety and release valves shall be placed on all boilers or other steam apparatus connection with the water system where the steam pressure may be raised in excess of fifty (50) pounds per square inch.

15.0217.1 Use of Water During Fire-Unlawful

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

15.0217.2

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

15.0218 Rates and Charges - Liability for

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

15.0219 Duty to Report to Auditor

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

15.0220 Excavators

No person, firm or corporation shall excavate in or on any street, alley or other public place for the purpose of installing any water and/or sewer connection until they have complied with the provisions of all relevant ordinances regarding excavations.

15.0221 Restriction of Use of Water

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

15.0222 Water Charges

The water charges of the city of OAKES provided by resolution of the City Council as amended from time to time and shall be on a monthly basis covering the respective monthly periods each year. The owner or occupant of each residential or commercial premises connected with the water works system of the city of OAKES shall pay for all water used and/or consumed at a rate as may be revised or supplemented to by the city council, and may be raised or reduced from time to time by resolution; provided, that as so revised, such rates and charges shall always yield gross revenues at least adequate to pay all current costs of operation and maintenance of such system and produce net revenues sufficient for the prompt and full payment of all amounts payable by the city in respect to said system.

15.0223 Utility Billing Policies

1. The charge for services of water, sewer, garbage collection, mosquito, and street lights and any other charges added by approval of City Council begins when the curb stop is installed and connection made, whether used or not.
2. Billing is done monthly based on the meter readings for the month. Meter readings will be collected at the end of each month. (Bills will be completed and mailed by the following business day of the reading collection)
3. All bills are due on the 15th of each month. If the bill is not paid by the next billing date, an additional $3.00 late charge will be applied. NDCC 13-01-14)
4. All accounts must be current by 4pm on the 10th of the month. If balance is outstanding in sixty (60) days and is over $10.00, it shall be declared delinquent. The City reserves the right to discontinue its services once an account has been considered delinquent. Delinquent accounts will be notified after the 10th of each month for nonpayment. Account must be paid to current status by 4pm on the 14th of the month or services will be disconnected on the 15th of the month or the Monday following the 15th of the month. Once service is disconnected, account must be paid in full plus a re-connect fee of $45.00 before services can be reinstated. If an account is delinquent on October 15 of each year, the entire balance will assessed to the property taxes. Instead of delinquent notices, notices will be mailed informing balance will be turned over to taxes (no disconnects in month of October).
5. Landlords/Property Owners reserve the right to disconnect services at any time. Advance notice must be given to City Hall.
6. Bills will only be adjusted one billing cycle once the notice of change is received from resident or owner.

15.0224 Outside City Limits

Any account located outside the city limits past 30 days due will be considered delinquent and service will be stopped until account paid in full. Any accounts not paid in full after 90 days may be subject to legal action. For services to resume, account must be paid in full.

15.0225 Penalty Provisions

Penalty Provisions: Any person violating provisions of the city water and sewer ordinances shall receive written notice stating the nature of the violation. The person, firm, occupant, tenant or partnership shall have seven (7) days to comply with the notice. Anyone who continues the violation after the seven (7) day notice shall be guilty of an infraction. Upon conviction of the District Court, the person shall be fined a sum determined by the District Court and not exceeding one-thousand dollars ($1000.00) for each violation. Each day in which any such violation shall have continued after the seven (7) day notice shall be deemed a separate offense.

ARTICLE 3

Regulation of Sewer Use

15.0301 Purpose

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

15.0302 Definitions

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

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

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

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

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

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

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

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

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

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

(10) "Person" shall mean any individual, firm, company, association, society, corporation or group.

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

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

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

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

(15) "Sewage" is the spent water of a community. The preferred term is "wastewater," Sec. 24.

(16) "Sewer" shall mean a pipe or conduit that carries wastewater or drainage water.

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

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

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

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

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

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

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

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

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

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

(27) "Hearing Board" shall mean that board appointed according to the provisions of Section 15.0309.

15.0303 Use of Public Sewers Required

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

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

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

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

within two hundred (200) feet (61 meters) according to the North Dakota plumbing code of the property line.

15.0304 When Private Sewage Disposal Permitted

(1) Where a public sanitary or combined sewer is not available under the provisions of Section 15.0303 (4), the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this article.

(2) Before commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit signed by the superintendent. The application for such permit shall be made on a form furnished by the City, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the superintendent. A permit and inspection fee of twenty dollars ($20) shall be paid to the City at the time the application is filed.

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

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

(5) At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in Section 15.0303 (4), a direct connection shall be made to the public sewer within sixty (60) days in compliance with this ordinance, and any septic tanks, cesspools and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.

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

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

15.0305 Building Sewers and Connections

(1) No unauthorized person shall uncover, make any connection with or opening into,

use, alter or disturb any public sewer or appurtenance thereof without first (1st) obtaining a written permit from the superintendent.

(2) There shall be two (2) classes of building sewer permits: (a) for residential and commercial service, and (b) for service to establishments producing industrial wastes. In either case, the owner or his agent, shall make application on a special form furnished by the City. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the superintendent. A permit and inspection fee of twenty dollars ($20) for a residential or commercial building sewer permit and twenty dollars ($20) for an industrial building sewer permit shall be paid to the City at the time the application is filed.

(3) All costs and expenses incidental to the installation and connection of all plumbing of the building sewer from the property line or water curb stop location to any service hookup to the customer's residence or other structure, including all extensions made to such plumbing, as well as well repairs to and from the property line or curb stop to the residence or other structure, shall be the legal responsibility of the owner, and not the City of Oakes, unless specifically stated otherwise by resolution of the City Council. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer. The cost of the installation of all plumbing between the city main and property line or where the water curb stop is installed, as well as repairs to and from the city main to the property line, shall be the legal responsibility of the City of Oakes, unless specifically stated otherwise by resolution of the City Council.

(4) A separate and independent building sewer shall be provided for every building; except where one (1) building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer. The City does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection.

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

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

(7) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is

too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer. All costs and expenses incidental to the installation of any device or mechanism to lift sanitary sewage shall be assessed to the owner(s), unless otherwise specifically stated by resolution adopted by the City Council.

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

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

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

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

15.0306 Use of Public Sewers

(1) No person shall discharge or cause to be discharged any unpolluted waters such as storm water, surface water, groundwater, roof runoff, subsurface drainage or cooling water: (a) onto any public property, nor (b) to any building drain or sewer which in turn is connected directly or indirectly to the sanitary sewer or to the storm sewer, (b) unless such activity and/or connection is approved by the City Council as a special use permit.

(2) Storm water other than that exempted under Section 15.0306 (1) and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the superintendent and the North Dakota State Department of Health.

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

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

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

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

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

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

(a) Wastewater having a temperature higher than one hundred fifty (150) degrees Fahrenheit (65 degrees Celsius).

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

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

(d) Any garbage that has not been properly shredded (see Section 15.0302 (12). Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers.

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

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

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

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

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

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

(5) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in 15.0306 (4), and which in the judgment of the superintendent, may have a deleterious effect upon the wastewater facilities, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the superintendent may:

(a) Reject the wastes;

(b) Require pretreatment to an acceptable condition for discharge to the public sewers;

(c) Require control over the quantities and rates of discharge; and/or

(d) Require payment to cover the added costs of handling and treating the wastes not covered by sewer charges under the provisions of 15.0306 (11).

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

(6) Grease, oil and sand interceptors shall be provided when, in the opinion of the superintendent, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts as specified in 15.0306 (4) (c), or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the North Dakota Plumbing Code and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors the owner shall be responsible for the proper removal and disposal by appropriate means of the captivated material and shall maintain records of the dates, and means of disposal which are subject to review by the superintendent. Any removal and having of the collected materials not performed by owner personnel must be performed by currently licensed waste disposal firms.

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

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

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

(a) Wastewaters discharge peak rate and volume over a specified time period.

(b) Chemical analyses of wastewaters.

(c) Information on raw materials, processes and products affecting wastewater volume and quality.

(d) Quantity and disposition of specific liquid, sludge, oil, solvent or other materials important to sewer use control.

(e) A plot plan of sewers of the user's property showing sewer and pretreatment facility location.

(f) Details of wastewater pretreatment facilities.

(g) Details of systems to prevent and control the losses of materials through spills to the City sewer.

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

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

15.0307 Damage to Sewer Works Prohibited

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

15.0308 Powers and Authority of Inspectors

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

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

(3) While performing the necessary work on private properties referred to in Section 15.0308 (1), above, the superintendent or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company, and the company shall be held harmless for injury or death to the City employees, and the City shall indemnify the company against loss or damage to its property by City employees and against liability claims and demands for personal injury or property damage asserted against the company growing out of the gauging and sampling operation, except such as may be caused by negligence or failure of the company to maintain safe conditions as required in Section 15.0306 (8).

(4) The superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not

limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the wastewater facilities lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

15.0309 Hearing Board

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

(2) One (1) member of the board shall be selected to represent the City, one member shall be selected to represent the sewer used involved in the arbitration and the third member shall be acceptable to both parties and shall serve as the chairman in the arbitration.

15.0310 Penalties

(1) Any person found to be violating any provision of this ordinance except Section 15.0307 shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

(2) Any person who shall continue any violation beyond the time limit provided for in Section 15.0310 (1), shall be guilty of a misdemeanor, and on conviction thereof shall be fined in the amount not exceeding one thousand five hundred dollars ($1,500.00) for each violation. Each day in which any such violation shall continue shall be deemed a separate offense.

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

15.0311 Validity

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

ARTICLE 4

Sewer Surcharge

15.0401 Purpose

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

(2) The definitions set forth in Section 15.0302 of this chapter shall also apply to this article.

15.0402 Determining the Total Annual Cost of Operation and Maintenance

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

15.0409 Wastes Prohibited from Being Discharged to the Wastewater Treatment System

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

15.0410 Prohibition of Clear Water Connections

No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

ARTICLE 5

Wellhead Protection District

PURPOSE AND INTENT

The OAKES City Council recognizes (1) that residents of the City of OAKES rely exclusively on ground water for a safe drinking water supply and (2) that certain land uses in DICKEY County can contaminate ground water particularly in shallow, surface aquifers. Aquifers existing include, without limitation, the Oakes Aquifer and Spiritwood Aquifer.

The purpose of the Wellhead Protection District is to protect public health and safety by minimizing contamination of the shallow/surface aquifers of DICKEY County. It is the intent to accomplish this, as much as possible, by public education and securing public cooperation.

Appropriate land use regulations will be imposed, however, which are in addition to these imposed in the underlying zoning districts or in other county regulations. It is not the intent to grandfather in existing land uses which pose a serious threat to public health through potential contamination of public water supply wellheads areas.

15.0501 Definitions

1. "Aquifer". A geological formation, group of formations or part of a formation capable of storing and yielding ground water to wells and springs.

2. "Best Management Practices". Measures, either managerial or structural, that are determined to be the most effective, practical means of preventing or reducing pollution inputs from nonpoint sources to water bodies.

3. "Buffer Zone". An area outside and adjacent to Zone A that has been delineated to account for possible changes in the boundaries of Zone A due to effects of irrigation pumping.

4. "Chemigation". The process of applying agricultural chemicals (fertilizer or pesticides) using an irrigation system by injecting the chemicals into the water.

5. "Contamination". The process of making impure, unclean, inferior, or unfit for use by introduction of undesirable elements.

6. "Contingency Plans". Detailed plans for control, re-containment, recovery, and clean-up of hazardous materials released during fires, equipment failures, leaks, and spills.

