
**ASHLEY MUNICIPAL
CODE**

ORDINANCES

CITY OF ASHLEY

NORTH DAKOTA

ORDINANCES ADOPTED NOVEMBER 1, 2004

REVISED APRIL 1, 2015.

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TITLE 1

THE ENACTING ORDINANCE

MAYOR – COUNCIL CITIES

CHAPTER 1 - Ashley Municipal Code

- 1.0101 Title
- 1.0102 Enactment
- 1.0103 Repeal, Exceptions
- 1.0104 Existing Licenses and Permits
- 1.0105 New Licenses and Permits
- 1.0106 Invalidity of Part
- 1.0107 Effective Date

TITLE 1

THE ENACTING ORDINANCE

CHAPTER 1 – Ashley Municipal Code

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

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

1.0101 Title

The Ashley Municipal Code (Revised Ordinances) of Ashley. This ordinance and the ordinances hereby adopted shall be known and cited as The Ashley Municipal Code (Revised Ordinances) of Ashley.

1.0102 Enactment

The Ashley Municipal Code (Revised Ordinances) of Ashley, consisting of Chapters I to XXI, both inclusive, an original copy of which has been authenticated by the original signatures of the City's chief executive officer and auditor and which original is on file in the office of the City Auditor, are hereby adopted as The Ashley Municipal Code (Ordinances of the City) of Ashley.

1.0103 Repeal, Exceptions

All ordinances of the City adopted prior to the date of this enacting ordinance are hereby repealed except the following ordinance which shall continue in full force and effect regardless of the fact that they are herein omitted:

1. All existing ordinances granting franchises, if omitted from these revised ordinances.
2. All existing ordinances creating contract obligations on the part of the City, which obligations shall remain binding until fully performed by the City.
3. All existing ordinances establishing special improvement districts, or street grades.
4. All of the existing ordinances levying taxes for any years under the provisions of any law relating to the issuance of revenue bonds, municipal bonds, warrants, certificates of indebtedness, or other municipal obligations, whether general or special.
5. All salary and appropriation ordinances.
6. The incorporation herein of any of the ordinances of the City granting franchises shall not operate to repeal the same in their original form nor to extend the term of any franchise beyond that fixed in that ordinance granting the same which in reenacted herein.
7. Any and all other ordinances adopted in said Ashley Municipal Code (Revised Ordinances) of Ashley by reference, although the same are not set forth in full therein.

8. All existing ordinances establishing, extending or reducing the city limits of the City, if omitted from these revised ordinances.

1.0104 Existing Licenses and Permits

All licenses and permits issued prior to the date on which this ordinance becomes effective shall continue in force for the remainder of the term for which the same were issued, without additional fees, but all licensees and permittees shall be governed by the provisions of The Ashley Municipal Code (Revised Ordinances) of Ashley for the remainder of the terms of said licenses and permits, in the same manner and to the same extent as if said licenses and permits had been issued under the provisions of The Ashley Municipal Code (Revised Ordinances) of Ashley.

1.0105 New Licenses and Permits

In the case of any license or permit not heretofore required and appearing for the first time in The Ashley Municipal Code (Revised Ordinances) of Ashley, such license or permit shall be secured on or before the first day of the first month following the effective date of this ordinance, and the first fee therefore shall be pro-rated for the remainder of that term thereof on a monthly basis, provided, that the minimum fee for any such new license or permit shall be \$1.00.

1.0106 Invalidity of Part

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

1.0107 Effective Date

This ordinance shall be in full force and effect from and after its final passage and approval, and without publication.

MAYOR

ATTEST:

CITY AUDITOR

CITY SEAL

First Reading: October 4, 2004

Second Reading and Final Passage: November 1, 2004

TITLE 2

CONSTRUCTION OF ORDINANCES

CHAPTER 1 - Construction of Ordinances

- 2.0101 Construction of Ordinances: Rules, Intent
- 2.0102 When These Rules of Construction Shall Not Apply
- 2.0103 Reference to Titles, Chapters, or Sections: Conflicting Ordinances
- 2.0104 When Ordinance to Take Effect
- 2.0105 Effect of Repeal

TITLE 2

CONSTRUCTION OF ORDINANCES

CHAPTER 1 – Construction of Ordinances

2.0101 Construction of Ordinances; Rules, Intent

In the construction of the Ashley Municipal Code, the following rules shall be observed unless that construction would be inconsistent with the manifest intent of the ordinance.

- (1) General Rule. All words phrases shall be construed and understood according to the common and approved usage of the language, but technical words and phrases and others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to that peculiar and appropriate meaning.
- (2) Gender. Singular and Plural. Every word in any ordinance importing the masculine gender shall extend and be applied to several persons or things as well as to one person or thing, and every word importing the plural number only shall extend and be applied to one person or thing as well as to several persons or things.
- (3) Person. The word "person" shall extend and be applied to firms, corporations, voluntary associations, or partnerships, as well as to individuals, unless plainly inapplicable.
- (4) Tenses. The use of any verb in the present tense shall include the future when applicable.
- (5) Shall Have Been. The words "shall have been" include past and future cases.
- (6) Heretofore and Hereafter. Whenever the word "heretofore" occurs in this code, it shall be construed to mean any time previous to the day when the ordinance shall take effect, and whenever the word "hereafter" occurs, it shall be construed to mean the time after the ordinance containing that word shall take effect.
- (7) Joint Authority. All words purporting to give a joint authority to three or more city officers or other persons shall be construed as giving the authority to a majority of those officers or other persons unless it shall be otherwise expressly declared on the statute or ordinance giving the authority.
- (8) Acts by Agents. When an ordinance requires an act to be done which may by law as well be done by an agent as by the principal, the requisition shall be construed to include all acts when done by an authorized agent.
- (9) Reasonable Time. In all cases where any ordinance shall require any act to be done in a reasonable time or reasonable notice to be given, reasonable time or notice shall be deemed to mean time only as may be necessary for the prompt performance of duty, or compliance with the notice.

- (10) Time, How Computed. The time within which an act is to be done as provided in any ordinance or in any order issued pursuant to any ordinance, when expressed in days, shall be computed by excluding the first day and including the last, except that if the last day be Sunday or a legal holiday it shall be excluded, and when any time is expressed in hours the whole of Sunday or any legal holiday, from midnight to midnight, shall be excluded.
- (11) Week. The word "week" shall be construed to mean seven days, but publication in a newspaper of any notice or other matter indicated to be for a stated number of weeks shall be construed to mean one insertion in each week, unless specifically stated to be for each day of the week or for more than one day in each week.
- (12) Ashley Municipal Code. Whenever the word "code" appears in these ordinances, it shall mean and be construed to be the Ashley Municipal Code.

2.0102 When These Rules of Construction Shall Not Apply

The rules of construction set forth in this chapter shall not be applied to any ordinance which shall contain any express provision excluding that construction, or when the subject matter or context of that ordinance may be repugnant thereto.

2.0103 Reference to Titles, Chapters, or Sections; Conflicting Ordinances

In addition to the rules of construction specified in Section 2-01-01, the following rules shall be observed in the construction of this code.

- (1) All references to titles, chapters, or sections are to the titles, chapters and sections of this code, unless otherwise specified.
- (2) If the provisions of different chapters of this code conflict with or contravene each other, the provisions of each chapter shall prevail as to all matters and questions growing out of the subject matter of that chapter.
- (3) If conflicting provisions be found in different sections of the same chapter, the provisions of the section which is last in numerical order shall prevail unless such construction be inconsistent with the meaning of that chapter.

2.0104 When Ordinances to Take Effect

All ordinances passed by City Council, including this code, and except when otherwise specifically provided, shall take effect and be in force from and after their publication where publication is required. Where publication is not required, the ordinance shall take effect immediately upon final passage and approval.

2.0105 Effect of Repeal

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

TITLE 3

GOVERNING BODY AND RULES OF PROCEDURE

CHAPTER 1- Meetings

- 3.0101 Regular Meetings
- 3.0102 Special Meetings
- 3.0103 President and vice President of Council
- 3.0104 Council Members to be Elected at Large

CHAPTER 2- Committees

- 3.0201 Standing Committees

CHAPTER 3- Rules of Procedure

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- 3.0302 Quorum
- 3.0303 Order of Business
- 3.0304 Priority of Business
- 3.0305 Order Preserved
- 3.0306 Right of Appeal
- 3.0307 Right of Floor
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- 3.0312 Speaker not to be Disturbed
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- 3.0314 Speaker not to Injure Feelings
- 3.0315 Motions to be Seconded
- 3.0316 Vote on Motions
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- 3.0318 Voting Procedure
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- 3.0321 Precedence of Motions
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- 3.0401 Salary of Mayor, Effective Date
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TITLE 3

GOVERNING BODY AND RULES OF PROCEDURE

CHAPTER 1 - Meetings

3.0101 Regular Meetings

The City Council shall hold regular meetings at 7:30 o'clock P.M. on the second Monday of each and every month at the City Hall in the Council Chamber, or at another place as the City Council shall determine.

3.0102 Special Meetings

Special Meetings shall be called by the Mayor whenever the Mayor shall deem it necessary for the transaction of the business of the city or whenever requested by two members of the Council in writing, the request to be filed with the City Auditor. Special meetings shall be held at the Council Chamber upon that date and at that hour as may be designated in the call therefore. The call shall state the date and hour of the meeting and the purpose for which the meeting is called, and no business shall be transacted thereat, except such as is stated in the notice. Notice of special meetings shall be given by the City Auditor to the Mayor, each Alderman, and the City Attorney at least twenty-four hours prior to the time set therefore by personal service of a copy of that call, or by leaving a copy thereof addressed to the Mayor and each of the Aldermen not signing the call, however, if all or any of the members of City Council, including the Mayor, shall at the time of the special meeting or prior thereto waive notice of special meeting, no notice of the special meeting shall be required to that member so waiving notice, and whenever the members of the City Council shall meet for a special meeting, that meeting shall be valid for all purposes without call or notice to each and all the members present at the meeting.

