TITLE 10
PUBLIC PLACES AND PROPERTY FRANCHISES

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CHAPTER 10-01. STREETS AND SIDEWALKS; GENERAL PROVISIONS

10-01-01. Street Designation. The designation and naming of streets and avenues is as follows:

1. All streets running north and south are signated streets.

2. All streets running east and west are designated avenues.

3. The names for streets and avenues are designated by the Board of City Commissioners and placed on the official street name map on file with the city auditor.

4. The names of all streets south of Main Avenue end with the word "south".

5. The names of all avenues south of Century Avenue and north of Wachter Avenue west of First Street end with the word "west", and all avenues north of Century Avenue and south of Wachter Avenue west of Washington Street end with the word "west".

10-01-02. Transportation Restrictions on Certain Materials.

1. The transportation within the city of manure, sand, earth, stone, ashes, coal, gravel or rubbish of any kind is prohibited, unless transported in a container designed to prevent spilling, sifting or scattering.

2. The transportation of dead trees, branches or limbs of any trees within the city is prohibited, unless transported in a pickup, truck or boxed trailer which is covered by a tarpaulin, other covering or secured with rope to prevent the scattering of the contents on the streets of the city.

10-01-03. Openings in Streets and Sidewalks. All openings from, into or upon any street, sidewalk or public grounds must be covered and in good repair. This includes cellar doors, pits, grating, vaults or subterranean passage openings.

10-01-04. Barbed Wire Fences Restricted. Barbed wire fences are prohibited along any public street or sidewalk, unless located more than six feet above ground on top of a non-barbed wire fence, over private property and at least six inches inside the property line. Barbed wire fences are not permitted in any district zoned for residential use.

10-01-05. Filing of Street Grades. All street grades must be placed on file with the city engineer.

10-01-06. Official Base or Plane of Street Elevations.

1. The official base or plane of reference for all elevations within the city is the system of bench marks 0established by the United States Coast and Geodetic Survey. A list of the respective elevations of the U.S.C.G.S. Bench Mark System and additional bench marks derived therefrom is available for inspection at the office of the city engineer.

2. All official elevations hereafter established in the city must be described with reference to their elevation as compared with the official base in feet and decimal parts of a foot.

10-01-07. Numbering Buildings and Lots. The following provisions govern the numbering of all buildings in the city:

1. All lots platted and unplatted which abut any street or avenue must be designated by number by the fire and building inspections chief. The number assigned to the lot must be affixed to the building occupying the lot by the owner.

2. Buildings on the south side of avenues will bear odd numbers and buildings on the north side even numbers.

3. Buildings on the east side of streets will bear odd numbers and buildings on the west side of the streets will bear even numbers.

4. If two buildings occupy the same lot the extra structure will bear a separate designated number.

5. The numbering on streets will begin at Main Avenue with number one hundred, and will progress north and south rising one hundred in either direction at the crossing of every avenue, or at about 400 foot intervals.

6. The numbering on avenues south of Century Avenue and north of Wachter Avenue will begin in both directions at First Street, and of all other avenues will begin at Washington Street, with the number one hundred and will rise one hundred in both directions at the crossing of every street, or at about 400 foot intervals.

7. The numbers used on buildings must be at least three inches in height and placed over the entrance to each

building in a conspicuous manner. The numbers may be painted directly onto the building or otherwise attached.

8. If an owner of a building refuses or neglects to comply with this section within a reasonable time following notice or order of the fire and building inspections chief, the fire and building inspections chief is to place the proper numbers on the building and the cost of doing so will be assessed against the property or collected from the owner in a suit. Failure to comply with this section is an ordinance violation and punishable as provided in Chapter 1-02.

10-01-08. Designation of Streets Under N.D.C.C. 21-03-07. All the streets in the City of Bismarck designated in the most current, approved map of the Federal Aid System shall be considered arterial streets for the purposes of *N.D.C.C. 21-03-07(4).*
(Ord. 4248, 3-14-89)

CHAPTER 10-02. SNOW EMERGENCY ROUTES

10-02-01. Snow Emergency Routes. The following streets or portions of streets are hereby designated as snow emergency routes:

1. Washington Street – Medora Avenue to Burleigh Avenue.

2. Seventh Street – Boulevard Avenue to Bismarck Expressway.

3. Ninth Street – Boulevard Avenue to Bismarck Expressway.

4. University Drive - Bismarck Expressway to Burleigh Avenue.

5. 16th Street - Divide Avenue to Broadway Avenue.

6. Broadway Avenue - 16th Street to Airport Road.

7. Airport Road - Broadway Avenue to University Drive.

8. 26th Street - Divide Avenue to Bismarck Expressway.

9. 11th Street - Divide Avenue to Capitol Avenue.

10. Capitol Avenue - 11th Street to State Street.

11. 19th Street - Divide Avenue to Century Avenue.

12. Century Avenue - Tyler Parkway to Centennial Road.

13. Tyler Parkway – Valley Drive to I-94.

14. College Drive - Schafer Street to Divide Avenue.

15. Schafer Street - College Drive to Divide Avenue.

16. Divide Avenue - I-94 to Bismarck Expressway.

17. Ward Road – College Drive to Avenue C.

18. Avenue C - Griffin Street to Washington Street.

19. Boulevard Avenue - Washington Street to 22nd Street.

20. 22nd Street – Boulevard Avenue to Divide Avenue.

21. Riverside Park Road - The water plant to Memorial Highway.

22. Memorial Highway - Main Avenue to Hannifin Street.

23. Front Avenue - Hannifin Street to Ninth Street.

24. Main Avenue - The Memorial Bridge to Bismarck Expressway.

25. Bismarck Expressway - Washington Street to Yegan Road.

26. London Avenue - The waste water treatment plant to Washington Street.

27. State Street – 57th Avenue North to Boulevard Avenue.

28. Bismarck Expressway – I-94 to Main Avenue.

29. Ash Coulee Drive – Golden Eagle Lane to Washington Street.

30. 43rd Avenue – Washington Street to 26th Street.

31. Centennial Road – Century Avenue to I-94.

32. Valley Drive – Ash Coulee Drive to Tyler Parkway.

33. Lockport Street – 43rd Avenue to Calgary Avenue East.

34. Calgary Avenue East – Lockport Street to State Street.

35. 6th Street North from Thayer Avenue East to Rosser Avenue East.

36. Rosser Avenue East from 6th Street North to 10th Street North.

37. Miriam Avenue from Bismarck Expressway to 52nd Street North.

(Ord. 4732, 10-10-95; Ord. 5015, 11-09-99; Ord. 5352, 9-14-04; Ord. 5561, 11-28-06; Ord. 5703, 01-13-09; 5752, 11-24-09; Ord. 5755, 12-08-09; Ord. 5787 09-28-10; Ord. 6018, 11-26-13; Ord. 6353, 11-27-18; Ord. 6372, 03-26-19)

10-02-02. Snow Emergency Route Signs. Each snow emergency route is to be posted with snow emergency route signs at intervals of one per block or at least one sign each 1000 feet. *(Ord. 4732, 10-10-95)*

10-02-03. Snow Emergency Declaration.

1. When the director of public works or designate determines on the basis of existing weather conditions or a forecast by the U.S. Weather Bureau that a snow emergency declaration is necessary it must be broadcast by local radio and television stations and announced in the official newspaper when feasible.

2. The declaration must include a list of the snow emergency routes on which a parking prohibition is in effect, unless the declaration is in effect for all designated snow emergency routes, in which case the declaration shall so state.

3. The snow emergency declaration and parking prohibition are effective until terminated or modified by the director of public works by public announcement.

10-02-04. Parking on Snow Emergency Route During Prohibition.

1. Following the declaration of a snow emergency and parking prohibition it is illegal to stop or park on any affected route.

2. When a vehicle stalls on a snow emergency route during a parking prohibition the operator has one-half hour to secure the assistance needed to remove the stalled vehicle.

3. Any vehicle parked, stopped or abandoned on a snow emergency route in violation of this chapter may be impounded by the police department.

4. In prosecuting parking violations of this chapter proof that the vehicle listed in the complaint was parked in violation of this chapter and that the defendant was the registered owner of the vehicle, gives rise to a rebuttable presumption that the defendant was the person who parked the vehicle in violation of this chapter.

10-02-05. Snow Removal. Notwithstanding the authority contained in Section 10-02-03, whenever, in the opinion of the director of public works, accumulated snow and/or ice creates hazardous road conditions or is likely to create hazardous road conditions which impede or are likely to impede the free movement of fire, health, police, emergency or other vehicular traffic or threaten the health, safety or welfare of the community, the director of public works may take the following actions in order to open and maintain the streets:

1. Post certain streets in need of snow removal for no parking. The signs must be posted at the times specified in Section 12-13-23(2)(l) before the snow removal is to occur. Any vehicles parked in violation of the posting shall be towed to facilitate snow removal.

2. When necessary to maintain the streets in good and safe driving conditions, goods and services may be purchased without complying with chapter 7-01 of this code. The board must be informed of any such purchases at the next following city commission meeting.

3. When necessary to maintain the streets in good and safe driving condition, temporary snow removal personnel may be hired. The board must be informed of any such hiring at the next following city commission meeting.

The City of Bismarck shall use snow gates or other devices to prevent snow, in an amount that prevents usual access, from being plowed or placed into driveways or their openings to public streets. This section shall cover City employees and contract employees. Any additional costs caused by this ordinance shall be paid by the City Sales Tax of the City of Bismarck. This ordinance shall not apply in the event of a snowfall of such magnitude that a snow emergency is declared.
(Ord. 4588, 03-15-94; Ord. 4644, 10-25-94; Ord. 5294, 06-13-00, Initiated Ordinance).

CHAPTER 10-03. CONSTRUCTION AND MAINTENANCE OF SIDEWALKS AND DRIVEWAYS

10-03-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Contractor" means persons under contract with the city or approved by the city engineer.

2. "Sidewalk" means that improved portion of a street between the curb lines or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.

10-03-02. Sidewalk Construction Procedure. When the board deems it necessary to construct or repair any sidewalk in the city, it shall follow the procedure set forth in this section. The city engineer and the sidewalk commissioner shall prepare a list of sidewalks proposed to be constructed, rebuilt, or repaired and present it to the board. Upon the board's approval of a list of sidewalks to be constructed, rebuilt, or repaired, the city engineer shall notify each property owner on the approved list of the requirement to construct, rebuild, or repair the sidewalk as follows:

1. A notice as specified in N.D.C.C. section 40-29-03, must be served on the owner of record.

2. The notice shall comply with the requirements of N.D.C.C. section 40-29-03, and shall include the following:

   a. The legal description of the property adjoining the sidewalk to be built or repaired.

   b. The work to be done, the character as specified by city ordinance, and the time within which it must be completed.

3. If the sidewalk is not constructed or repaired as ordered, the board shall order the city engineer to complete the work or supervise completion of the work by a city contractor, and certify the cost with a return of service of the notice to the city administrator.

4. Expenses of constructing, repairing or rebuilding the sidewalk shall be assessed to the owner of the adjoining property pursuant to Chapter 40-29, N.D.C.C.

5. Sidewalks must be built in accordance with the elevation and grade furnished by the city engineer in

accordance with construction specifications for Municipal Public Works Improvements.

6. All grading, ditching or other alteration of the existing ground level in the roadway of any street or alley and all surfacing by ground or other material may be done only by the city engineer or under the supervision or direction of the city engineer.

All new residential, commercial, industrial, or public properties shall include the installation of sidewalks unless specifically waived by the City during the platting process.
(Ord. 6004, 09-24-13)

10-03-03. Duty of Property Owners to Maintain Sidewalks. The owner of any lot or parcel of land adjoining any street, lane or alley shall construct, reconstruct and maintain in good repair such sidewalks along the street, lane or alley adjacent to the lot or parcel of land as have been constructed or ordered. Such sidewalks must be of the material and width and upon the place and grade specified.

10-03-04. Removal of Snow and Ice.

1. The owner of any lot or parcel of land abutting any sidewalk shall:

   a. Keep the sidewalk clean and unobstructed at all times.

   b. Remove snow and ice within 24 hours after the snow falls or ice forms, and keep the sidewalk free of ice and snow. Sand may be used to make the area safe for pedestrian travel if removal of ice is impracticable.

2. Should snow and ice not be removed in the manner required, it shall be removed under direction of the director of public works or city engineer, and costs assessed to the abutting property pursuant to Chapter 40-29, N.D.C.C.

3. A person may not move, dump or deposit by any means any snow or ice accumulated on private property onto any public street, alley, or public right-of-way.

   This subsection does not prohibit the dumping or deposit of snow or ice accumulated on public sidewalks adjacent to streets and alleys designated and posted as "street cleaning" areas onto streets or alleys so designated.

(Ord. 4123, Sec. 1, 12-30-86; Ord. 4658, 01-10-95)

10-03-05. Sidewalk Bids. Bids for sidewalk construction must be advertised as required by section 40-29-07, N.D.C.C., and contracts awarded pursuant to the provisions of section 40-29-08, N.D.C.C.

10-03-06. Sidewalk Standards. All sidewalks must be constructed of concrete and in conformity with the following:

1. When constructed along improved commercial, industrial or school lots sidewalks must be a minimum of six feet in width. The back edge shall begin on the front property line of the lot and extend towards the center of the street a distance of six feet. The sidewalk must be continuous from lot line to lot line. Lots shall contain sidewalks on all sides fronted by public streets.

   There shall be a sidewalk construction and maintenance easement established on the front one and one-half feet of each lot except where this area is covered by a building.

2. When constructed along improved residential lots, sidewalks must be a minimum of four and one-half feet to a maximum of six feet in width, depending on adjacent zoning regulations or as determined necessary by the city engineer. There shall be a sidewalk construction and maintenance easement established on the front one and one-half feet of each lot. The back edge of the sidewalk must be constructed with relation to the front property line pursuant to the following guidelines:

   a. Thirty-seven foot street, sixty-foot right-of-way:

      (1) All sidewalks must be constructed so that the back edge of the sidewalk begins on the front property line of the lot and extends toward the street a distance of four and one-half feet.

   b. All other streets:

      (1) A four and one-half foot sidewalk must be constructed so that the back edge of the sidewalk begins one and one-half feet off the front property line of the lot and extends toward the street a distance of four and one-half feet.

(2) A six-foot sidewalk must be constructed so that the back edge of the sidewalk begins on the front property line of the lot and extends toward the street a distance of six feet.

(Ord. 4166, 7-21-87; Ord. 6004, 09-24-13)

10-03-07. Driveway Standards. All driveways must be constructed as follows:

1. The minimum allowable width of a driveway is ten feet. The maximum allowable width of a driveway is thirty feet. Measurements must be made adjacent to the property line. Requests for driveway widths not in conformance with these standards must be delivered to the city engineer's office, accompanied by a site plan depicting the proposed driveway width and location. Variances may be granted by the city engineer.

2. A driveway may not be constructed so as to be in conflict with the nonaccess lines shown on the addition plat and/or the street right-of-way plan on which the proposed driveway is to be located.

3. Whenever any driveway is opened up to connect with the roadway of any street on which curb and gutter is already in place, where vertical face curbing is installed, the curb and gutter must be removed for the full width of the driveway, for six feet beyond on either side thereof, and back to the first construction joint, and new curb and gutter must be constructed on both sides of the driveway between the roadway and the sidewalk, or sidewalk line, connecting with the existing curb and gutter by a section of curved curb and gutter having a radius of six feet, or a section of drop curb and gutter two to six feet in length as determined by the city engineer. Such work must be done without expense to the city.

4. Requests to widen an existing driveway may be granted by the city engineer. If the widening will necessitate the removal and/or relocation of public utilities, street lights or fire hydrants, or the adjustment of manhole castings or valve boxes, such work must be done without expense to the city.

5. All driveways which connect to a paved roadway must also be paved without expense to the city.

6. Driveways may not be constructed within the limits of any street, unless at right angles to streets and approved by the city engineer.

7. A driveway may not be built closer than six feet to a fire hydrant.

8. An existing driveway that extends only from the street to the roadside edge of the sidewalk shall be for the exclusive use of the adjacent property. A vehicle parked in this area may not extend past the back of the curb or the roadside edge of the sidewalk.

(Ord. 5706, 02-24-09)

10-03-08. Standards for Retaining Walls. Retaining walls must be of concrete and of the dimensions necessary, including reinforcements, to withstand the pressure of the earth against them. The wall may not project beyond the property line, including steps built into the wall.

10-03-09. Standards for Curb and Gutter.

1. All public streets must be constructed with monolithic concrete curb and gutter sections adjacent to and on both sides of the paved street surface so the face of the curbs are set at a width established by the city engineer and approved by the board of city commissioners.

2. Ambulatory ramps must be constructed through intersection curbing to allow wheelchair passage across the curb.

3. Curbing without integral concrete gutters may be allowed only to repair existing curb without gutters except as approved by the city engineer.

4. "Surmountable" or "rolled-face" curbing is permitted except where prohibited by the city engineer.

10-03-10. Construction Areas to be Signed. All construction areas covered by this chapter must be signed in accordance with the "Traffic-Control for Street and Highway Construction and Maintenance Operations" section of the Manual of Uniform Traffic-Control Devices, adopted by the State Highway Commissioner pursuant to section 39-13-06, N.D.C.C.

10-03-11. Construction Vehicles Crossing Curb, Gutter and Sidewalk.

1. Crossing the curb and gutter, or sidewalk with construction vehicles is prohibited unless done at an existing driveway or when material is used on the curb and gutter and sidewalk areas to prevent damage. The crossing of the curb and gutter may be done only with the use of planking or other wooden structure sufficient to prevent damage.

2. All material placed upon the sidewalk and curb and gutter must be maintained so as to not obstruct pedestrian traffic and must be signed pursuant to section 10-03-10.

3. When the crossing is no longer needed the contractor shall remove all the crossing material.

4. The contractor shall promptly repair all damage caused by the crossing to the curb and gutter section, or sidewalk.

5. Any damage not attributable to the crossing is to be repaired as provided in this chapter.

10-03-12. Additional Bond. When a contract for the construction of sidewalks, driveways, curb and gutter, relaying of block walks, or paving repairs is entered into by the city, the contractor to whom the contract is awarded shall give, in addition to the contract bond required by the laws of the state, a bond in an amount determined by the Board of City Commissioners. The bond shall run to the city, conditioned on the contractor maintaining and keeping in good repair, for a period of two years from the date of final estimate all sidewalks, driveways, curb and gutter, and paving repairs constructed by the contractor under the terms of the contract, and that in case of default by the contractor to maintain and keep the improvements in repair the two years, or in case they begin to crumble or disintegrate or become cracked or broken to the extent that, in the opinion of the city engineer, they are not in compliance with the applicable specifications, then the city engineer may direct that the sidewalks, driveways, curb and gutter, or paving repairs be repaired. In case the contractor neglects, refuses or fails to comply with the engineer's directions, the city may cause the improvements to be repaired or re-laid, and the cost, whether done by the city directly or through a contract, may be recovered from the contractor and the surety upon the bond.

10-03-13. Pre-construction Notice. All contractors shall notify the city engineer when they intend to construct or repair a sidewalk, driveway, curb, gutter or retaining wall in or along any street, alley or dedicated public right-of-way. The city engineer shall set the stakes marking the line and grade at which the work is to be done, and no work may be started until the stakes marking the line and grade have been set.

10-03-14. Approval Required. A contractor may not construct paved driveways, sidewalks, curbs and retaining walls in or along any right-of-way unless approved by the city engineer.

10-03-15. Contractor Approval Procedure.

1. Applicants to be approved as a contractor shall file an application with the city engineer. The application must contain evidence of the applicant's experience and competency in concrete work and a copy of a current North Dakota contractor's license or renewal. The city engineer shall adopt specific written criteria establishing minimum qualifications for contractors, which shall be approved by the board.

2. If the applicant meets the minimum qualifications, the city engineer shall approve the application on condition the applicant files a five thousand dollar surety bond.

3. The bond is to ensure conformity with this Title for a term of two years from the final acceptance of any work and to indemnify the city against all losses, claims, suits or damages, direct or special, which may be sustained as a result of the contractor's failure or refusal to conform to the requirements of this Title.

10-03-16. Permit Required. A permit is required to construct, repair or alter any sidewalk, curb, driveway, street or retaining wall on or along any right-of-way, except that a permit is not required of the city contractor doing the work under contract with the city.

10-03-17. Permit Application and Issuance.

1. Permit applicants shall submit an application to the city engineer containing the following:

   a. Name and address of the owner of the property abutting the proposed work area.

   b. Name and address of the contractor doing the work.

   c. Address and legal description of the property abutting the work.

   d. Attached plans or sufficient sketches showing details of the proposed work.

   e. Estimated cost of work.

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

2. A fee shall be charged for inspection and engineering work provided by the city based on a percentage of total construction cost computed on unit prices. The percentage shall be set by the board.