7. "Development". The carrying out of any construction, reconstruction, alteration of surface or structure or change of land use or intensity of use.

8. "Facility". Something that is built, installed, or established for a particular purpose.

9. "Feedlot". A parcel of land whereon there is contained an operation of feeding or raising animals in excess of one hundred (100) animal units per acre or in excess of five hundred (500) animal units per parcel of land. One (1) animal unit is equivalent to one (1) beef cow, steer, feeder or fat beef animal; one (1) horse; 0.7 dairy cow; 1.7 swine; 6.7 sheep; thirty-three (33) hens, cockerels, capons broiler or ducks; and ten (10) geese or turkeys.

10. "Grey Water". All domestic wastewater except toilet discharge water.

11. "Hazardous Material". A material which is defined in one or more of the following

categories:

a. “Ignitable” A gas, liquid or solid which may cause fires through friction, absorption of moisture, or which has low flash points. Examples: white phosphorous and gasoline.

b. “Carcinogenic” A gas, liquid or solid which is normally considered to be cancer causing or mutagenic.
Examples: PCB’s in some waste oils.

c. “Explosive” A reactive gas, liquid or solid which will vigorously and energetically react uncontrollably if exposed to heat, shock, pressure or combinations thereof. Examples: dynamite, organic peroxides and ammonium nitrate.

d. “Highly Toxic” A gas, liquid or solid so dangerous to man as to afford an unusual hazard to life. Examples: parathion and chlorine gas.

e. “Moderately Toxic” A gas, liquid or solid which through repeated exposure or in a single large dose can be hazardous to man. Example: atrazine.

f. “Corrosive” Any material, whether acid or alkaline, which will cause severe damage to human tissue, or in case of leakage might damage or destroy other containers of hazardous materials and cause the release of their contents. Examples: battery acid and phosphoric acid.

12. “Manure Storage Area” An area for the containment of animal manure in excess of eight thousand (8,000) pounds or one thousand (1,000) gallons.

13. “Leaks and Spills” Any unplanned or improper discharge of a potential containment including any discharge of a hazardous

14. “Pasture” A field that provides continuous forage to animals without depletion of forage matter.

15. “Primary Containment Facility” A tank, pit, container, pipe or vessel of first containment of a liquid or chemical.

16. “Secondary Containment Facility” A second tank, catchment pit, pipe, or vessel that limits and contains liquid or chemical leaking or leaching from a primary containment area; monitoring and recovery are required.

17. “Shallow/Surfical Aquifer”. An aquifer in which the permeable media (sand and gravel) starts at the land surface or immediately below the soil profile.

18. “Ten Year Time of Travel Distance” The distance that ground water will travel in ten years. This distance is a function of the permeability and slope of the aquifer.

19. “Zone of Contribution” The entire area around a well or well-field that is recharging to contribution water to the well or well-field.

15.0502 Zones

1. ZONE A - AQUIFER CRITICAL IMPACT ZONES. Zone A, the wellhead protection area, is the zone of contribution mapped around all public water supply wells or well-fields and includes land up-gradient to the ten year time of travel boundary plus contributing drainage areas.

    a. Permitted uses provided they meet appropriate performance standards outlined for aquifer protection overlay zones:

        i. Agriculture

        ii. Horticulture

        iii. Park, greenways or publicly owned recreational areas.

        iv. Necessary public utilities/facilities designed so as to prevent contamination of ground water.

    b. Special exceptions:

        i. The following uses are permitted only under the terms of a special exception and must conform to provisions of the underlying zoning district and meet the Performance Standards outlined for the Aquifer Protection Overlay Zones.

        ii. Expansion of existing nonconforming uses to the extent allowed by the underlying district. The Commission shall not grant approval unless it finds such expansion does not pose greater potential contamination to ground water than the existing use.

2. Prohibited uses:

    a. New feedlots installed after adoption of this ordinance;

    b. Disposal of solid waste except spreading of manure;

    c. Outside unenclosed storage of road salt, unless properly contained, such as protective barrier;

    d. Processing and storage of PCB containing oils;

    e. Car washes not hooked up to city utilities;

    f. Auto service, repair or painting facilities and junk or salvage yards;

g. Disposal of radioactive waste;

h. Graveyards or animal burial sites;

i. Open burning and detonation sites;

j. A11 other facilities involving the collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or waste having potentially harmful impact on ground water quality;

k. A11 uses not permitted or not permitted as special exceptions;

l. Fall applications of nitrogen fertilizer except spreading of manure;

m. Weeds prays used must conform to county standards;

n. Disposal of waste oil, oil filters, tires and all other petroleum products.

3. ZONE B — Zone B is established as the remainder of the shallow/surficial aquifer not included in Zone A.

a. Permitted uses:

i. All uses permitted in the underlying zoning districts provided that they can meet the Performance Standards as outlined for the Aquifer Protection Overlay Zones.

b. Special exceptions:

i. All special exceptions allowed in underlying districts may be approved by the City Commission provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zones.

c. Prohibited uses:

i. Fall application of nitrogen fertilizer except spreading of manure.

ii. Weed sprays that do not conform to county standards.

d. Performance standards:

i. The following standards shall apply to land uses in Zones A and B of the Aquifer Protection Overlay Districts:

ii. Any new or existing business shall be connected to the City sewer system for containment of human or animal wastes which conforms

with regulation established by the North Dakota State Department of Health.

iii. Any facility involving the collection, handling manufacture, use, storage, transfer or disposal of any solid or liquid material or wastes, except for spreading of manure, in excess of one thousand (1000) pounds and or one hundred (100) gallons which has the potential to contaminate ground water must have a secondary containment system which are easily inspected and whose purpose is to intercept any leak or discharge from the primary containment vessel or structure. Underground tanks or buried pipes carrying such materials must have doubles walls and inspectable sumps. Pipes installed to carry diluted chemicals for chemigation are exempted and storage of liquid fertilizer for chemigation is allowed as long as a secondary containment system is used. Secondary containment for the tanks used for chemigation must be in place July 1, 1990.

iv. Open liquid waste ponds containing materials referred to in (2) above will not be permitted without a secondary containment system except for community wastewater lagoons. Agricultural waste storage ponds are permitted under certain conditions as approved by the City Commission.

v. Storage of petroleum products in quantities exceeding fifty-five (55) gallons at the locality in one (1) tank or series of tanks must be in elevated tanks; such tanks must have a secondary containment system noted in (2) above where it is deemed necessary by the City Commission.

vi. Discharge by industrial process water on site is prohibited without City Commission approval.

vii. Owners/operators of active or abandoned feedlots shall handle and dispose of manure in accordance with regulations set by the City Commission.

viii. Auto service, repair, or painting facilities and junk or salvage yards in Zone B shall meet all Federal and State standards for storage, handling and disposal of petroleum products and shall properly dispose of all other potentially hazardous waste materials.

ix. An acceptable contingency plan for all permitted facilities must be prepared and on file in the materials from contaminating the shallow/surficial aquifer should floods, fire, and other natural catastrophes or equipment failure occur:

1. For flood control, all underground facilities shall include but not be limited to a monitoring system and secondary

standpipe above the one hundred (100) year flood control level, for monitoring and recovery. For above ground facilities, an impervious dike, and above the one hundred (100) year flood level and capable of containing one hundred (100) percent of the largest volume of storage, will be provided with an overflow recovery catchment area

2. For fire control, plans shall include but not be limited to a safe firefighting procedure, a fire retardant system, and provide for dealing safely with both health and technical hazards that may be encountered by disaster control personnel in combating fire. Hazards to be considered are overhead and buried electrical lines, pipes, liquids, chemicals or open flames in the immediate vicinity.

3. For equipment failures, plans shall include but not be limited to:

    a. Below ground level, removal and replacement of leaking parts, a leak detection system with monitoring, and an overfill protection systems.

    b. Above ground level, liquid and leaching monitoring of primary containment systems, their replacement or repair and cleanup and/or repair of the imperious surface.

4. For any other natural or man-caused disasters occurring, the owner and/or operator shall report all incidents involving liquid or chemical material in an endangerment of the health and/or safety of either disaster personnel and or the public in general.

Agricultural operations are exempted from this section unless they store chemicals that are on the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III) extremely hazardous substance list over the threshold planning quantity at any one time.

4. The City Inspector shall be informed within twenty-four (24) hours of all leaks and spills of materials that might potentially contaminate the water.

5. Since it is known that improperly abandoned wells can become a direct conduit for contamination of ground water by surface water, all abandoned wells should be plugged.

15.0503 Scope

The provisions of this article shall apply to all wells or other openings greater that fifteen (15) feet in depth. Furthermore, the owner of any proposed well shall be required to apply and receive from the City Commission a permit to construct such a well or opening, the application for which shall supply all the information required under Article 15.0505, and for such permit the Council shall charge and receive the fee hereinafter provided for.

15.0504 Permit

1. A permit shall be granted when the City Inspector has examined the application and determined that the proposed use, activity, or development meets the performance standards.

2. In securing a use permit, the owner/developer must make future improvements which may become necessary to prevent contamination of shallow/surficial aquifers and the owner/developer must allow City personnel to inspect any improvements to verify they meet the performance standards.

3. Whenever any person has obtained a permit and thereafter desires alteration of the authorized use, such persons shall apply for a new permit. The owner may appeal a City Inspector's decision to modify or deny a requested permit.

4. It shall be unlawful for any person to drill or otherwise construct, repair, correct, abandon or plug a well, or to engage upon such work, within the limits of the area, or to employ anyone else to engage in such work, without first applying for and securing a permit from the City Commission or a duly authorized agent thereof. Such permit may be granted with the approval of the City Commission to any person who files with such Commission the application hereinafter provided for and pays the fee hereinafter required, and complies with all other provisions of this article applicable to him.

15.0505 Application

Every application for a permit for the drilling, construction, repair and correction, abandonment of plugging of a well, shall state the name and address of the owner thereof, the purpose for which the permits is desired, which shall be done or more of the acts above—mentioned; the definite location of the well or proposed well; its approximate depth; and if the permit for the drilling or construction or repair and correction of the water well, the estimated amount of water to be, or which is pumped daily, monthly or annually, and the use or uses for which the water will be or is required; if for a permit for the drilling or construction or for the repair and correction of a well, the proposed method of drilling or construction, or the proposed method of repair and correction, arid the kind or equipment to be used, and in all cases, the name of the contractor(s), and the license number issued by the City Council, if done through a contractor, whom the owner desires to drill or construct, repair and correct, or do the work pursuant to an abandonment of a well in compliance with this article.

15.0506 City Liability

Nothing in this ordinance shall be construed to imply that the OAKES City Council, by issuing a permit, has accepted any of an owner/developer's liability if a permitted development contaminates water in shallow/superficial aquifers.

15.0507 Enforcement

1. Civil Enforcement:

    a. Any person may submit to the city a verbal or written complaint alleging a violation of this ordinance.

    b. Upon receipt of a complaint, the city shall conduct an investigation of the substances of the complaint. The investigation shall include a meeting with the landowner involved and an inspection of the animal feedlot and/or manure storage area to which the complaint pertains.

    c. Based upon the determination that there is a violation of this ordinance, the city shall conduct an informal reconciliation with the violator. As part of such informal reconciliation, the city shall;

        i. Notify the violator by mail of the violation of this ordinance and a desire of the city to correct the violation through informal reconciliation. The statement shall also indicate that should the violator refuse to follow the recommended corrective actions within the time set forth by the city, the may take action to correct the violation and bill the violator for the cost of taking the corrective action.

        ii. Make a good faith effort to meet with the violator and resolve the correction of the violation.

    d. If after taking the steps above and after a period of ninety (90) days following the mailing of the notice of violation, the city in good faith determines that the violator is unwilling to participate in informal reconciliation and take the corrective actions prescribed, the city shall notify the violator by mail of the termination of the informal reconciliation.

    e. The city may take the corrective action prescribed above following thirty (30) days after notifying violator by mail of the notice of termination of the informal reconciliation, and bill the violator for the reasonable cost of such action.