3.0103 President and Vice President of the Council

At the organization meeting held the fourth Tuesday in June in each even numbered year, the City Council shall proceed to elect from its own members a President and a Vice President, who shall hold their respective offices for the term of two years, and until their successors are elected and qualified. It shall be the duty of the President, in the absence or temporary disability of the Mayor, to act as presiding officer of the Council, and the President shall, during the absence of the Mayor from the city, or the Mayor's temporary disability, be Acting Mayor and possess all the powers of the Mayor. In the absence or disability of the Mayor and President of the Council, the Vice President shall perform the duties of Mayor and President of the Council.

3.0104 Council Members to be Elected at Large

Commencing with the municipal election to be held in 1994, the members of the city council of the City of Ashley, North Dakota shall be elected at large by vote of electors of the

entire city. Each voter may vote for as many candidates as there are council members to be elected for four year terms.

CHAPTER 2 - Committees

3.0201 Standing Committees

The following standing committees shall be appointed by the Mayor at the organization meeting or as soon thereafter as practicable, and their reports shall be received in the following order unless otherwise received by consent:

- (1) Streets and Garbage
- (2) Water and Sewer
- (3) Police

Each committee shall consist of two (2) members, and the first named member of each committee shall be the Chairman thereof.

CHAPTER 3 - Rules of Procedure

3.0301 Meetings: Call to Order

- (1) At the hour of meeting the Mayor shall call the Council to order.
- (2) In case of the absence of the Mayor, President and Vice President at the time of the meeting the Auditor shall call the Council to order, thereupon the Council shall select one of its own members present as presiding officer.
- (3) Upon call to order the Auditor shall call the names of the members in alphabetical order marking who are present and who are absent, and record the same in the proceedings of the Council.

3.0302 Quorum

Four members of the City Council shall constitute a quorum.

3.0303 Order of Business

The order of business shall be as follows:

- (1) Reading and approval of the minutes of the preceding meeting, but the reading of the minutes of any preceding meeting may be dispensed.
- (2) Petitions, remonstrances, and communications.
- (3) Reports of officers.
- (4) Accounts, claims, and bills.
- (5) Reports of standing committees.
- (6) Reports of special committees.
- (7) Committee of the whole.
- (8) Presenting ordinances.
- (9) Communications from Mayor.
- (10) Appointments and confirmation of officers.
- (11) Unfinished business.
- (12) New business.
- (13) Adjournment.

The above order of business shall not be changed except by unanimous consent of all members present, and shall govern all special meetings so far as applicable.

3.0304 Priority of Business

All questions as to the priority of business shall be decided without debate, subject to an appeal to the Council without debate.

3.0305 Order Preserved

The presiding officer shall preserve order and decorum, prevent personalities or the impugning of members motives, confine members in debate to the question under discussion, and shall decide all points of order subject to an appeal to the Council.

3.0306 Right of Appeal

Any member may appeal to the Council from a ruling of the presiding officer. If the appeal is seconded, the member making the appeal may briefly state the reason for the same, and the presiding officer may briefly explain the ruling but there shall be no debate on the appeal and no other member shall participate in the discussion. The presiding officer shall then put the question, "Shall the decision of the chair be sustained?" If a majority of the members present vote aye, the ruling of the chair is sustained; otherwise it is overruled.

3.0307 Right of Floor

When any member is about to address the Council, he need not rise from his seat, but shall respectfully address the presiding officer by title, and when recognized by the chair shall confine himself to the question under debate, avoid personalities and refrain from impugning the motives of any other member's argument or vote.

3.0308 Stating of Motion; Resolutions Written

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

3.0309 Debate Limitation

No member shall speak more than twice at the same meeting on any question except by leave of the Council. No speaker shall address the Council for a period longer than five (5) minutes without permission. It shall be the duty of the presiding officer to call the speaker to order upon the expiration of that time limit. This rule may be suspended at any time by a majority vote of the Council.

3.0310 Member Called to Order

When a member is called to order, the member shall not proceed until the question of order is decided.

3.0311 Division of Question

If the question contains two or more divisible propositions, the presiding officer may, and upon request of a member shall, divide the same, but a motion to strike out a provision and insert a substitute is not divisible.

3.0312 Speaker not to be Disturbed

When the presiding officer is putting the question, or when a member is speaking, no member shall walk across or out of the room, nor entertain any private discourse or pass between the speaker and the presiding officer.

3.0313 Manner Addressing Chair

Every member previous to speaking shall address the presiding officer as "Mr. President," but shall not proceed until recognized and named by the presiding officer.

3.0314 Speaker not to Injure Feelings

No personalities or reflections injurious to the feelings of any member or the harmony of

the council shall be tolerated, and every person indulging therein shall be called to order by the presiding officer.

3.0315 Motions to be Seconded

No motion shall be entertained unless seconded. When seconded, it shall be stated by the presiding officer, and if any member requires it, reduced to writing

3.0316 Vote on Motions

When a motion is stated, every member present shall vote unless excused by the Council, or unless directly interested in the question, in which case that member shall not vote.

3.0317 Withdrawal of Motions

When a motion has been stated by the presiding officer, it shall be deemed to be in the possession of the Council, but may be withdrawn at any time before a decision, by the person offering the same, with consent of the second.

3.0318 Voting Procedure

All questions except passage of ordinances shall be put in this form: "Those who are in favor of the motion (state the question) say "Aye", those opposed say "No". In doubtful cases, or before the question is decided, any member may call for ayes and nays by roll call, and when the ayes and nays are so called for and ordered, the fact shall be entered on the journal with the names of those persons voting and the nature of their vote. The aye and nays shall in all cases be ordered upon passage of all ordinances, expenditure of funds, or sale of property, and when called for by one member.

3.0319 Reconsideration

After the decision on any question, any member who voted with the majority may move a reconsideration of any action at the same or the succeeding meeting, provided, however, that a resolution authorizing or relating to any contract may re-considered at any time before the final execution thereof. A motion to reconsider shall require the same number of votes as is required to adopt an ordinance or resolution. After a motion for reconsideration has once been acted upon, no other motion for a re-consideration thereof shall be made without unanimous consent.

3.0320 Precedence of Motion to Adjourn

A motion to adjourn shall always be in order except when a vote is being taken.

3.0321 Precedence of Motions

When a question is before the Council, no motion shall be entertained except the following:

- (1) To adjourn.
- (2) To fix the hour of adjournment
- (3) For the previous question
- (4) To lay on the table
- (5) To postpone to a certain day
- (6) To postpone indefinitely
- (7) To refer to a committee
- (8) To amend

The motions shall have precedence in the order indicated. Any of these motions, except a motion to amend, shall be put to a vote without debate.

3.0322 Alteration of Standing Rules

No standing rules of order of the Council shall be repealed, rescinded, changed, or suspended except by a vote of the majority of the members, nor shall any new rule be added

thereto except by like vote.

3.0323 Adjournment of Regular Meetings

Any regular meeting of the Council may be adjourned from time to time and all proceedings held under the adjourned meeting shall be as of the regular meeting for the month, and one week intervening between sessions shall be considered as the interval necessary for the second reading and passing of ordinances. When any regular meeting day shall come on a legal holiday, that meeting shall be held on the first business day following.

3.0324 Ordinances, Resolutions, and Amendments Thereof

All ordinances and resolutions shall be introduced in the Council only in written form. It shall be in order to amend an ordinance at any time when not in the hands of a committee. If an ordinance after its second reading is referred to a committee to be amended, it shall be laid over for further consideration at the next council meeting. A motion to amend an amendment shall always be in order but shall be limited to a single amendment of an amendment.

3.0325 Amendment in Committee as Substitute

If an ordinance is amended in committee without direction of the Council, it shall be reported as a substitute ordinance by the committee.

3.0326 Aldermen to Attend All Meetings

It shall be the duty of every member of the Council to attend all meetings of the Council at the hour appointed therefore, and to remain until the close of the session, unless excused.

3.0327 Excused from Attendance

No member shall be excused from attendance at council meetings, except upon roll call, and by vote of the majority of the members present.

3.0328 Excused During Meeting

Any member desiring to be excused while the Council is in session shall obtain permission from the presiding officer.

3.0329 Presiding Officer Leaving Chair

The presiding officer at a meeting may call any other member to take his place in the Chair, but the substitution shall not extend beyond adjournment. By presiding officer is meant either the Mayor, President, Vice President, or chairman of the meeting.

3.0330 Anonymous Communications

Unsigned communications shall not be introduced in council meetings.

3.0331 Duties of Chief of Police During Meetings

The Chief of Police shall be ex-officio Sergeant at Arms and shall attend all meetings of the Council at the hour appointed, and remain in attendance until the close of the session unless otherwise ordered. It shall be his duty to prevent spectators from entering within the bar, unless invited, and to prevent members from leaving unless excused. He shall bring in the absent members under the direction of the presiding officer, and shall further obey all orders of the presiding officer in enforcing order and decorum.

3.0332 Names Entered in Minutes

In all cases the name of the member offering a resolution or motion shall be entered with it in the minutes.

3.0333 Petitioners to Pay Costs

Whenever application is made for the grant of a franchise right, change of street name, amendment of zoning ordinance, street vacation, or for any other grant, right franchise, or privilege, resulting in special benefit to the applicant, the Auditor shall require an amount

estimated to be sufficient to pay the costs of any advertising, recording, printing, mimeographing, or other special services arising by reason of such application. Any unused balance of such deposit shall be refunded to the petitioners on voucher of the Auditor.