3. The city engineer shall issue a permit if he determines:

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

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

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

CHAPTER 10-03.1. SIDEWALK, CURB AND GUTTER SPECIAL FUND

10-03.1-01. Special Fund Established. It is hereby found and determined that the City of Bismarck has for many years maintained a separate fund designated as the "Sidewalk, Curb and Gutter Special Fund," pursuant to and in accordance with the provisions of Chapters 40-29 and 40-31 (the "Chapters") of the North Dakota Century Code, as amended ("NDCC") and has issued warrants thereon in accordance with the provisions of Chapters; that in accordance with said Chapters, the City has duly levied special assessments for the payment of the cost of sidewalks and curbing constructed, rebuilt or repaired thereunder and has appropriated the same to the said Sidewalk, Curb and Gutter Special Fund for the payment of principal and interest on said warrants; that under NDCC Section 40-29-14 and 40-31-08, whenever all taxes and assessments collected are insufficient to pay the warrants issued with interest, this Board is required upon the maturity of the last warrant, to levy a tax upon all of the taxable property in the City for the payment of such deficiency and is authorized to levy such tax whenever a deficiency exists in the fund or is likely to occur within one year; that in order to equalize and reduce the burden of the taxes which the City may be required to levy for the payment of deficiencies in said Sidewalk, Curb and Gutter Special Fund as required by NDCC Sections 40-29-14 and 40-31-08, it is necessary to establish a uniform policy for the administration of said fund and the issuance of warrants thereon, and for the levy of

taxes from year to year in the amounts required to prevent the accumulation of deficiencies therein, and that from and after the final passage and adoption of this ordinance the provisions hereof shall govern the administration of said fund and the issuance of said warrants, provided that the City reserves the right to amend or supplement this ordinance as the need therefor may arise, to such extent as will not impair the rights of holders of such warrants under said Chapters.

(Editor's Note: Chapter 10-03.1 was adopted as Ordinance No. 3983 on May 22, 1984. The ordinance was apparently misplaced and was consequently never published by the city's former code publisher, and therefore was not included in the 1986 Revised Code. However, the ordinance remained in effect, pursuant to the provisions of section 3 of Ordinance No. 4103, when the 1986 Revised Code was adopted. When the oversight was discovered, Ordinance No. 3983 was codified as Chapter 10-03.1.)

10-03.1-02. Administration of Special Fund. Said Sidewalk, Curb and Gutter Special Fund shall be continued as a separate and special fund of the City so long as any warrants drawn thereon shall be outstanding and unpaid, and shall be administered as follows: In said fund there shall be maintained a separate account to be designated as the "Construction Account", and upon the issuance of any warrants on said fund, the proceeds thereof which are not required to be credited to the Principal and Interest Account shall be credited to the "Construction Account", unless such warrants are delivered directly to a contractor in payment for sidewalk and curbing construction, rebuilding or repair. The moneys in said Construction Account shall be disbursed only in payment of sidewalk and curbing construction, rebuilding or repair ordered by this Board, as such expenses are incurred and allowed and costs incurred in connection with the issuance of the warrants and the levying of the assessments; provided that if, upon the completion of sidewalk and curbing work ordered in any calendar year there remains any unexpended balance in the Construction Account, such balance shall be transferred to the Principal and Interest Account for the payment of warrants issued during the current year, as described below. There shall also be maintained in said fund a Principal and Interest Account for the payment of the principal of premium, if any, and interest on the sidewalk, curb and gutter warrants to be issued against said fund from and after the adoption of this ordinance, as amended, commencing with 1955. The Principal and Interest Account shall be credited with any accrued interest paid as part of the purchase price, any capitalized interest and all special assessments or taxes levied and collected for the payment of the cost of sidewalk and curbing projects instituted during such year. The moneys in the Principal and Interest Account shall be used without further authorization or direction for the payment of the principal of premium, if any, and interest on the warrants as the same become due or for the redemption of warrants when and as the same are redeemable by their terms.

10-03.1-03. Assessments. Forthwith upon the completion of each project involving the construction, repair or rebuilding of

sidewalks and curbing, the cost thereof shall be assessed against the lots or parcels of land properly chargeable therewith in accordance with the provisions of NDCC Sections 40-29-05 and 40-31-02, and on or before the 1st day of September of each year, the city auditor shall deliver to the county auditor a duplicate of all assessment rolls containing sidewalk and curbing assessments, which assessments shall be collected and the payment thereof enforced in the same manner as other taxes. All such assessments shall be payable in equal annual installments, extending over a period of not exceeding ten years and the unpaid portions thereof shall bear interest at an annual rate of not more than two percentage points above the average rate on the warrants. Such installments, if not theretofore paid, shall be certified and collected with the general taxes of the city for the year in which the assessment is levied and for each of the succeeding years. In the event that any such assessment shall at any time be held or claimed to be invalid due to any error or mistake in the making thereof, a reassessment or new assessment shall be made in lieu thereof and the city and all of its officers and employees shall take all such action and proceedings as may be necessary to make such assessment a valid and binding lien upon the property on which the same is levied.

10-03.1-04. Deficiency. Annually, at the time of the preparation of the municipal budget, the city auditor shall compute the requirements and the current resources of the Principal and Interest Account of the Sidewalk, Curb and Gutter Special, Curb and Gutter Special Fund for the payment of the warrants drawn thereon, and an amount sufficient for the payment of any deficiency then existing or anticipated to occur within one year in said Principal and Interest Account shall be included in said budget and a tax shall be levied therefor and when collected shall be credited to such account. If at the last maturity of the warrants drawn on said account, the moneys in said account should be insufficient for the payment of all such warrants and accrued interest thereon, this Board shall levy a tax upon all of the taxable property in the city for the payment of such deficiency as a part of the annual tax levy thereafter made. All taxes levied and collected under the provisions of this section, in advance of the time when such levy is required by the provisions of NDCC Sections 40-29-14 and 40-31-08, as amended, shall be credited against the levies which the city would otherwise have become obligated to make under such sections.

10-03.1-05. Issuance of Warrants.

1. At any time after the award of a contract for sidewalk and curbing work under the provisions of NDCC Sections 40-29-08 and 40-31-04, the board of city commissioners may by resolution authorize the issuance of sidewalk,

curb and gutter warrants in anticipation of the collection of special assessments to be levied and collected with respect to the construction, rebuilding and repairing of sidewalks, curb and gutter ordered during the then current year. Said warrants shall be drawn upon the Principal and Interest Account created in the Sidewalk, Curb and Gutter Special Fund and shall be issued upon such terms and conditions as set forth in the resolution providing for their issuance.

2. Said warrants shall be prepared for execution under the direction of the city auditor and shall be executed on behalf of the city by the manual or facsimile signature of the president of the board of city commissioners, countersigned by the manual or facsimile seal of the city. When so prepared and executed, they shall be delivered by the city auditor to the purchasers thereof, upon receipt of the purchase price plus interest accrued thereon to the date of the delivery of payment, or if so directed by resolution of the board of city commissioners, shall be delivered by the city auditor to the contractor for the sidewalk and curbing work for which such warrants are issued, in payment of estimates prepared by the city engineer and approved by the board of city commissioners of the cost of the work and materials theretofore performed and delivered. Purchasers of such warrants shall not be obligated to see to the application of the purchase price, but the proceeds of all such warrants shall be credited to the Construction Account and the Principal and Interest Account of the Sidewalk, Curb and Gutter Special Fund as hereinabove directed.

3. In the event that at any time the moneys in any of said Principal and Interest Account are insufficient to pay all principal and interest then due on warrants issued against such account, such moneys shall be first used to pay the accrued interest and the balance shall be applied in payment of principal, in order of maturity dates, and pro rata in payment of the principal amount of warrants maturing on the same date.

4. The officers of the city are hereby authorized to prepare and furnish to the purchaser or deliveree of any warrants issued against the Sidewalk, Curb and Gutter Special Fund certified copies of this ordinance and of the resolutions authorizing such warrants and of any other actions, proceedings or records of the city reasonably required to show the validity or marketability of said warrants, and all instruments so

furnished shall be deemed to constitute representations of the City of Bismarck as to the correctness of all statements contained therein.

CHAPTER 10-04. EXCAVATION

10-04-01. Excavation Permit Required. It is illegal to do the following without a permit, unless directed by the city engineer:

1. Excavate any street, alley or right-of-way to connect, disconnect, install or repair any sewer, water, gas pipe, main, telephone conduit or other underground cable or conduit.

2. Excavate on private property to construct or repair any sewer or water service that is connected or will be connected to the city sewer or water main.

10-04-02. Permit Application. An excavation permit application must be filed with the city engineer on forms furnished by the city. The application shall contain the following:

1. Reason for excavation.

2. Whether pavement, curb and gutter or sidewalk will be removed for excavation.

3. Legal description and street address where excavation will be made.

4. Name and mailing address of property owner.

5. Anticipated construction date and estimated time to complete work.

6. Name of approved contractor and signature of contractor or authorized agent.

A reasonable fee established by the board must be paid at the time the application is filed. The city engineer shall issue a permit upon determining that the applicant has met all of the requirements of this chapter.

10-04-03. Site Plans Required. An excavation permit may not be issued for utility connections to commercial or industrial properties, or multiple building developments, unless a site plan is submitted by the property owner or agent and approved by the city engineer.

10-04-04. Contractors. Only persons under contract with the city or approved by the city engineer may excavate in or along public rights-of-way in the city. The following requirements apply:

1. The contractor must have a current North Dakota contractor's license.

2. The contractor must have experience as an excavating contractor and upon request of the city engineer, provide references pertaining to the ability and experience of the contractor.

3. The contractor must be familiar with all applicable city ordinances.

10-04-05. Supervision. The city engineer shall supervise all excavations covered by this chapter.

10-04-06. Plans. The city engineer shall issue plans and specifications which will govern all work, materials and procedures used in excavations covered by this chapter.

10-04-07. Backfilling Excavations. The following specifications govern the backfilling of excavations covered by this chapter:

1. After the sewer and water pipes are installed, the trench must be backfilled under and along the pipe up to its center line with pitrun gravel compacted to form a uniform bed for the pipe.

2. The compaction may be done by any approved method or equipment that will produce a uniform density, which will achieve not less than eighty-five percent maximum dry density at optimum moisture as determined by A.S.T.M. D1577.

3. If there is sand or gravel in the trench which the city engineer finds acceptable it may be used to backfill up to the center line of the pipe.

4. The backfill must be completed to within three lengths of the last pipe being laid and to a point of two feet above the top of the pipe with a uniform density which will achieve not less than eighty percent of the maximum dry density at optimum moisture as determined by A.S.T.M. Compaction Control Test Designation D1557.

5. Drop pile hammer, loaded or unloaded clam shells, backhole buckets or similar equipment may not be used within two feet of the top of the pipe.

6. When the uniform bed has been laid, the rest of the trench shall be backfilled in layers of twelve inches or less and compacted to produce a uniform density which will achieve not less than eighty-five percent of maximum dry density at optimum moisture as determined by A.S.T.M. D1557, except that the top four feet of the trench shall achieve not less than ninety percent of maximum dry density at optimum moisture as determined by A.S.T.M. D1557.

7. Backfilling gas piping, telephone, electrical, cable or conduit shall follow the procedure for water and sewer lines, except sand and gravel may be omitted from the bed of the trench unless required by the city engineer.

8. The contractor shall supply all deficiencies in material or moisture needed for backfilling.

10-04-08. Surety Bond.

1. All persons excavating in any street, alley or public right-of-way within the city shall file with the city auditor a twenty-five thousand dollar surety bond with the application.

2. The bond shall indemnify the city against all costs, loss and damage caused by the excavation. The bond is to be further conditioned on the guarantee of the excavating party to keep the site in repair for two years from date of completion.

3. If the contractor fails to restore or maintain the excavation as required the city may do the necessary work and recover all costs and expenses from the bond or the defaulting party.

(Ord. 4127, 2-10-87)

10-04-09. Construction Signing. All construction activity must be signed in accordance with Section 10-03-10.

CHAPTER 10-05. OBSTRUCTIONS

10-05-01. Permit Required to Place Building Materials in Street. It is illegal to place building materials on any street or highway adjacent to a construction site, except in compliance with a permit issued by the city engineer.

10-05-02. No Merchandise on Sidewalk.

1. Merchandise for sale or display may not be placed beyond the front lot line, except when permitted by resolution of the board of city commissioners.

2. Persons receiving or delivering merchandise or goods may place the merchandise on a sidewalk for no longer than one hour, provided an area at least four feet wide is free for pedestrians.

10-05-03. Placement of Gas and Water Shut-offs. Gas and water shut-offs must be placed between the property line and curb. The tops may not project above the surface of the street. When it is necessary to place shut-offs in a sidewalk, the tops must be placed and maintained flush with the upper surface of the sidewalk.

10-05-04. Placing Materials on Public Property. A person may not deposit, store or maintain upon any public right-of-way or other public place any stone, brick, sand, concrete scoria, petrified wood or other nuisance materials, except by written permit from the city engineer. Nuisance material includes material that may readily wash or erode from the boulevard into the street, or allow runoff to undermine the curb and gutter or street section, or obstruct the view of motorists or pedestrians, or appreciably detract from the aesthetics of the area, as determined by the city engineer. A property owner may place a reasonable amount of bark chips or wood chips around the base of trees in boulevards.

10-05-05. Placement of Mail Boxes.

1. Poles used for the support of mail boxes, general delivery boxes or receptacles for the delivery of periodicals, fliers or other circulars may not be less than thirty-six inches nor more than forty-eight inches behind the face of the curb. The supporting pole must be set at a height not exceeding thirty-six inches above the grade at the top of the curb. If a street or alley is improved without a curb or gutter section, the pole location must be measured from the pavement edge.

2. Mail boxes must be placed at least six feet from a fire hydrant.

3. This section may not be construed to be in conflict with the existing requirements for mail box placement established by the postmaster general of the United States Postal Service.

(Ord. 4842, 04-08-97)

10-05-06. Stretching Wires. A person may not stretch wire, cable, cord, line or rope of any kind in, on or over

public rights-of-way except in compliance with a permit issued by the city engineer. The wire, cable, cord, line or rope may not interfere with any other wire previously stretched in the same public right-of-way and shall be maintained in good and safe condition.

10-05-07. Cutting Wires. A person may not cut, remove or break any telephone, telegraph, fire alarm, or electric wire properly strung upon poles except in the case of fire or to prevent the destruction of property, without prior permission of the owner and prior notice to the city engineer.

10-05-08. Placement of Poles Restricted. A pole for the holding or conveying of any wire, cable or any other equipment or installation to be used in connection with the provision of cell, data, telephone, cable television, electric lighting, electric power or any other utility or communication service to the public, with or without a franchise, may not be placed in any public right-of-way or other public place within the city without prior approval by the city engineer.
(Ord. 6232, 09-13-16)

10-05-09. Maintenance of Pipes and Conduits in Streets.

1. It is the duty of every person transmitting water or gas through pipes or other conduits laid in a public right-of-way or other public ground in the city to prevent the public use of the street, alley or public ground from being impaired, obstructed, injured or rendered dangerous or offensive by the escape of water or gas.

2. In case a pipe or conduit breaks and water or gasescapes, the person forcing, transmitting or conveying water or gas through the broken pipe or conduit shall, within twenty-four hours after receiving notice or knowledge of the escaping water or gas, commence and diligently prosecute the repair of the break. That person shall immediately shut off the water or gas until the break is repaired. If the break is in a gas line, the person shall immediately notify the fire department.

3. It is the duty of the police, upon discovering that water or gas is escaping from a pipe or other conduit, to notify the city engineer or director of public works and the fire department, who shall in turn notify the person forcing, transmitting or conveying water or gas through the break.

4. If the person using the pipe or conduit fails to repair the break or shut off the water or gas as

required, the city engineer shall repair the break and the costs shall be recovered from the owner.

10-05-10. Maintenance of Stairways in Public Rights-of-Ways. All stairways serving below grade entryways on public rights-of-ways shall be protected with guard rails of not less than 42 inches in height. Open guard rails shall have intermediate rails or ornamental patterns such that a sphere six inches in diameter cannot pass through the railing. An approved self-closing gate shall be installed on the open end of the stairway.
(Ord. 4212, 7-05-88)

CHAPTER 10-05.1 COMMERCIAL USE OF SIDEWALKS, STREETS AND PUBLIC GROUNDS

10-05.1-01. Commercial Use of Sidewalks, Streets and Public Grounds Restricted. Except as authorized by this Chapter, no person, firm, or entity shall sell, offer, or expose for sale any food, goods, wares, or merchandise, upon any public street, alley, sidewalk, public right-of-way or other public grounds owned or controlled by the City.

1. Definitions. As used in this Chapter:

"Adjacent to" as it relates to patio areas, shall mean an area on the public sidewalk defined as the space between two lines, each drawn from the ends of a building or portion of a building housing a business, perpendicular to the right-of way.

"Cooking" shall mean the preparation of food through the use of heat by boiling, baking, roasting, microwaving, frying, grilling, smoking or any other method using heat.

"Designated area" shall mean an area of public right-of-way or public property specifically set aside or designated by the City for use by mobile vendors. The boundaries and rules for use of each designated area shall be as shown by maps or diagrams produced by the City and available from City Engineering or City Administration.

"Food" shall include any food item meant for human consumption and any beverage meant for human consumption.

"Grilling" shall mean the cooking of raw animal products such as meat, poultry or fish or vegetables on a flat top or charbroil style high-heat surface designed for such purpose, but does not include

smoking, deep-fat frying, wok or skillet-style cooking, rotisserie-style cooking or any other type of cooking.

"Merchandise" shall include, but is not limited to, plants, flowers, wearing apparel, jewelry, ornaments, art work, household or office supplies or other goods or wares and excepting food or beverages of any kind.

“Mobile vendor” shall mean any person or entity engaged in the business of preparing or serving food or merchandise from a pushcart or a mobile vendor vehicle.

“Mobile Vendor Vehicle” shall mean a trailer which may be moved by towing with a vehicle or a self-contained mobile food truck which is designed and used for displaying, cooking, keeping or storing any food, beverages, merchandise or other articles for sale by a vendor. To the extent a mobile vendor vehicle is used for preparing, displaying, cooking, keeping or storing food or beverages, the mobile vendor vehicle must be inspected and approved by the Public Health Department/Environmental Health Division.

"Outdoor patio area" shall mean an area in front of or adjacent to a business maintaining a liquor license, a restaurant license or limited restaurant license issued by the City and located on a public sidewalk whereon tables, chairs or benches are placed for purposes of serving food and/or alcoholic beverages.

"Outdoor merchandise area" shall mean an area in front of or adjacent to a retail business where merchandise is located on a public sidewalk for the purpose of displaying, exhibiting, selling or offering merchandise for sale.

"Pushcart" shall mean a wheeled cart which may be moved by hand by one person without the assistance of a motor and which is designed and used for displaying, cooking keeping or storing any food, beverages or other articles for sale by a vendor. To the extent a pushcart is used for displaying, keeping or storing food or beverages, the pushcart must be inspected and approved by the Public Health Department/Environmental Health Division.

2. Each permit required by this Chapter shall expire on December 31 of each year, unless revoked by the City, regardless of the date of issuance. There shall be an

application fee of $50 for permits issued under this Chapter.

10-05.1-02. Permitted Uses of Streets, Sidewalks, Alleys or Other Public Grounds. Except as allowed under the provisions of this Chapter, it shall be unlawful for any person to sell, offer for sale or order, any food, goods, wares, merchandise, mechanical devices, animals or any other article of any kind whatsoever, by whatever name called, upon any public street, alley, sidewalk, public right-of-way or other city-owned or controlled public grounds without a permit issued by the City Traffic Engineer.