2. Criminal Enforcement:

    a. A person who is alleged to have violated Articles (c) and (d) may be prosecuted for the commission of a Class B misdemeanor and punished accordingly.

15.0508 Savings Clause

Should any section or provision of this ordinance be declared invalid, such decision shall not affect the validity of the ordinance as a whole or any other part thereof.

CHAPTER SIXTEEN

PUBLIC NUISANCES

ARTICLE 1

Sanitary Nuisances

16.0101 Residence – When Sewer and Water Required

It shall be unlawful for any person to use or occupy or permit to be used or occupied for residence purposes, any premises or building within the corporate limits of this City without first making or causing to be made proper connections with the City's sewer and water facilities and mains.

The term "proper connections" when used in this section shall be construed to mean connections with the water mains and sanitary sewers which are equipped and furnished with proper valves and fittings so as to enable such water connections to be used at all times. Sanitary toilets and drains and such equipment shall at all times be kept in repair and in a manner so as to make them available for household use and in condition to be used at all seasons of the year.

16.0102 Outhouses – Cesspools – A Nuisance

The use, construction, maintenance, building or erection of any outhouse, privy, vault or cesspool within this City is hereby declared to be a nuisance and a menace to public health, when in violation of Section 16.0101.

16.0103 Outhouses – Cesspools – Exceptions

1. Private sewage system and private water supplies may be constructed to serve new buildings to be built in areas not included in Section 16.0101, providing such lot area complies with the requirements of any zoning requirements.

2. Private sewage systems and private water systems may be installed in existing buildings in areas not included in Section 16.0101.

3. Each private sewage system or private water supply hereafter altered or constructed shall conform to the State Health Department Standards.

16.0104 Outhouses – Cesspools – Offensive Odors

It shall be unlawful for the owner or occupant of any lot or piece of ground within the corporate limits of this City to permit any private sewer system to emit any offensive odors or to become dangerous or injurious to public health or offensive to sense of smell of the people of the City. Any private sewer system emitting such odor is hereby declared to be a nuisance and a menace to the public health of the City.

16.0105 Outhouses – Cesspools – Cleaning of

In the cleaning of private septic tanks and sewage systems the contents thereof shall be removed in containers fitted so as to prevent the escape of odors or materials therefrom and disposed of in a manner approved by the City health officer.

The pumping of a private sewage system on the surface of the ground or hauling contents thereof in such a manner as to allow the material to spill on the ground, street or public ways is hereby declared to be a public nuisance.

16.0106 Dead Animals

Any person who owned or had possession or control of a dead animal prior to its death shall remove or cause the same to be removed within five (5) hours from the time the animal dies and have the same buried or disposed of in some other sanitary way approved by the City health officer. Any dead animal remaining in any street, alley or other public place in this City, or in any private premises within this City, for more than five (5) hours after the animal shall have died, is hereby declared to be a nuisance. Any person allowing any animal which that person controlled or possessed, prior to its death, to remain in any street, alley or public place, or on any private premises within the City for more than five (5) hours after its death shall be guilty of a violation of this article.

16.0107 Water Pools – Putrid Substances

It shall be unlawful for the owner or occupant of any parcel of ground in this City to suffer or permit water or putrid substance whether animal or vegetable to accumulate or stand so as to cause an offensive odor to be emitted therefrom or to become injurious or dangerous to the health of the neighborhood. Any pool of water and any putrid substance permitted to become offensive or injurious to the public health are hereby declared to be a public nuisance.

16.0108 Garbage and Refuse

Depositing, maintaining or permitting to be maintained or to accumulate upon any public or private property, any household waste, including but not limited to, items such as paper, rags, trash, garbage, discarded clothing, shoes, curtains, linens, and other apparel, batteries, motor oil, tin cans, aluminum cans, plastic containers, glass containers, cleaning utensils, cooking utensils and discarded household fixtures; water, sewage, excrement, any decaying fruit, vegetables, fish, meat or bones or any foul, putrid or obnoxious liquid substances when such items are stored, collected, piled or kept on private or public property, and in view of adjacent properties or public right of ways is hereby declared to be a public nuisance.

16.0109 Undressed Hides and Carcasses

Undressed hides and carcasses kept longer than twenty-four (24) hours, except at the place where they are to be manufactured, or in a storeroom, or basement whose construction is approved by the health department is hereby declared to be a public nuisance.

16.0110 Breeding Places for Flies

The accumulation of manure, garbage or anything in which flies may breed is hereby declared to be a public nuisance.

16.0111 Stagnant Water

Any excavation in which stagnant water is permitted to collect is hereby declared to be a public nuisance.

16.0112 Garbage Handling Improperly

Throwing or letting fall on or permitting to remain on any street, alley or public ground any manure, garbage, rubbish, filth, fuel or wood while engaged in handling or removing any such substances is hereby declared to be a public nuisance.

16.0113 Rodents

Accumulation of junk, old iron, automobiles or parts thereof, or collection of branches or stumps, or anything whatever in which rodents may live or breed or accumulate is hereby declared to be a public nuisance.

16.0114 Parking Livestock Trucks or Trailers in Residential Districts

Parking or permitting a livestock truck or trailer to remain on any street, area or public ground in a residential district when such truck or trailer gives off an offensive odor or is contaminated with manure or other filth is hereby declared to be a public nuisance.

16.0115 Household Appliances

Household appliances, fixtures and furniture including but not limited to, items such as stoves, refrigerators, freezers, sinks, cabinets, and other kitchen appliances, bedroom furniture, mattresses, tables, chairs, clothes washing and drying machines, heating appliances, water heaters, bathroom appliances and fixtures, light fixtures, washtubs, when such items are stored, collected, piled or kept in a district zoned residential, commercial or any residences in other zoning districts and are not stored inside a building is hereby declared to be a public nuisance. Except that patio furniture designed for outdoor use shall not constitute a nuisance when kept in a residential district, and in view of adjacent properties or public rights-of-way.

16.0116 Dismantled Motor Vehicles, Etc.

The wrecking, storing or accumulation of dismantled motor vehicles, motor vehicle bodies and disassembled parts thereof, dismantled bicycles or bicycle parts, other machines and motors and old cars for the purpose of junking the bodies and securing parts by any other person in residential, commercial or any residences in other zoning districts, and are not stored inside a structure thus causing unsightliness in such districts is hereby declared to be a public nuisance.

16.0117 Electrical Generators

The use of generators to supply electricity to any structure within the City of Oakes is prohibited. This prohibition shall not apply to emergency situations when the delivery of electricity by a public utility is interrupted. The failure to pay an electrical bill, resulting in a disconnect by the utility shall not be deemed an emergency. Contractors may use generators for licensed work between the hours of 6:00 A.M. and 6:00 P.M. unless the City Auditor grants a further extension of time, limited to several days.

16.0118 Dog Waste

The owners of all dogs must immediately remove the excrement of their dog(s) from any street, alley, sidewalk, City Park or other public grounds. The owners of all dogs shall immediately remove the excrement of their dog(s) from private property which they do not own or lease. Owners of dogs shall not allow dog excrement from their dog(s) to accumulate on their property if it creates a breeding ground for flies or other insects. All persons and businesses boarding dogs shall have the same responsibility as an owner to remove waste. Violation of this section is not subject to the other notice requirements of this chapter and may subject the owner of the dog to a fine of $25.00 for each violation.

ARTICLE 2

Smoke – Gases

16.0201 Smoke, Dust, Ashes, Cinders, Gases – A Nuisance

The emission of dense smoke, ash, dust, cinders or noxious gases from any machine, contrivance or from the smoke stack or chimney of any building or premises in such quantities as to cause injury or detriment to any person or persons or to the public, or to endanger the comfort, health or safety of any person or persons, or in such manner as to cause or tend to cause damage or injury to property, is hereby declared to be a public nuisance.

16.0202 Smoke, Dust, Ashes, Cinders, Gases – Prohibited

No person, persons, association or corporation shall cause, permit or allow the escape from any smoke stack or chimney into the open air, of such quantities of dense smoke, ash, dust, soot, cinders, acid or other fumes, dirt, or other material, or noxious gases, in such place or

manner as to cause injury, detriment or nuisance to any person or persons, or to the public, or to endanger the comfort, health or safety to any such person or persons, or the public, or in such manner as to cause or have a natural tendency to cause injury or damage to business or property.

ARTICLE 3

Radio Interference and Noise Control

16.0301 Radio Interference Prohibited

It shall be unlawful for any person knowingly to maintain, use, operate or cause to be operated within this City, any machine, device, appliance, equipment or apparatus of any kind whatsoever, the operation of which shall cause reasonably preventable electrical interference with radio reception within said municipal limits. The maintenance, use or operation within the City of any machine, device, appliance, equipment or apparatus of any kind so as to interfere with radio reception in violation hereof is hereby declared a public nuisance.

16.0302 Loud, Disturbing, Unnecessary Noises – Prohibited

The making, creating or maintenance of loud, unnatural or unusual and disturbing noises are a detriment to public health, comfort, convenience, safety and welfare, and are hereby declared to be unlawful and a public nuisance. The following acts, among others, are declared to be prohibited noises in violation of this section, but such enumeration is not exclusive:

1. The sounding of horns or signaling devices on any motor vehicle or motorcycle on any street or public place except as a danger warning.

2. Radios phonographs, etc. The using, operating or permitting to be played, used or operated, any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated, and who are voluntary listeners thereto. The operations of any such set, instrument, phonograph, machine or device in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.

3. Loudspeakers, amplifiers for advertising. The using, operating or permitting to be played, used or operated, any radio receiving set, musical instrument, phonograph, loudspeaker, amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure.

4. Yelling, shouting, etc. Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of eleven (11) p.m. and seven (7) a.m., or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office, or in any dwelling, hotel or other type of residence, or of any persons in the vicinity.

5. Schools, courts, churches, hospitals. The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while the same are in use, or adjacent to any hospital, which unreasonably interferes with the workings of such institution, or which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed indicating that a school, hospital, or court is in the vicinity.

6. It shall be unlawful for the driver of any vehicle, including but not limited to motor carriers, trucks, semi-trailers and tractor trailers, to cause their vehicle to brake or slow by any method which increases the noise emission levels of the engine, including but not limited to the use of compression brakes, commonly known as “jake braking”, which use the vehicle’s engine compression to reduce the engine’s revolutions per minute.

ARTICLE 4

Personal Property

16.0401 Definitions

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

1. The term "junk" shall include, without limitation, trash, rubbish, parts of machinery or recreational vehicles, unused furniture, stoves, refrigerators, or other appliances, remnants of wood, metal, or any other castoff material of any kind, whether or not the same could be put to any reasonable use.

2. The term "junk automobiles" shall include, without limitation, any motor vehicle which is not licensed for use upon the highways of the state of North Dakota for a period in excess of thirty (30) days, and shall also include, whether licensed or not, any motor vehicle which is inoperative for any reason for a period in excess of thirty (30) 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.