3.0334 Allowance of Claims and Accounts

All demands, claims, or accounts against the City of Ashley shall be handled as set forth in Title 4 of this Code.

3.0335 Robert's Rules of Order

Any question of procedure not covered herein shall be governed by Robert's Rules of Order.

CHAPTER 4 - Salaries of Governing Body

3.0401 Salary of Mayor, Effective Date

The annual salary of the Mayor of the City of Ashley, North Dakota shall be One Thousand Two Hundred Dollars (\$1,200.00). The effective date of this section shall be July 1, 1998.

3.0402 Salary of Aldermen, Effective Date

The annual salary of each Alderman of the City of Ashley, North Dakota shall be Nine Hundred Dollars (\$900.00). The salaries provided in this section shall commence as of the 1st day of July, 1998.

TITLE 4

FINANCES

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- 4.0102 Bids
- 4.0103 Bid Opening Procedure
- 4.0104 Rejection of Bids
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- 4.0401 Sale of Property

TITLE 4

FINANCES

CHAPTER 1 – Purchasing Procedure

4.0101 Requisition

Each department shall from time to time make requisition to the City Council, on the requisition form provided, for the materials, supplies, and equipment required for the operation of the department.

4.0102 Bids

- (1) Where the cost for any purchase or construction project is \$50,000.00 or more, bids shall be solicited by notifying the official newspaper at least five full days prior to the final day for receiving bids. The bids shall be submitted sealed to the City Auditor and shall be accompanied by surety in the form of a certified check, cash, or bid bond in the amount as the City Council may prescribe, all bids shall be opened by the City Auditor at the time specified. The City Council may award the contract to the lowest responsible bidder, or may reject any or all bids. Each contract submitted to the Council for approval shall be accompanied by a tabulation of all bids received. The Council shall have and complete authority to enter into and make any contract on behalf of the City, and when competitive bidding is not practical or advantageous to the City, the Council may dispense with the same and enter into a contract for the purchase or construction project.
- (2) Where the statutes of the State of North Dakota require bids and or specify a different length of time in advertising for bids, these statutes shall be observed.
- (3) Where the cost of any purchase or construction project is more than \$1,000.00 and less than \$50,000.00, bids shall be solicited in the open market by the City Auditor on behalf of the City Council. The bids shall be submitted to the City Auditor who shall allow at least five days between the date the bids are solicited and the final date for receiving bids. After the tabulation of the bids, the City Auditor shall submit the tabulation to the City Council, which may make the award or reject any or all bids as it deems to be in the best interests of the City.
- (4) Bidders shall be invited to be present at all bid openings.

4.0103 Bid Opening Procedure

- (1) Bids shall be submitted sealed to the City Auditor and shall be identified as bids on the envelope.
- (2) Bids shall be opened on public at the time and place stated in the notices.
- (3) A tabulation of all bids received shall be posted for public inspection.

4.0104 Rejection of Bids

The City Council shall have the authority to reject all bids, part of all bids, or all bids for any one or more supplies or contractual services included in the proposed contract, when the public interest will be served thereby. The Council shall not accept the bid of a contractor or supplier who is in default on the payment of taxes, licenses, or other money due the City.

4.0105 Award of Contract

- (1) Contracts shall be signed by the Mayor and City Auditor on behalf of the City. The purchase of supplies, where less than \$1,000.00 is involved, may be completed by the City Auditor.
- (2) Contracts shall be awarded to the lowest responsible bidder. In determining "Lowest responsible bidder," in addition to price, the Council or City Auditor, as the case may be, shall consider:
 - (a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
 - (b) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
 - (c) The character, integrity, reputation, judgment, experience, and efficiency of the bidder.
 - (d) The quality of performance of previous contracts or service;
 - (e) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
 - (f) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
 - (g) The quality, availability, and adaptability of the supplies, or contractual services to the particular use required;
 - (h) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
 - (i) The number and scope of conditions attached to the bid;
- (3) When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere may be prepared by the City Auditor and filed with the other papers relating to the transaction.
- (4) If all bids received are for the same total amount or unit price, quality and service being equal, or two or more are local bidders. If such bidders are not local bidders, or two or more are local bidders, the award shall be made to one of such tie bidders by drawing lots in public.
- (5) A performance bond, before entering onto a contract, in that amount as shall be found reasonably necessary to protect the best interests of the City, may be required only if provided by law and stated in the call for bids. Where not stated, and then required, the cost thereof shall be added to the base bid.

4.0106 Prohibition Against Subdivision

No contract or purchase shall be subdivided to avoid the requirements of this chapter.

4.0107 City Auditor to Purchase Certain Supplies

The City Auditor shall prescribe regulations as the Auditor may deem advisable for the purchase of equipment and supplies the cost of which is not in excess of 1,000.00. Those regulations shall be subject to the approval of the City Council and set forth by ordinance.

Present regulations are as follows:

- (1) Prescribe and maintain the forms as the City Auditor shall find reasonably necessary for the operation of this chapter.
- (2) Exploit the possibilities of buying "in bulk" so as to take full advantage of discounts.
- (3) Act so as to procure for the City all federal and state tax exemptions to which it is entitled.
- (4) Co-operate with the City Council or any committee thereof to secure for the City maximum efficiency in budgeting, accounting, and purchasing.
- (5) Have the authority to declare vendors who default on their quotations irresponsible bidders and to recommend that the Council disqualify them.
- (6) To classify all the supplies used by the various Branches of the City government.
- (7) To adopt as standards the minimum number of qualities, sizes, and varieties of supplies consistent with the successful operation of the City government.
- (8) To prepare and adopt written specifications of all such standard supplies.
- (9) All open market purchases shall, wherever possible, be based on at least three competitive bids, and shall be awarded to the lowest responsible bidder in accordance with the standards set forth in Section 4-01-05.
- (10) The City Auditor shall solicit bids by:
 - (a) Direct mail request to prospective vendors;
 - (b) By telephone; and
 - (c) By public notice posted in the U.S. Post office.
- (11) The Council or City Auditor, whichever applicable, shall keep a record of all open market orders and the bids submitted in competition thereon, and such records shall also be open to public inspection.

4.0108 Approval of Contract Funds by Auditor

All contracts, either in the form of a written contract or a purchase order, except those covering purchases made for immediate use, shall be approved by the City Auditor as to sufficiency of funds and appropriations before being executed.

4.0109 Inspection and Receipt of Materials

The responsibility for the inspection and acceptance of all materials, supplies, and equipment or a construction project shall rest with the department head. Using the same receipt of the purchase shall be indicated on the receiving report form provided therefore. Defective supplies shall be immediately reported to the City Auditor.

4.0110 Sale of Surplus Property

Whenever any personal property is no longer required for a public purpose, the same may be offered for public sale by the City Auditor. Property with a value in excess of 100.00 shall be sold or traded in only with the consent and approval of the City Council.

CHAPTER 2 - Bills and Claims Against the City

4.0201 Itemized Statement and Certificate Required

No bill, claim, or account against the City of Ashley, except fixed salaries of officials and employees whose positions are continuing, shall be approved by the City Council or paid by the City Auditor unless an itemized voucher or bill shall have been filed and certified in substantially the following form;

CERTIFICATE

I do hereby certify that this bill, claim, or account against the City of Ashley is just and true; that the money charged was actually paid for the purpose stated that the services charged were actually rendered and were of the value charged. That the goods charged were actually delivered and were of the value charged; and that no part of this bill, claim, or account has been paid.

Sign here _____

If signed for a firm or corporation state authority.

Goods received as itemized.

Department Head or Official.

4.0202 Approval of Claims

Every bill, claim, or account coming before the City Council for consideration and approval, except as other wise provided, shall bear the approval of the head of the department for which the expense was incurred, or the approval of another official who is responsible therefore, and shall have been checked by the City Auditor for correctness of extensions and additions.

4.0203 Examination, Investigation, and Approval by the City Council

Before any bill, claim, or account is allowed and approved by the City Council, any alderman may examine and question any bill, claim, or account and may request the same held for further investigation. The bills that are not questioned or held for further investigation may be approved by a single motion to cover all the bills, claims, and accounts which have been found to be correct and proper charges against the City. The Auditor shall certify on each bill, claim, or account the date of approval and the amount for which the bill was approved by the City Council.

4.0204 Records Kept Regarding Approved Bills

Except in the case of disputed or questioned bills, claims, or accounts, the City Auditor's certificate showing the date of approval and the amount allowed by the City Council, shall constitute all the record required covering the consideration which has resulted in its approval. The minutes shall show any action taken by the Council in the case of disputed or questioned bills.

CHAPTER 3 - Penalty

4.0301 Penalty for False Claim

Every person who shall falsely certify and file with the City Auditor any false or fraudulent bill, claim, or account against the City of Ashley, or who shall violate any of the provisions of this title, shall upon conviction thereof be subject to fine or not exceeding one Hundred Dollars (100.00), or imprisonment for a period of not exceeding ninety (90) days, or both such fine and imprisonment in the discretion of the Court.

CHAPTER 4 - Sale of Property

4.0401 Sale of Property

(1) That all property, both real and personal, owned by the City of Ashley, McIntosh County, North Dakota shall be conveyed, sold, leased, or disposed of in accordance with the terms of this ordinance.