1. Outdoor Patio Areas. No person may own, set up or operate an outdoor patio area on any public sidewalk without first obtaining a permit from the City Traffic Engineer. An application for an outdoor patio area and minimum rules for sidewalk clearances and border heights is available from the Engineering Department. Food and beverages may be sold in outdoor patio areas on the public sidewalks only pursuant to a permit issued by the City Traffic Engineer. An outdoor patio area must be adjacent to the business that has received the permit to operate the outdoor patio area. Permit holders for outdoor patio areas and their employees shall meet the following:

a. The permit holder shall set up the outdoor patio area, including, but not limited to, the furniture, canopies, fencing and/or other accessories used for the outdoor patio area, only in the area designated by the City in the permit. An outdoor patio area may not include a roadway or alley. The outdoor patio area shall not impede, endanger or interfere with pedestrian or vehicular traffic. The City Traffic Engineer shall set minimum sidewalk standards with regard to obstructions located in the clear space required by this section.

b. Furniture, canopies, fencing and/or other accessories used for the outdoor patio area shall be located so that a minimum of 72 consecutive inches of unobstructed clear space for pedestrian travel within the pedestrian way, or the minimum required by the Americans with Disabilities Act, is maintained at all times.

c. The permit holder shall provide proper containers or some other means for the collection of waste and trash within the outdoor dining area permitted. The permit holder shall keep the immediate area around the outdoor dining area and the outdoor patio area clean of garbage, trash, paper, cups, cans

or litter associated with the operation of the outdoor dining area. All waste and trash shall be properly disposed of by the permit holder.

d. The permit holder shall comply with all City health and other applicable regulatory agency requirements, including, but not limited to, the requirements for food service. The permit holder shall display in a conspicuous location all such required permits and/or licenses and shall provide copies of those permits and/or licenses to the City prior to issuance of a permit for an outdoor patio area by the City. The permit holder shall renew the permit annually. The permit holder shall continuously maintain the required approvals, permits and/or licenses and provide evidence to the City upon request.

e. The permit holder shall be responsible for the maintenance, upkeep, security, and safe condition of the furniture and accessories of the outdoor patio area and the City shall not be responsible for the same.

f. The permit holder shall not have on the premises any bell, siren, horn, loudspeaker or any similar device to attract the attention of possible customers nor shall the permit holder use any such device to attract attention.

g. Employees of the permit holder for the outdoor dining area shall not consume alcoholic beverages while working in the outdoor patio area.

h. For any outdoor patio area where alcoholic beverages are served, the permit holder shall comply with all state and local regulations for the sale, possession and/or consumption of alcoholic beverages and shall provide the City with a diagram and/or plans showing the location of the outdoor patio area where alcoholic beverages will be served. In addition, the area where alcoholic beverages are sold, possessed and/or consumed must be effectively bordered by a partition, temporary fence or other rigid device designed and intended to separate the outdoor patio area from passersby.

i. The permit holder shall comply with the prohibitions on disturbing, annoying and unnecessary noises set forth in Chapter 8-10 of this Ordinance.

j. The design of the furniture, canopies, fencing and/or other accessories, including a border required for an outdoor patio area by paragraph 1(h) of this section, must be approved by the City prior to a permit being issued. The applicant must provide a photograph, drawing or sketch of the design of the furniture and accessories to be used for the outdoor patio area as part of the application for a permit.

k. Tables, chairs, fences or dividers and any other structure or item placed on the sidewalk must be removed by November 1 each year and may not be set out until April 1 each year unless different dates are specifically allowed by the City Administrator.

l. Cooking or food preparation shall not be allowed in outdoor dining areas. Self-service food outdoors is allowed if approved by the Public Health Department/Environmental Health Division.

m. No outdoor patio area equipment or furniture may be placed in such a manner as to obstruct a building exit.

2. Mobile vendors. A mobile vendor may not cook prepare, display or sell food or sell merchandise on any public street, public alley or sidewalk or other public grounds except as allowed by this section. Upon application and receipt of a permit to do so issued by the City, a mobile vendor may, cook, prepare, display or sell food or merchandise in or on any designated area that has been specifically identified by the City for that use. No mobile vendor shall locate or operate in an area of the City not zoned for the sale of prepared food or merchandise. This section shall not apply to a mobile vendor that is part of a permitted community event or festival. This section shall not apply to the sale of frozen desserts, which is governed by Chapter 8-02. Permit holders for mobile vendors and their employees shall meet the following:

a. A mobile vendor may locate a mobile vendor vehicle or pushcart and operate in any designated area between the hours designated by the Traffic Engineer for each designated area. Designated areas may be used from May 1 through October 31 each year. Designated areas are available to any permitted mobile vendor on a first come-first serve basis. A mobile vendor may not reserve, occupy or otherwise attempt to hold a designated area prior to the time requirements set forth above.

b. A mobile vendor may not grill, barbeque or smoke food within 50 feet from any entrance of any building without first obtaining the written permission of the building tenant(s) served by those entrances.

c. A mobile vendor must provide and deploy portable lighting adequate to illuminate the vicinity of the mobile vendor vehicle or pushcart.

d. A mobile vendor may not set up chairs, tables or other temporary seating in a designated area.

e. A mobile vendor shall be responsible to remove any garbage, spills or stains or repair any damage to the designated area resulting from its operations.

f. A mobile vendor may not leave a mobile vendor vehicle or pushcart in a designated area unattended or overnight.

g. A mobile vendor wishing to utilize the City's designated areas to sell food or merchandise shall make application for a mobile vendor license on an application which is available from the Engineering Department. At a minimum, the information in the application must contain:

1. For the sale of food, a letter from the Public Health Department/Environmental Health Division stating that the mobile vendor vehicle or pushcart has been inspected and approved.

2. A certificate of insurance from a company licensed to do business in North Dakota evidencing that the applicant has general liability insurance policies in effect with limits of at least $250,000 per individual and $1,000,000 per occurrence.

3. A mobile vendor failing to comply with any state law, city ordinance or policy adopted by the City is subject to permit suspension or revocation upon the order of the City Commission.

3. Use of the sidewalk by an adjacent business for sale of merchandise. Merchandise may not be sold on any public street, alley, sidewalk, public right-of-way or other public grounds in the City except as part of a

permitted community event or festival or except pursuant to a permit for the temporary use of the sidewalk issued by the City Traffic Engineer. An application for a permit to use the sidewalk to sell merchandise shall be available from the Engineering Department. A permit to sell merchandise shall not be issued unless the proposed location is adjacent to the applicant's business. A minimum of 72 consecutive inches of unobstructed clearance within the pedestrian way, or the minimum required by the Americans with Disabilities Act, must be maintained at all times.

10-05.1-03. Community Events and Festivals. The City Commission may grant permits for certain types of community events or festivals to take place upon the public streets, sidewalks, squares, avenues or alleys of the City.

1. The sponsor of the event or festival shall submit to City Administration a written application for a permit at least 45 days prior to the opening of the community event or festival for which a permit is desired. The application shall state:

a. The time, date and location of the festival or event. The applicant shall include a map of the proposed event showing the layout of booths, stalls or other attractions and including the specific location of any outdoor grilling activities;

b. The group, firm or individual by whom the festival or event will be sponsored;

c. The purpose of the festival or event;

d. The activities that will be held.

e. The streets requested to be closed. A drawing showing the requested street closures shall be included with the application.

2. A completed application will be considered by the City Commission.

3. In granting permits for community events and festivals, the City Commission shall consider the following:

a. The nature of the event or festival and how it can serve the community and its citizens;

b. The time period during which the event or festival will occur;

c. The location of the event or festival and whether the location inhibits the safe flow of traffic in the City;

d. Whether or not the location(s) proposed for cooking or grilling activities is appropriate considering area residents and businesses.

e. Whether the activities would be in compliance with other applicable laws;

f. Whether the event or festival is to benefit non-profit community service organizations. Commercial events or festivals which generate profit for the private sector, other than profit incidental to the festival or event which is made by persons other than the sponsor of the festival or event, shall be permitted only if the applicant submits evidence to the review committee that the event or festival constitutes a community service; and

g. The general health, safety and welfare of the participants in the event or festival and the citizens of the City.

h. The sponsor of the event or festival shall provide all cleaning services necessary to rid the festival area of all debris and litter created as a result of the event or festival.

i. The issuance of a permit to a sponsor shall authorize only that sponsor and participants specifically authorized by the sponsor to participate in that community event or festival without the restrictions imposed by this chapter.

j. Authorized participants in a community event or festival for which a permit has been issued shall not be required to obtain a city permit required by the provisions of this Chapter for the period during which the community event or festival takes place.

10-05.1-04. Penalty. A violation of this Chapter shall be an infraction.
(Ord. 6111; 06-23-15)

CHAPTER 10-05.2 WIRELESS TELECOMMUNICATION FACILITIES IN THE PUBLIC RIGHT-OF-WAY.

10-05.2-01. Purpose. To ensure that residents, businesses and public safety operations in the city have reliable access to wireless telecommunications network technology and state of the

art mobile broadband communications services, the city desires to accommodate the deployment of wireless communications facilities and services within the public right-of-way. The city also desires to minimize potential negative impacts of wireless facility placement within the public right-of-way. This article applies only to installation in the public right-of-way. All other installations are governed by Title 4 and Title 14 of this Ordinance, and all other applicable laws and regulations. The impact of wireless facilities can be reduced by maintaining standards and objectives for location, visual impact, structural integrity, compatibility, collocation, and the like, which do not unreasonably discriminate among similar users.

Nothing in this chapter affects the city's right to regulate users of the public right-of-way in a competitively neutral and nondiscriminatory manner. The city intends to exercise its authority with respect to the regulation, placement, construction and modification of wireless facilities in the public right-of-way to the fullest extent permitted by applicable law.

10-05.2-02. Definitions. For purposes of this chapter, the following definitions apply. References to "sections" are, unless otherwise specified, references to sections in this article.

"Antenna" means a device used to transmit and/or receive radio or electromagnetic waves for the provision of communication services including, but not limited to, cellular, paging, personal communications services and microwave communications. Such devices include, but are not limited to small wireless facility antennas, small cell antennas, remote radio heads, directional antennae, such as panel antennas, microwave dishes, and satellite dishes; omnidirectional antennae; and wireless access points (Wi-Fi), including strand-mounted wireless access points.

"Applicant" means any person who applies for a permit under this article.

"Attachment" includes any wireless communication facility affixed to, contained in, or placed on or in a structure within the city’s public right-of-way.

"City" means the city of Bismarck.

"City Engineer" means the Bismarck City Engineer or his or her designee.

"City-Owned Structure" means an existing structure owned by the city that is located in the city’s public right-of-way.

It does not mean State, County or other government entity owned infrastructure within the public right-of-way. It does not mean infrastructure owned by a public utility. It does not mean infrastructure located outside of the public right-of-way or on right-of-way which the city does not control.

"Collocation" means the mounting or installation of new wireless communication facilities on or within an existing wireless support structure.

"Construction Plan" means a written plan, and a collection of documents, for construction that: (i) demonstrates to the satisfaction of the city engineer that the aesthetic impact and physical structure of the wireless communication facility is comparable to prevailing standards of similar structures in the immediate area; (ii) includes the identity and qualifications of each person directly responsible for the design and construction; (iii) includes signed and sealed documentation to proportional scale from a professional engineer licensed in North Dakota describing the proposed wireless communication facilities in detail, including (a) the proposed location of the wireless support structure and all easements, property boundaries, and existing structures within on the same side of the roadway and within fifty (50) feet of such wireless facility or wireless support structure unless a different distance is specified by the city engineer; (b) a structural, loading, and wind-speed analysis for existing, proposed, and reserved loading, and (c) a schematic describing the communications properties of the facility, including EMF and RF propagation and off-site data connections; and (iv) includes such other information as the city engineer may require.

"EMF" means electromagnetic frequency.

"Equipment" means accessory equipment serving or being used in conjunction with an antenna or wireless communication facility. Equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables and conduit, equipment buildings, cabinets, storage sheds, shelters, and vaults.

"Existing Height" means the height of a structure, including wireless communications facilities, as originally approved or as of the most recent approved modification. Height shall be measured from natural grade to the top of all appurtenances.

"Existing Structure" means a structure located in the public right-of-way and capable of supporting wireless

communication facilities, erected prior to the application for collocation or substantial modification under this article. An existing structure includes a replacement of an existing structure that is proposed to accommodate the collocation of a wireless communication facility, as long as the replacement structure is substantially similar in appearance to the existing structure and is no taller that the existing height of the structure to be replaced.

"Ground Mounted equipment" means any equipment that is affixed to the ground and extends above the natural grade.

"Guidelines" or "Wireless Facility Guidelines" means any procedure or description from the city engineer, which may be modified and amended from time to time, concerning wireless facility application process and siting requirements. Any such Wireless Facilities Guidelines shall be consistent with this article.

"Interference" means any material and harmful impairment, physically or electronically of the operation, views, signals or functions of city property or third party property.

"Laws" means any and all applicable federal and state laws and applicable local ordinances, resolutions, regulations, administrative orders or other legal requirements.

"Land Development Code" means the Titles 4 and 14 of the Ordinances for the City of Bismarck.

“MAA” means a master attachment agreement between the city and a lessee that defines the general terms and conditions which govern their relationship with respect to particular sites at which the city agrees to permit lessee to install, maintain, and operate communications equipment on existing or new city-owned infrastructure.

"Installation Permit Holder" means any person that has obtained permission through the issuance of an installation permit from the city under this article to locate, install or place wireless facilities in the public right-of-way.

"Person" means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

"Public Right-of-way" means the area on, below, or above a public roadway, highway, street, cart way, bicycle lane and

public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

"RF" means radio frequency.

"Site" or "Premises" means the area occupied by the wireless support structure, the wireless communications facility, accessory equipment, ground-mounted equipment, and the path of the wire or conduit connecting to an off-site network.

"Wireless Communication Facility" means any fixed tangible asset usable for the purpose of providing wireless transmission of voice, data, images or other signals or information including, but not limited to, telecommunications, cellular telephone service, personal communications service and paging service. A wireless communications facility includes antennas and accessory equipment. A wireless communications facility does not include an underlying wireless support structure.

"Wireless Support Structure" means any fixed, above-grade structure in the public right-of-way used to house or support wireless communications facilities and equipment.

10-05.2-03. Locating Wireless Communication Facilities. The location of any new wireless communication facility in the public right-of-way shall be, when possible, on existing structures, such as utility poles through agreement with the pole owner, or street lights, or the replacement of an existing structure as provided herein. Installation of additional wireless support structures for the purpose of supporting a wireless communication facility within the public right-of-way will be permitted only as provided for in Section 10-05-08 and the applicant must have a franchise with the city for the use of the public right-of-way, or MAA, or an encroachment agreement for that specific location and an installation permit.

10-05.2-04. Installation Permit Required.

a. No person may construct, install or modify a wireless communication facility within the public right-of-way without having first done one of the following:

1. Having entered into an MAA with the city, if the wireless communication facility will be installed on city-owned existing or new infrastructure.

2. Having obtained a franchise from the city allowing use of the public right-of-way.

3. Having obtained an encroachment agreement allowing the specific occupation of the public right-of-way.

4. Having entered into an agreement to co-locate with an entity with infrastructure in the right-of-way pursuant to a current franchise.

In each case, the person must also obtain an installation permit from the city engineer as set forth in this chapter.

b. Installation Permit Issuance. Before a Site License, if applicable, is agreed upon and an installation permit is issued, a written application for each site must be filed with the city engineer containing such information as may be required by the city engineer. The application shall include the following:

1. Information required to be provided by a registrant for public right-of-way use and occupancy under this chapter.

2. The name and address of any retail communications service provider for which the facilities are intended to be used, if this is different than the applicant.

3. Evidence that the applicant has obtained all state permits and other licenses, as well as insurance, performance and payment bonds as may be required by the city engineer.

4. A detailed statement of the location of all proposed facilities for which the permit is sought.

5. A construction plan, if applicable.

6. Other information required by this article.

c. Fees. The city may require payment of a nonrefundable installation permit application fee at the time an installation permit application is submitted, as approved by the Board of City Commission and adopted in the Wireless Facilities Guidelines, which shall not exceed $250. Such fees shall be set to recoup some or all of the cost of permit review, processing and issuance, and will be in addition to any other applicable fee or any separate payments that may be required in the event an installation

permit is granted for use of the public right-of-way or the use of city-owned structures. The city reserves the right to charge applicants for installation permits and a fee for their use of the public right-of-way to the extent that such charges are allowed under state law. All such fees shall be described in the Wireless Facility Guidelines and may be in addition to any fee charged for or cost associated with attachment to city-owned structures.

d. Where the city determines that it requires expert assistance in evaluating an application, the city may procure technical and other specialized consulting services that may be necessary to promptly and thoroughly review the application. Reasonable fees charged by the consultant, in an amount not to exceed $200 per site, shall be reimbursed to the city by the applicant regardless of whether the application is, or is not, ultimately approved and a permit issued. The city shall be authorized to require the applicant to deposit a sum equal to the reasonable estimated amount of consultant fees to be paid.

e. Time for Review. The city engineer shall comply with applicable federal, state and local law concerning the time period for review following receipt of a completed application to install or modify a wireless communications facility or wireless support structure in the public right-of-way. Specific timeframes shall be described in Wireless Facility Guidelines.

f. Nondiscrimination. The city shall evaluate, issue, and deny permit applications under this article on a competitively neutral basis, with no unreasonable discrimination among similarly situated applicants and installations.

g. The city engineer may impose additional reasonable conditions on any installation permit issued under this article relating to time, place and manner.

h. The city shall not impose environmental testing, sampling, or monitoring requirements or other compliance measures for RF emissions on wireless communication facilities that are categorically excluded under the FCC's rules for radiofrequency remissions pursuant to 4 CFR 1.1307(b)(1).

i. Scope and Duration.

1. Any installation permit granted pursuant to such application shall be limited in scope to the description submitted in a completed application, as

modified by any further agreed-upon conditions or subsequently approved modification.

2. The installation permit shall be voidable by the city unless in the city's determination the work is commenced within one hundred eighty (180) days from the date of issuance of the permit, unless extended by the city engineer. If the facility is not used for its intended use within twelve (12) months from the date of permit issuance, the city may revoke the permit.

3. Within sixty (60) days following completion of facility installation as described in the permit application, the permit holder shall submit as-built diagrams in digital format and digital photographs of the Site to the city engineer.

4. MAAs issued under this article are valid for a period of fifteen (15) years. To extend the MAA for an additional period of ten (10) years, the permit holder shall provide proof that it continues to have the legal authority to occupy and use the public right-of-way for the purpose set forth in its permit; shall affirm that its site as it exists at the time of the renewal is in full compliance with the applicable city permit or permits issued for the site, and is in compliance with FCC regulations; and shall pay any permit processing fee required for renewal. Failure to submit such proof of legal authority or affirmation of compliance shall be grounds for non-renewal of the permit. The burden is on the permit holder to demonstrate that the site complies with the requirements herein.

j. Conditional Upon Related Agreements. The city engineer may cause a permit under this article to be made temporary or conditional upon the execution of a finalized permit application or attachment agreement further addressing the proposed installation.

k. Proximity to Other Facilities. The city reserves the right to deny, but is not obligated to deny, any siting permit application under this article that proposes to install a new wireless support structure within three hundred (300) feet of any other existing wireless support structure. It is the intent of this provision to encourage the collocation of wireless communication facilities on the same wireless support structure or on existing buildings or other structures, and to sensibly limit the overall visual impact of wireless communications in the public right-of-way.

l. Denial of Permit. Any denial of permit shall be made in writing, supported by substantial evidence that the proposed installation would be inconsistent with one or more of the provisions of this Code of Ordinances or with the health, safety and welfare of the city.

10-05.2-05. General Conditions. The city engineer may approve a permit for the installation of a wireless communication facility in the public right-of-way, provided the applicant certifies compliance with the following general conditions, and subject to other use-specific conditions and other requirements set forth in this article and in any Wireless Application Guidelines.

a. General Design Standards.

1. The installation shall be unobtrusive, harmonious with its surroundings, and streamlined in appearance. The city engineer may require camouflage or concealment efforts. For installations in areas zoned Downtown Core or Downtown Fringe, all designs of wireless communication facilities must comply with zoning requirements, to be approved by the Downtown Design Review Committee.

2. The height of any wireless communication facility shall be comparable to nearby structures of similar type and not more than 50 feet above normal grade unless otherwise approved by the city engineer in the installation permit.

3. Antennas shall be as small as possible. To address the physical and aesthetic impact on the public right-of-way, the city engineer may limit the physical size of the antenna.

4. All riser cabling and wiring must be contained in conduit, affixed directly to the face of the structure, or enclosed within the hollow interior of the pole, for as long as it is technically feasible. No exposed slack or extra cable will be allowed.

5. No signage or advertising will be permitted, except as required by law or as specifically permitted or required by the city engineer.

6. Wireless communication facilities in historic areas shall comply with any special requirements applicable to such areas, and may be subject to additional city review.

b. Minimizing Impacts on Adjacent Property Owners.

1. A permit holder must design and install a wireless communication facility so as to minimize any impact on the adjacent property owners, and must actively mitigate any unreasonably adverse impact relating to visibility from the adjacent property; access to and from the adjacent property; intrusion of light, sound, or smell; in addition to any other cognizable unreasonable and substantial impact made known by an adjacent property owner.

2. No Antenna shall be within five (5) feet of a door, balcony or window nor placed in front of any window within 20 feet and located at a similar height to the antenna unit on the adjacent public right-of-way, unless otherwise restricted by the right-of-way width.

3. An installation shall not interfere with city operations, or the operations of preexisting third-party installations in the public right-of-way. The city will reasonably cooperate with the applicant and/or permit holder to permit activities and modifications that may effectively avoid or correct the interference.

10-05.2-06. Wireless Communications Facilities Upon Existing Structures. In addition to the general conditions described in section 10-05.2-06 and any specification contained in the Wireless Facility Guidelines, any wireless communication facility for which an installation permit is requested under this chapter shall meet the following requirements:

a. The wireless communication facility shall not increase total existing height, including the wireless support structure, by more than 10% over other public utility poles in the area unless, in the city engineer's discretion, an alternative height is accepted depending on the type and structure of the existing facility and the proposed location.

b. The wireless communication facility shall not impair nighttime visibility in the area that result from light emanating from a utility structure and shall not otherwise interfere with the original purpose of an existing structure.

c. Electrical power. Unless otherwise provided in the applicable Site License, franchise, or encroachment agreement the acquisition of electrical power shall be the sole responsibility of the applicant.