3. The term "abandoned vehicle" shall include, without limitation, any vehicle that has remained for a period of more than forty-eight (48) hours on public property illegally or lacking vital component parts, or has remained for a period of more than forty-eight (48) hours on private property without consent of the person in control of such property or in an inoperable condition such that it has no substantial potential

further use consistent with its usual functions unless it is kept in an enclosed garage or storage building. It also means a motor vehicle voluntarily surrendered by its owner to a person duly licensed under section §39-26-10. An antique automobile, as defined in section §39-04-10.4, and other motor vehicles to include parts car and special interest vehicles, may not be considered an abandoned motor vehicle within the meaning of this chapter.

4. The term "blighted structure" shall include, without limitation, any dwelling, garage, or outbuilding, or any factory, shop, store, warehouse or any other structure or part of a structure which, because of fire, wind, or other natural disaster, or physical deterioration, is no longer habitable as a dwelling, nor useful for the purpose for which it may have been intended.

5. The term "building materials" shall include, without limitation, lumber, bricks, concrete or cinder blocks, plumbing materials, electrical wiring or equipment, heating ducts or equipment, shingles, mortar, concrete, or cement, nails, screws, or any other materials used in constructing any structure.

6. The term "person" shall include all natural persons, firms, co-partnerships, corporations, and all associations of natural persons, incorporated or unincorporated, whether acting by themselves, or by a servant, agent or employee. All persons who violate any of the provisions of this ordinance, whether as owner, occupant, lessee, agent, servant or employee shall, except as herein otherwise provided, be equally liable as principals.

7. The terms "trash" and "rubbish" shall include any and all forms of debris and waste material not herein otherwise classified.

16.0402. Contrary to Public Health and Safety—Nuisance.

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

16.0402.1 When State Law Supersedes Municipal Ordinances-Abandoned Vehicles.

To the extent that the North Dakota Century Code Chapter 23.1-15 supersedes (supremacy clause analysis) these city ordinances, said N.D.C.C. Chapter 23.1-15 law and procedures are incorporated herein and shall be applicable, but only to the extent such state law directly supersedes a specific ordinance section. To the extent that state law regarding abandoned vehicles is more favorable to the city, the city may in its sole discretion utilize state law regarding abandoned vehicles as an alternative to utilization of city ordinances.

16.0403. Unlawful to store or accumulate.

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

2. No person shall abandon any vehicle upon a street, highway, alley or other public roadway.

3. No person shall abandon any vehicle upon any public or private property without the express or implied consent of the owner or person in lawful possession or control of the property.

4. Any motor vehicle, animal and article of personal property which constitutes an obstruction to, hazard or detriment to public traffic, snow removal operations, public safety, public health, or which may be abandoned or unclaimed with the City, is hereby declared to be a nuisance.

5. For purposes of this section, a vehicle shall be presumed to be abandoned if it is left unattended on a highway, alley, or other public roadway, for a period in excess of forty-eight (48) hours; or on any public or private property without the express or implied consent of the owner or person in lawful possession or control of the property, for a period in excess of forty-eight (48) hours.

6. Any police officer who has reasonable grounds to believe that a vehicle or any other item has been abandoned or is otherwise in violation of this Article may remove the vehicle or item, or cause it to be removed, at the expense of the owner, to the nearest garage or other place of safety.

7. In the event a vehicle or other item is not reclaimed along with full payment of all fines, fees and/or costs associated with such vehicle or other item, by the registered owner or owner or any lien-holder within ninety (90) days, the vehicle or other item may be disposed of as provided in this Article or as provided for by the laws of this state governing the disposition of abandoned property in the sole discretion of the City. The City may offer such items for sale to the highest and/or best bidder and shall provide a bill of sale/bill of transfer to anyone who purchases any item sold by the City and to the extent permissible under State law such transfer documentation shall be conclusive evidence of ownership and title of the item.

16.0404. Unlawful to Dismantle Motor Vehicles.

It shall be unlawful for any person to dismantle, cut up, remove parts from, or otherwise disassemble any automobile, whether or not the same be junk automobile, abandoned vehicle, or otherwise, or any appliance, machinery or recreational vehicle, except in a completely enclosed building, or for a period greater than thirty (30) days, or upon the properly zoned business premises of a duly licensed: junk dealer, junk buyer, dealer in used auto parts, dealer in secondhand goods or dealer junk gatherer.

16.0405. Unlawful to Maintain Blighted Structure.

It shall be unlawful for any person to keep or maintain any blights or vacant structure, dwelling, garage, outbuilding, factory, shop, store, or warehouse unless the same is kept securely locked, the windows kept glazed or neatly boarded up, and otherwise protected to prevent entrance thereto by unauthorized persons or unless such structure is in the course of construction in accordance with a valid building permit issued by the city of OAKES, and unless such construction is completed within a reasonable time. This section shall not make otherwise dangerous or nuisance structures legal.

16.0406. Unlawful to Store Building Materials Except on Business Premises.

It shall be unlawful for any person to store or permit the storage or accumulation of building materials on any private property, except in a completely enclosed building or except where such building materials are part of the stock in trade of a business located in said property that is properly zoned for such activity(ies), or except when such materials are being used in the construction of a structure on the property in accordance with a valid building permit issued by the city of OAKES, and unless such construction is completed within a reasonable time, not to exceed ninety (90) days.

16.0407. City May Remove—Notice to Property Owner.

1. The city of OAKES may remove or cause to be removed any trash, rubbish, junk, junk automobiles, abandoned vehicles, building materials, blighted structures, or parts of either, or any other item determined to be in violation of this Article from any public or private property after having notified, in writing, the owner or occupant of such property of its intention to do so at least ten (10) days prior to such removal. Such notice shall identify the property to be removed and the real property upon which it is located and shall state further that if it is not removed by the owner within ten (10) days, it will be removed by the city and the cost thereof will be assessed against the real property described in the notice.

2. The notice may be served personally upon the owner or occupant of the property; or may be served by regular mail addressed to the same person and to the same address as is designated to receive the real estate tax notice for the property. If service of the notice is by mail, three (3) additional days shall be allowed for mailing time.

3. If such trash, rubbish, junk, junk automobiles, abandoned vehicles, building materials, blighted structures or any other violation of this Article has not been removed by the owner within the time specified, it shall be removed by the city and disposed of forthwith. If any abandoned vehicles have not been removed by the owner within the time specified, such abandoned vehicles shall be removed and disposed of as provided in section 16.0403 of this article.

4. Such removal by the city shall not excuse or relieve any person of the obligation imposed by this ordinance to keep his property free from violation of this Article including without limitation storage or accumulation of junk, junk automobiles or abandoned vehicles, or parts of either, nor from the penalties for violation thereof.

16.0408. Appeal to City Council.

In the event the property owner disagrees with the determination of the city and the notice for removal, the property owner may appeal to the city council by filing with the City Auditor, a notice of appeal, in writing. Such appeal must be filed within ten (10) days of receipt of the notice for removal and before the deadline within which the owner is otherwise required to remove the trash, rubbish, junk, junk automobiles, abandoned vehicles, building materials, or blighted structures, or otherwise become in compliance with this Article. Upon receipt of such notice, the city will set a hearing date at a time, to be heard at the next occurring regularly scheduled monthly city council meeting at which time the matter will be heard.

16.0409. Transfer to Other Property.

In the event that any trash, rubbish, junk, junk automobiles, abandoned vehicles, building materials, blighted structures or any other violation of this Article are identifiable and are moved or transferred from one parcel of real property to another after receipt of the notice provided for in section 16.0407 of this article, a new notice shall not be required and the identifiable trash, rubbish, junk, junk automobiles, abandoned vehicles, building materials, or blighted structures may be removed by the city as provided in section 16.0407 of this article and the costs assessed against the property upon which it was located at the time the notice was given.

16.0410. Abatement of nuisance—Penalty.

The cost of removal of trash, rubbish, junk, junk automobiles, abandoned vehicles, building materials, blighted structures or any other violation of this Article may be assessed against the property where said junk, junk automobiles and abandoned vehicles are located at the time the notice was issued. Such removal and assessment of costs shall not be deemed to be the exclusive remedy of the city.

Violation of any of the provisions of this article is an infraction, punishable by a fine of not more than five hundred dollars ($500.00). Each day of violation shall be deemed to be a separate infraction.

16.0411. Removal, Impoundment, and Sale by City.

As an additional remedy and procedure in the discretion of the City, if not reclaimed and redeemed along with full payment of applicable fines, fees and costs by the true owner or the person lawfully entitled to the possession thereof within a period of thirty (30) days after impounding, any article of personal property described in section 16.0401 of this article may be sold and disposed of by the city of OAKES in the manner hereinafter provided.

1. Notice that such property will be sold shall be published once, at least six (6) days prior to the sale, in the official newspaper.

2. Such notice shall specify a description of the property to be sold and the time and place of sale.

3. Any sale may be postponed or discontinued by public announcement at the time of the sale where there are not bidders or when the amount offered is grossly inadequate, or for other reasonable cause.

4. The City may become a purchaser of any or all property at the sale.

5. The purchaser shall be given at the sale a certificate of purchase of such property.

6. Within thirty (30) days after a sale, the person making the sale shall make out, in writing, and file with the City a full report of the sale, specifying the property sold, the amount received therefore, the amount of costs and expenses and the disposition of the proceeds of the sale.

7. The proceeds arising from the sale shall be delivered to the city auditor and credited to the general fund.

ARTICLE 5

Noxious Weeds

16.0501 Definition

Whenever used in this ordinance, the term “noxious weeds” shall mean and include all weeds of the kind known as Canada Thistle, sow thistle, quack grass, leafy spurge (Euphorbia esula or Ruphrobia virgata), field bindweed, Russian knapweed, (Centaurea picris), hoary cress (Lapidium draba, Lepidium reoebs, and Humenophysa pubescens), dodder, or any similar unwanted vegetation over eight (8) inches in height.

16.0502 Weeds Prohibited

No owner of any lot, place or area within the City or the agent of such owner, shall permit on such lot, place or area and the one-half of any road or street lying next to the lands or boulevards abutting thereon, noxious weeds or other deleterious, unhealthful growths.

16.0503 Notice to Destroy

The City health officer is hereby authorized and empowered to notify in writing the owner of any lot, place, or area within the City or the agent of such owner, to cut, destroy, and/or remove any noxious weeds found growing, lying, or located on such owner’s property or upon the one-half of any road or street lying next to the lands or boulevards abutting thereon. The notice shall be by registered or certified mail addressed to said owner or agent of said owner at their last known address and shall give such owner or agent a minimum of five (5) days to cut or destroy the noxious weeds.

16.0504 Action Upon Non-Compliance

Upon the failure, neglect, or refusal of any owner or agent to cut, destroy and/or remove noxious weeds growing, lying or located upon the owner's property or upon the one-half (1/2) of any road or street lying next to the lands or boulevards abutting thereon, after receipt of the written notice provided for in 16.0503 or within five (5) days after the date of such notice in the event the same is returned to the City because of inability to make delivery thereof, provided the same was properly addressed to the last known address of such owner or agent, the health officer is hereby authorized and empowered to pay for the cutting, destroying, and/or removal of such noxious weeds or to order their removal by the City.