- (2) For the sale of real estate estimated to be of a fair market value of Twenty-five Hundred Dollars or more, the City Council shall only sell such property at public auction or on sealed bids, as shall be determined by the City Council, and such sale shall be conducted on notice thereof given according to statute.
- (3) For the sale of real estate estimated to be of a fair Market value of less than Twenty-five Hundred Dollars, the City Council may sell the same in accordance with the provisions of Subsection (2) above, or it may sell the same at private sale for a fair and adequate consideration as it may determine upon resolution of the City Council, which resolution shall be approved of by at least two-thirds of the members-elect of the said City Council.
- (4) For the sale of personal property the City Council may sell the same in accordance with the provisions of either Subsection (2) or (3) above as it shall determine.
- (5) For the lease of real or personal property, the City Council shall submit the same on bids or may lease upon the terms and conditions as it sees fit. If such property is leased upon bids, the manner of bidding and the notice thereof shall be given as provided by resolution of the City Council.
- (6) Upon the sale or lease of any property of the City, a proper written conveyance or lease shall be prepared and shall be executed by the Mayor and the City Auditor in accordance with law.

TITLE 5

OFFICERS AND DUTIES

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TITLE 5

OFFICERS AND DUTIES

CHAPTER 1 - Bonds of Municipal Officers and Employees

5.0101 Bonds of Officials and Employees

The following officers and employees of the City of Ashley shall be bonded in the sums as hereinafter set forth:

- (1) The City Treasurer shall be bonded in the amount as provided by statute.
- (2) The City Auditor shall be bonded in the amount of \$1,000.00.
- (3) The Chief of Police shall be bonded in the amount of \$1,000.00.
- (4) The Water and Sewer Commissioner shall be bonded in the amount of \$1,000.00.
- (5) The Municipal Judge shall be bonded in the amount of \$500.
- (6) All policemen shall be bonded in the amount of \$1,000.00
- (7) The City Assessor shall be bonded in the amount of \$500.00

CHAPTER 2 - Delivery of Cash and Checks

5.0201 Delivery of Cash to City Auditor or Treasurer

It shall be the duty of any employee or official, including the Municipal Judge, receiving money on account of, or in behalf of, the City of Ashley in connection with the municipal duties performed by such person, including, but not limited to, money to be turned over to the City Auditor or Treasurer at least every month and to secure from the City Auditor or Treasurer a receipt for that money.

5.0202 Delivery of Checks to the City Auditor or Treasurer

It shall be the duty of any employee or official referred to in Section 5-02-01 to deliver before the close of business of each day to the City Auditor or Treasurer any checks received by such individual representing funds belonging to the City of Ashley. Such person shall be given a receipt in the amount of such checks from the City Auditor or Treasurer the same as if such checks were cash. It is the intention of this section to cause all checks to be promptly deposited through the City Treasury so that the same shall be placed in line for immediate payment.

5.0203 Cashing of Checks Prohibited from City Funds; Exception

No employee or official of the City of Ashley having in his possession cash or currency belonging to the City of Ashley shall cash any personal checks from city funds. This section shall not apply where any official or employee receives a personal check in payment of a fine, costs, license or permit fee, or other municipal charges of that nature nor shall this section prohibit the City Auditor from cashing those checks as the City Auditor may deem proper for city

employees or persons who are in some manner associating themselves with the City of Ashley, either by contract or otherwise. In cashing the checks the City Auditor shall use the utmost discretion and may refuse to cash any check or checks without specifying any reason.

5.0204 Failure to Make Report or Turn Over Fines; Penalty

If any employee or official, including the Municipal Judge, shall neglect or refuse to make a required report or to pay over the money collected by the employee or official, or shall refuse to allow the City Council or any of its committees to examine the records in regard to those matters, he shall be subject to removal.

5.0205 Failure to Report Any Bill, Check; Neglect of Duty

Any employee or official, including the Municipal Judge, having in custody and control any money, account, bill, check, report, or other thing pertaining to the City of Ashley about which that person is required by this Code to report or transmit to the City Auditor or Treasurer, shall be deemed neglecting duty if that person shall fail to make the report or transmission within the time specified. That person shall, upon the request of the City Auditor under the power delegated by Section 5-06-01, immediately prepare and deliver to the City Auditor a report pertaining to cash received and city funds as the Auditor shall request and a failure to make such report promptly shall be considered is neglect of duty.

CHAPTER 3 - Municipal Judge

5.0301 General Duties

The Municipal Judge shall perform all of the duties prescribed by statute and the ordinances of the City. The Municipal Judge shall receive such compensation as the City Council shall from time to time determine.

5.0302 Report to the City Council

It shall be the duty of the Municipal Judge to make a full report under oath, of all proceedings in actions or matters before him in which the City of Ashley is a party, or interested therein, to the City Council at the close of each month. Until that report has been filed with the City Auditor no compensation shall be paid to the Municipal Judge for that work.

5.0303 Contents of Report

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

5.0304 Report to be Accompanied with Receipt

This report shall be accompanied with the duplicate receipt or receipts of the City Auditor or Treasurer for the total amount of the fees and money so collected on behalf of the city.

5.0305 Exclusive Jurisdiction over Ordinance Violations

The Municipal Judge within the City of Ashley shall have exclusive jurisdiction of, and shall hear, try and determine all offenses against the ordinances of the City of Ashley. During the temporary absence, interest, or disability of the Municipal Judge, a District Judge shall act as Municipal Judge in the trial of causes trialed before the Municipal Judge.

5.0306 Municipal Court Hours

The Municipal Judge shall be in attendance at Municipal Court for the transaction of business that may come before him and shall devote the time necessary to handle and dispose of the business coming before him. Complaints may be made to and write and process issued by him at all times in Court or otherwise.

5.0307 Procedure

In all actions and proceedings brought and heard in the Municipal Court for violation of any ordinance of the City of Ashley, or the enforcement and recovery of any penalty provided for violation thereof, when it shall appear from the evidence that another ordinance of said city other than that charged to have been violated has been violated, the Court shall have power and authority to find and adjudge the defendant guilty of the violation of such other ordinance, provided, that upon demand of the defendant so to do, a new complaint shall be made and filed charging said defendant with such violation, and the proceeding there under shall be had in manner and form as by law provided in cases otherwise instituted in said Court.

5.0308 Conduct of Municipal Court

The conduct of the Municipal Court shall be governed by the statutes of the State of North Dakota and by the ordinances of the City of Ashley. During all causes, proceedings, and trials held in the Municipal Court, it shall be the duty of the Municipal Judge or the Acting Municipal Judge, as the case may be, to preserve order and dignity and to cause such matter to be heard with courtesy to all parties concerned.

5.0309 Rendering Judgment on Conviction; Committed in Lieu of Fine

In all trials for offenses under the ordinances of the City of Ashley, if the defendant is found guilty, the Municipal Judge or Acting Municipal Judge, as the case may be, shall render judgment accordingly. It shall be part of the judgment that the defendant stand committed until such judgment is complied with, in no case to exceed one (1) day for every one dollar and twenty five cents (1.25) of the fine and costs assessed against said defendant.

5.0310 Hard Labor Authorized

If, in the opinion of the Court, such person so sentenced is capable of performing manual labor, such Court may sentence such person to confinement at hard labor.

5.0311 Hard labor under Direction of Chief of Police; Credit For

Any person so imprisoned and sentenced to hard labor, as provided in Section 5-03-10, shall be required to work for the city at such labor as his or her strength will permit under the direction of the Chief of Police, not to exceed ten (10) hours each working day, and for such work the person so employed shall be allowed Minimum Wage per hour, to be applied on account of such fine and costs.

5.0312 Refusal to Work in Contempt of Court

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

5.0313 Punishment of Violators upon Conviction

Any person convicted before the Municipal Judge of the City of Ashley of an offense against any of the ordinances of the City of Ashley, shall be punished as may be regulated by such ordinance, except as is here in after provided.

5.0314 Fines not to be Remitted

Under no circumstances shall such Municipal Judge remit fines or penalties for payment

of costs.

5.0315 Deferring or Suspending Sentence, Commitment

The Municipal Judge may, upon the conviction of any person for any offense against any of the ordinances of the City of Ashley, provided no other penalty is provided by ordinance, impose a sentence of not to exceed ninety (90) days in the jail facility and a fine of not to exceed Five Hundred Dollars (500.00), or both such fine and imprisonment, and may suspend the sentence so imposed.

During the period of suspended sentence the Municipal Judge may allow the defendant to go upon his or her own recognizance, or upon bail as may be regulated by law or the ordinances of said city, and may revoke the suspension at any time and cause the sentence of the Court to be carried out.

In all cases where the sentence of imprisonment is not deferred or suspended the Municipal Judge shall then and there forthwith commit the defendant to the city jail, if that is the sentence imposed, and collect any fine and costs levied against said defendant, if fine and costs have been levied against the defendant, or both to the end that justice will be met.

5.0316 Sections 5.0307 To 5.0316 not Repealed by Implication

Sections 5.0307 to 5.0316, inclusive, shall not be repealed by implication and shall be made effective where applicable to existing ordinances and to all ordinances hereafter enacted, unless by the express terms thereof these sections shall be repealed in whole or in part and, if in part only, then as to only the part as may have been expressly repealed.

5.0307 Sections 5.0307 To 5.0316 to be Liberally Construed

Sections 5.0307 to 5.0316, inclusive, are enacted in furtherance of the ends of justice, and to enable the Municipal Judge in proper cases to further the ends of justice.

Sections 5.0307 to 5.0316 shall be given a liberal construction by all courts. Any person who accepts the benefits of indulgences extended to him or her pursuant to the provisions hereof shall be deemed to have waived all objections to the validity hereof all objections not filed with the Municipal Judge at the time of the proceedings taken to which objection might be entered, shall be deemed waived.

5.0318 Chapter to Apply to Municipal Judge

If the office of Police Magistrate is abolished and the office of Municipal Judge substituted therefore, the provisions of this chapter shall apply to such Municipal Judge in all Cases, where not inconsistent with the statutes of the State of North Dakota or any of the ordinances of the City of Ashley.