10-05.2-07. Attachments to City-Owned Structures. In addition to the requirements set forth in this chapter and the Wireless Facility Guidelines, the following conditions will apply to a wireless communication facility attached to a city-owned structure:

a. The city engineer shall require an applicant for a wireless communication facility attachment to a city-owned structure to execute a separate MAA with the city addressing such attachment.

b. The management of attachments to city-owned structures is governed by the MAA between the city and the applicant. The MAA does not waive any zoning, building code or other public right-of-way management requirements that may also apply.

c. The city may require payment of rental fee, permit fee, application fee or other compensation, as set forth in the Wireless Facility Guidelines.

d. In the event a city-owned wireless support structure is compromised or knocked down, the city and an affected wireless communication facility permit holder will cooperate to reinstall or replace the pole and restore the wireless communication facility.

e. Training. At the request of the city, the permit holder shall host on-site training for city maintenance staff. The training will be offered semiannually or as otherwise agreed between the parties. The training shall include occupational safety, personal protection, proximity limits, emergency procedures and contact information.

10-05.2-08. Replacement of City-Owned Structures or Addition of City-Owned Structures. In addition to the general conditions described in this chapter and the Wireless Facility Guidelines, the proposed replacement of an existing city-owned structure or placement of a new city-owned structure shall be subject to the following requirements.

a. The replacement of a city-owned structure or the addition of a new city-owned structure shall be entirely at the reasonable discretion of the city engineer and at a minimum, must be able to co-locate at least one additional similar facility.

b. Before installing a new structure in the right-of-way or replacing an existing structure, the applicant must demonstrate the following, to the satisfaction of the city engineer:

1. That the facility is not able to be placed on existing infrastructure. The applicant shall provide a map of existing infrastructure in the service area and describe why each such site is not feasible.

2. That city functions for which the original structure was used will be preserved, improved or enhanced, as part of any replacement structure, at the applicant's expense. Replacement of lighting, electrical power, network connectivity, and any other functional purpose of, on or within the original structure shall be done to the satisfaction of the city engineer.

3. In order to place a new city-owned facility, the applicant must establish to the satisfaction of the city engineer that there are no existing or replacement structures that would provide the necessary capabilities, that the new facility serves a public purpose other than wireless communication, and that placement of the facility outside of the right-of-way on private property would be unduly burdensome.

c. Ownership. A replacement structure or a new structure under this section shall be dedicated to and owned by the city upon completion, to the satisfaction of the city. Unless otherwise provided in the applicable MAA, Site License, franchise, or encroachment agreement, the permit holder shall provide city a Bill of Sale, free and clear of all liens and encumbrances.

d. Unless otherwise provided in the applicable Site License, franchise, or encroachment agreement, acquisition and use of electrical power to serve a wireless communication facility on a replacement wireless support structure or facility shall be the sole responsibility of the permit holder.

e. Stocked Poles. To enable prompt replacement in the event of a knockdown or structural compromise, a permit holder shall provide the city with an inventory of poles to be kept by the city. The inventory shall consist of, for each type/style of pole, one pole substantially identical to the initial city-owned replacement pole. For each set of five additional replacement poles of any particular type/style, an additional pole of that type/style.

f. facilities placed in the right-of-way shall be maintained in accordance with the terms of this article and as provided for in a separate agreement.

g. An applicant may be required to enter into such license and other agreements with the city or third parties as the city may require to effect the replacement, consistent with this section.

10-05.2-09. Equipment.

a. Equipment other than ground-mounted equipment shall be mounted in one of the manners described below, or as prescribed by the city engineer.

1. Equipment shall be mounted in a base shroud of approved design. The base shroud should be coated or painted an approved color to match the pole.

2. Equipment shall be mounted directly to the pole a minimum of twelve (12) feet above the existing grade and be coated or painted with an approved color to match the pole.

3. Equipment shall be mounted to the pole in an equipment box a minimum of twelve (12) feet above the existing grade. The equipment box shall be coated or painted an approved color to match the pole.

4. Equipment shall be attached to the wireless support structure in a manner as approved by the city engineer.

b. Ground-Mounted Equipment.

1. A permit for a wireless communication facility that involves ground-mounted equipment will be issued if the city engineer finds the following:

a. The ground mounted equipment will not disrupt traffic or pedestrian circulation;

b. Space exists in the public right-of-way to accommodate the ground mounted equipment;

c. The ground mounted equipment will not create a safety hazard;

d. The location of the ground mounted equipment minimizes impacts on adjacent property;

e. In any historical area, that the ground mounted equipment does not detrimentally affect the historical nature of the area, to the satisfaction of the city engineer;

f. That no reasonable alternative exists that is more favorable to adjacent property owners and to effective use and management of the public right-of-way; and

g. The ground mounted equipment will not adversely impact the health, safety or welfare of the community.

2. Underground equipment. The city engineer may require, at his or her discretion, that utilities be placed underground, and may prohibit the installation of ground mounted equipment unless technically infeasible or otherwise cost prohibitive.

c. Any excavation required for installation of ground-mounted or underground equipment shall be performed in accordance with chapter 10-04.

10-05.2-10. Attachment to City-Owned Buildings. The city may permit the attachment of a facility to a city-owned building upon the recommendation of the city engineer and the approval of a lease by the city commission. An installation permit shall be required for such installations.
(Ord. 6343, 07-10-18)

CHAPTER 10-06. ASSEMBLIES AND DEMONSTRATIONS

10-06-01. Permit Required. A permit is required to organize, hold or participate in a parade or procession on the streets or alleys of the city.
(Ord. 5717, 05-12-09)

10-06-02. Permit Process.

1. An applicant for a parade permit shall file an application with the chief of police containing the following information:

   a. The name and address of the applicant. If the applicant is an organization, the name and contact information for a contact person.

   b. The proposed route and the time and date of the parade including the time of commencement and the anticipated time of termination.

   c. The anticipated number of participants in the parade including the anticipated number of floats, motor vehicles, animals, or people. The applicant should also provide plans for staging

and parking for parade participants for both the beginning and end of the parade.

d. Plans for any necessary cleanup that might arise from the parade. The applicant is responsible for returning the parade route to its pre-parade condition. If an applicant fails to adequately clean up after a parade, the city shall perform the clean up and bill the cost to the applicant.

e. Such other relevant information as the chief of police or the traffic engineer may require to safeguard the parade participants and the public.

2. The traffic engineer and the chief of police shall work with the applicant to insure public safety and to minimize the impact on traffic movements and public convenience. Upon the concurrence of the traffic engineer and the chief of police, the parade permit shall be issued by the chief of police.

(Ord. 5717, 05-12-09)

10-06-03. Picketing and Demonstrations.

1. "Picketing" means the practice of standing, marching, sitting, lying, patrolling or otherwise maintaining a physical presence by one or more persons inside of, in front of, or about any premises. Picketers shall not block the access points of any property including the private sidewalk or driveway.

2. "Public sidewalk" shall mean that portion of the street right-of-way which is designated for the use of pedestrians and may be paved or unpaved.

3. "Street" shall mean the entire width of the public right-of-way, excluding the sidewalk, that is open to the use of the public as a street or alley, including the boulevard.

(Ord. 4408, 11-19-91; Ord. 4816, 01-28-97; Ord. 5717, 05-12-09)

10-06-04. Notice of Intent to Picket or Demonstrate.

1. An individual intending to picket or demonstrate or the organizer of a group intending to picket or demonstrate, where the organizer knows that the picket or demonstrations will include a group of less than 30 individuals, shall provide written notice to the chief of police of the picket or demonstration, including the planned time and location of the picket or demonstration.

2. The organizer of a picket or demonstration that the organizer knows, or should reasonably know, will

include a group of 30 or more individuals shall provide written notice of the intent to picket to the chief of police at least 48 hours before the picket or demonstration is to begin. The notice shall contain the following information:

a. The name, address, and contact telephone number of the organizer of the picket.

b. The name of the organization sponsoring the picket.

c. The location, date and time, including duration and intended daily hours of the picket.

d. The organizer's best estimate of the number of individuals who will participate in the picket.

(Ord. 4408, 11-19-91; Ord. 4816, 01-28-97; 5717, 05-12-09)

10-06-05. Picketing Regulations.

1. Picketing may be conducted on public sidewalks in the city. Picketing may not be conducted on public sidewalks during times when a permit for a different use of that location has been issued by the city. Picketing may not occur on street medians or on streets used primarily for motor vehicle traffic unless so directed by the police. Picketing shall not be allowed on a street if an adjacent public sidewalk is available.

2. Picketing shall not disrupt, block, obstruct, or interfere with pedestrian or vehicular traffic or the free passage of pedestrian or vehicular traffic into any driveway, pedestrian entrance or other access to buildings which abut the public sidewalk.

3. Placards, flags, signs, or banners carried by picketers shall be of such a size as to allow safe and unobstructed passage of pedestrian or vehicular traffic.

4. If more than one group of picketers desire to picket at the same time and location, a police officer may, without regard to the purpose or content of the picket, assign each group a place to picket in order to reduce congestion and preserve public peace. Picketing time and location shall be generally on a first-to-notify basis.

5. Whenever the free passage of any street or public sidewalk in the city is obstructed by a crowd,

congregation, meeting, assembly, demonstration, picket, or procession, or the conduct of two or more persons, the persons comprising the group shall disperse or move so as to remove the obstruction when directed to do so by a police officer. It is unlawful for any person to refuse to comply with a request by a police officer pursuant to this section.

6. Picketers shall be subject to all city, state, and federal laws, rules, and regulations.

(Ord. 4816, 01-28-97; Ord. 5717, 05-12-09)

CHAPTER 10-07. ABANDONED PROPERTY

10-07-01. Abandonment of Vehicles. It is unlawful for any person to abandon any vehicle within the city or to leave any vehicle within the city for such time and under such circumstances as to cause such vehicle reasonably to appear to have been abandoned.

As used in this chapter, an "Abandoned vehicle" means a vehicle considered to be an abandoned motor vehicle within the meaning of section 39-26-02, North Dakota Century Code.

10-07-02. Certain Vehicles Prohibited.

1. It is unlawful for any person to leave any partially dismantled, nonoperating, wrecked or junked vehicle on any street, highway, public lot or other public property or area open to the public within the city.

2. It is unlawful for any owner or other person in charge or control to allow a partially dismantled, nonoperating, wrecked, junked or discarded vehicle to remain on any private property longer than thirty days. This section does not apply with regard to a vehicle in an enclosed building, a vehicle on the premises of a business enterprise operated in a lawful place and manner, when the vehicle is necessary to the operation of such business enterprise; or to a vehicle in an appropriate storage place or depository maintained by the city.

10-07-03. Declaration of Nuisance - Impoundment of Motor Vehicles. Any motor vehicle located within the city, the use, condition or status of which is in violation of any provision of this code or law of the state, or which constitutes an obstruction, hazard or detriment to public health or morals, or which may be damaged, disabled or otherwise involved in an accident or in the commission of any violation of any provision of this code or any law of the state; or any vehicle abandoned or unclaimed within the city is hereby declared to be a

nuisance and may be towed and impounded, without prior notice, as provided in Title 12.

10-07-04. Abandoned Personal Property. Any personal property, other than motor vehicles or money, abandoned or left unclaimed upon the streets, alleys or other public ways of the city for a period exceeding ten days, may be seized or turned over to the police department and held for a period of sixty days. Any property unclaimed must be sold at public auction if unclaimed after sixty days pursuant to section 10-07-06.
(Ord. 5354, 09-14-04)

10-07-05. Redemption of Impounded Property. The owner of any property seized or impounded pursuant to this chapter or the owner of any vehicle seized pursuant to this chapter or pursuant to Title 12 may redeem the property upon showing of proof of ownership and payment of all costs and expenses of seizure, impoundment and storage.

10-07-06. Sale of Unclaimed Property.

1. Whenever any motor vehicle or other personal property, except money, or property deemed to be lost, has come into the possession of the police department and remains unclaimed and the towing, storage and other charges thereon are unpaid for a period of sixty days, and the owner cannot be found upon diligent inquiry or being found and notified refuses or neglects to receive the property and pay the legal charges thereon, the police department shall sell the property at public auction. Firearms that come into the possession of the police department shall be dealt with as provided in paragraph 8 of this section.

2. Prior to sale of any motor vehicle, notice of sale must be mailed, by regular mail, to the registered owner of the vehicle, if known, as shown by records of the Motor Vehicle Department, at least ten days in advance of the scheduled sale.

3. Prior to public sale of any unclaimed property, including motor vehicles, notice of sale and a list of all property to be sold must be posted at the location where the property is stored, at the police department, and at city hall at least ten days in advance of the scheduled sale. A notice of the sale must be published in a local newspaper at least ten days in advance of the sale, although the list of property need not be published if the notice gives the locations where the list is posted.

4. Out of the proceeds of sale the towing, storage and other charges and costs of sale must be paid first,

and the balance of proceeds, if any, must be paid to the registered owner of the motor vehicle, or owner of other property, if known, or if the registered owner or other owner is not known, the balance less those funds due to the State of North Dakota under NDCC Section 39-26-08 and NDCC Chapter 47-30 must be paid to the general fund of the city.

5. The police department shall give the purchaser of any property a bill of sale.

6. Within thirty days after the sale the person making the sale shall make out, in writing, and file with the city auditor a full report of the sale specifying the property sold, the amount received therefor, the amount of costs and expenses, and the disposition made of the proceeds of the sale.

7. At any time within six months of the sale of any property, the owner of the property at the time of sale, upon written application and submission of proof of ownership, is entitled to receive the proceeds of the sale from the city, less the necessary expense of towing, storing and selling the property. The owner of any property may reclaim the property at any time prior to sale upon payment of all costs and expenses.

8. Any firearm that has come into the possession of the Police Department by any means shall be disposed of pursuant to the provisions of NDCC Section 62.1-01-02.

9. An individual who finds money or property deemed to be lost and places the money or lost property in the custody of the police department is entitled to assume ownership of the money or lost property if it is not claimed within 90 days after the money or lost property is placed in the custody of the police department, unless, based upon the circumstances, a longer claim period is set at the discretion of the police department. If the owner does not claim the money or lost property during the claim period, the police department may release the money or unclaimed property to the finder if the finder claims the money or lost property within 30 days of the expiration of the owner's claim period. Lost property unclaimed by the owner or the finder will be sold at the next public auction pursuant to this section. Money unclaimed by the owner or finder will be deposited in the general fund.

(Ord. 4777, 07-23-96; Ord. 5354, 09-14-04; Ord. 5796, 12-14-10; Ord. 5933, 11-27-12; Ord. 6148, 07-28-15)

CHAPTER 10-08. BISMARCK MUNICIPAL AIRPORT

10-08-01. Sale of Aviation Fuel, Lubricants and Coolants.

1. In order to provide for the safe and efficient storage and use of certain highly flammable or dangerous substances, and the proper handling and distribution of these substances by qualified persons, the city shall sell or store for sale or resale fuel, lubricants and coolants at the municipal airport and, in addition thereto, persons who have a permit from the city enabling them to do so may sell or store for resale fuel, lubricants and coolants at the municipal airport. Owners or operators may fuel their own aircraft, with fuel not purchased from the city, or use lubricants and coolants not purchased from the city in their own aircraft, provided they obtain a self-fueling permit from the city.

2. All sales of fuel, lubricants and coolants and all self-fueling operations are subject to all applicable federal, state and local laws, rules, regulations and ordinances. All permits are subject to cancellation or suspension for cause and immediate suspension for violation of any term of the permit or federal, state or local law, rule, regulation or ordinance relating to the city.

3. The airport manager shall draft reasonable and uniform regulations and policies establishing requirements and procedures for fueling operations and permits, including provisions for notice and an opportunity for a hearing in the event of cancellation or suspension.

4. As a condition of the permit, the permittee shall agree to defend, indemnify and hold harmless the City of Bismarck and its officers, employees, and agents from any and all claims, demands, damages, obligations, suits, judgments, penalties, causes of action, losses, liabilities or costs of any kind or at any time received, incurred or accrued as a result of or arising out of the existence or exercise of the rights or obligations of the permittee under the permit.

5. As a condition of the permit, the permittee shall obtain liability insurance, and submit proof of such insurance to the airport manager, in minimum amounts and coverages established by the airport manager. All required policies shall name the City of Bismarck and its officers, employees and agents as additional insureds.

6. As a condition of the permit, the permittee shall promptly pay all administrative fees and flowage fees, in addition to all other applicable fees and taxes.

7. As a condition of the permit, the permittee shall post a bond or equivalent security, in a minimum amount established by the city, conditioned on compliance with applicable laws, rules, regulations and ordinances, and the terms of the permit, and payment of all costs to respond to fires, accidents or spills arising out of fueling operations or storage, or to clean up any such accident or spills consistent with federal and state laws and regulations.

(Ord. 4292, 6-06-89)

10-08-02. Regulations. The following provisions govern operations at the airport:

1. All aeronautical activities of the municipal airport and all flying of aircraft departing from or arriving at the airport in the airspace that constitutes the control zone and/or airport traffic area of the airport must be done in conformity with the current pertinent provisions of the federal aviation regulations issued by the Federal Aviation Administration.

2. The airport manager has the authority to take the necessary actions to safeguard the public in attendance at the airport.

3. The airport manager may suspend or restrict any or all operations when it is deemed necessary irrespective of the weather.

4. The airport manager may deny all airport privileges to any airman or aircraft who violates this chapter.

5. Instructors shall fully acquaint their students with the provisions of this chapter and are responsible for the conduct of students under their direction during dual instruction. When a student flies solo he or she is responsible for his or her conduct.

6. A flight to, from and in the traffic pattern of the municipal airport must be done in accordance with the diagram on file in the office of the airport manager. The same traffic pattern applies to all runways and wind conditions, except as directed or authorized by the FAA control tower.

7. Landings and take-offs must be made into the wind, either on the runway most nearly aligned into the wind

or directly into the wind, or as authorized by the FAA control tower. Landings or take-offs may not be made except at a safe distance from airport buildings and aircraft. Ski equipped aircraft shall confine their take-off and landing operations to those areas so designated by the airport manager.

10-08-03. Ground rules.

1. Aircraft engines may be started or warmed up only in the places designated for those purposes by the airport manager. Engines may not be turned up when hangars, shops, other buildings or persons in the observation area are in the path of the propeller or jet stream.

2. Aircraft may not be started or run at the municipal airport unless a competent operator is at the controls. An aircraft may not be left unattended when the engine is running.

3. Aircraft without adequate brakes must have wheels chocked before starting the engine.

4. Aircraft must be parked in areas and in the manner designated by the airport manager.

5. All repairs to aircraft and engine, except emergency repairs, must be made in the space specifically designated for this purpose.

6. No person, except airmen, duly authorized personnel, passengers going to or from aircraft, or other persons being personally conducted by airmen or airport attendants, are permitted to enter the ramp or aircraft parking area. This does not give any person or persons so accepted the privilege of unrestricted use of the space so designated. These privileges are confined to the necessary use of this space in connection with flights, inspections or routine duties.

7. A person may not enter the movement area of the airport without permission from the airport manager and specific authorization from the FAA control tower. This includes an instructor getting out of an aircraft and observing a student making solo landings and take-offs, or walking back to the ramp after getting out of an aircraft on the movement area of the airport. The movement area of the airport is described as the area within the confines of the airport boundary, except

those areas designated as ramp or parking areas by the airport manager.

8. Motor vehicles may not be driven on the movement area of the airport without the express permission of the airport manager or his designated representative, and under the control of the FAA control tower.

9. Motor vehicles may not be parked on the airport property except in areas designated for that purpose by the airport manager.

10-08-04. Taxiing Rules.

1. Pilots may not taxi to or from the hangar line, or to or from an approved parking space until they have ascertained that there is no danger of collision with any person or object in the immediate area by visual inspection of the area and, when available, through information furnished by airport attendants.

2. Aircraft shall taxi at a safe and reasonable speed.

3. Any aircraft not equipped with adequate brakes may not be taxied near buildings or parked unless an attendant is at the wing of the aircraft to assist the pilot.

4. In aircraft that do not provide full vision forward, pilots shall taxi, turning alternately to the right and the left, commonly known as S-turning, to clear the aircraft to the front and on either side.

5. Taxiing to or from the take-off area must be done as directed by the FAA control tower. When the control tower is closed, the pilot will broadcast his/her intentions on the published Common Traffic Advisory Frequency (CTAF). When CTAF procedures are in effect, the pilot in command assumes sole responsibility for the safe movement of that aircraft.

6. Pilots, before taxiing into take-off position, shall obtain clearance from the FAA control tower. When the control tower is closed, the pilot will broadcast his/her intentions on the published Common Traffic Advisory Frequency (CTAF). When CTAF procedures are in effect, the pilot in command assumes sole responsibility for the safe movement of that aircraft.

7. After the landing roll, taxiing is done under the direction of the FAA control tower. When the control tower is closed, the pilot will broadcast his/her intentions on the published Common Traffic Advisory

Frequency (CTAF). When CTAF procedures are in effect, the pilot in command assumes sole responsibility for the safe movement of that aircraft.