16.0505 Dirt, Filth etc. on Streets and Property

It shall be unlawful for any person, firm or corporation to throw, place, deposit, leave or cause to be thrown, placed, deposited or left in any of the public streets, highways, alleys, parks or thoroughfares, or on any private premises in this city, any dirt, filth, sewage, sweepings, rags, dung, garbage, compost, wastepaper, excelsior, straw, hay, leaves, brush, weeds, dry grass, shavings, barrels, boxes, wood, manure, ashes, vegetables, slobs, or litter of any kind. Any place or property having left or deposited thereon any of the things or substances herein listed is hereby declared to be a nuisance.

16.0506 Spitting

No person shall spit upon any sidewalk or upon the stairs, hallway, floor, carpet, furniture or walls of any public or office buildings in the city of OAKES.

16.0507 Cost Assessed to Property

When the City has effected the removal of such noxious weeds or has paid for their removal, the actual cost thereof, if not paid by the owner prior thereto, shall be charged and assessed against the property upon which the noxious weeds were cut or destroyed. An assessment list showing the lots or tracts to be assessed with the cost against each lot or tract shall be prepared as are other special assessment lists and shall be approved by the governing body. Such assessments shall be subject to the same procedure for certification to the county auditor, payment and collection as are other special assessments under state law.

ARTICLE 6

Trees

16.0601 Definitions

For the purpose of this ordinance, the following terms, phrases, words, and their deviations shall have the meaning given herein.

1. "City" is the City of OAKES, State of North Dakota and shall mean all parks,

airport, land fill and lagoon.

2. “Person means any person, firm, partnership, association, corporation, company, or organization of any kind.

3. “Streets” means the entire width of every public way or right-of-way when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular and pedestrian traffic.

4. “Boulevard” means the space between the sidewalk, or the normal location of the sidewalk and the curb line or curb.

5. “Width of Boulevard” means the distance between the sidewalk, or the normal location of the sidewalk and the curb line or curb.

6. “Property Lines” means the outer boundaries of any lot or parcel of land.

7. “Property Owner” shall mean the person owning such property as is shown by the DICKEY County, North Dakota Register of Deeds.

8. “Public Trees" are all shade and ornamental trees now or hereafter growing on any public right-of-way or in any public place or park.

9. “Master List” is a listing of varieties of trees and shrubs determined by the City Council as acceptable for planting in the City. The list will be reviewed by the City Forester and will be available at City Hall. The “Master List” shall be attached to these ordinances as amended from time to time by resolution of the City Council.

16.0602 Administration

1. A Tree Committee is hereby created and shall be composed of one (1) member of the OAKES City Council appointed by the mayor, one (1) the City Forester to be appointed by the City Council, and three (3) other members to be appointed by the OAKES City Council. The members shall be appointed as follows:

    a. For a term of one (1) year: three (3) members

    b. For a term of two (2) years: two (2) members Annually thereafter, Group I and Group II shall be appointed alternately.

   The duties of the Tree Committee shall be to advise and to aid in the coordination of the tree care programs in the City of OAKES, on properties controlled by the City of OAKES.

   The members of the Tree Committee shall serve without compensation.

16.0603 Nuisance Declared

The following conditions are public nuisances whenever they may be found within the City of OAKES:

1. Any living or standing elm tree or part thereof infected to any degree with the Dutch elm disease fungus, Ceratocystis ulmi, and which harbors any of the elm bark beetles, Scolytus multistriatus or Hylurgopinus rufipes or any other disease or insect that is known to harm elm trees and be infectious to other elm trees.

2. Any living or standing ash tree or part thereof infected to any degree with the Emerald Ash Borer or any other disease or insect that is known to harm ash trees and be infectious to other ash trees

3. Any dead elm tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed or chipped and buried in a city land fill during that part of the year, April 15 to October 15, each year.

4. Any dead ash tree or part thereof, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed or chipped and buried in a city land fill during that part of the year, April 15 to October 15, each year

5. Any tree, shrub or hedge, or part thereof, located upon public property or upon private property that is dead or that is overhanging or interfering with the use of any public walk, Street or highway, park or public place within the City of OAKES, which in the opinion of the majority of the Tree Committee, endangers the life, health, safety or property of the public, shall be declared a public nuisance.

16 .0604 Abatement

It is unlawful for any person to willfully permit any public nuisance as defined in 16.0603 to remain on any premises owned or controlled by him within the City. Such nuisance may be abated in the manner prescribed by this ordinance.

16.0605 Inspection and Investigation

1. The Tree Committee shall inspect all premises and places within the City annually to determine whether any condition described in 16.0603 exists therein.

2. The inspection shall determine all hazards as specified in 16.0603(3). The owner shall be notified in writing of the existence of the nuisance and given a reasonable time for its removal.

3. The Tree Committee may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned to it under this ordinance.

4. It shall be up to the Tree Committee to determine if a laboratory diagnosis of a suspect Dutch elm diseased or diseased ash tree is necessary. A field evaluation will usually be adequate unless there is some question about the tree being diseased

or if the landowner requests that a sample be sent into the lab.

5. The Tree Committee, upon finding a suspect Dutch elm diseased tree or a suspect diseased ash tree, immediately shall take and send appropriate specimens or samples to a qualified plant disease diagnostician. No action to remove suspect trees or wood shall be taken until positive diagnosis of the disease has been made.

6. Within five days of receipt of the diagnosis, the owner of the property from which the specimen was obtained shall be notified by the City Council of the result by mail.

16.0606 Abatement of Nuisance in the City of OAKES

1. In abating the nuisance on public streets, alleys, boulevards or public ways as defined in 16.0603, the city of OAKES shall cause the infected tree or wood to be removed or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of Dutch elm disease fungus and elm bark beetles and diseased ash trees. Such abatement procedures shall be carried out in accordance with the latest technical and expert methods and plans as may be designated by the Commissioner of Agriculture of the State of North Dakota. The Tree Committee shall establish specifications for tree removal and disposal methods consistent therewith.

2. In abating tree hazards on public property as defined in 16.0603, the City Council shall cause such hazards to be removed and disposed in accordance with tree care specifications, which, the Committee shall accept, the cost to be assessed as defined in 16.0612.

16.0607 Abatement of Nuisance on Private Property

1. Whenever the Tree Committee finds with reasonable certainty that the Dutch elm disease defined in 16.0605 or any diseased ash tree exists in any tree or wood located on private property, outside of any public way in the City, it shall notify the owner or person in control of such property on which the nuisance is found by mail within five days of receipt of the diagnosis. The Tree Committee shall direct that the diseased tree be removed and effectively treated in a manner approved by the Committee within thirty (30) days after receipt of such notice. If such owner cannot be found, a copy of said notice shall be posted upon said infected tree. If said tree is not so removed and/or treated as specified within thirty (30) days after posting of the notice, the City of OAKES shall remove and/or treat said tree. The owner or person in charge may be charged with a violation of this ordinance for maintaining a nuisance and that the City may abate the nuisance, the cost to be assessed as defined in 16.0612.

2. Abatement of Tree Hazards on Private Property:

   The nuisance as defined in 16.0603 shall be abated by the owner following notification of the existing nuisance. If not corrected or removed within the time

allowed, the Tree Committee shall authorize the removal or correction to be done in accordance with recommended procedures, the property owner to bear the cost.

16.0608 Spraying

1. Whenever the Tree Committee shall determine that any elm tree or ash or part thereof is infected with Dutch elm disease fungus or ash tree disease and is in a weakened condition, it may cause all elm or ash trees within a one thousand (1,000) foot radius thereof to be treated with an effective ash tree or elm bark beetle destroying concentrate as recommended by the State Entomologist.

2. Whenever the Tree Committee shall determine that other diseases or insects pose a problem, it may cause all trees to be treated with control materials as recommended by the State Entomologist.

3. In order to facilitate the work and minimize the inconvenience to the public or any treating operations conducted under this ordinance, the Tree Committee shall cause to be given advance public notice of such operations by newspaper, radio, public service announcements or other effective means and shall also cause the posting of appropriate warning notices in the areas and along the streets where trees are to be treated at least twenty-four (24) hours in advance.

4. When appropriate warning notices have been given and posted in accordance with subsection (c) of this section, the City shall not allow any claim for damages to any vehicle damaged by such treating operations.

5. When trees on private property are to be treated, the City Council shall notify the owner of such property and proceed in accordance with the requirements of this ordinance.

16.0609 Transporting Elm or Ash Wood Prohibited

It shall be unlawful for any person to transport within the City any bark bearing elm wood or ash wood, April 15 to October 15, without having obtained a permit from the City Council. The Council shall grant such permits only when the purpose of this ordinance shall be served thereby.

16.0610 Interference Prohibited:

It shall be unlawful for any person to prevent, delay or interfere with the Tree Committee while it is engaged in the performance of duties imposed by this ordinance.

16.0611 Costs

The costs for abating of the public nuisances as defined in 16.0603 shall be borne as follows:

1. For abatement of the nuisance as defined in 16.0603 whereby the nuisance occurs

on public property the cost will be borne by the City of OAKES, IF the nuisance occurs in a publicly owned place that is: (1) not on any street, alley, boulevard, or other public way adjoining private property, or is (2) on park district lands.

2. For abatement of the nuisance as defined in 16.0603 whereby the nuisance occurs on private property or on any street, alley, boulevard or other public way adjoining the private property, the cost shall be borne by the private owner.

3. For abatement of the nuisance as defined in 16.0603, the costs shall be borne in 16.0612, with the exception that the full cost maximum assessment will apply to each citation.

4. All permits relating to this ordinance will be issued at no cost fee.

16.0612 Tree Planting

The office of the City Council shall, in its sole discretion, issue permits to plant trees and shrubs on any street, alley, boulevard, or other public way adjoining private property and on park district lands and the cost of such planning shall be the sole responsibility of the person seeking to plant such trees and/or shrubs.

All acceptable varieties of trees and shrubs that can be planted within the City will be listed on a Master List which shall be adopted from time to time by the City Council by resolution and filed with the City Auditor.

Public Trees:

Trees may not be planted within 35 feet of any intersection or within 15 feet of any driveway, alley, or utility pole (measuring from the edge of each object). Existing trees that violate this restriction are allowed to remain unless the Oakes Police Department determines the tree is a safety hazard. Any trees removed within restricted area will not be replaced.

City Council or City Forester will determine classification of tree size by motion and spacing of trees shall be as follows:

1. Large trees (50 feet plus) – Boulevard width shall be 7 feet to 9.5 feet or larger depending on the species and planted at the middle distance between the sidewalk and the curb edge.
2. Medium trees (30 – 50 feet) – Boulevard width shall be 5.5 feet to 7 feet or larger depending on the species and planted at the middle distance between the sidewalk and the curb edge.
3. Small tree (less than 30 feet) – Boulevard width shall be 4 feet to 7 feet or larger depending on the species and planted at the middle distance between the sidewalk and the curb edge.
4. The distance between trees shall be a minimum of 30 feet. Other distances shall be as followed:
    a. At least 8 feet from any water lines and fire hydrants.
    b. Trees less than 30 feet shall be planted under the powerlines.

Private Trees:

Any person desiring to plant any trees, plants or shrubs on any street, alley, boulevard, or other public way adjoining private property shall, before planting, notify the City Forester or City Auditor stating the variety and precise location proposed for each tree, plant or shrub.

16.0613 Tree Topping

It shall be unlawful as a normal practice for any person, firm or city department to top any street tree, park tree or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

16.0614 Pruning, corner clearance

Every owner of any tree overhanging any street or right of way within the City shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight (8) feet above the surface of the street or sidewalk.