CHAPTER 4 - City Treasurer

5.0401 Definition

The City Auditor and the City Treasurer shall be one office to be held by the same person, who will be designated the City Auditor. All duties assigned to the City Treasurer in this code shall be performed by the City Auditor, and all references in this code to the City Treasurer shall mean the City Auditor.

5.0401.1 Salary of City Treasurer; Fees Paid into Treasury

The salary of the City Treasurer shall be fixed by the City Council. The City Treasurer shall receive no fees or per diem in addition thereto. All fees collected by the Treasurer shall be paid into the City Treasury.

5.0402 Treasurer to Receive Money; Account

The City Treasurer shall receive all money belonging to the city and shall keep accurate and detailed accounts thereof in suitable books and/or on the computer prepared for that purpose in the manner as the City Council may direct.

5.0403 Duplicate Receipts by Treasurer

The City Treasurer shall give to each person paying money into the City Treasury a duplicate receipt therefore specifying the date and amount of such payment and upon what account the money is paid.

5.0404 Separate Account of Funds to be Kept

The City Treasurer shall keep a separate and accurate account of each fund showing the debits and credits of each fund in chronological order.

5.0405 Disbursement of Money; Payment of Bonds and Interest Coupons

The City Treasurer shall pay put or disburse money only upon the warrant of the Mayor, countersigned by the City Auditor, except that the Auditor shall pay city bonds and interest coupons when the same are due and presented for payment if there is money available for that purpose. If the bonds or interest coupons are payable outside the city, the money for that payment shall be remitted by the City Treasurer to the place of payment in time to reach that point on or before the maturity date of the obligation.

5.0406 Funds Controlled by Council and Disbursed on its Order; Exception

All funds in the City Treasury, except funds created and set apart for the payment of interest and principal of the debt of the city, and funds collected on special assessments, shall be under the control of the governing body of the city and shall be drawn out when authorized by a vote of the governing body upon order of the Mayor, countersigned by the City Auditor. All orders drawn upon the Treasury shall specify the purpose for which they are drawn and shall be payable out of the funds in the treasury on which they are drawn. The orders shall be payable to the persons in whose favor they are drawn and may be transferred by endorsement.

5.0407 When Warrant Paid; Endorsements; Failure to Pay

All warrants shall be paid from the fund upon which they are drawn and in the order in which they are presented for payment. On the back of each warrant presented, the Treasurer shall note the date of presentation, and when payment is made he shall note the date of such payment. If a warrant is not paid for want of funds, the Treasurer shall state this fact on the warrant and it shall bear interest at the legal rate until called for payment.

5.0408 Warrant Register to be Kept by Treasurer

The Treasurer shall keep a register of all warrants redeemed and paid during the year, describing the warrant, their respective dates, amounts, numbers, the funds on which they were paid, the persons to whom paid, and the times of payment.

5.0409 Treasurer not to Commingle Money; Office Forfeited for Violation

The City Treasurer shall keep the city's money separate from other moneys, and shall not, either directly or indirectly, use the city's money warrants, other obligations in his or her custody and keeping for his or her own use and benefit or for that of any other person. If the Treasurer is convicted of a violation of this section, his or her office shall be forfeited and shall become vacant.

5.0410 Treasurer to Report to Council; Warrants to be Examined

The City Treasurer shall report to the governing body at least once a month on the condition of the Treasury. The report shall contain a full and detailed account of all receipts and expenditures since the last report and of the balances of the City Treasury. All warrants

redeemed and paid by the Treasurer as disclosed by that report shall be examined by the governing body.

CHAPTER 5 - Appointive Officers - General

5.0501 Term of Office

All appointed officers, unless sooner removed, shall hold office until the expiration of the term for which they were appointed, and until their successors have been appointed and qualified, and before entering upon the duties of their office shall take oath and give the bonds required by law and ordinance.

5.0502 Inspection of Books

All officers, agents, or employees of the city shall at all times, when required, submit the books and papers of their respective offices, and make a report if their transactions in that office to the Mayor and City Council or any standing or special committee thereof.

CHAPTER 6 - City Auditor

5.0601 Duties of the City Auditor

It shall be the duty of the City Auditor in connection with his or her other duties:

- (1) To be present and keep a correct journal of the proceedings of each meeting of the City Council.
- (2) To make a correct record of the same, engross all ordinances and record the same in a book for ordinances.
- (3) To furnish the several committees' copies of resolutions and other matters that maybe referred to them, unless the original papers are furnished, and to do those other clerical duties as may be prescribed by the City Council.
- (4) To collect water, sewer, and other charges, license and permit fees, and all other municipal charges which the City Council shall from time to time make.
- (5) To keep the corporate seal and all papers and records of the city.
- (6) To draw and countersign all orders on the Treasury in pursuance of any order or resolution of the governing body and keep a full and accurate account thereof in books provided for that purpose.
- (7) To examine and countersign all bonds, orders, or other evidences of indebtedness of the city before the same become valid.
- (8) To keep regular books of account in which he or she shall enter all indebtedness of the city and which at all times shall show the financial condition of the city, the amount of bond orders, certificates, or other evidences of indebtedness issued by the governing body, the amount of all bonds, orders, certificates, or other evidences of indebtedness which have been redeemed, and the amount of each outstanding.
- (9) To make and keep a list of outstanding city bonds, orders, certificates, or other evidences of indebtedness showing to whom and for what purpose the same were issued, when and where each is payable, the rate of interest each bears, and to recommend such action to the governing body as will secure the punctual payment of the principal and interest of those bonds or other indebtedness.
- (10) To countersign all contracts made on behalf of the city if necessary funds have been

provided to pay the liability incurred there under, to countersign certificates of work authorized by any committee of the governing body, or by any city official. Each contract made on behalf of the city or to which the city is a party shall be void unless countersigned by the City Auditor.

- (11) To make a list of all certificates for the payment of which special taxes are to be levied in each year in time for the same to be inserted in the tax roll in the form of a schedule of special taxes and to certify to the correctness thereof.
- (12) To prepare and submit to the governing body of the city a written report each month showing the condition of the several funds of the city and of all outstanding contracts and claims which may be payable out of any of those funds.
- (13) To prepare and submit to the governing body a report each month showing a full, clear, and complete statement of all the taxes and other revenues collected and expended for the preceding month, and indicate the respective sources from which the moneys are derived and the disposition made thereof.
- (14) To prepare and submit a report, on or before January tenth and July tenth of each year, showing the receipts and expenses of the city for the six month periods ending December thirty-first and June thirtieth, respectively. That report shall include a statement of the financial condition of all municipal funds as of the date for which it is given, and shall be kept on file in the office of the City Auditor as a permanent public record. Certified copies of the report shall be forwarded to and kept on file in the offices of the City Auditor and County Treasurer and shall be open to public inspection on examination.
- (15) To prepare and submit a detailed statement, on or before the last day of January in each year, showing the expenses of the city during the last fiscal year and an estimate of the expenses for the ensuing fiscal year and the income for that year from sources other than taxes.
- (16) To perform those other duties as may be prescribed by this Code.

CHAPTER 7 - City Attorney

5.0701 Duties of the City Attorney

The City attorney shall;

- (1) Conduct all law business in which the city or any of its departments shall be interested.
- (2) Furnish written opinions, when requested, upon all questions submitted to him or her by the governing body or any of the departments of the city.
- (3) Draft all ordinances, bonds, contracts, leases, conveyances, and other instruments which may be required by the officers of the city.
- (4) Examine tax and assessment rolls and all proceedings in reference to the levying and collecting of city taxes.
- (5) Keep a docket of all cases to which the city may be a party in any court of record in which shall be entered briefly all steps taken in each of those cases, and that docket shall be open to public inspection at all reasonable hours.
- (6) Perform all other duties which may be prescribed by the governing body, this Code, or the statutes of North Dakota.

5.0702 Conduct of Cases in Municipal Court

The conduct of all causes and proceedings in Municipal Court, in so far as the City of Ashley is concerned shall be handled by the City Attorney who shall be fully responsible for all causes so tried and shall have complete authority to require assistance from other employees of the city as may be necessary in order to present properly any case before the Municipal Court in which the City of Ashley is a party.

The City Attorney shall keep advised of all causes and proceedings and shall expeditiously prosecute, try, settle, dismiss, or otherwise dispose thereof in a manner and at a time in his or her discretion.

5.0703 Evidence

- (1) In any and all proceedings, actions, or prosecutions had and taken in the Municipal Court of the City of Ashley, for violation of any ordinance of the city prohibiting or commanding the use or operation of any motor vehicle, the property or passengers therein contained, the driving, parking, stopping, or standing thereof, proof of the registered or actual ownership of the vehicle shall be, in the absence of evidence and proof of the person or persons other than the owner who at the time and place of the alleged violation was driving or operating and was then and there in possession and had physical control of the vehicle, in possession thereof and of the contents thereof at the time and place of the alleged violation.
- (2) Upon proof of the ownership of the vehicle in manner and form as aforesaid, the burden of proceeding and submitting evidence in contradiction and controverting the presumption set forth in subsection one of this section shall be shifted to and placed upon the defendant or person charged with the violation of the ordinance for which said proceedings, action, or prosecution is instituted, pending, or carried on, including any penalty provided by this Code for that violation.

CHAPTER 8 - City Assessor

5.0801 Duties of the City Assessor

The City Assessor of the City of Ashley shall perform all the duties necessary in assessing the property within the corporate limits of the city of Ashley for the purpose as levying the municipal, county, school, and state taxes.