(Ord. 4402, 09-24-91)

10-08-05. Fire Regulations.

1. Persons using, in any way, the airport area or the facilities of the airport shall exercise the utmost care to guard against fire and injury to persons or property.

2. Persons may not smoke within fifty feet of any aircraft.

3. Aircraft may not be fueled while the engine is running with the following exceptions:

   (a) Turbine powered helicopters of the military during periods of training and declared emergencies, provided the areas of fueling have been designated and approved by the Airport Director.

   (b) Turbine powered helicopters being used for medical emergency transport provided a copy of a manual of approved fueling procedures can be furnished showing F.A.A. approval and provided the fueling area designated by the Airport Director is used.

   (c) Airport emergency procedures approved by the Airport Director.

4. All aircraft must be positively grounded when being serviced with gasoline.

5. All fueling must be conducted by authorized airport personnel.

(Ord. 4475, 12-08-92)

10-08-06. Damaged or Disabled Aircraft. The pilot or operator of any aircraft involved in any accident is responsible for the prompt disposal of aircraft wrecked or disabled at the airport and parts of such aircraft as directed by the manager. In the event of the failure of the operator to comply with such directions the wrecked or disabled aircraft and parts may be removed by the city at the operator's expense and without liability for damage which may result in the course of the removal.

10-08-07. Commercial Activities.

1. A person may not engage in any commercial aeronautical activity on the airport without the written approval of the airport manager and under minimum standards prescribed by the City. For the purpose of this part, a commercial aeronautical activity includes any activity which involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations.

2. The City may adopt written minimum standards for commercial aeronautical activities at the airport. The City Commission may adopt minimum standards or amendments to existing minimum standards only after a public hearing. The minimum standards for commercial aeronautical activity adopted by the City Commission will be on file in the airport manager's office.

(Ord. 5362, 10-12-04)

10-08-08. Parking Regulations.

1. The airport manager is authorized to establish, from time to time, time parking areas, loading and unloading taxi parking, emergency parking, no parking, or police use parking zones determined to be of greatest benefit and convenience to the public and to promote the best use of streets for traffic.

2. A person may not, when signs are erected giving notice thereof, park or leave standing in violation of parking regulations, either attended or unattended, any motor vehicle in street areas at the municipal airport.

10-08-09. False Statement. It is unlawful for any person to make a false statement or false representation, orally or in writing, to a designated airport official if that false statement allows that person to access or enter the security display identification area, airport operations area, or any other secured area at the airport.

(Ord. 4883, 01-13-98)

10-08-10. Enforcement and Penalty.

1. The Airport Director, or his/her designee or designees, is responsible for the enforcement of the rules and regulations contained in this chapter.

2. Any person violating any provision of this chapter is guilty of an ordinance violation and subject to the provisions of Chapter 1-02. Each day the violation continues is a separate offense.

3. Any person whose act or failure to act results in a fine or penalty being assessed against the Airport or the City of Bismarck by any federal, state, or local governmental agency having jurisdiction shall be fully liable for the payment or reimbursement to the Airport of such fine or penalty. This liability would extend to and include the costs associated with the restitution, modification, repair, or clean-up of conditions resulting from such violations including attorney fees. These situations may include security, safety, environmental, aeronautical, health or any other Airport related issues.

(Ord. 5088, 01-09-01)

CHAPTER 10-09. AIRPORT ZONING REGULATIONS

10-09-01. This chapter is and may be cited as "Bismarck Airport Zoning Ordinance".

10-09-02. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Airport" means Bismarck Municipal Airport.

2. "Airport elevation" means the established elevation of the highest point of the landing areas and is set at 1,663 feet above sea level.

3. "Airport hazard" means any structure, tree or use of land which obstructs the airspace for or is otherwise hazardous to the flight of aircraft in landing or taking-off at the airport.

4. "Airport reference point" means the point established as the approximate geographic center of the airport landing area and so designated.

5. "Board of adjustment" means a board consisting of five members appointed by the Board of City Commissioners of said city.

6. "Height". For the purpose of determining the height limits in all zones set forth in this article and shown on the zoning map, the datum shall mean sea level elevation unless otherwise specified.

7. "Instrument runway" means a runway equipped or to be equipped with electronic or visual air navigation aids adequate to permit the landing of aircraft under restricted visibility conditions.

8. "Landing area" means the area of the airport used for the landing, take-off or taxiing of aircraft.

9. "Nonconforming use" means any structure, tree or use of land which is lawfully in existence at the time the regulation is prescribed in the article or an amendment thereto becomes effective and does not then meet the requirements of said regulation.

10. "Noninstrument runway" means a runway other than an instrument runway.

11. "Person" means an individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.

12. "Runway" means the paved surface of an airport landing strip.

13. "Structure" means an object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

10-09-03. Creation of Zones. To carry out the provisions of this chapter certain zones are created which include all of the land lying within the instrument approach zones, non-instrument approach zones, transition zones, horizontal zone and conical zone. These areas and zones are shown on the airport zoning map consisting of one sheet, prepared by the city engineering department and dated March 5, 1979, which is made a part hereof, and on file in the offices of the city auditor and the city engineer. The various zones are established and defined as follows:

1. Instrument approach zone. An instrument approach zone is established at each end of the NW-SE instrument runway and at each end of the master planned NE-SW instrument runway, for the purpose of instrument landings and takeoffs. The instrument approach zones have a width of one thousand feet at a distance of two hundred feet beyond the ends of the runways, widening thereafter uniformly to a width of sixteen thousand feet at a distance of fifty thousand two hundred feet beyond the ends of the runways, the center lines being the continuation of the center lines of the runways.

2. Non-instrument approach zones. A non-instrument approach zone is established at each end of all existing and master planned non-instrument runways for the purpose of non-instrument landings and takeoffs. The non-instrument approach zone of the NE-SW runway and the master planned NW-SE runway have a width of

two hundred fifty feet at a distance of two hundred feet beyond each end of the runways, widening thereafter uniformly to a width of one thousand two hundred fifty feet at a distance of five thousand two hundred feet beyond each end of the runways, the center lines being the continuation of the center lines of the runways. The non-instrument approach zone of the N-S runway has a width of five hundred feet at a distance of two hundred feet beyond each end of the runway, widening thereafter uniformly to a width of two thousand five hundred feet at a distance of ten thousand two hundred feet beyond each end of the runway, its center line being the continuation of the center line of the runway.

3. Transition zones. Transition zones are established adjacent to each existing and master planned instrument and non-instrument runway and approach zone as indicated on the zoning map. Transition zones symmetrically located on either side of the runways have variable widths as shown on the zoning map. Transition zones extend outward from a line one hundred twenty-five feet on either side of the center lines of the NE-SW and the master planned NW-SE non-instrument runways, and two hundred fifty feet on either side of the center line of the N-S non-instrument runway, for the length of the runways plus two hundred feet on each end, and are parallel and level with the runway center lines. Transition zones extend outward from a line five hundred feet on either side of the center line of the NW-SE and the master planned NE-SW instrument runways, for the length of the runways plus two hundred feet on each end, and are parallel and level with the runway center lines. The transition zones along the runways slope upward and outward one foot vertically for each seven feet horizontally to the point where they intersect the surface of the horizontal zone. Further, transition zones are established adjacent to the instrument and non-instrument approach zones for the entire length of the approach zones. These transition zones have variable widths, as shown on the zoning map. The transition zones flare symmetrically with either side of the runway approach zones from the base of the zones and slope upward and outward at the rate of one foot vertically for each seven feet horizontally to the points where they intersect the surfaces of the horizontal and conical zones. Additionally transition zones are established adjacent to the instrument approach zones where they project through and beyond the limits of the conical zone, extending a distance of five thousand feet measured horizontally from the

edge of the instrument approach zones at right angles to the continuation of the center line of the runways.

4. Horizontal zone. A horizontal zone is established as the area contained within the following described boundary, the perimeter of which is constructed by swinging arcs of ten thousand two hundred feet from each end of the NW-SE runway and the master planned NE-SW runway, and connecting the adjacent arcs of lines tangent to those arcs. The horizontal zone does not include the instrument and non-instrument approach zones and the transition zones.

5. Conical zone. A conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward therefrom a distance of four thousand feet. The conical zone does not include the instrument approach zones and transition zones.

10-09-04. Zone Height Limits.

1. Except as otherwise provided in this chapter, a structure or tree may not be erected, altered, allowed to grow, or maintained in any zone to a height in excess of the height limit established for the zone. The height limitations established for each of the zones are as follows:

   a. Instrument approach zones. One foot in height for each fifty feet in horizontal distance beginning at a point two hundred feet from and at the elevation of the end of the runway extending to a distance of ten thousand two hundred feet from the end of the runway; thence one foot in height for each forty feet in horizontal distance to a point fifty thousand two hundred feet from the end of the runway.

   b. Non-instrument approach zones. One foot in height for each forty feet in horizontal distance beginning at a point two hundred feet from and at the elevation of the end of the runway, extending to a point ten thousand two hundred feet from the end of the runway, said zones are established at the ends of the N-S non-instrument runway. One foot in height for each twenty feet in horizontal distance beginning at a point two hundred feet from and at the elevation of the end of the runway, extending to a point five thousand two hundred feet from the end of the runway.

c. Transition zones. One foot in height for each seven feet in horizontal distance beginning at any point one hundred twenty-five feet normal to and at the respective elevations of the center lines of the NE-SW non-instrument runway and the master planned NW-SE non-instrument runway and two hundred fifty feet normal to and at the elevation of the center line of the N-S non-instrument runway extending two hundred feet beyond each end, and five hundred feet normal to and at the respective elevations of the center lines of the NW-SE instrument runway, extending two hundred feet beyond each end extending to a height of one hundred fifty feet above the airport elevation which is one thousand six hundred sixty-three feet above mean sea level. In addition, there are established height limits of one foot vertical height for each seven feet horizontal distance measured from the edges of all approach zones for the entire length of the approach zones and extending upward and outward to the points where they intersect the horizontal or conical surfaces. Further, where the instrument approach zones project through and beyond the conical zone, a height limit of one foot for each seven feet of horizontal distance must be maintained beginning at the edge of the instrument approach zones and extending a distance of five thousand feet from the edge of the instrument approach zones measured normal to the center lines of the runways extended.

d. Horizontal zone. One hundred fifty feet above the airport elevation or a height of one thousand eight hundred thirteen feet above mean sea level.

e. Conical zone. One foot in height for each twenty feet horizontal distance beginning at the periphery of the horizontal zone; extending to a height of three hundred fifty feet above the airport elevation.

2. Where an area is covered by more than one height limitation the more restrictive limitation prevails.

10-09-05. Use Restrictions. Notwithstanding any other provisions of this chapter, a use may not be made of the land within a zone established by this chapter in a manner which creates electrical interference with radio communication between the airport and aircraft, makes it difficult for flyers to distinguish between airport lights and others, results in glare in the eyes of flyers using the airport, impairs visibility in

the vicinity of the airport or otherwise endangers the landing, takeoff or maneuvering of aircraft.

10-09-06. Regulations Not Retroactive.

1. The provisions of this chapter are not retroactive as to any structure or tree not in conformity with these regulations on January 24, 1967, nor shall the regulations affect the continuance of the non-conformity. In addition, this chapter does not require any change in the construction or alteration of the intended use of a structure which was began prior to January 24, 1967, and diligently prosecuted.

2. Notwithstanding subsection 1, the owner of any nonconforming structure or tree shall permit the installation, operation and maintenance of the markers and lights the airport manager deems necessary to indicate to the operators of aircraft in the vicinity of the airport, the presence of such airport hazards. The markers and lights are to be installed, operated and maintained at the expense of the city.

10-09-07. Use Permits.

1. Future uses: Except as specifically provided in paragraphs a, b and c, a material change may not be made in the use of land and a structure or tree may not be erected, altered, planted or otherwise established in any zone hereby created unless a permit therefor has been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit must be granted.

   a. In the area lying within the limits of the horizontal zone and the conical zone, a permit is not required for any tree or structure less than seventy-five feet of vertical height above the ground, except when because of terrain, land contour or topographic features such tree or structure would extend above the height limits prescribed for such zone.

   b. In the areas lying within the limits of the instrument and non-instrument approach zones but at a horizontal distance of not less than 42,000 feet from each end of the runways, a permit is

not required for any tree or structure less than seventy-five feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such instrument or no-instrument approach zone.

c. In the areas lying within the limits of the transition zones beyond perimeter of the horizontal zone, a permit is not required for any tree or structure less than seventy-five feet of vertical height above the ground except when such tree or structure, because of terrain, land contour or topographic features would extend beyond the height limit prescribed for such transition zones.

Nothing in the foregoing exceptions may be construed as permitting or intending to permit any construction, alteration or growth of any structure or tree in excess of the height limits, except as set forth in section 10-09-04.

2. Existing uses: Permits may not be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming use, structure or tree to be made or become higher, or become a greater hazard to air navigation, than it was on January 24, 1967, or than it was when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.

3. Non-conforming uses abandoned or destroyed: Whenever the airport manager determines that a non-conforming structure or tree has been abandoned or is more than eighty percent torn down, physically deteriorated, or decayed, a permit may not be granted to allow the structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.

4. Variances: Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use his or her property, not in accordance with the regulations, ma apply to the board of adjustment for a variance from the regulations. The variances may be allowed if it is found that a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted is not contrary to the public interest but would do substantial justice and be in accordance with the spirit of this chapter.

5. Hazard lighting and marking: Any permit or variance granted may, if deemed advisable and reasonable in the circumstances, be conditioned on the owner of the structure or tree in question permitting the city at its own expense, to install, operate and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

10-09-08. Enforcement. It is the duty of the airport manager to administer and enforce the regulations of this chapter. Applications for permits and variances must be made to the airport manager on a form furnished by him or her. Applications required by this chapter to be submitted to the airport manager shall be promptly considered and granted or denied. Applications for action by the board of adjustment shall be forthwith transmitted by the airport manager.

10-09-09. Board of Adjustment. The existing city board of adjustment shall exercise the powers granted in section 2-04-10 of the North Dakota Century Code.

10-09-10. Administrative Appeal.

1. Any person aggrieved, or any taxpayer affected, by a decision of the airport manager may appeal to the board of adjustment.

2. All appeals must be taken within a reasonable time as provided by the rules of the board of adjustment, by filing with the airport manager a notice of appeal specifying the grounds. The airport manager shall transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

3. An appeal stays all proceedings in furtherance of the action appealed from, unless the airport manager certifies to the board of adjustment, after the notice of appeal is filed with it, that by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed except by order of the board of adjustment on notice to the agency from which the appeal is taken and on due cause shown.

4. The board of adjustment shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, and decide the appeal within a reasonable time. At the hearing any party may appear in person or by agent or by attorney.

5. The board of adjustment may reverse or affirm, in whole or in part, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as may be appropriate under the circumstances.

10-09-11. Judicial Review. Any person aggrieved, or taxpayer affected, by a decision of the board of adjustment, may appeal to the board of city commissioners and may appeal an adverse decision of the board of city commissioners to the district court as provided in the North Dakota Century Code.

10-09-12. Conflicting Regulations. Where there exists a conflict between any of the regulations or limitations prescribed in this chapter and any other regulations applicable to the same area, the more stringent limitation or requirement shall govern and prevail.

CHAPTER 10-10. EVENTS CENTER

10-10-01. Control of Events Center. The Events Center is under the supervision and control of the Board of City Commissioners and is subject to such regulations as the Board shall from time to time direct.

10-10-02. Alcoholic Beverages. The Board may, pursuant to the provisions of Chapter 5-01, issue a license to a qualified person for the sale of alcoholic beverages at the Events Center. Otherwise, alcoholic beverages may be sold or dispensed pursuant to special permits issued pursuant to Chapter 5-01 or by means of a concession agreement for the provision of alcoholic beverages at the Events Center awarded to any qualified City liquor licensee. The Board may award separate concessions for different areas of the Events Center or separate concessions for beer, wine and alcoholic beverages or in any combination.
(Ord. 6220, 07-26-16)

CHAPTER 10-11. FRANCHISES

10-11-01. Franchises Required. Except as otherwise provided by law, a person, firm, corporation or utility may not place or maintain any permanent or semipermanent fixtures, including poles, wire, cable, conduit, or any other medium used to transmit or transport electric or electronic signals, natural gas or other materials, in, over, upon or under any street or public place without a franchise to do so from the city. A franchise may be granted by resolution of the Board of City Commissioners.

10-11-02. Term. An exclusive, perpetual or irrevocable franchise may not be granted. A franchise may not be granted for a term exceeding twenty years.

10-11-03. Public Hearing. Before any franchise is granted, the Board of City Commissioners shall hold a public hearing. Notice of the hearing must be published at least once in the official newspaper not less than ten days prior to the date of hearing.

10-11-04. Renewals and Extensions. A franchise may not be extended, but shall expire at the end of the term for which granted. A franchise may be renewed only in the same manner and with the same limitations applicable to the grant of a new franchise, except that cable franchises may be renewed subject to the provisions of applicable federal law, as provided by Chapter 10-11.1.
(Ord. 5647, 11-27-07)

10-11-05. Application Required; Fees. Before any franchise is granted, the applicant shall file with the city auditor an application containing such information as may be necessary and helpful to act on the application. All applications for a franchise must be accompanied by a non-refundable application fee of $500.00. A reasonable franchise fee for use of public streets, rights-of-way and other public grounds and other costs may be assessed at the discretion of the Board of City Commissioners. Any franchise fee must be fair and uniform for all franchises of the same class or category.

10-11-06. Commercial Garbage Collection; Franchise Required. Except as otherwise provided by law, a person, firm or corporation may not operate in and upon the streets, alleys, public ways and places in the city for the purpose of collecting and conveying garbage accumulated in the city without a franchise issued by the city.
(Ord. 5647, 11-27-07)

10-11-07. Garbage Franchise Term; Fees. Garbage collection franchises are non-exclusive and may not exceed five years. A reasonable franchise fee for the use of public streets, rights-of-way and other public grounds and other costs may be assessed.
(Ord. 5647, 11-27-07)

10-11-08. Garbage Collection Franchises; Public Hearing. Before any garbage collection franchise is awarded, the Board of City Commissioners shall hold a public hearing. Notice of the hearing must be published at least once in the official newspaper not less than ten days prior to the date of the hearing.
(Ord. 5647, 11-27-07)

10-11-09. Garbage Collection Franchises; Renewals and Extensions. A franchise may not be extended, but shall expire at the end of the term for which granted. A franchise may be

renewed only in the same manner and with the same limitations applicable to the granting of a new franchise.
(Ord. 5647, 11-27-07)

10-11-10. Garbage Collection Franchise; Application Required.

1. Before any franchise is granted, the applicant shall file with the city auditor an application containing such information as may be necessary and helpful to act on the application. All applications for a franchise must be accompanied by a non-refundable application of $500.00 and proof that the applicant has met the following conditions:

   a. The applicant shall have collection vehicles which are specifically designed for the sanitary hauling of municipal waste. The collection must pass initial inspections by a City health inspector.

   b. The applicant shall have at least one full-time collection vehicle and shall show proof of access to a complying backup collection vehicle. Applicant may show access by proof of ownership, lease, or other contractual commitment which guarantees availability of the backup collection vehicle within six hours of request.

   c. The applicant shall be licensed by the North Dakota State Department of Health and Consolidated Laboratories before operating under any franchise granted by the City.

   d. The applicant shall indemnify and save the City and its agents and employees harmless from all and any claims for personal injuries or property damages, and any other claims, costs, including attorney's fees, expenses of investigation and litigation of claims and suits thereon which may arise from its operations under this franchise. For this purpose the company shall carry and at all times maintain on file with the City Auditor, and at all times keep in force, a public liability policy of insurance, insuring the company and the City against any and all liability of not less than $25,000 property damage, $250,000 for any one person, personal injury or death, and $500,000 for any one accident resulting in injury or death. Such policies of insurance or certificate thereof by a company licensed to do business in the State of

North Dakota shall be filed with the City Auditor prior to the commencement of such use.

2. If the franchisee fails to continuously comply with any of the provisions of Subsection 1 of this section, the franchise shall be suspended until proof of full compliance is provided.

(Ord. 4512, 05-25-93; (Ord. 5647, 11-27-07)

CHAPTER 10-11.1 CABLE SYSTEMS

10-11.1-01. Declaration of Findings. The Board of City Commissioners finds and declares that:

1. It is in the public interest to permit the use of rights-of-way and easements for the construction, maintenance, and operation of cable systems under the terms of this ordinance and a franchise.

2. It is in the public interest to ensure that a grantee does not unreasonably discriminate in whom they serve based on race, ethnic status, income, area in which they live, or other inappropriate basis, such as by not serving certain areas of the City, or failing on a timely basis to build their system to serve certain areas.

3. In order to meet community needs, cable systems need to be accessible throughout the City and need to be constructed with lines in appropriate places both to make available public, educational, and governmental access channels and to provide cable service to schools and government buildings.