16.0615 Separability

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

16.0616 Penalty

In the event that any person, firm or corporation violates any provision of the above ordinance sections, they will be subject to revocation of their license and a fine not to exceed five hundred ($500) and thirty (30) days in jail or both fine and imprisonment.

Article 7

Assessment of Costs

16.0701 Assessment of Costs

Any of the costs incurred by the City of OAKES pursuant to the enforcement of this Chapter may be charged against the real property where the costs were incurred or adjacent to the location where the costs were incurred (pursuant to 16.0611) and/or its owner(s) and treated as a special assessment to be collected in the manner provided elsewhere in the OAKES Revised Ordinances and/or the North Dakota Century Code.

ARTICLE 7.1

Fireworks

16.07.101 Restriction Imposed

The sale, use, firing or discharging of any rocket, firecracker, torpedoes, roman candles or of any such "Fourth of July" explosives whatsoever, or fireworks within the City limits is expressly prohibited at any time whatsoever, except as provided by state statute and as stated in the following: Allowable hours of discharging fireworks:

June 27th through July 2nd--8:00 AM to 10:30 PM
July 3rd through July 4th--8:00 AM to 12:00 AM
July 5th--8:00 AM to 10:30 PM
December 31st through January 1st—10:00 PM to 1:00 AM

Those violating the ordinance are subject to a fine of $25.00 each occurrence. A permit process and special approval by the City Council is required for the use of fireworks for special events.

16.07.102 Exceptions to Fireworks Restriction

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

16.07.102 Penalties for Article 7.1 of this Chapter

In the event that any person, firm or corporation violates Article 7.1 of this Chapter, they

will be guilty of a misdemeanor and subject to a fine not to exceed One Thousand Five Hundred Dollars ($1,500) or thirty (30) days in jail or both fine and imprisonment.

Article 8: Camping

16.0801 Definitions. Unless the context requires otherwise the following definitions apply to Article 11.0121.

A. "To Camp" means to set up or to remain in or at a campsite.

B. "Campsite" means any place, including without limitation a motor vehicle, where a person sleeps, or where bedding, sleeping bag, or other material used for bedding purposes, or any stove or fire is placed, established, or maintained for the purpose of maintaining a temporary place to live, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure, or any vehicle or part thereof. A "Campsite" does not include a permanent structure properly constructed under existing zoning ordinances and does not include camper trailers or motorhomes complying with Ordinance Number 11.0600 et seq. regulating the parking of and use of recreational vehicles.

16.0802 Sleeping on Sidewalks, Streets, Alleys, or Within Doorways Prohibited.

A. No person may sleep on public sidewalks, streets, or alleyways at any time as a matter of individual and public safety.

B. No person may sleep in any pedestrian or vehicular entrance to public or private property abutting a public sidewalk.

C. In addition to any other remedy provided by law, any person found in violation of this section may be immediately removed from the premises.

16.0803 Camping Prohibited. No person may occupy a campsite in or upon any sidewalk, street, alley, lane, public right of way, park, bench, or any other publicly-owned property or under any bridge or viaduct, unless

(i) otherwise specifically authorized by Oakes Ordinances,
(ii) by a formal declaration of the Mayor in emergency circumstances, or
(iii) upon City Council resolution, the Council may exempt a special event from the prohibitions of this section, if the Council finds such exemption to be in the public interest and consistent with Council goals.

Any conditions imposed will include a condition requiring that the applicant provide evidence of adequate insurance coverage and agree to indemnify the City for any liability, damage or expense incurred by the City as a result of activities of the applicant. Any findings by the Council shall specify the exact dates and location covered by the exemption.

16.0804 Removal of Campsite on Public Property. Upon discovery of a campsite on public property, the campsite may be removed by the Police Department. The Police Department is authorized to remove the campsite and all personal property related thereto.

Items having no apparent utility or monetary value and items in an unsanitary condition may be immediately discarded. Weapons, drug paraphernalia, items appearing to be stolen, and evidence of a crime may be retained as evidence by the Police Department until an alternate disposition is determined. All personal property removed from the campsite which is not retained, disposed of, or held as evidence shall be stored by the Police Department for a minimum of 30 days, during which time it shall be reasonably available for and released to an individual confirming ownership.

Article 9: Parking Recreational Vehicles

16.0901 Definitions

Whenever used in this article, unless a different meaning appears from the context:

1. "Recreational vehicle" means a portable dwelling that is a motorized (driveable) or non-motorized (towable) vehicle, that includes living/sleeping facilities, and is designed primarily as temporary living quarters during recreational, camping, or travel use. Often abbreviated as RV, the definition includes: motorhomes, campervans, coaches, travel trailers, camper trailers, fifth-wheel trailers, popup campers, and pickup truck cargo box campers.
2. "Recreational vehicle park", “RV park”, or “RV campground” are synonymous terms meaning a parcel or tract of land under the control of a person, organization, or government entity where three or more lots are offered for use by members of the public or an organization for rent or lease. Such facilities are primarily designed to accommodate recreational vehicles.
3. "Mobile home" means any relocatable manufactured structure or unit that is designed to be used as residential living quarters. The term does not include a recreational vehicles.
4. "Mobile home park" means any parcel of land licensed to containing three or more lots intended for occupancy by mobile homes but may permit recreational vehicles.

16.0902 Parking of recreational vehicles – when and where - permits

1. It shall be unlawful, within the limits of the City of Oakes, for any person to park and occupy overnight, any recreational vehicle on any street, alley, or highway, or other public place, or any tract of land owned by any person, occupied or unoccupied, within the City of Oakes, except as provided in this article.
2. No person shall park and occupy any RV on the premises of any dwelling or on any lot which is not a part of the premises of any dwelling, either of which is situated outside an approved recreational vehicle park or mobile home park, without an City of Oakes issued “Visitors RV Permit”.
3. Unoccupied recreational vehicles may be parked or stored:
    a. in a building,
    b. upon property owned or leased by the owner of the RV,
    c. in a rear or side yard of a dwelling, or
    d. on the street (7 consecutive days maximum during the months of April through October, inclusive), and
    e. providing no living quarters shall be maintained in said RV while so parked or stored.
4. The owner of any residence within the City of Oakes may request and receive at no cost a “Visitors RV Permit” issued by City Hall for themselves or guests to park

and allow occupying a recreational vehicle upon their property for a period of not to exceed two (2) weeks. In the event of an arrival of a visitor after City Hall business hours, the permit shall be requested the next business day. The recreational vehicle shall be parked not less than ten (10) feet from either side lot line nor less than 10 feet from the residence, and not in the front of the residence or on the street. Visitors permit may be renewed, at the discretion of the City, for an additional two week period upon the same terms and conditions.

5. Violation of this Ordinance shall be deemed an infraction punishable by not less than $100 and not more than $1,000 and any unpaid fine may in the sole discretion of the City Council be assessed to the real estate, if any, owned by the offending person as a special assessment.

Form Visitors Conditional RV Permit:
Name and Address of RV Owner

_____
_____
Address where the Recreational Vehicle will be parked and occupied:

_____
_____
Effective Date: _____ Expiration Date: _____
For the City of Oakes: _____(auditor signature) Date: _____
Please display this permit in an obvious location so that it may be seen. Note: Generators must not be operated between the hours of 9:00 PM and 8:00 AM.

CHAPTER SEVENTEEN

SALES TAX, USE TAX AND SPECIAL ASSESSMENTS

ARTICLE 1 - SALES, USE, AND GROSS RECEIPTS TAX

17.0101 Definitions.
All terms defined in chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2 of the North Dakota Century Code (N.D.C.C.), including any future amendments, are adopted by reference. All references to the N.D.C.C. include amendments adopted by the North Dakota Legislative Assembly.

17.0102 Collection and Administration.
Where not in conflict with the provisions of this Ordinance, the provisions of N.D.C.C. chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2, and all administrative rules adopted by the Tax Commissioner, pertaining to the collection and administration of the retail sales, use, and gross receipts tax, including provisions for liability, refund, penalty, interest or credit, govern the administration by the North Dakota Office of State Tax Commissioner (hereinafter "Tax Commissioner") of the taxes imposed by this Ordinance.

17.0103 Sales Tax Imposed.
Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided by

this Ordinance, or the sales and use tax laws of the State of North Dakota, a tax of one percent (1%) is imposed upon the gross receipts of retailers from all sales at retail, including the leasing or renting of tangible personal property, within the corporate limits of the of the city of Oakes, North Dakota.

17.0104 Use Tax Imposed.
Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, or the sales and use tax laws of the State of North Dakota, an excise tax is imposed upon the storage, use, or consumption within the corporate limits of the city of Oakes, North Dakota of tangible personal property purchased at retail for storage, use, or consumption in this city, at the rate of one percent (1%) of the purchase price of the property. An excise tax is imposed on the storage, use, or consumption within the corporate limits of the city of Oakes, North Dakota of tangible personal property not originally purchased for storage, use, or consumption in this city at the rate of one percent (1%) of the fair market value of the property at the time it was brought into this city.

17.0105 Gross Receipts of Alcoholic Beverages.
Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, a gross receipts tax of one percent (1%) is imposed upon all gross receipts from the sale of alcoholic beverages within the city. A person who receives alcoholic beverages for storage, use, or consumption in this state is subject to tax on storage, use, or consumption of those alcoholic beverages at the rate of one percent (1%).

17.0106 Gross Receipts of New Farm Machinery and New Farm Irrigation Equipment.
Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, a gross receipts tax of one percent (1%) is imposed upon all gross receipts from the sale of new farm machinery and new farm irrigation equipment within the city. A person who receives new farm machinery or new farm irrigation equipment for storage, use, or consumption in this state is subject to tax on storage, use, or consumption of that machinery and/or equipment at the rate of one percent (1%).

17.0107 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 of North Dakota are specifically exempt form the provisions of this article. In addition to the exemptions provided by state law, this Ordinance provides exemptions from imposition and computation of the city sales or use tax for sales of the following:

a. All of those sales and uses and items exempted by section 57-40.2-04.1 of the North Dakota Century Code, or any amendments thereto.

17.0108 No Maximum Tax Imposed.
There shall be no maximum sales tax imposed on any patron or user paying a tax imposed by this Chapter.

17.0109 Contract with Tax Commissioner.
The city of Oakes City Auditor is hereby authorized to contract with the Tax Commissioner for administration and collection of taxes imposed by this Ordinance. The City Auditor has all powers granted to the Tax Commissioner and in the absence of a valid contract with the

Tax Commissioner or failure of the Tax Commissioner to perform the delegated duties, shall perform these duties in place of the Tax Commissioner.

17.0110 Dedication of Tax Proceeds.
All fees, taxes, penalties and other charges imposed and collected under the City Charter, less administrative costs, shall be dedicated and utilized as follows:

a. Fifty percent (50%) of sales and use tax proceeds collected to a dedicated economic development of the City of Oakes, Dickey County, North Dakota for purposes of job creation, job retention, business development, industrial development and maintenance of business and trade activities and facilities.
b. Fifty percent (50%) of sales and use tax proceeds collected to be dedicated for other uses the City Council may from time to time determine, which may include Ambulance, Park District, Historical Society and any other use in furtherance of economic development or other public uses including infrastructure and property tax relief.

The City Council, of the City of Oakes, North Dakota to make all decisions regarding the dedication of funds from sales tax and use tax revenues.

17.0111 Compensation
City sales, use, and gross receipts tax permit holders are allowed to retain a portion of tax collected under this ordinance to help recover administrative expenses. This compensation shall equal three percent (3%) of the city tax due; however, the deduction is limited to $250.00 per quarter. A tax return must be filed and paid in full by the scheduled due date or the compensation will be disallowed and the tax obligation will be subject to penalty and interest.