5.0802 Procedure for Making Assessments and Returns

The City Assessor shall be governed by and shall make assessments and returns as is provided for in the title "Taxation" of the North Dakota Century Code and by this Code relative to procedure where the procedure has not been clearly set forth by state statute.

5.0803 Assessment Roll

On or before the first day of June in each year the City Assessor shall return the assessment roll to the City Auditor.

5.0804 Assist in Collection of Taxes

The City Assessor shall also assist in the collection of taxes of persons moving buildings from any part of the city upon which taxes are due upon the property from which said buildings are to be removed. In addition he or she shall perform these other and further services for the City of Ashley as may be provided by this Code or as prescribed by the governing body.

5.0805 Review Applications for Tax Abatements

The City Assessor shall review all applications made for tax abatements and shall cause a written report and recommendations in duplicate to be attached to the report.

CHAPTER 9 - Water and Sewer Commissioner

5.0901 Water and Sewer Commissioner Created

There is hereby created in the City of Ashley the position of Water and Sewer Commissioner whose duties shall be as hereinafter set forth. For purpose of brevity the Water and Sewer Commissioner shall be referred to in this chapter as Water Commissioner.

5.0902 Water Commissioner to Supervise Water Connections

It shall be the duty of the Water Commissioner to supervise the making of all connections with the water works system, which shall include both water and sewer mains, and shall follow the instructions of the City Auditor in turning on or turning off the water for any consumer. The Water Commissioner shall see that all of the provisions of the ordinances pertaining to the sewer and water utility, insofar as the construction, reconstruction, and maintenance of the water and sewer systems are followed. For the purpose of general administration the Water Commissioner is responsible to the City Council.

5.0903 Keep Record of Connections; Report to Auditor

The Water Commissioner shall keep an accurate account showing when and where all connections are made with the city water and sewer systems and the location in the streets and alleys of all valves, cut-offs, connections, and other matters connected with the water and sewer systems. He or she shall make and file with the City Auditor a full report in writing at the close of each month of all the work in his or her office, which report shall be a detailed outline for the information of the City Council and the City Auditor.

5.0904 Responsible for Property in Department

The Water Commissioner shall be responsible for all of the waterworks property of the city, including all books, records, and files of said department, but excluding there from any files or records which it is the duty of the City Auditor to keep in control and custody.

The Water Commissioner shall make a full report to the City Council each month, explaining the general condition of the property of the water and sewer systems.

5.0905 Record of Water use

The water Commissioner shall keep or cause to be kept an accurate record of the amount of water used by each consumer of city water. He or she shall read water meters at such intervals as shall be determined from time to time by the City Council.

5.0906 Report Violations of Health Ordinances

It shall be the duty of the Water Commissioner to report promptly to the Health Officer all violations of health ordinances which come to his or her notice and render any practical assistance to the Health Officer which the Health Officer may require.

CHAPTER 10 - Street Commissioner

5.1001 Office Created; General Duties

There is hereby created within the City of Ashley the office of Street Commissioner. The duties of the Street Commissioner shall be as hereinafter provided and as provided by any other provision of this Code. For the purpose of general administration the Street Commissioner is

responsible to the City Council.

5.1002 Monthly and Annual Reports

The Street Commissioner shall make monthly reports to the City Council. That report shall contain a list of all property in his or her hands or under his or her control belonging to the city and the condition of that property. In addition he or she shall make an annual report as the condition of the streets, avenues, and alleys of the city, together with recommendations and suggestions for their improvement.

5.1003 Repair of Streets, Alleys, and Sidewalks

The Street Commissioner, under the direction of the City Council, shall have charge of the streets, alleys, and sidewalks of the city, and shall see that all needful repairs are made.

5.1004 Streets and Alleys to be Kept Clean

The Street Commissioner shall see that the streets and alleys are kept clean and free from filth, manure, paper, and other rubbish and from all obnoxious weeds.

5.1005 Report Violations of Health Ordinances

It shall be the duty of the Street Commissioner to report promptly to the Health Officer all violations of health ordinances which come to his or her notice and render any practical assistance to the Health Officer which the Health Officer may require.

5.1006 Defects Repaired; Notify City Council

In the event the Street Commissioner, or the personnel working in that department, shall notice defects in the streets, alleys, or sidewalks in the City of Ashley, they shall take steps to repair those defects as are reasonably possible under the circumstances. In the event the Street Commissioner feels that he or she is unable to properly repair the street, alley, or sidewalk within the amount of resources available, he or she shall be charged with the responsibility of notifying the City Council for further authority to proceed.

The Street Commissioner shall recommend in writing to the City Council such street and sidewalk repair as is necessary.

5.1007 Prevent Use, Post Danger Signs, Repair Defective Sidewalk

The Street Commissioner shall have the power, and it is hereby made his or her duty, when the condition of any sidewalk is such as to render it dangerous to the public, to take those measures as shall prevent the use of the same, and shall post danger signals thereon, and shall at once repair the same under the direction of the City Council.

Whenever any excavation is open in the streets or alleys for plumbing ditches or otherwise, it shall be the duty of the Street Commissioner to see that the person charged with the responsibility for opening such street, alley, boulevard, or sidewalk shall cause the same to be properly protected with suitable barriers to prevent accident or injury to the passing public.

In the event that the opening is to remain uncovered or unfilled during the night or otherwise dark hours, it shall be the duty of the Street Commissioner to see that a flare or flares, as may be necessary to safeguard the general public properly, shall be placed upon said excavation.

5.1008 Erection of Traffic, Parking, and Other Street Signs; Painting

It shall be the duty of the Street Commissioner to cause to be erected all stop signs, other traffic signs and signals, and other signs as the City Council may direct. He or she shall also cause to have painted all of the streets or areas designation parking or traffic control and spaces, and such control painting either traffic or otherwise, as the City Council shall from time to time direct or ordain. He or she shall be responsible for the upkeep and maintenance of all signs so

erected and all control painting.

CHAPTER 11 - Fire Chief

5.1101 Fire Chief to Keep Records

The Fire Chief of the Ashley Volunteer Fire Department, hereinafter referred to as the Fire Chief, shall cause to be kept in books for that purpose a full and complete record of the organization of the department, its membership, the respective positions held by the firemen in the department, vacancies appointments, and dismissals, notices issued by the department, and all of its transactions, of all fires occurring in the city and the cause thereof when ascertainable, of the time lost by firemen, of all the property placed in his or her charge, all expenditures made by his or her order, and all rural fires at which the department assists, and shall keep other books and records as shall be required in the department and those books shall always be open to the inspection of the Mayor and the City Council.

5.1102 Fire Chief to Make Reports

On the first Monday of January and July of each year the Fire Chief shall make a report, in writing, including a summary of the number of fires that have occurred in the city since the last report, and the number of fires, including rural fires, at which the department gave assistance, and the cause of the same as far as can be ascertained, the amount of insurance upon buildings destroyed or damaged, the names of the owners or occupants of the same as near as can be ascertained, which report shall be filed in the office of the city Auditor. Reports shall be made at shorter intervals if directed by the City Council.

5.1103 Fire Chief to Have Charge of Apparatus

The Fire Chief shall have charge of, and be responsible for, all fire equipment and see that the same is kept in repair and in efficient working order and ready for instant use. He shall promptly report to the City Council any serious injures to or defects in any of the fire apparatus belonging to the city.

5.1104 Fire Chief to Prescribe Rules and Regulations

The Fire Chief shall prescribe such rules and regulations for the operation of the department as are in his or her judgment necessary to secure the best and most efficient service.

5.1105 Fire Chief to Investigate Fires

The Fire Chief shall immediately after each fire carefully and thoroughly investigate the same. For that purpose he or she may call on the Chief of Police for assistance. If possible he or she shall ascertain and record and report the cause of such fire as herein provided

5.1106 Fire Chief to Control and Enforce Discipline

The Fire Chief under the direction of the City Council shall have absolute control and command over all persons connected with the Fire Department. He or she shall possess full power and authority to enforce discipline in the department.

5.1107 Fire Chief to Prescribe Limits at Fire

The Fire Chief may prescribe limits in the vicinity of any fire within which no person, except those who reside therein, firemen, policemen, and those admitted by his or her order, shall be permitted to enter.

5.1108 Fire Chief May Order Removal of Property

At all fires the Fire Chief shall have power to cause the removal of any property whenever it shall become necessary for the preservation of that property to prevent the spreading

of fire, or to protect adjoining property.

5.1109 Fire Chief in Command at Fire

The Fire Chief shall have power to Command such assistance from persons attending any fire, not members of the Fire Department, for the extinguishment fires or the preservation of property exposed to fire, or both, as his judgment may required.

5.1110 Fire Chief May Command Assistance at Fires

The Fire Chief shall have power to command such assistance from persons attending any fire, not members of the Fire Department, for the extinguishment fires or preservation of property exposed to fire, or both, as his or her judgment may required.

5.1111 Police Powers at Fires

While in actual attendance at fires, the Fire Chief or other officer in command, shall have, and are hereby each vested with police power in so far as the exercise of the same may be necessary to prevent disorder, breach of the peace, interference with the work of the department, or the destruction or larceny of property.

CHAPTER 12 - Police Department and Officers

5.1201 Establishment of Police Department

The police Department heretofore created for the City of Ashley, and by this chapter continued, shall consist of the Chief of Police and as many policemen as may be authorized by the City Council and may be appropriated therefore on the budget. The selection of the Chief of Police shall be made by the City Council.

5.1202 City Police Policy Defined

It shall be the policy of the City of Ashley insofar as the enforcement of its ordinances are concerned, together with the enforcement of any statutes under which the individual members of the Police Department shall perform official functions in preserving the public peace, preventing the commission of crimes, protection the rights of persons and property and protecting the public welfare, to cause such ordinances and laws to be enforced impartially.