4. Requiring providers to obtain a franchise prior to constructing such systems, while requiring the City to act expeditiously on any franchise request, allows the City to ensure that the City can properly manage and control rights-of-way use and that the preceding objectives and others which are in the public interest are met, while allowing the prompt provision of cable service.

5. It is the City's intent to apply the ordinances of the City, including this ordinance to all persons who intend to offer video programming in the city and who intend in providing such video programming to use rights-of-way to construct or operate facilities comparable to a cable system, in a competitively neutral and non-discriminatory manner. All such persons shall be required to apply for a franchise before offering video programming in the City.

(Ord. 5647, 11-27-07)

10-11.1-02. Statement of Intent and Purpose. The City intends, by the adoption of this ordinance, to facilitate the development and operation of cable systems in the City. This type of development can contribute significantly to meeting the needs and desires of many individuals, associations, and institutions. Therefore, the following are statements of the City's intent when granting or renewing a franchise:

1. Provide for the installation and operation of cable systems with features meeting the current and future cable-related needs and interests of the community considering the costs to subscribers and to a grantee.

2. To act expeditiously on any requests for a franchise so as to allow the prompt provision of cable service while ensuring that the public interest is met and that residents are not discriminated against based on race, ethnic status, income, area in which they live, or other inappropriate basis.

3. Encourage the widest feasible scope and diversity of programming and other cable services to all City residents that are consistent with community needs and interests and as measured against the cost of providing such programming and cable services.

4. Encourage prompt implementation of technical advances in communications technology.

5. Provide for ample and fairly allocated access to cable system facilities for program producers of public, educational, or governmental access programming consistent with the needs and interests of the community as measured against the cost of providing such programming.

6. Ensure that rates and charges for basic cable programming and equipment are fair, reasonable and consistent with federal standards.

7. Require that a grantee of a franchise provide customer service consistent with the standards of the FCC.

8. Ensure that the installation and maintenance of cable systems comply with all applicable City ordinances and regulations and do not interfere with the City's legitimate use of rights-of-way and its own facilities and property.

9. Ensure that the occupants of the City's rights-of-way protect the health, safety and welfare of the citizenry, public property and other uses of the rights-of-way.

10. Ensure universal availability of cable systems and video programming within City on a non-discriminatory basis.

11. Provide for timely mandatory government access to all cable systems in times of civil emergency consistent with any contractual obligations that any operator has with commercial broadcasters as permitted under applicable law.

12. Obtain compensation for the use of rights-of-way.

(Ord. 5647, 11-27-07)

10-11.1-03. General Provisions.

1. This ordinance shall be known and cited as the "City of Bismarck Cable System Ordinance," or herein "this ordinance."

2. The requirements of this ordinance shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by valid applicable federal or state law, including such changes in valid applicable law as may be hereinafter enacted. The provisions of this ordinance shall be deemed incorporated in each franchise granted. The failure of the City to enforce any provision herein or in a franchise or the failure of any person to comply with any provision herein or in a franchise shall not be a waiver of the City's right to enforce such provisions.

3. Any rights granted pursuant to this ordinance and pursuant to any franchise authorized hereunder are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Grantees shall be subject to and comply with all valid generally applicable ordinances enacted by the City; however, a grantee's rights and duties pursuant to this ordinance and a franchise may not be materially altered or impaired without grantee's prior written consent, which shall not be unreasonably withheld except for the City's valid exercise of its police powers.

4. Certain information required to be filed with the City pursuant to this ordinance is subject to inspection and copying by the public pursuant to the provisions of North Dakota Open Records Law, NDCC Chapter 44-04.

5. The City shall be entitled to enforce the provisions of this ordinance and any franchise through all remedies lawfully available.

6. Under no circumstances shall any franchise authorized by this ordinance be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.

7. As a condition of use of the rights-of-way, every grantee at its sole cost and expense shall indemnify and hold harmless City for all damages and penalties as a result of the exercise of a franchise by a Grantee and as described in Section 10-11.1-22 of this ordinance.

8. Except as otherwise permitted by law, it shall be unlawful for any person to establish, operate or to carry on the business of distributing to any persons in the City any cable services by means of a cable system using rights-of-way unless a franchise therefore has first been obtained pursuant to the provisions of this ordinance, and unless such franchise is in full force and effect.

9. Unless permitted by law, it shall be unlawful for any person to construct, install or maintain within any rights-of-way in the City, or within any other public property of the City, or within any privately owned area within the City which has not yet become a rights-of-way but is designated or delineated as a proposed rights-of-way on any tentative subdivision map approved by the City, or the City's official map or the City's major thoroughfare plan, any cable system, unless a franchise authorizing such use of such rights-of-way or property or areas has first been obtained.

(Ord. 5647, 11-27-07)

10-11.1-04. Definitions. For purposes of this ordinance and a franchise, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this ordinance and any franchise granted by City, unless the context clearly indicates that another meaning is intended or unless otherwise more specifically defined in another chapter or code of the City. Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

Affiliate: When used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

Applicant: Means any person that applies for a franchise pursuant to this ordinance.

Application: Means the process by which an applicant submits a request and indicates a desire to be granted a franchise to provide cable service. An application shall be considered an open record unless otherwise exempted by the North Dakota Open Records Law.

Basic Cable: Means the lowest priced tier of cable service that includes the retransmission of local broadcast television signals, and public, educational, and governmental access channels.

Cable Act: Means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V. 1987) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) as it may, from time to time, be amended.

Cable Operator: Means any person or groups of persons, who provide(s) cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a cable system.

Cable Service or Service: Means (A) the one-way transmission to subscribers of (i) video programming or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Cable service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6).

Cable System or System: Means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the City, but such term does not include:

1. A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

2. A facility that serves subscribers without using any rights-of-way;

3. A facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall

be considered a cable system (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

4. An open video system that complies with 47 U.S.C. § 573; or

5. Any facilities of any electric utility used solely for operating its electric utility systems.

Channel: Means a portion of the spectrum which is used in a cable system and which is capable of carrying one industry standard video signal.

City or Grantor: Means the City of Bismarck, North Dakota.

City Administrator: Means the administrator of City appointed by City Commission.

City Commission: Means the governing body of City.

DMA: Means Dakota Media Access, an entity designated by the City to oversee and administer public, educational, and governmental access programming in the City.

Effective Date: Means the date that a grantee files its written acceptance of a franchise with the City or as otherwise described in a franchise.

Federal Communications Commission or FCC: Means the agency of the federal government authorized to adopt and enforce rules pertaining to cable systems and any cable service(s) contemplated by application of this ordinance.

Franchise or Franchise Agreement: Means a cable system and cable service authorization granted by the City authorizing a grantee to construct a cable system in rights-of-way and provide cable service in City. Any such authorization, in whatever form granted, shall not mean or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City, including the provision of telecommunications services; (ii) any permit, agreement, or authorization required in connection with operations in the rights-of-way including, without limitation, permits and agreements for placing devices on or in poles, conduits, or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the rights-of-way.

Franchise Fee: Means any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a grantee or its subscribers, or both, solely because of their status and activities as such. The term "franchise fee" does not include: (i) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and grantee or their cable services but not including a tax, fee, or assessment that is unduly discriminatory against grantees or subscribers); (ii) capital costs that are required by a franchise to be incurred by a grantee for public, educational or government ("PEG") access facilities; (iii) requirements or charges incidental to the award or enforcement of a franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; (iv) any permit fee or other fee imposed under any valid rights-of-way ordinance; or (v) any fee imposed under Title 17 of the United States Code.

Grantee: Means any person, including a cable operator, required to have a cable system franchise pursuant to this ordinance.

Gross Revenue: Means any and all revenue in whatever form, from any source received by a grantee or an affiliate of grantee that would otherwise be subject to the payment of franchise fees pursuant to the provisions of 47 U.S.C. § 542 derived from the operation of the cable system to provide cable services, within the City. By way of illustration and not limitation, this definition includes revenue received from the sale of advertising time by an affiliate of grantee as calculated in a manner consistent with generally accepted accounting principles. Gross revenues shall include but are not limited to all revenue received from basic and expanded basic, pay cable, installation and reconnection fees, leased channel access, converter rentals, fees for cable internet service (if such service is deemed to be a cable service), and home shopping revenues. Revenues which are not directly attributable to specific subscribers, including, but not limited to, leased access fees, advertising revenues, and home shopping commissions, shall be allocated among the franchising jurisdictions served by a grantee's cable system on a per cable subscriber or other equitable basis measured in a consistent manner from period to period. The term does not include any taxes or fees on cable services furnished by a grantee and imposed directly upon any subscriber or user by federal, state, or local law and collected by grantee on behalf of such governmental unit, or amounts collected from

subscribers for public, educational and/or government access.

1. Gross revenues does not include any revenue which cannot be collected by a grantee and are identified as bad debt; provided, that if revenue previously representing bad debt is collected, this revenue shall be included in gross revenues for the collection period.

2. It is understood that over the term of a franchise, a grantee may provide new services that are classified as cable services under a franchise and federal law. The parties anticipate and agree that such services shall be subject to franchise fees under this ordinance and a franchise without any further amendment or other action by the parties hereto.

Interactive On-Demand Services: Means a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming providers.

Non-Cable Services: Means any use of rights-of-way by any person to make available its services outside the service area.

Normal Business Hours: Means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one (1) night per week and/or some weekend hours.

Normal Operating Conditions: Means those conditions which are within the control of a grantee. Those conditions which are not within the control of a grantee, include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are within the control of a grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the cable system.

Open video services or OVS: Means any video programming services provided to any person by a person certified by the FCC to operate an open video system pursuant to 47 U.S.C. § 573, as may be amended, regardless of the facilities used.

Other Programming Service: Means information that a cable operator makes available to all subscribers generally.

Person: Means any corporation, partnership, proprietorship, individual, organization, governmental entity, including the City, or any natural person.

Public, Educational or Governmental Access: Means the availability of channels on the cable system for non-commercial public, educational or government use by agencies, institutions, organizations, groups and individuals in the community, including the City for the distribution of non-commercial programming not under a grantee's editorial control and consistent with applicable law, including:

1. Public access shall mean access where organizations, groups, or individual members of the general public are the designated programmers having editorial control over their programming pursuant to rules which may be promulgated by the City.

2. Educational access shall mean access where local schools or education institutions, public or private, K-12, technical and community colleges, as well as other accredited institutions of higher learning, are the designated programmers having editorial control over their programming which shall concern their educational functions.

3. Government access shall mean access where the City, County, or other governmental entities, agencies or institutions, or their designees, are the primary or designated programmer having editorial control over its programming which shall concern governmental meetings, activities, services, or community affairs.

4. "PEG access" or "PEG Access Channels" means Public access, educational access and government access, or the channels designated for those purposes, collectively.

Renewal: Means a new franchise and franchise agreement granted pursuant to this ordinance to an existing cable operator.

Rights-of-Way: Means the surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public

boulevard, public parkway, public drive or any public easement or rights-of-way now or hereafter held by the City which shall, within its proper use and meaning, entitle a grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a system.

Service Area: Means the present municipal boundaries of the City, and shall include any additions thereto by annexation or other legal means.

Service Interruption: Means the loss of picture or sound on one (1) or more channels or channel equivalents.

Standard Installation: Means installations within one hundred twenty-five (125) feet from the nearest tap to the subscriber's terminal.

Subscriber: Means a person who lawfully receives cable service from a cable system with a grantee's express permission.

Telecommunications: Means the transmission between or among points specified by the user, of information of the user's choosing (e.g., data, video, and voice), without change in the form or content of the information as sent and received regardless of the technology used. This term does not include cable service.

Telecommunications Act: The Telecommunications Act of 1996 codified at Title 47 of the Unites States Code.

Telecommunications Service: Means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public. This term does not include cable service, which is instead subject to separate cable franchising requirements under this Ordinance.

Video Programming: Programming provided by or generally considered comparable to programming provided by a television broadcast station.

(Ord. 5647, 11-27-07; Ord. 6334, 06-12-18)

10-11.1-05. Franchise General Provisions.

1. It shall be unlawful for any person to construct, operate or maintain a cable system or other competing cable services or video programming facilities, including a cable system, in the City without a franchise in the form of a franchise authorizing the same, unless valid applicable

federal or state law prohibits the City's enforcement of such a requirement. Such franchise shall comply with all of the specifications of this ordinance.

2. Any franchise granted by the City shall be non-exclusive. The City specifically reserves the right to grant, at any time, such additional franchises to any other person, including itself, as it deems appropriate, subject to this ordinance and valid applicable state and federal law. The term of a franchise granted pursuant to this ordinance may not exceed fifteen (15) years.

3. Before granting an additional franchise, the City shall give written notice to every existing grantee of any new application, identifying the applicant for such additional franchise and providing at least thirty (30) days prior notice of the date, time, and place at which the City shall consider and/or determine whether such additional franchise should be granted.

4. A franchise granted or renewed pursuant to this ordinance shall authorize constructing, operating, and maintaining a cable system in the City for the purpose of offering cable service. A grantee may utilize the rights-of-way within the City for the operation of a cable system, subject to the requirements of this ordinance and all other applicable City codes and state and federal laws.

5. Every franchise shall apply to the entire service area of the City, as it exists now or may later be configured.

6. The terms and conditions of all new or renewed franchises granted after the date of this Ordinance shall be substantially similar in order that one grantee not be granted a competitive advantage over another. Nothing in this provision shall be construed in such a way as to limit the City's authority to enter into other franchises. In the event a person commences offering cable service or video programming without a franchise or is granted a franchise or permit to operate a cable system or an OVS system by the City, the terms and conditions of which do not comply with this ordinance shall be subject to review by a grantee for comparable application to its franchise. Any grantee shall have the right to petition the City for modifications to its franchise to ensure competitive equity and, in addition, to provide for any rights it may have to modify its franchise under state or federal law. The City shall work in good faith with a grantee to review and adopt modifications which the grantee deems necessary, and the review and approval by City shall not be unreasonably delayed or denied. A grantee is not a person that provides

direct broadcast satellite services for purposes of this section.

7. It is the City's intent to apply the ordinances of the City, including this ordinance to all persons who intend to offer video programming in City and who intend in providing such video programming to use rights-of-way to construct or operate facilities comparable to a cable system, in a competitively neutral and non-discriminatory manner. The City acknowledges that at the time of adoption of this ordinance, technology change is occurring in the delivery to subscribers of video programming. However, there are not clear guidelines from the FCC or other applicable legislative enactment defining local government authority. Notwithstanding this, and consistent with the City's intentions, the City will evaluate change in technology and applicable law on its own motion, upon receipt of an application for a franchise or at the request of a grantee, and amend or modify this ordinance prior to granting a franchise to describe requirements of the City applicable to the use of City rights-of-way or to ensure competitive equity applicable to all persons intending to offer video programming to subscribers by facilities comparable to a cable system. A grantee is not a person that provides direct broadcast satellite services for purposes of this section. Notwithstanding any provisions of this section to the contrary, if the City does not possess authority under applicable laws to require a franchise from any person, the provisions of this section shall not apply.

(Ord. 5647, 11-27-07)

10-11.1-06. Application for Grant of Franchise.

1. An application for an initial franchise to provide video programming shall be in writing on a form provided by the City which shall contain where applicable:

a. Applicant name and business address of applicant.

b. A statement as to the proposed service area, and whether applicant holds an existing authorization to access the rights-of-way in the City, and a map of the areas where such authorization exists, if for an area other than the entire City.

c. Resume of prior history of applicant, including the legal, technical, and financial expertise of applicant in the cable service field.

d. List of officers, directors, and managing employees of applicant and resumes of each.

e. A proposed construction and schedule to provide cable service or video programming to subscribers.

f. A certificate of insurance consistent with the requirements of this ordinance.

g. A description of the cable system the applicant intends to build, including its capacity, the types of equipment proposed for use and the cable services or video programming which will be offered.

h. A description of the financial qualifications of the applicant to construct and operate the system including a balance sheet, income statement sources and uses of funds statement and pro forma projections for at least three (3) years of operation subsequent to system completion.

i. A proposed plan for public, educational, and government access channels, including funding, facilities, and equipment and capacity on the system to be dedicated for educational and governmental use.

2. The initial franchise application may be evaluated according to the following criteria, and approved within one-hundred eighty (180) days after City deems the application is complete. In the event applicant is already authorized to occupy the rights-of-way, the time for review and approval will be ninety (90) days.

a. The evidence of legal, technical, and financial ability required in the applicant's proposal will be such as to assure the ability to complete the entire system within a reasonable time from the date the franchise is granted. The City will also consider the applicant's ability to operate the system and provide the necessary cable services or video programming in compliance with the terms of this ordinance.

b. The City Administrator or designee shall prepare a report and make his or her recommendations respecting such application to the City Commission.

c. A public hearing shall be set prior to any grant of a franchise, at a time and date approved by the City Commission. Within thirty (30) days after the close of the hearing, the City Commission shall make a decision based upon the evidence received at the hearing as to whether or not the franchise(s)

should be granted, and, if granted subject to what conditions.

d. The City may consider any additional information that it deems applicable.

(Ord. 5647, 11-27-07)

10-11.1-07. Application for Franchise Renewal. Franchise renewals will be according to applicable law including the Cable Act, as amended. The City and grantee, by mutual consent, may enter into renewal negotiations at any time during the term of a franchise. The City will review and evaluate the requirements and conditions for renewal according to the Cable Act requirements and the requirements of Section 10-11.1-06.
(Ord. 5647, 11-27-07)

10-11.1-08. Permits for Non-Cable Services. The City may issue a license, easement, or other permit to a person other than a grantee to permit that person to traverse any portion of the City in order to provide services outside, but not within the City. Such license or easement, absent a grant of a franchise in accordance with this ordinance, shall not authorize nor permit said person to provide cable service of any type to any home or place of business within the City nor render any other service within the City.

To the extent allowed by law, the City shall retain the authority to regulate and receive compensation for non-cable cable services. If a grantee is allowed by law and chooses to provide non-cable cable services, a grantee and the City will negotiate the terms and fees in accordance with applicable law.
(Ord. 5647, 11-27-07)

10-11.1-09. Franchise Provisions.

1. All franchises granted pursuant to this ordinance will be subject to this ordinance, applicable City ordinances and at least the following:

a. The continuing authority of City to impose such other regulations of general applicability through lawful exercises of the City's police powers as may be determined by the City Commission to be conducive to the health, safety, and welfare of the public.

b. The continuing authority of City to control and regulate the use of the City's rights-of-way.

c. The authority of City or its designees to inspect all construction or installation work performed subject to the provisions of the franchise and this ordinance, and make such inspections as it

will find necessary to insure compliance with the terms of the franchise, this ordinance, and other pertinent provisions of law.

d. The authority of City or its designees to inspect the books, records, maps, plans, and other like materials of a grantee upon reasonable notice to insure compliance with the terms of the franchise, this ordinance, and other pertinent provisions of law.

e. The provisions in a franchise shall provide that upon the expiration of the term for which a franchise is granted or upon the termination and cancellation as provided therein, the City may require a grantee to remove, at grantee's own expense, any and all portions of a cable system from the rights-of-way within the City; provided, however, that this paragraph shall not be applicable if a grantee is authorized to provide telecommunications service in City.

f. A requirement of a franchise fee or other compensation for rights-of-way use.

g. Service area and technical standards.

h. Privacy and discrimination prohibitions consistent with applicable law.

i. Customer service standards comparable to then applicable rules of the Federal Communications Commission.

j. Community benefit requirements, including PEG access channels and funding, facilities, return lines and equipment and capacity dedicated for educational and government use.

k. Insurance and indemnification require-ments.

l. Enforcement and termination procedures.

m. Such other requirements that may be determined by City subject to compliance with applicable law.

2. This ordinance and any franchise will be construed in a manner consistent with all valid applicable federal and state laws.

a. In the event that the state or federal government will discontinue preemption in any area of

cable service or video programming over which it currently exercises jurisdiction in such a manner as to expand rather than limit municipal regulatory authority or otherwise change applicable law, the City may, if it so elects, make amendments or adopt rules and regulations in these areas to the extent permitted by law. Any rules and regulations adopted by the City will apply equally to all grantees and will be subject to Section 10-11.1-03(3).

b. This ordinance will apply to all franchises granted or renewed from and after the effective date of this ordinance.

c. A grantee will not be relieved of its obligation(s) to comply with any of the provisions of this ordinance or franchise granted pursuant to this ordinance by reason of any failure of the City to enforce prompt compliance.

3. Franchises shall be subject to the following:

a. By acceptance of a franchise, a grantee acknowledges and agrees that this ordinance in whole is incorporated and made part of a franchise and the franchise shall be a binding contract. In addition, the franchise must contain the following express representations by a grantee that:

1. It accepts and agrees to all of the provisions of this ordinance, and any supplementary specification, as to construction, operation, or maintenance of the cable system, which the City may include in the franchise subject to valid applicable state and federal law.

2. It has examined all of the provisions of this ordinance and agrees that the provisions thereof are valid, binding at this time, and enforceable as of the effective date of the franchise.