17.0112 Effective Date
This Ordinance shall be in full force and effect only after approval by majority of the qualified electors of the City of Oakes voting at a special city election and subsequent approval by at least a majority vote of the City Council of the City of Oakes, North Dakota, and shall then be effective on, from and after the 1st day of October, 2008.

17.0113 Termination Date
The sales and use tax imposed by this article has by a majority of the qualified electors of the City of Oakes voted to extend the sales and use tax indefinitely, unless referred by the citizens of Oakes, North Dakota. This ordinance shall be in full force and effect from and after its final passage, approval and publication.

Election: June 10, 2008 Results: Yes votes- 249 No VOTES- 162
First Reading: June 24, 2008
Second Reading: July 7, 2008
Effective Date: July 24, 2008

ARTICLE 2 - SALES, USE, AND GROSS RECEIPTS TAX FOR SWIMMING POOL CONSTRUCTION

17.0201 Definitions.

All terms defined in Chapter 57-39.2, N.D.C.C. and Chapter 57-40.2, N.D.C.C., including all future amendments, are adopted by reference.

17.0202. Sales Tax Imposed.

Except as otherwise provided in this article, a tax of one-half (1/2 %) is imposed upon the gross receipt of retailers from all retail sales within the corporate limits of the City of Oakes, North Dakota, of the following:

1. Tangible personal property, consisting of goods, wares or merchandise.
2. The furnishing of service of gas, communication services or steam other than steam used for processing agricultural products.
3. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in amusement, entertainment, or athletic activity; but not including the playing of any machine for amusement or entertainment in response to the use of a coin.
4. Magazines and other periodicals.
5. The leasing or renting of a hotel or motel room or tourist court accommodations.
6. 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 article.
7. Sales of alcoholic beverages and tobacco products as defined in Section 57-39.2-03.2 N.D.C.C.
8. Sales of new farm machinery and new irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of new farm machinery and new irrigation equipment used exclusively for agricultural purposed within the State of North Dakota to consumers or users.

17.0203. Use Tax Imposed.

Except as otherwise provided in this article, an excise tax of one-half percent (1/2 %) is imposed on the storage, use or consumption in the City of Oakes on:

1. The purchase price of tangible personal property purchased at retail for storage, use or consumption within the city.
2. The fair market value of tangible personal property that was not originally purchased for storage, use or consumption in the city, at the time which it is brought into this city.
3. Alcoholic beverages and tobacco products which are stored, used or consumed in this city, as provided in Section 57-39.2-03.2, N.D.C.C.
4. The purchase price of tangible personal property used by a contractor or subcontractor to fulfill a contract as defined in Section 57-40.2-0.3, N.D.C.C. This tax applies only to bids submitted on or after October 1, 2003.

17.0204. Exemptions.

All sales, storage, use or consumption of tangible personal property that are exempt from imposition and computation of the sales or use tax of the State of North Dakota are specifically exempt from the provisions of this article.

17.0205. No Maximum Tax Imposed.

There shall be no maximum tax imposed pursuant to this Chapter.

17.0206. Collection and Administration.

The Tax Commissioner and the City Auditor for the City of Oakes shall have the powers enumerated in the provisions of Chapter 57-39.2, N.D.C.C. and Chapter 57-40.2, N.D.C.C., 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.

17.0207. Contract with State Tax Commissioner.
The City Auditor for the City of Oakes is hereby authorized to contract with the Tax Commissioner for the administration and collection of taxes imposed by the 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.

17.0208. Corporate Officer Liability.
Officers of any corporation or limited liability company required to remit taxes imposed by this article are personally liable for the failure of the corporation of the limited liability company to file required returns or remit required payments. The dissolution of a corporation or limited liability company shall not discharge an officer's liability for a prior failure of the corporation or limited liability company to make a return or remit the tax due. The tax, penalty and interest due may be assessed and collected pursuant to the provisions adopted by this article. If the corporate officers, governors or managers elect not to be personally liable for the failure to file the required returns, or to pay the tax due, the corporation or limited liability company must be required to make a cash deposit, or post with the North Dakota Tax Commissioner, a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond or undertaking provided for in this section must be in an amount equal to the estimated annual sales tax liability of the corporation or limited liability company.

17.0209. Application of Tax Proceeds by City Council.
All fees, taxes, penalties and other charges imposed and collected under this ordinance, including administrative costs, shall be dedicated and utilized as follows:
a. The additional one-half (1/2 %) percent sales and use tax proceeds collected are to be dedicated for construction of a new swimming pool within the City of Oakes, ND. The original one (1%) percent sales tax proceeds are dedicated as follows: 50% to Job Development Authority and 50% to be determined by the Oakes City Council.
b. The estimated fourth quarter sales tax proceeds for 2003 shall be allocated as follows: For the one (1%) percent sales tax, an amount of $32, 761.00, with the balance of the tax proceeds collected allocated to the one-half (1/2 %) percent sales tax ordinance.
c. Thereafter, beginning the first quarter of 2004, the total tax proceeds collected shall be divided as follows: The one (1%) percent sales tax ordinance is to receive two-thirds (2/3) of the total sales tax proceeds collected. The one-half (1/2 %) percent sales tax ordinance is to receive one-third (1/3) of the total sales tax proceeds collected.

17.0210. Saving Clause.
Should any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall not be affected hereby.

17.0211. Sales Tax To Be Added To Purchase Price and Be A Debt-Sales Tax on Alcoholic Beverages May Be Included In Purchase Price.

1. Retailers shall add the tax imposed under this article, or the average equivalent thereof, to the sale price or charge, and when added, such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to the retailer until paid, and shall be recoverable at law in the same manner as other debts. In adding such tax to the price or charge.

17.0212. Deduction To Reimburse Retailer For Administrative Expenses From Collection Of Sales and Use Taxes.

1. A retailer who pays the estimated sales tax or use tax due within the same limitations prescribed may deduct and retain a total of three percent (3.0%) of the city sales tax due, or use tax up to $250.00 per quarter maximum on all city sales taxed imposed by the City of Oakes, ND.
2. The aggregate of deduction allowed by this section and section 17-0112 may not exceed three percent (3.0%) up to $250.00 per quarter.
3. The deduction allowed retailers by this section is to reimburse retailers for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the auditor and commissioner upon request.

17.0213. Penalties-Offenses-Sales Tax.

1. a. If any person fails to file a return or corrected return or to pay any tax within the time required by this chapter or, if upon audit, is found to owe additional tax, the person is subject to interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due.

b. In addition to the tax and interest prescribed in this chapter, a taxpayer is subject to penalties as follows:

(i) If any taxpayer, without intent to evade any tax imposed by this chapter, fails to file a return, on or before the prescribed or extended due date, a penalty equal to five percent of the tax required to be reported, or five dollars, whichever is greater, must be added if the failure is for not more than one month, counting each fraction of a month as an entire month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.

(ii) If any taxpayer, without intent to evade any tax imposed by this chapter, fails to pay the amount shown as tax due on any return, filed on or before the prescribed or extended due date, a penalty of five percent of the tax due, or five dollars, whichever is greater, must be added to the tax.

(iii) If upon audit of a taxpayer's return an additional tax is found to be due, penalty as prescribed in subdivision a or b must be added to the tax.

(iv) The commissioner, if satisfied that the delay was excusable, may waive, and if paid, refund all or any part of the penalty and interest. The penalty and interest must be paid to the commissioner and disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this chapter.

2. Any person who shall sell tangible personal property, tickets or admissions to places of amusement, and athletic events, or steam, gas and communication service at retail in this

state after that person's permit shall have been revoked, or without procuring a permit within sixty days after the effective date of this chapter, as provided in section 57-39.2-14, or who shall violate the provisions of section 57-39.2-09, and the officers of any corporation or the managers of any limited liability company who shall so act, shall be guilty of a class A misdemeanor.
3. The certificate of the commissioner to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be prima facie evidence thereof.
4. Any person failing to comply with any of the provisions of this chapter, or failing to remit within the time herein provided to the state the tax due on any sale or purchase of tangible personal property subject to said dales tax, shall be guilty of a Class A misdemeanor.

17.0214. Disposition of Excess Tax Collections.
Whenever a retailer has collected a sales tax from a customer in excess of the amount prescribed or due under this article, and if the retailer does not refund the excessive tax collected to the customer, the amount so collected by the retailer shall be paid by the retailer to the auditor, or as the case may be, the commissioner, in the quarterly period in which the excessive collection occurred. If the excessive collection is subsequently refunded by the retailer to the customer, the retailer may deduct, as a credit against said retailer's sales tax liability on the next return that said retailer is required to file, the
amount of sales tax due to the City of Oakes, North Dakota, by the retailer in the next regular return, such excess shall be allowed as a credit against future sales tax due from the retailer because of discontinuance of a business or for other valid reasons, the amount thereof may be refunded to the retailer. The provisions of North Dakota Century CodE section 57-39.2-27 shall be included in this section as if there were fully set forth herein, or any amendments thereto.

17.0215. Permits.
No person shall engage in or transact business as a retailer within the City of Oakes, North Dakota unless a North Dakota state permit or permits shall have been issued to said person pursuant to North Dakota Century Code section 57-39.2-14. The City hereby adopts such state permit(s) as the City permit(s) and, as such, no separate City permit(s) shall be required. All matter relating to said permit(s), as enumerated or set forth in section 57-39.2-14, North Dakota Century Code section 57-39.2-14 are included in this section as if they were fully set forth herein, or any amendments thereto. This section
shall apply to the use tax imposed herein.

17.0216. Effective Date.
This article shall be in full force and effect only after approval by majority of the qualified electors of the City of Oakes voting at a special city election and subsequent approval by at least a majority vote of the City Council of the City of Oakes, North Dakota, and shall then be effective on, from and after the 1st day of October, 2003.

17.0216.(B) Termination.
The sales and use tax imposed by this article has by a majority of the qualified electors of the City of Oakes voted to extend the sales and use tax indefinitely, unless referred by the citizens of Oakes, North dakota.

17.0217. Use Tax on Contractors.
The use tax on contractors, for purposes of this article, shall be determined and administered according to the provisions of section 57-40.2-03.3 if the North Dakota Century Code, or any amendments thereto. The rate of any use tax shall be as provided in section 17-02-02.

17.0218. Unlawful Advertising.
It shall be unlawful for any retailer to advertise or hold out or state to the public or to any purchaser, consumer or user, directly or indirectly, that the tax or any part thereof imposed by this article will be assumed or absorbed by the retailer, or that it will not be added to the selling price of the
property sold, or if added, that is or any part thereof will be refunded.

17.0219. Records Required.
Each retailer required or authorized to collect the tax imposed by this article, and each person using in the City of Oakes, North Dakota, tangible personal property purchased shall keep such records and other documentation and shall preserve such records and documentation and shall authorize inspection of the same and shall allow examination of the books, papers, records and equipment and investigation of the character of the business for verification purposed by the auditor, or where applicable, the commissioner or their duly authorized agents, in the manner and as is required pursuant to Section 57-40.2-09 of the North Dakota Century Code, or any amendments thereto.

17.0220. Revocation of Permit and Authority To Do Business.
The provisions of section 57-40.2-10, North Dakota Century Code, or any amendments thereto are hereby adopted and incorporated by reference in this section as if fully set forth herein, concerning any failure to comply with any of the provision of this article, or with any order or regulation of the auditor or, where applicable, the commissioner, by any retailer maintaining a place of business in this State or authorized to collect the tax imposed by this article.