The City of Ashley expects of its police officers neatness and courtesy while on duty, and at any time when in uniform. The Chief of police is authorized and directed to emphasize as part of the training program of police officers of the City of Ashley neatness and courtesy. To this end the Chief of police is authorized and directed to make such recommendations to the conduct of police officers while on duty as may be proper and required.

5.1203 Oath and Bond of Officers

The Chief of Police and other shall take and subscribe the oath and affirmation provided for by law for all officers of the city, and shall give bond in such amount as may be required by this Code.

5.1204 Appointment of Additional Officers in Case of Emergency

In case of riot or general disturbances of the peace, the Mayor or the Chief of Police shall have power to appoint such other and additional policemen as he or she may deem necessary for the preservation of the public peace.

5.1205 Appointment and Powers of Special Officers

At the request of any person, firm, or corporation, the Mayor may appoint and commission one or more special policemen to do duty for that person, firm, or corporation, which special policemen shall have all the authority now, or which may be hereafter conferred by

law upon policemen; provided, however, that those special policemen shall receive no compensation from the city, and must be paid by the person, firm, corporation requesting their appointment.

5.1206 Police Chief to be Executive Officer

The Chief of Police shall be the chief executive officer of the Police Department and shall be responsible for its discipline efficiency. He or she shall be responsible for the courtesy, appearance, and neatness of the police force.

5.1207 Rules and Regulations of the Police Department

The Chief of Police is hereby authorized to promulgate rules and regulations for the government of the department as may be considered by him or her proper, a copy of such rules and regulations shall provided for each of the employees of the department.

5.1208 Serve Warrants

It shall be the duty of the Police Department, and of each and every policeman, to serve all warrants and processes delivered to that policeman for service in the city and which by law he or she is authorized to serve.

5.1209 Report Violations of Law, Make Complaint, Attend Trials

It shall be the duty of the Police Department, and each and every policeman, to notice and diligently inquire into report to the Chief of Police and City Attorney all violations of the city ordinances, violations of the criminal laws of the state and breaches of the peace, and to make complaint against the person or persons guilty thereof, and to attend punctually and all trials of offenses in regard to which complaint has been made by any policeman.

5.1210 Arrest Without Warrant Any Disturbers of Peace

It shall be the duty of the Police Department, and of each and every policeman, to ferret out all suspicious or disorderly houses in the city, visit all parts of the city where disturbances and breaches of peace, or violations of any ordinance are occurring or likely to occur, who are fighting, pilfering, or robbing, or who shall be making or uttering loud cries or noises or doing any act to disturb the peace or good order of the community, or who he or they shall have good cause to believe is about to commit any unlawful act, or has committed an unlawful act in the presence of the policeman, and bring that person or persons before the Municipal Judge, to be dealt with according to law.

5.1211 Abatement of Nuisances

It shall be the duty of the Police Department, and of each and every policeman, to abate or remove or cause to be abated or removed, all nuisances within the city, and to prosecute all persons guilty of maintaining the same.

5.1212 Moneys or Property of Persons Arrested

It shall be the duty of the Police Department, and of each and every policeman, to keep safe all moneys or property which may be found on the person, in possession of, or claimed by any person arrested for violation of any city ordinance and pay or deliver over the same by order of the Municipal Judge, and forthwith after taking the same, to report in writing the kind and amount thereof to the Municipal Judge, any and all property seized of taken into their possession, custody, and control for purpose of evidence or otherwise in connection with the arrest of any person or persons for violation of any city ordinance of the City of Ashley and upon order of the Municipal Judge, to surrender and deliver over to the owner thereof, destroy, or make such disposition thereof as may be by and pursuant to that order directed, including any of the property as shall not have been claimed by any person or persons within sixty days after the judgment of

the Municipal Judge, as to the guilt or innocence of the person or persons arrested shall have become final and conclusive.

5.1213 Enforcement of All Ordinances

It shall be the imperative duty of every policeman to be active and vigilant in enforcing the several provisions of all city ordinances that may be now or year after in force.

5.1214 Arrested Person Before Magistrate, Confinement in Jail

Any police officer after making any arrest, with or without a warrant, for any violation of city ordinances, shall take the person or person so arrested, without any unreasonable delay, before the Municipal Judge, to be dealt with according to law and the city ordinances. Provided, that if the arrest be made on Sunday or after sunset and before nine o'clock in the forenoon of any day, then in those cases the person or persons so arrested shall be confined in a jail facility, until a reasonable time as the Municipal Judge, may direct in pursuance of law and the city ordinances for hearing the charge and the city ordinances for hearing the charge and complaint against the person so arrested.

5.1215 Removal of Officer for Failure to Comply

Any police officer failing to comply with the provisions of this chapter shall be subject to summary removal.

5.1216 Orders, Rules, and Regulations

The Chief of Police shall also promptly execute all orders and observe all rules regulations. All orders to the Chief of Police shall emanate from and be issued by the City Council all orders to the Police Department are issued by the Chief of Police. The Chief of Police shall have the power to promulgate orders to the police force not inconsistent with law or this Code. The same shall be written or printed and all members of the force shall observe and obey them.

5.1217 Record of Reports from Officers

The Chief of Police shall record in a book, reports from the several officers of all defects in the highway pavement, sidewalks, bridges, violations of the building laws, and cases of nuisances and shall report the same to the City Council.

The Chief of Police shall cause the Street Commissioner to be promptly notified of all defects in streets or sidewalks or bridges, or otherwise which might cause serious injury or property damage.

The Chief of Police shall see that persons responsible for flaring and barricading ditches and cuts in the streets shall keep the same properly barricaded and flared when the same is required.

The written report required hereunder is a routine daily report to be made to the Street Commissioner or responsible party and shown on the necessary routine report.

5.1218 Record of Accidents

The Chief of Police shall cause to be kept a record of all accidents whereby the city may become chargeable with the circumstances, names of witnesses, and the particular description of the location.

5.1219 Other Duties

The Chief of Police shall perform any other duties and services required by this Code or by the City Council.

The Chief of Police shall cause any juvenile under the age of eighteen (18) years to be turned over to the Juvenile Commissioner. In the event that there shall be a waiver of such

custody directly made and entered by a District Judge having jurisdiction then the Chief of Police shall cause such juvenile to be promptly presented to the Municipal Judge, for trial.

The Chief of Police shall enforce all ordinances in relation to licenses. From time to time he shall examine the license record on file in the City Auditor's office and prosecute all persons who shall be acting without license and refusing to comply with the provisions of the ordinance in relation to taking out a license.

CHAPTER 13 - Building Inspector

5.1301 Duties of Building Inspector

The Building Inspector shall:

- (1) Inspect all buildings in the city, as required by the City Council, to determine their structural condition to be in accordance with Chapter 2 of Title 13 of this Code.
- (2) Make reports to the owner or occupant of and to the City Council of any building in the city whose structural condition is below the minimum prescribed in Chapter 2 of Title 13 of this Code.
- (3) Issue building permits for new structures or alterations of existing structures pursuant to Chapter 1 of Title 17 of this Code.
- (4) Inspect all new buildings and alterations of existing buildings during construction and immediately upon completion to determine whether they comply with the provisions of the Zoning Title of this Code.
- (5) Report all violations of the Zoning Title of this Code to the City Council.
- (6) Perform all other duties assigned to him by the provisions of this Code or by the City Council.

CHAPTER 14 - Health Officer

5.1401 Health Officer: Duties: Bond

The Health Office shall be a competent physician. He or she shall perform those duties as may be conferred upon him or her by law or by this Code. Before entering upon the duties of his or her office he or she shall take the usual oath of office, and he or she shall receive compensation for his or her services as the City Council may determine.

5.1402 Member of Board of Health

The Health Officer shall be member of the Board of Health and it shall be his or her duty to make and publish suitable rules and regulations tending to promote the health of the inhabitants of the city. He or she shall promptly report to the Mayor and/or City Council all violations of the rules and regulations of city ordinances and state laws tending to promote the health of the city.

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TITLE 6

TRAFFIC

CHAPTER 1 - Definitions

6.0101 Definitions

Words and phrases used in this Title shall have the meanings and be defined as provided in the North Dakota Century Code in Title 39, and NDCC 39-01-01 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance. In this Title unless the context or subject matter otherwise requires:

6.0102 Authorized Emergency Vehicles

A. Class A authorized emergency vehicles shall mean:

- (1) Vehicles of a governmental owned fire department;
- (2) Vehicles when operated by or under the control of a police officer having authority to enforce the provisions of this title or by a salaried employee of any municipal police department within the municipality or by any sheriff or deputy sheriff not to include special deputy sheriffs, or by a warden of the state penitentiary and his or her authorized agents;
- (3) Ambulances;
- (4) Vehicles operated by or under the control of the commissioner, and district deputy commissioner, and district deputy game warden of the North Dakota game and fish department;
- (5) Vehicles owned or leased by the United States Government used for law enforcement purposes; and
- (6) Vehicles designated for the use of the adjutant general and assistant adjutant general in cases of emergency.
 - a) Class A authorized emergency vehicles shall mean:
 - 1) Vehicles or a governmental owned fire department;
 - 2) Vehicles when operated by or under the control of a police officer having authority to enforce the provisions of this title or by a salaried employee of any municipal police department within the municipality or by any sheriff or deputy sheriff not to include special deputy sheriffs, or by warden of the state penitentiary and his or her authorized agents;
 - 3) Ambulances;
 - 4) Vehicles operated by or under the control of the commissioner, and district deputy commissioner, and district deputy game warden of the North Dakota Game and Fish Department;

- 5) Vehicles owned or leased by the United States government used for law enforcement purposes; and
- 6) Vehicles designated for the use of the adjutant general and assistant adjutant general in cases of emergency;
- b) Class B authorized emergency vehicles shall mean wreckers and those other emergency vehicles as are authorized by the local authorities.
- c) Class C Vehicles by civil defense directors while used in the performance of emergency duties.
 - (1) Vehicles authorized by state and local division of emergency management organizations.
 - (2) Vehicles used by volunteer firemen while performing their assigned disaster and emergency responsibilities.
 - (3) Vehicles, other than ambulances, used by emergency medical services personnel.