3. A grantee recognizes the right of the City to adopt such additional regulations of general applicability as it will find necessary in the exercise of the City's police power to protect the health, safety and welfare of the citizens; however, a grantee's rights and duties pursuant to this ordinance and its franchise may not be materially altered or impaired without

grantee's prior written consent, which shall not be unreasonably withheld.

4. The franchise will contain such further conditions or provisions as are included in the applicant's proposal and negotiated between the City and a grantee, except that no such conditions or provisions will be such as to conflict with any provisions of this ordinance or other valid applicable law. In case of such conflict or ambiguity between any terms or provisions of a franchise and this ordinance, the franchise will control.

(Ord. 5647, 11-27-07)

10-11.1-10. Conditions for Use of Rights-of-Way and Construction in the City.

1. Construction. A grantee shall comply with all applicable codes and ordinances of City with respect to construction within rights-of-way, including the City's comprehensive set of construction specifications referred to as "Construction Standards for Municipal Public Works Improvements," and shall obtain all necessary permits and licenses required there under or by other applicable law, ordinances and rules and as required of other like users of the rights-of-way, before commencing construction of a system in the City.

2. Use of Rights-of-Way. A grantee shall construct and maintain its system so as to minimize any adverse impact on public improvements or facilities of others in a rights-of-way and which will not unnecessarily interfere with the usual and customary uses in the rights-of-way.

3. Aerial Installations and Poles. A grantee shall not erect, for any reason, any pole on or along any rights-of-way without the prior approval of the City.

4. Above-Ground Installations. Above-ground location of a system and related facilities shall generally be located where reasonable and safe and in a manner that will not unlawfully and adversely affect the City or other public or private property and shall be screened from public view upon request by the City if such requirements are made of like users of the rights-of-way.

5. City Use of Rights-of-Way. Nothing herein or in a franchise shall be construed to prevent the City from constructing sewers, grading, paving, repairing or altering any rights-of-way, or laying down, repairing or removing water mains or constructing or establishing any other public work. All such work shall be done in such manner as

not to obstruct, injure or prevent the free use and operation of poles, wires, conduits, conductors, pipes or appurtenances of a grantee. If any facilities of a grantee interfere with the construction or repair of any public sidewalk, roadway, public utility or public facility or improvement, then the installation, facility or property of a grantee shall be removed or replaced as directed by the City so that the same shall not interfere with the public works of the City. Such removal, relocation or replacement shall be at the expense of a grantee. This section shall to apply to any facility which may compete with a grantee's system or cable services.

6. Underground Installations. In those areas within the City where cable system facilities are currently placed underground, all cable system facilities shall remain or be placed underground. In areas where telephone or electric utility facilities are above ground or where occupied poles exist at the time of a grantee's installation, a grantee may install its cable system facilities above ground, provided that at such time as both electric and telephone utility facilities are placed underground, a grantee shall likewise place its cable system facilities underground without cost to the City. In no event shall a grantee be authorized to place above ground any facility that has previously been underground without prior approval from the City. Nothing contained in this section shall require a grantee to construct, operate and maintain underground any ground-mounted appurtenances.

7. New Subdivisions. Subject to the line extension provisions of Section 10-11.1-12, a grantee shall provide cable services or video programming to residential development constructed or erected after the date of this ordinance. The developer or sub-divider developing any residential development within the City shall be required to notify all grantees of the filing of an application for a plat for a new subdivision to the City. A developer shall also be obligated to give at least fourteen (14) days advance written notice to a grantee of the beginning of excavation for or construction of off-site improvements in any residential development. All grantees shall then be required to install such conduit, pedestals, substructures and other equipment as may be necessary to provide cable service to the residential units in the development with minimal interference with surface improvements in the sole discretion of the individual grantee.

In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give a grantee at least fourteen (14) days' written notice of such construction or

development, and of the particular date on which open trenching will be available for a grantee's installation of conduit and/or facilities. Each grantee shall provide specifications as needed for trenching.

The cost of trenching and easements required to bring cable service to the development shall be borne by the developer or property owner; provided, however, if the developer has fully complied with its notice obligations to a grantee and that grantee fails to install its conduit and/or cable within thirty (30) working days of the date the trenches are available pursuant to notice given by the developer, and the trenches are closed after the thirty (30) day period, the cost of new trenching shall be borne by the grantee.

8. Moving Facilities. A grantee, on the request of the City, or any person holding a lawful permit issued by the City, or any permit issued by an appropriate state agency, shall temporarily move its wires, cables, poles or other cable system facilities to permit the moving of large objects, vehicles, buildings or other structures. The expense of such temporary moves shall be paid to a grantee by the person requesting the same and a grantee shall have the authority to require such payment in advance. In no event shall City pay such expense. A grantee shall be given not less than ten (10) business days advance notice to arrange for such temporary moves.

9. Property Damage and Repair. Whenever a grantee disturbs or damages any rights-of-way, other public property or any private property, a grantee shall promptly restore the property to at least its prior condition, normal wear and tear excepted, at its own expense. In addition, if a grantee is restoring rights-of-way, it shall do so in accordance with all applicable requirements. A grantee shall warrant any restoration work performed by or for a grantee for one (1) year. If restoration is not satisfactorily performed by a grantee within a reasonable time, the City may, after thirty (30) days prior notice to a grantee, or without notice where the disturbance or damage creates a risk to public health or safety, cause the repairs to be made and recover the out-of-pocket costs of those repairs from a grantee. A grantee shall reimburse the City within thirty (30) days of receipt of an itemized list of those costs.

10. Work Performed by Others. A grantee shall make available to the City the names and addresses of any person, other than a grantee, which performs work on behalf of a grantee pursuant to a franchise. All provisions of this ordinance and a franchise remain the responsibility of

a grantee. All provisions of a franchise shall apply to any of a grantee's subcontractors or others performing any work or service pursuant to the provisions of a franchise. A grantee shall be responsible for and hold the City harmless for any claims or liability arising out of work performed by persons other than a grantee. A grantee shall provide the City with emergency contact information (name, address, phone number, etc.) for said entity.

(Ord. 5647, 11-27-07)

10-11.1-11. Service Areas and Technical Standards.

1. Geographical Coverage. A grantee shall design its cable system or system providing video programming, and construct and maintain it to pass every dwelling unit within the service area, subject to the extension provisions in this section. Further, as provided in the cable act, a grantee shall have a reasonable amount of time to complete construction and as may otherwise be provided in a franchise. A grantee shall maintain a map of its entire system and this map will be annually updated by a grantee and provided to the City upon request to show extensions of the system throughout the service area.

2. Required Extensions of the Cable System. Whenever a grantee receives a request for cable service from a subscriber in a contiguous un-served area within the City where there are at least ten (10) residences within one thousand three hundred and twenty (1,320) cable-bearing strand feet (one-quarter cable mile) from the tap or node of a grantee’s trunk or distribution cable from which it is to be extended as designated by the grantee, it shall extend its cable system to such subscribers at no cost to said subscribers for the cable system extension, other than the published standard/non-standard installation fees charged to all subscribers. Notwithstanding the foregoing, a grantee shall have the right, but not the obligation, to extend the cable system into any portion of the service area where another operator is providing cable service, into any annexed area which is not contiguous to the present service area of a grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

3. Subscriber Charges for Extensions of the Cable System. No subscriber shall be refused cable service arbitrarily. However, if an area does not meet the density requirements of paragraph 2 above, a grantee shall only be required to extend the cable system to subscriber(s) in that area if the subscriber(s) are willing to share the capital costs of extending the cable system. A grantee may require that payment of the capital contribution in aid of

construction borne by such potential subscribers be paid in advance. Subscribers shall also be responsible for any non-standard installation charges to extend the cable system from the tap or node as designated by the grantee to the residence.

4. Technical Standards. A grantee is responsible for insuring that the cable system is designed, installed and operated in a manner that fully complies with FCC rules

(Ord. 5647, 11-27-07; Ord. 6334, 06-12-18)

10-11.1-12. Emergency Use.

1. In accordance with and at the time required by the provisions of FCC Regulations Part 11, Subpart D, Section 11.51, and as other provisions which may from time to time be amended, a grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Regulations, Section 11.18.

2. The City shall permit only appropriately trained and authorized persons to operate the EAS equipment and take reasonable precautions to prevent any use of a grantee's cable system in any manner that results in inappropriate use, or any loss or damage to the cable system. Except to the extent expressly prohibited by law, the City agrees to hold a grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the City, including, but not limited to, reasonable attorneys' fees and costs.

(Ord. 5647, 11-27-07)

10-11.1-13. Public, Educational and Government Access Channels.

1. Every grantee shall, to the extent required in its franchise agreement and subject to this ordinance and applicable law, provide channels, funds, facilities, and equipment as described in a franchise agreement. Further, such requirements shall, at a minimum, satisfy the community needs as determined by the City for the period of the applicable franchise agreement. Additional franchises awarded by City shall have equivalent requirements.

2. All such public, educational and government access channels shall be available to all subscribers as part of their basic cable. Given the on-going changes in

the state of technology as of the effective date of this ordinance, absent express written consent of the City, grantee shall transmit at least three public, educational and government access channels in the format or technology utilized to transmit all of the channels on basic cable. Oversight and administration of the educational and government access channels shall be set forth in the franchise agreement.

3. Every grantee shall, in good faith and with reasonable efforts, ensure that the transmission of public, educational and governmental access programming and channel designations between systems within City can be accomplished in a reasonable and cost-effective manner through interconnection.

4. Every grantee shall ensure that an access plan made part of a franchise agreement shall include provisions regarding program origination from sites identified and agreed to between City and a grantee, which may be the same or different than additional grantee's, but the obligation for this commitment shall be comparable.

5. Grantees, by acceptance of a franchise, agree that on the effective date of its franchise, the PEG access channels on the basic cable service activated and used by the City will have the same channel designations as other grantees.

6. Unless permitted by applicable law, a grantee may not change PEG access channel designations on the basic cable service without City approval during the term of a franchise except to the extent such channel designations are changed by other grantees as approved by City.

7. The use of PEG access channels by City or its designee, DMA, shall be in accordance with and subject to the rules and procedures adopted by the City or its designee, DMA, and as authorized under the Cable Act.

8. A grantee shall include access channels in all cable services packages.

9. Access channels shall be for non-commercial use, except for programming sponsorship acknowledgements or for-credit courses offered by North Dakota accredited educational institutions located in the City.

10. A grantee shall insure that all access channels meet the technical standards of the FCC; provided, however, a grantee shall not be responsible for defects, flaws or other impairments in the PEG access programming delivered

to a grantee and shall only be responsible for maintenance up to the location agreed to with City.

11. If grantee makes changes to its cable system that necessitate modifications to access signal transmission facilities and equipment (including but not limited to the upstream paths), a grantee shall provide reasonable advance notice of such changes to the City and shall provide, at a grantee's expense, any additional or modified headend facilities necessary to implement such modifications within a reasonable period of time prior to the date that the system changes are to be made.

12. Upon request by the City, the access channels shall be made available in any new formats comparable to commercial offerings at the time a grantee converts its system to digital transmission.

13. The City may require all grantees to provide financial support permissible under the Cable Act, as a grant payable by each grantee to the City or its designee for any lawful purpose for development of PEG Access Programming in the amount of up to two percent (2%) of each grantee's Gross Revenue, as determined by City no more frequently than once every two (2) years. The grant shall be payable by each grantee with the Franchise Fee payment as required by this Ordinance and shall be itemized and passed through to the Subscribers, in the same manner. The City shall impose the same percentage fee on all grantees or shall not impose said fee on any grantee.

(Ord. 5647, 11-27-07; Ord. 6334, 06-12-18)

10-11.1-14. Cable Service to Public Buildings. A grantee, upon request, shall provide a standard installation and one (1) outlet and free basic cable to those administrative buildings owned and occupied by the City, library(ies) fire station(s), police station(s) and K-12 public and private school(s) that are within four hundred (400) feet of its cable system at the Grantee's lowest non-subsidized residential rate. The City shall take reasonable precautions to prevent any use of a grantee's cable system in any manner that results in the inappropriate use thereof or any loss or damage to the cable operator. The City shall hold a grantee harmless from any and all liability or claims arising out of the provision and use of cable service and/or the cable system required by this subsection. A grantee shall not be required to provide an outlet to such buildings where a non-standard installation is required, unless the City or building owner/occupant agrees to pay the incremental cost of any necessary cable system extension and/or non-standard installation. If additional outlets of basic cable are provided to such buildings, the building owner/occupant shall pay the actual cost associated therewith.

(Ord. 5647, 11-27-07; Ord. 6334, 06-12-18)

10-11.1-15. Institutional Network and Services to Public, Governmental, and Educational Locations. Repealed June 12, 2018.
(Ord. 5647, 11-27-07; Ord. 6334, 06-12-18)

10-11.1-16. Broad Categories of Programs and Services. Consistent with federal law, a grantee shall provide or enable the provision of broad categories of programming to the extent such categories are reasonably available on commercially reasonable terms.
(Ord. 5647, 11-27-07; Ord. 06-12-18)

10-11.1-17. Periodic Evaluation. The field of video communications is rapidly changing and may see many regulatory, technical, financial, marketing, and legal changes during the term of a franchise. Therefore, in order to provide for a maximum degree of flexibility in this ordinance and a franchise, and to help achieve continued advanced and modern cable systems serving the City that meet the needs of the City, the following evaluation provisions shall apply:

1. Subject to the provisions of this section and upon thirty (30) days written notice to a grantee, the City may require an evaluation session. The evaluation session may occur no sooner than the fifth (5th) anniversary date of a grantee's franchise. Such evaluation shall determine if it is appropriate to amend this ordinance and/or a franchise to address developments in the field of video communications that may have taken place over the course of time. Any proposed amendment of the franchise under this section shall be based upon the reasonable cable needs and related needs and interests of the City and subscribers and take into consideration the costs to a grantee of meeting those needs and interests. The City and a grantee shall negotiate amendments to the franchise in good faith.

2. All evaluation sessions shall be open to the public and notice of sessions published in the same way as the City publishes other legal notices.

3. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, a grantee's performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this ordinance and a franchise, judicial rulings, FCC rulings, line extension policies, and any other topics City and a grantee deem relevant.

4. Notwithstanding any provisions of this section, the City and a grantee may at any time amend the franchise by mutual consent.

10-11.1-18. Regulation by the City.

1. City's Transfer of Functions. The City may delegate its obligations and duties under this ordinance and a franchise to any elected official, officer, employee, department, agent or board of the City to the extent permitted by law, and a grantee shall recognize the authority of any such delegate provided, however, that the City Commission shall retain the sole authority to take enforcement action pursuant to this ordinance and a franchise. The City shall provide a grantee with written notices of any such delegation or transfer of functions.

2. City's Right of Inspection. The City may inspect all construction or installation work performed pursuant to a franchise granted under this ordinance in order to ensure compliance with the terms of the franchise grant, as well as all applicable statutes and ordinances.

3. Franchise Fee.

a. A grantee shall pay to the City a franchise fee of five percent (5%) of annual gross revenue. In accordance with the Cable Act, the twelve (12) month period applicable under the franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due monthly and payable within thirty (30) days after the close of the preceding month. Each payment shall be accompanied by a brief report prepared by a representative of a grantee showing the basis for the computation. Should a grantee have the ability to do so and at the direction of the City, payments shall be deposited to a City account electronically.

In the event that the Franchise Fee in Paragraph 2.8 is preempted and all appellate or other legal reviews have been concluded, the City may establish and apply to Grantee an alternative per linear foot rental charge for Grantee's use of the Rights-of-Way. If the City is then applying a linear foot charge to any "Similar User" of the Rights of-Way, the City shall apply to Grantee a linear foot charge at the rate per linear foot that it is charging any Similar User. A "Similar User" shall mean any entity or company that· occupies the Rights-of-Way and offers services similar to those that Grantee offers. The City shall apply the rate per linear foot thus determined to the actual linear feet of cables, wires or other devices that Grantee is occupying in the Rights-of-Way in the year at issue. If no Similar User exists at the time that

the City establishes a linear foot charge for Grantee, the City shall determine Grantee's charge by reference to the revenues that the City received, or should have received, in the previous twelve months from Grantee. For example, if the City should have received Sixty Thousand Dollars ($60,000.00) from Grantee for the prior twelve (12) month period and Grantee's facilities occupied thirty thousand (30,000) linear feet of Rights-of-Way during that period, Grantee's rate per linear foot will be Two Dollars ($2.00) ($60,000/30,000). The rate of Two Dollars ($2.00) will then be applied in each subsequent year to the number of linear feet that Grantee's facilities occupy in the Rights-of-Way that year. If the City determines by audit that the revenues that it received in the base period were incorrect, the City shall make appropriate adjustments, both retroactively and prospectively.

Should the above-described linear foot rental charge be declared invalid by a court or other body of competent jurisdiction, or in any way be preempted, relieving the Grantee of the obligation to pay the linear foot rental charge, the City shall establish a further alternative reasonable rental charge or other appropriate method of compensation. Any such further rental charge shall be comparable to payments Grantee would otherwise have been obligated to pay to the City under Paragraph 2.1A. No such further alternative rental charge shall be established without a public hearing with notice to Grantee of such hearing not less than thirty (30) days prior to the public hearing.

Where Grantee bundles, integrates, ties, or combines Cable Service with other services in a bundled package for which Subscribers pay a single fee, Gross Revenues for such bundled, integrated, or tied combination of services shall be determined based on the pricing for individual components billed or advertised to Subscribers by Grantee or, if such pricing for individual components is not provided by Grantee, based on a pro rata allocation among the services offered. Grantee shall not use bundled package offerings as a means of evading the payment of financial obligations that are based on Cable Service revenue.

b. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by a grantee is due.

c. All amounts due and owing under this ordinance and a franchise and not paid by the dates specified herein shall bear interest at the prime rate listed in the Wall Street Journal on the date payment was due and compounded daily and calculated daily from the date due until the date of actual payment.

d. The franchise fee obligation herein is a material requirement of a franchise and is considered payment by a grantee for use of rights-of-way.

4. Accounting Standards. Within Forty-five (45) days of the end of each calendar year, a grantee shall file with the City a report, certified by a certified public accountant, an officer or a director of a grantee, showing the previous year's gross revenues from subscribers and the applicable franchise fee payments as defined within the Ordinance.

5. Auditing and Financial Records. A grantee and the City shall make good faith efforts to work together to prescribe reasonable standards governing the nature, extent, and type of accounting system and accounting procedures utilized by a grantee for the purposes of promoting the efficient administration of the franchise fee requirement of this franchise and which are consistent general accounting standards.

A grantee agrees, by acceptance of a franchise, that the City, upon thirty (30) days written notice to a grantee, may during the term of a franchise, but not more frequently than once each year, conduct an audit of the books, records, and accounts of a grantee for the purpose of determining whether a grantee has paid franchise fees in the amounts prescribed herein. Such notice shall specifically reference the section of this ordinance and/or the franchise to be reviewed, so that a grantee may organize the necessary books and records for easy access by the City. The audit may be conducted by the City or by an independent certified public accounting firm retained by the City and shall be conducted at the sole expense of the City. The party conducting the audit shall prepare a written report containing its findings and the report shall be filed with the City and mailed to the City and grantee. A grantee shall make available for inspection by authorized representatives of the City, its books, accounts and all other financial records at reasonable times and upon reasonable advance notice for the purpose of permitting exercise of the authorities conferred by this section. A grantee shall not be required to maintain any books or records for franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set

forth herein, and subject to the requirements of North Dakota's Government Records Management Act (GRAMA), grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate that is not providing cable service in the service area. The City agrees to treat any information disclosed by a grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. A grantee shall not be required to provide subscriber information in violation of Section 631 of the Cable Act.

6. Rates and Charges. The City may regulate rates for the provision of basic cable and equipment as expressly permitted by federal or state law.

7. Renewal of Franchise.

a. Any proceedings undertaken by the City that relate to the renewal of a grantee's franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

b. In addition to the procedures set forth in said Section 626(a), the City agrees to notify a grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of a grantee under the then current franchise term. The City further agrees that such assessments shall be provided to a grantee promptly so that a grantee has adequate time to submit a proposal under Section 626(b) of the Cable Act and complete renewal of the franchise prior to expiration of its term.

c. Notwithstanding anything to the contrary set forth in this Section 8-11.1-18, a grantee and the City understand that at any time during the term of the then current franchise, while affording the public appropriate notice and opportunity to comment, the City and a grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current franchise and the City may grant a renewal thereof.

d. A grantee and the City consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the Cable Act.

8. Conditions of Sale. If a renewal or extension of a grantee's franchise is denied or the franchise is

lawfully terminated, and the City either lawfully acquires ownership of the cable system or by its actions lawfully effects a transfer of ownership of the cable system to another person, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act and after a grantee has had the opportunity to effectuate a lawful transfer of its system to a qualified third party pursuant to this section.