17.0221. Articles Taxed in Other Cities.
If any article or tangible personal property has been subjected already to a tax by any other city or this state or another state in respect to its sale or use in an amount less than the tax imposed by this article, the provisions of this article shall apply, but at a rate measured by the difference only between the rate fixed in this article and the rate by which the previous tax upon the sale of use was computed. If the tax imposed in such other city of this stated or another state is in the same or more, then no tax shall be due on such article. The provisions of this section shall apply only if such other city of this state or another state allows a tax credit with respect to the retail sale and use taxes imposed by the City of Oakes, North Dakota, which is substantially similar in effect to the credit allowed by this section.

17.0222. Unlawful Sale or Soliciting.
No agent, canvasser or employee or any retailer, not authorized by permit from the auditor, or where applicable, the commissioner, shall collect the tax as prescribed by this article, nor sell, solicit orders for, nor deliver, any tangible personal property in the City of Oakes,

North Dakota.

17.0223. Contractor's Performance Bonds For Payment of Use Tax.
The provisions of section 57-40.2-14 of the North Dakota Century Code, or any amendments thereto, are hereby adopted and incorporated in this section by reference as if fully set forth herein. The additional obligation of the surety company, whenever any contractor or subcontractor enters into any contract for the erection of buildings or the alteration, improvement or repair of real property in the City of Oakes, North Dakota, shall be an additional obligation upon said contractor or subcontractor shall promptly pay all use taxes which may accrue to the City of Oakes, North Dakota under the provisions of this article.

17.0224. Penalties-Offenses-Regarding Use Tax.
1. Any person failing to file a return or corrected return or to pay any tax imposed pursuant to this article, within the time required by this article, or more delinquent original returns or payments, for any such violations as specified herein, said person is subject to the penalties and interest as established and prescribed for each such enumerated violation as is set forth in North Dakota Century Code section
57-40.2-15(1) or any amendments thereto. The auditor or, if applicable, the commissioner, if satisfied that the delay was excusable, may waive, and if paid, refund all or any part of the penalty and interest. The penalty and interest must be paid to the auditor or, if applicable, the commissioner and disposed of in the same manner as other receipts under this article. Unpaid penalties and interest may be enforced
in the same manner as the tax imposed by this article.
2. The certificate of the auditor, or where applicable, the commissioner, to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant
to the provisions of this article shall be prima facie evidence thereof.
3. Any person failing to comply with any of the provisions of this article or failing to remit within the time herein provided the tax due on any sale or purchase of tangible personal property subject to the tax imposed under the provisions of this article shall, in addition to the penalties imposed hereinabove or hereafter, be guilty of a Class B Misdemeanor and shall be punished by a fine and/or imprisonment upon conviction in the municipal court, said fine not to exceed one thousand five hundred dollars ($1500.00) or imprisonment no to exceed thirty (30) days, or both such fine and imprisonment.
4. Except as otherwise provided in subsection three (3) herein, the provisions of North Dakota Century Code 57-40.2-15 shall be included in and supersede this section as if they were fully set forth herein, or any amendments thereto.

17.0225. Lien of Tax Collection-Action Authorized
The provisions of North Dakota Century Code 57-40.2-16, or any amendments thereto, are specifically adopted and incorporated by reference in this section as if fully set forth herein. A reference or authority granted in said section to the commissioner or the attorney general shall also apply to the auditor and city attorney imposed by this article or for any penalties in respect thereto who refuses or neglects to pay the same amount, including any interest, penalty or addition to such tax together with the costs that may accrue in addition thereto, shall be a lien in favor of the City of Oakes, upon all property and rights to property, whether real or personal, belonging to said taxpayer or deceased

taxpayer as provided in said 57-40.2-16 and may be enforced pursuant to the provisions of said section. The foregoing remedies shall be cumulative and no action taken shall be construed to be an election of the part of the City of Oakes, North Dakota, to pursue any remedy to the exclusion of any other remedy. This ordinance shall be in full force and effect from and after its final passage, approval and
publication.

Election: June 17, 2003 Results: Yes votes- 493 No votes- 221
Effective Date: October 1, 2003

ARTICLE 3 - SALES, USE, AND GROSS RECEIPTS TAX FOR CITYWIDE INFRASTRUCTURE IMPROVEMENTS

17.0301 Definitions.
All terms defined in chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2 of the North Dakota Century Code (N.D.C.C.), including any future amendments, are adopted by reference. All references to the N.D.C.C. include amendments adopted by the North Dakota Legislative Assembly.

17-0302 Collection and Administration.
Where not in conflict with the provisions of this Ordinance, the provisions of N.D.C.C. chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2, and all administrative rules adopted by the Tax Commissioner, pertaining to the collection and administration of the retail sales, use, and gross receipts tax, including provisions for liability, refund, penalty, interest or credit, govern the administration by the North Dakota Office of State Tax Commissioner (hereinafter "Tax Commissioner") of the taxes imposed by this Ordinance.

17.0303 Sales Tax Imposed.
Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided by this Ordinance, or the sales and use tax laws of the State of North Dakota, a tax of half percent (0.5%) is imposed upon the gross receipts of retailers from all sales at retail, including the leasing or renting of tangible personal property, within the corporate limits of the of the city of Oakes, North Dakota.

17.0304 Use Tax Imposed.
Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, or the sales and use tax laws of the State of North Dakota, an excise tax is imposed upon the storage, use, or consumption within the corporate limits of the city of Oakes, North Dakota of tangible personal property purchased at retail for storage, use, or consumption in this city, at the rate of half percent (0.5%) of the purchase price of the property. An excise tax is imposed on the storage, use, or consumption within the corporate limits of the city of Oakes, North Dakota of tangible personal property not originally purchased for storage, use, or consumption in this city at the rate of half percent (0.5%) of the fair market value of the property at the time it was brought into this city.

17.0305 Gross Receipts of Alcoholic Beverages.
Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in

this Ordinance, a gross receipts tax of half percent (0.5%) is imposed upon all gross receipts from the sale of alcoholic beverages within the city. A person who receives alcoholic beverages for storage, use, or consumption in this state is subject to tax on storage, use, or consumption of those alcoholic beverages at the rate of half percent (0.5%).

17.0306 Gross Receipts of New Farm Machinery and New Farm Irrigation Equipment.
Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, a gross receipts tax of half percent (0.5%) is imposed upon all gross receipts from the sale of new farm machinery and new farm irrigation equipment within the city. A person who receives new farm machinery or new farm irrigation equipment for storage, use, or consumption in this state is subject to tax on storage, use, or consumption of that machinery and/or equipment at the rate of half
percent (0.5%).

17.0307 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 of North Dakota are specifically exempt form the provisions of this article. In addition to the exemptions provided by state law, this Ordinance provides exemptions from
imposition and computation of the city sales or use tax for sales of the following:

a. All of those sales and uses and items exempted by section 57-40.2-04.1 of the North Dakota Century Code, or any amendments thereto.

17.0308 No Maximum Tax Imposed.
No maximum tax is applicable.

17.0309 Contract with Tax Commissioner.
The city of Oakes City Auditor is hereby authorized to contract with the Tax Commissioner for administration and collection of taxes imposed by this Ordinance. The City Auditor has all powers granted to the Tax Commissioner and in the absence of a valid contract with the Tax Commissioner or failure of the Tax Commissioner to perform the delegated duties, shall perform these duties in place of the Tax Commissioner.

17.0310 Dedication of Tax Proceeds.
All fees, taxes, penalties and other charges imposed and collected under the City Charter, less administrative costs, shall be dedicated and utilized as follows:
The current one and one-half cent percent (1.5%) to remain:

a. Half percent (0.5%) of sales and use tax proceeds collected to a dedicated economic development of the City of Oakes, Dickey County, North Dakota for purposes of job creation, job retention, business development, industrial development and maintenance of business and trade activities and facilities.
b. Half percent (0.5%) of sales and use tax proceeds collected to be dedicated for other uses the City Council may from time to time determine, which may include Ambulance, Park District, Historical Society and any other use in furtherance of economic development or other public uses including infrastructure and property tax relief.
c. Half percent (0.5%) of sales and use tax proceeds collected to be dedicated for

construction and maintenance of the swimming pool within the City of Oakes.

The additional half percent (0.5%) sales and use tax proceeds collected are to be dedicated for the construction and maintenance infrastructure within the City of Oakes.

The City Council, of the City of Oakes, North Dakota to make all decisions regarding the dedication of funds from sales tax and use tax revenues.

17.0311 Compensation
City sales, use, and gross receipts tax permit holders are allowed to retain a portion of tax collected under this ordinance to help recover administrative expenses. This compensation shall equal three percent (3%) of the city tax due; however, the deduction is limited to $250.00 per quarter. A tax return must be filed and paid in full by the scheduled due date or the compensation will be disallowed and the tax obligation will be subject to penalty and interest.

17.0312 Effective Date
This Ordinance shall be in full force and effect only after approval by majority of the qualified electors of the City of Oakes voting at a special city election and subsequent approval by at least a majority vote of the City Council of the City of Oakes, North Dakota, and shall then be effective on, from and after the 1st day of October, 2010.

17.0313 Termination Date
The sales and use tax imposed by this article has by a majority of the qualified electors of the City of Oakes voted to extend the sales and use tax indefinitely, unless referred by the citizens of Oakes, North Dakota.

This ordinance shall be in full force and effect from and after its final passage, approval and publication.

Election: June 8, 2010 Results: Yes votes- 240 No votes- 91
First Reading: June 22, 2010
Second Reading: July 6, 2010
Effective Date: October 1, 2010

CHAPTER EIGHTEEN
(Franchises)

ARTICLE 1 – GRANT OF FRANCHISES

18.0101 Power to Grant
The governing body may grant to any person, firm, partnership, association, corporation, company or organization of any kind a franchise or special right or privilege to operate or do business in the City, but such franchise shall be subject to the provisions of this article. (North Dakota Century Code Section 40-05-01- (57)). If any franchise agreement expires after the maximum term of 20 years, such franchise agreement shall auto-renew for successive one-year terms pursuant to the other terms of the franchise

agreement. Copies of the franchise agreement(s) for each franchisee shall be kept at the Auditor's Office.

18.0102 Compliance with Applicable Laws and Ordinances

The grantee of any franchise during the life of the franchise shall be subject to all lawful exercise of the police power of the City, and to such reasonable regulation, as the City shall by resolution or ordinance provide. Pursuant to N.D.C.C. Section 50-05-01(57), franchise agreements may be implemented by ordinance or by resolution in the sole discretion of the city council.

18.0103 Indemnification

The grantee of any franchise shall indemnify and save the City and its agents and employees harmless from all and any claims for personal injury or property damages and any other claims, costs, including attorney's fees, expenses of investigation and litigation of claims and sits thereon which may result from the activities of the grantee of the franchise in the City.

18.0104 Insurance

Any grantee of a franchise by the City shall carry and keep in force a public liability policy of insurance, insuring the grantee of the franchise and the City against any and all liability, of not less than two hundred fifty thousand dollars ($250,000.00) for any one person, property damage, personal injury, or death, and five hundred thousand dollars ($500,000.00) for any one accident resulting in property damage, personal injury, or death. The City may demand proof of such insurance coverage in an insurance company licensed to do business in the State of North Dakota. (North Dakota Century Code Section 32-12.1-03)