A grantee and the City will understand and agree that in the case of a final determination of a lawful revocation, termination or non-renewal of a franchise, a grantee shall be given at least twelve (12) months to effectuate a transfer of its cable system to a qualified third party, approval for which by the City shall not be unreasonably withheld. Furthermore, a grantee shall be authorized to continue to operate pursuant to the terms of its prior franchise during this period. If, at the end of that time, a grantee is unsuccessful in procuring a qualified transferee or assignee of its cable system which is reasonably acceptable to the City, a grantee and the City may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that a grantee's continued operation of the cable system during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the City or a grantee.

9. Transfer of Franchise. A grantee's right, title, or interest in the franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with a grantee, without the prior consent of the City, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of a grantee in the franchise or cable system in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the City shall notify a grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the City has not taken action on a grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the City shall be deemed given.

(Ord. 5647, 11-27-07; Ord. 6334, 06-12-18)

10-11.1-19. Customer Practices.

1. No Discrimination. A grantee shall not, as to rates, charges, make or grant any preference or advantage

to any person, nor subject any person to any prejudice or disadvantage. This section shall not be construed to prohibit promotional or bulk discounts, or discounts that may be made available to seniors or the economically disadvantaged.

Neither a grantee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other person, shall discriminate or permit discrimination between or among any persons in the availability of cable services provided in connection with a cable system in the City. It shall be the right of all persons to receive all available cable services provided on cable systems so long as such person's financial or other obligations to a grantee are satisfied

2. Subscriber Privacy. A grantee agrees to comply with the provisions of Section 631 of the Cable Act.

3. Notice to Subscriber. A grantee shall provide written notices to those subscribers notifying them of their privacy rights in accordance with the provisions of Section 631 of the Cable Act.

4. Grantee Rules, Regulations. A grantee shall have authority to promulgate such rules, regulations, terms and conditions as it deems necessary in order to operate the franchise granted under this ordinance. Copies of all rules, regulations, terms and conditions including subscriber agreements together with any amendments, additions or deletions thereto, shall be made available to the City.

(Ord. 5647, 11-27-07)

10-11.1-20. Customer Service Standards.

1. A grantee shall comply with the customer service standards of the FCC.

2. Subject to the privacy provisions of 47 U.S.C. § 521 et. seq., every grantee shall prepare as necessary and maintain records of complaints made to them and the resolution of such complaints, including the date of such resolution. For the purposes of this requirement, all complaints or cable service calls that result in the dispatch of a cable service technician shall be individually logged and for all other complaints a grantee may satisfy this requirement by the creation of a periodic written summary of the type of complaint and their resolution. Such complaint logs and summaries shall be on file at the office of a grantee for three (3) years, and available for inspection by the City upon request.

(Ord. 5647, 11-27-07)

10-11.1-21. Annual Reports and Records of Grantee.

1. Annual Reports Required. Upon request a grantee shall make available to the City the following annual reports not later than ninety (90) days after the request is made.

a. Any publicly available reports or documents which a grantee must file with a government agency that specifically address a grantee's obligation under a franchise shall be provided to City, excepting federal and state income tax returns and forms, and such reports not required to be filed based on the federal Securities Act.

b. A copy of the publicly available consolidated report to its stockholders issued at the end of a grantee's fiscal year rendered by a grantee's parent grantee for all of its operations, if such a report exists.

c. A copy of its annual reports to the FCC as well as a copy of such annual report made to any state agency which in the future may regulate such system, if such a report exists.

2. Records.

a. The City shall have the right to inspect, upon reasonable notice and during normal business hours, any records maintained by a grantee which relate to cable system operations including specifically a grantee's accounting and financial records; provided, however, a grantee may withhold records it deems to be confidential and proprietary until the parties execute a nondisclosure agreement consistent with applicable law. A grantee shall produce such books and records for City's inspection at a grantee's local office or at another mutually agreed upon location.

b. The City acknowledges that some of the records, including maps and facility location information, that may be provided by a grantee may be considered confidential by a grantee and therefore may subject a grantee to competitive disadvantage if made public. The City will maintain the confidentiality of any records provided to it by a grantee that are identified by grantee in writing as "confidential" ("confidential information").

Upon receipt of demand from any third party for disclosure of records pursuant to applicable law, the City shall advise a grantee and provide a grantee with a copy of any written request by the party demanding access to such records, if available, prior to the proposed release. The City agrees that, to the extent permitted by state and federal law, it shall deny access to any of a grantee's books and records marked confidential as set forth above. If the City is compelled to disclose any of a grantee's confidential information pursuant to applicable federal or state laws, rules, regulations, or court orders or subpoenas (each a "Requirement"), the City shall provide the grantee with prompt notice of any such requirement and shall cooperate with the grantee, at the grantee's sole expense, in seeking to obtain any protective order or other arrangement pursuant to which the confidentiality of the grantee's confidential information is preserved. If such an order or arrangement is not obtained, the City shall disclose only that portion of the grantee's confidential information as is required pursuant to such requirement. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as the grantee's confidential information. Subject to the City's compliance with this section, the City shall not be liable to a grantee for any submission or disclosure of such information to a third party as required by applicable law or to a government agency or regulatory body seeking the records and claiming jurisdiction in any of these events. Nothing in this section shall limit the right of a grantee to contest disclosure or submission to a third party as required by law or to a government agency or regulatory body asserting jurisdiction over it or such subject matter before such disclosure shall be effected. A grantee shall reimburse the City for all reasonable costs and attorneys fees incurred in any legal proceedings pursued under this section.

(Ord. 5647, 11-27-07)

10-11.1-22. Insurance and Indemnification.

1. Indemnification Against Liability. A grantee agrees by acceptance of a franchise that it shall indemnify and save free and harmless, and by the acceptance of a franchise, agrees to indemnify and save free and harmless the City, the City Commission, each member thereof, all officers, agents, employees and members of boards and commissions of the City from and against any and all liability by reason of or arising out of any and all claims, demands, causes of action or proceedings which may be asserted, prosecuted or established against them or any of them, for damage to persons or property of whatever nature arising out of the use by a grantee of the rights-of-way, or of any other operations or activities of a

grantee pursuant to this ordinance and a franchise and the operation of a cable operator, whether such damage shall be caused by negligence or otherwise (including but not limited to any liability for damages for defamation and damages by reason of or arising out of any failure by a grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by a grantee's cable operator or vehicle operations) and irrespective of the amount of the liability insurance policies required hereunder, but excepting there from liability arising out of any claim, demand, cause of action or proceeding resulting from the negligence or willful misconduct of the City, the City Commission, each member thereof, or officers, agents, employees or members of boards and commissions of the City, or resulting from the negligence or willful misconduct of persons distributing programs via the access channels over which persons and programming a grantee cannot legally and does not exercise control.

2. Duty to Defend. A grantee, by the acceptance of a franchise, agrees to defend at its own cost and expense the City, the City Commission each member thereof, all officers, agents, employees and members of board and commissions of the City against any and all claims, demands, actions or proceedings brought against them or any of them, in respect to the matters embraced by the indemnity set forth herein.

3. General Comprehensive Liability Insurance Policy. Concurrently with the filing of the acceptance of award of a franchise, a grantee shall furnish to the City and at all times during the existence of franchise shall maintain in full force and effect, at its own cost and expense, a commercial general liability insurance policy and in a form reasonably satisfactory to the city. Said policy shall include, but shall not be limited to, personal injury, broad form property damage, blanket contractual, completed operations, underground hazard, explosion and collapse hazard, independent contractors, vaults, and products liability insurance. Said policy shall insure a grantee, the City, the City Commission, each member thereof, all officers, agents, employees and members of board or commissions of the City against liability for all matters embraced herein, with minimum combined single liability limit of two million dollars ($2,000,000).

4. Workers' Compensation Insurance. A Grantee will obtain and maintain workers' compensation insurance for all grantee's employees, and in case any work is sublet, a grantee will require any subcontractor similarly to provide workers' compensation insurance for all subcontractors'

employees, in compliance with state laws, and to fully protect the City from any and all claims arising out of work-related occurrences. A grantee, by acceptance of a franchise, thereby agrees it indemnifies City for any damage resulting to it from failure of either a grantee or any subcontractor to obtain and maintain such insurance. A grantee will provide the City with a certificate of insurance indicating workers' compensation insurance prior to operations under a franchise and the commencement of any construction, system upgrade, reconstruction, or maintenance of a System. The certificate of insurance must confirm that the required endorsements are in effect.

5. Additional Insured, Primary Coverage and Defense. The policies of insurance shall contain an additional insured clause providing that City, the City Commission, each member thereof, all officers, agents, employees and members of boards and commissions of the City shall be named as an additional insured under said policy. Each such policy required above shall provide that it is to be considered primary insurance in the event a demand is made on the City. Each policy required above shall contain a provision by the insurer to perform the covenant for defense set forth herein.

6. Notice. Each of the above-listed policies of insurance shall contain a provision that a written notice of cancellation or reduction in coverage shall be delivered to the City Administrator thirty (30) days in advance of the effective date thereof. If such insurance is provided by a policy which also covers any other entity or person other than those above-named, then such policy shall contain the standard cross-liability enforcement. A grantee will not cancel or reduce said insurance coverage without the City having been given thirty (30) days prior written notice thereof by a grantee.

7. Filing of Certified Copy with City. A certificate of insurance coverage shall be filed in the office of the City Administrator concurrently upon the acceptance of the award of a franchise and shall be updated annually if any changes to the policies occur.

8. Subrogation. Any insurance policies procured by a grantee pursuant to this ordinance and a franchise shall provide that the insurance carrier waives all rights of subrogation against the City.

9. Third Parties. A grantee shall be liable for the acts of its third parties (contractors and subcontractors) and ensure that before commencement of work regarding construction, operation, and maintenance of its cable

system, any such third parties have provided insurance in compliance with this Section.

(Ord. 5647, 11-27-07)

10-11.1-23. Enforcement and Termination of Franchise.

1. Security Fund.

a. Except as expressly provided herein, a grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded a franchise or continuing its existence. The City shall determine whether or not a bond or surety is required based upon a review of an applicant's or a grantee's legal, financial, and technical qualifications and shall establish such requirement in the franchise. If the qualifications of a grantee are sufficient for compliance with the terms of this ordinance and a franchise and the enforcement thereof the City may waive any requirement for a bond or surety. In the event that a bond or other surety is required in the future, the City agrees to give a grantee at least sixty (60) days prior written notice thereof stating the amount and the reason for the requirement. The City agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than ten thousand dollars ($10,000).

b. If a bond or other surety has been established, the security fund may be drawn on by City for those purposes specified.

c. Within thirty (30) days after notice to a grantee that any amount has been withdrawn by the City from the bond or other surety, a grantee shall deposit a sum of money or otherwise replace the bond or other surety in a manner sufficient to restore such bond or other surety to its original amount.

d. Nothing herein will be deemed a waiver of the normal permit and bonding requirements made of all contractors working within the City's rights-of-way, except as may be waived in accordance with a franchise.

2. Procedure for Remedying Franchise Violations. If a grantee fails to perform in a timely manner any material obligation as determined by the City to be required herein, following notice from the City and an opportunity to cure such non-performance, the City may remedy such violation in accordance with the following procedures:

a. The City will first notify a grantee of the violation in writing by delivery of registered or certified mail, and demand correction within a reasonable time. A grantee shall have thirty (30) days from receipt of the notice to: (a) respond to the City, contesting the assertion of non-compliance, which shall toll the running of any timeframes hereunder until a grantee is afforded the public hearing required herein and a written determination of the City Commission has been issued, or (b) cure such default, or (c) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed. If a grantee fails to correct the violation within the time prescribed or if grantee fails to commence corrective action within the time prescribed and diligently remedy such violation thereafter, a grantee will then be given thirty (30) days prior written notice of a public hearing to be held before the City Commission. Said notice will specify the violations alleged to have occurred.

b. At the public hearing, the City Commission will hear and consider all relevant evidence, and thereafter render findings and its decision. Such public hearing shall be held at the next regularly scheduled meeting of the City which is scheduled at a time which is no less than five business days there from. The City shall notify a grantee in writing of the time and place of such meeting and provide a grantee with an opportunity to be heard.

c. In the event the City Commission finds that a grantee has corrected the violation or has diligently commenced correction of such violation after notice thereof from the City and is diligently proceeding to fully remedy such violation, or that no material violation has occurred, the proceedings will terminate and no penalty or other sanction will be imposed.

d. Subject to applicable federal and state law, in the event the City Commission finds that a material violation exists and that a grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation, the City Commission may establish a date, no earlier than thirty (30) days following notification, by which grantee must comply with the obligation or the City may thereafter seek specific performance of any

franchise provision, which reasonably lends itself to such remedy. In the case of a substantial default of a material provision of the franchise, the City Commission may also implement the franchise termination procedures in accordance with the following:

1. The City shall give written notice to a grantee of its intent to revoke a franchise on the basis of a pattern of non-compliance by a grantee, including one or more instances of substantial non-compliance with a material provision of the franchise. The notice shall set forth the exact nature of the non-compliance. A grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from a grantee, it may then seek termination of the franchise at a public meeting. City shall cause to be served upon a grantee, at least ten (10) days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to request such termination.

2. At the designated meeting, the City shall give a grantee an opportunity to state its position on the matter, after which it shall determine whether or not a franchise shall be revoked. A grantee may appeal such determination to an appropriate court. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the City.

3. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce the City's rights under a franchise in lieu of revocation of a franchise.

e. In determining whether a violation is material, the City will take into consideration the reliability of the evidence of the violation, the nature of the violation, and the damage, if any, caused to the City or the City’s residents thereby, whether the violation was chronic, and any justifying or mitigating circumstances, and such other matters as the City may deem appropriate. The parties hereby agree that it is not the City’s intention to subject a grantee to penalties, fines, forfeitures or revocation of a franchise for so-called “technical” breach(es) or

violation(s) of a franchise or local cable ordinance, which shall include, but are not limited to, the following:

1. In instances or for matters where a violation or a breach by a grantee of a franchise or local cable ordinance was good faith error that resulted in no or minimal negative impact on the customers within the service area.

2. Where there existed circumstances reasonably beyond the control of a grantee and which precipitated a violation by a grantee of a franchise or local cable ordinance, or which were deemed to have prevented a grantee from complying with a term or condition of the franchise or local cable ordinance.

3. Penalty. In the event, after complying with the due process procedures provided herein, the City finds that a material violation exists and that a grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation, the City may establish a date, no earlier than thirty (30) days following notification, by which a grantee must comply with the obligation or the City may thereafter impose damages, payable from the security fund.

4. Revocation. Should the City seek to revoke a franchise after following the procedures set forth above, the City shall give written notice to a grantee of its intent. The notice shall set forth the exact nature of the non-compliance. A grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from a grantee, it may then seek termination of a franchise at a public hearing. The City shall cause to be served upon a grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke a franchise.

At the designated hearing, the City shall give a grantee an opportunity to state its position on the matter, after which it shall determine whether or not the franchise shall be revoked. A grantee may appeal such determination to an appropriate court. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the City.

5. City’s Rights to Enforce. The City may, at its sole discretion, take any lawful action which it deems

appropriate to enforce a franchise and the exercise of any of the remedies as set forth herein shall not constitute an election of remedies or otherwise be considered a waiver by the City to take any lawful action or exercise any appropriate remedy it deems appropriate to enforce the terms and conditions of this ordinance and a franchise.

6. Removal or Abandonment of Property. Notwithstanding anything to the contrary of this section, upon termination of a franchise, a grantee or its successors and assigns shall retain ownership of the cable system and shall be entitled at its option and expense to remove the cable system from all rights-of-ways, private property, or to abandon said cable system. Should a grantee elect to remove the cable system, it is obligated to restore all property to its prior condition. If a grantee fails to restore the property satisfactorily, the City may complete the work and a grantee shall reimburse the City within ninety (90) days of receipt of an itemized bill for such work.

7. Force Majeure. A grantee shall not be held in default under, or in non-compliance with, the provisions of this ordinance or a franchise, nor suffer any enforcement or penalty relating to non-compliance or default, where such non-compliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of a grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which a grantee's cable system is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the City's intention to subject a grantee to penalties, fines, forfeitures or revocation of the franchise for violations of this ordinance or the franchise where the violation was a good faith error that resulted in no or minimal negative impact on the subscribers within the service area, or where strict performance would result in practical difficulties and hardship to a grantee which outweigh the benefit to be derived by the City and/or subscribers.

(Ord. 5647, 11-27-07)

10-11.1-24. Miscellaneous Provisions.

1. Compliance with Laws. A grantee and the City shall act reasonably and in good faith, deal fairly, and cooperate with each other to enable performance of all obligations under this ordinance and achievements of the expected benefits.

2. Compliance with Federal, State and Local Laws.

a. If any federal, state or local law or regulation requires or permits a grantee or the City to perform any service or act or shall prohibit a grantee or the City from performing any service or act which may be in conflict with the terms of a franchise, then as soon as possible following knowledge thereof, City and a grantee shall notify the other of the point of conflict believed to exist between such law or regulation.

b. Severability. If any section, sentence, clause or phrase of this ordinance or a franchise is for any reason held to be invalid, unenforceable or unconstitutional by a decision of any authority or court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance or a franchise and the remainder shall remain in full force and effect.

3. Non-enforcement by City. A grantee shall not be relieved of its obligation to comply with any of the provisions of this ordinance or a franchise by reason of any failure of City to enforce prompt compliance.

4. Direct Sales Allowed in City. A grantee shall be allowed to utilize a door-to-door sales force to market its cable service in the City in compliance with Chapter 5-07.

(Ord. 5647, 11-27-07)

CHAPTER 10-12. AMERICAN WITH DISABILITIES ACT

10-12-01. ADA Compliance. It is the intent of the City of Bismarck to fully comply with all applicable requirements of the Americans with Disabilities Act.

10-12-02. ADA Coordinator for Buildings and Services. The board of city commissioners shall designate an employee to coordinate the city's compliance with the American with Disabilities Act (ADA) with respect to buildings and services. The name, office address, and telephone number of the designated person is available through City Administration.

10-12-03. Grievance Procedure. Any person adversely affected by an alleged violation, Title II of the ADA as it relates to buildings or services owned or provided by the City may file a grievance as follows:

a. Any aggrieved party may file a written grievance with the city's designated ADA coordinator. The written grievance shall set out, with particularity, the action or inaction by the city that is alleged to violate Title II of the ADA. Upon receipt of a written grievance, the ADA coordinator shall immediately transmit copies to the department head of the department in which the alleged violation is located and to the city attorney. Within 10 days of receipt of the grievance, the ADA coordinator, the department head, the city attorney, and the person filing the grievance and/or the grievant's representative shall meet to attempt to solve the grievance. Within five business days of the meeting, the ADA coordinator shall issue a written reply to the grievance and provide a copy to all involved parties. The reply shall set forth any agreement that was reached between the parties or the response of the city to the grievance.

b. If the grievance is unresolved or the grievant is not satisfied by the written reply, the grievant may, within five business days, submit an appeal in writing to the board of city commissioners by filing it with the ADA coordinator. The board of city commissioners shall set a time to hear the appeal not less than five nor more than 30 days after the receipt of the notice of appeal.

c. The Board of city commissioners shall hear the appeal at the time set by it. The commission may hear the evidence and facts presented by each party in any order it deems appropriate so long as all parties are given full opportunity to be heard. The evidence presented may be through sworn testimony of witnesses or through exhibits authenticated and introduced through sworn witnesses. After all parties have been given a full opportunity to present all of their evidence, the board of city commissioners may call other persons or witnesses to give information relevant to the matter and may continue the hearing to undertake any further investigation which it deems proper. After completing the hearing and investigation, the board of city commissioners shall decide the appeal on its merits. The commission shall issue its written findings, conclusions and

appropriate order within 5 days of the closing of the hearing.

(Ord. 4478; 01-19-93)

CHAPTER 10-13. EMINENT DOMAIN

10-13-01. Eminent Domain; Quick Take. If the City is unable to purchase land, easements, or any other interest in property at what it deems a reasonable valuation, the Board of City Commissioners at a public hearing, may determine the damages resulting from the taking pursuant to NDCC Section 24-07-16. In arriving at a valuation of damage to property, the City shall acquire at least one appraisal by a licensed appraiser. The City may offer the determined amount to purchase the property or interest in property and may deposit the amount of the offer with the clerk of the district court and may then immediately take possession of the property or the interest in property. The offer shall be made by a resolution of the Board of City Commissioners and a copy of the resolution shall be attached to a complaint filed with the clerk of court in accordance with NDCC Section 32-15-18. The clerk shall immediately notify the owner or owners of the property or interest in property by attaching a notice to the summons when served stating the amount deposited by the City. The owner or owners may appeal to the court by filing an answer to the complaint and may have a jury, unless a jury is waived, determine damages. Upon proof of service of the summons and notice and upon deposit of the offer, the court may without further notice enter an order determining the City to be entitled to take immediate possession of the property or interest in property. An appeal from a judgment in condemnation proceedings shall be taken within 60 days after the entry of judgment. No final judgment in the condemnation proceedings shall be vacated or set aside if the City shall pay to the defendant, or into court on behalf of the defendant, the amount of the judgment.

(Ord. 4700, 07-11-95)