6.0103 Bicycle

Shall mean every device propelled by human power upon which any person may ride, having two tandem wheels either of which is more than twenty inches in diameter.

6.0104 Bus

Shall mean every motor vehicle designed for carrying more than ten passengers used for the transportation of persons, and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

6.0105 Business District

Shall mean the territory contiguous to a highway when fifty percent or more of the frontage thereon for distance of three hundred feet or more is occupied by buildings in use for business.

6.0106 Commercial Passenger Transportation

Shall mean the carriage of passengers for hire, except that the term shall not include.

- a. The carriage of passengers within the limits of a city.
- b. The carriage by local bus lines of passengers to or from a railroad station from or to places within any city or within two miles of the limits thereof.

6.0107 Commercial Freighting

Shall mean the carriage of things other than passengers, for hire except that this term shall not include;

- a. The carriage of things other than passengers within the limits of the same city.
- b. Carriage by local dray lines of baggage or goods to or from a railroad station from or to places in the city or on the immediate vicinity thereof, in this state, and not to exceed two miles from the corporate or recognized limits of said city.
- c. Hauling done by farmers for their neighbors in transporting agricultural products to or from market.

6.0108 Commissioner

Shall mean the Director of the North Dakota Department of Transportation acting directly or through his or her authorized agents.

6.0109 Controlled-Access Highway

Shall mean every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such

points only and in the manner as may be determined by the public authority having jurisdiction over that highway, street, or roadway.

6.0110 Crosswalk

Shall mean that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs, or in the absence of curbs, from the edges of the traversable roadway, or any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

6.0111 Dealer

Shall mean every person, partnership or corporation engaged in the business of buying, selling or exchanging motor vehicles, or who advertises, or holds himself or herself out to the public as engaged in the buying, selling or exchanging of motor vehicles, or who engages in the buying of motor vehicles for resale. Any person, partnership, corporation, or association doing business in several cities or in several locations within a city shall be considered a separate dealer in such location.

6.0112 Department

Shall mean the North Dakota Department of Transportation.

6.0113 Director

Shall mean the director of the division of public safety of this state.

6.0114 Division

Shall mean the division of public safety of this state.

6.0115 Driver

Shall mean every person who drives or is in actual physical control of a vehicle.

6.0116 Essential Parts

Shall mean all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration or substantially alter its appearance, model, type or mode of operation.

6.0117 Explosives

Shall mean any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in those proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or by destroying life or limb.

6.0118 Farm Tractor

Shall include every motor vehicle designed and used primarily as a farm implement for drawing plows, moving machines, and other implements of husbandry.

6.0119 Flammable Liquid

Shall mean any liquid which has a flash point of seventy degrees Fahrenheit, or less as determined by a tagliabue or equivalent closed-cup test device.

6.0120 Gust

Shall mean and include a person who accepts a ride in any vehicle without giving compensation therefore.

6.0121 Gross Weight

Shall mean the weight of a vehicle without load plus the weight of any load thereon.

6.0122 Highway

Shall mean the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

6.0123 House Car

Shall mean a motor vehicle which has been reconstructed or manufactured for private use as sleeping or living quarters.

6.0124 Implement of Husbandry

Shall mean every vehicle designed and adapted exclusively for agricultural, horticultural or livestock raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration or used upon the highway.

6.0125 Intersection

Shall mean the area embraced within the prolongation or connection of the lateral curb lines, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. Where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersection highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection;

6.0126 Intoxicating Liquor

Shall mean and include any beverage containing alcohol.

6.0127 Judgment

Shall mean any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state of the United States, upon a cause of action arising out of ownership, maintenance, or use of any motor vehicle, for damages, including damages for care and loss of services, because bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for damages.

6.0128 Legal Owner

Shall mean a person who holds the legal title to a vehicle.

6.0129 Local Authorities

Shall include every county, municipal, and other local board or body having authority to adopt local police regulations under the constitution and laws of this state.

6.0130 Mail

Shall mean to deposit mail properly addressed and with postage prepaid with the United States postal service.

6.0131 Manufacturer

Shall mean any person engaged in the business of manufacturing motor vehicles or trailers.

6.0132 Metal Tires

Shall include all tires the surface of which in contact with the highway is wholly or partly metal or other hard, non resilient material except that this provision shall not apply to pneumatic tires.

6.0133 (Reserved for future use.)

6.0134 Motor Vehicles

Shall include every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

6.0135 Motorcycle

Shall include every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding implements of husbandry.

6.0136 Nonresident

Shall mean any person who is not a resident of this State.

6.0137 Nonresident's Operating Privilege

Shall mean the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by that person of a motor vehicle, or the use of a vehicle owned by that person, in this state.

6.0138 Official Traffic-Control Devices

Shall mean all signs, signals, markings and devices not inconsistent with this title placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

6.0139 Operator

Shall mean every person who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

6.0140 Owner

Shall mean a person who holds the legal title of a vehicle, if a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement, and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

6.0141 Pedestrian

Shall mean any person afoot.

6.0142 Park

When prohibited, shall mean the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

6.0143 Person

Shall include every natural person, firm, copartnership, association, or corporation.

6.0144 Pneumatic Tires

Shall include all tires inflated with compressed air.

6.0145 Pole Trailer

Shall mean every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

6.0146 Police Officer

Shall mean every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

6.0147 Private Road or Driveway

Shall mean every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

6.0148 Proof of Financial Responsibility

Shall mean proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of twenty five thousand dollars because of bodily injury to or death of one person in any one accident, and subject to said limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and in the amount of ten thousand dollars because of injury to or destruction of property of others in any one accident.

6.0149 Railroad

Shall mean a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

6.0150 Railroad Sign or Signal

Shall mean any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of presence of railroad tracks or approach of railroad trains.

6.0151 Reconstructed Vehicle

Shall mean every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition or substitution of essential parts, new or used.

6.0152 Residence District

Shall mean territory contiguous to a highway not comprising a business district, when the frontage on such highway for a distance of three hundred feet or more is occupied mainly by dwellings, or by dwellings and buildings in use for business.

6.0153 Right of Way

Shall mean the privilege of the immediate use of a roadway.

6.0154 Road Tractor

Shall mean every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

6.0155 Roadway

Shall mean that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any roadway separately but not to all roadways collectively.

6.0156 Safety Zone

Shall mean the area or space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set aside as a safety zone.

6.0157 School Bus

Shall mean every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

6.0158 Semi-trailer

Shall include every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by a motor vehicle, except that it shall not include a "house trailer" or "mobile home" as defined on subsection 68 of this section.

6.0159 Sidewalk

Shall mean that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

6.0160 Solid Tire

Shall include every tire made of rubber or other resilient material other than a pneumatic tire.

6.0161 Specially Constructed Vehicle

Shall mean any vehicle under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

6.0162 Stand or Standing

Shall mean the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

6.0163 State

Shall mean a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a province of the Dominion of Canada.

6.0164 Stop

When required, shall mean complete cessation from movement.

6.0165 Stop or Stopping

When prohibited, shall mean any halting, even momentarily of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.

6.0166 Street

Shall mean the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

6.0167 Through Highway

Shall mean every highway or portion thereof on which vehicular traffic is given preferential right of way, and at the entrances to which vehicular traffic from intersecting highways is required by law to yield right of way to vehicles on that through highway and in obedience to either a stop sign or yield sign, when signs are erected by law.

6.0168 Trackless Trolley Coach

Shall mean every motor vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

6.0169 Traffic

Shall mean pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highway for purpose of travel.

6.0170 Traffic-Control Signal

Shall mean any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

6.0171 Trailer

Shall include every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle, except that it shall not include a "house trailer" or "mobile home", which terms shall mean a vehicle as defined in this subsection which is designed and intended for use as living or sleeping quarters for people and which is not used for commercial hauling of passengers.

6.0172 Truck

Shall include every motor vehicle designed, used or maintained primarily for transportation of property.

6.0173 Truck Tractor

Shall include every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle so drawn.

6.0174 Urban District

Shall mean the territory contiguous to and including any street which is built up with structures devoted to business, industry or dwelling houses situated at intervals of less than one hundred feet for a distance of a quarter of a mile or more.

6.0175 Vehicle

Shall include every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

CHAPTER 2 - Traffic Administration

6.0201 Police Administration

There is hereby established in the police department of this city a traffic division to be under the control of an officer of police appointed by and directly responsible to the chief of police.

6.0202 Duty of Traffic Division

It shall be the duty of the traffic division with such aid as may be rendered by other members of the police department to enforce the street traffic regulations of the city and all of the State vehicle laws, to make arrests for traffic violations, to investigate accidents and to cooperate with the city traffic engineer and other officers of the city in the administration of the traffic conditions, and to carry out those duties specially imposed upon said division by the ordinances of this city.

6.0203 Records of Traffic Violations

- (1) The police department or the traffic division thereof shall keep a record of all violations of the traffic ordinances of this city or of the State vehicle laws of which any person has been charged, together with a record of the final disposition of all such alleged offenses. That record shall be so maintained as to show all types of violations and the total of each. Said record shall accumulate during at least a five-year period and from that time on the record shall be maintained complete for at least the most recent five-year period.
- (2) All forms for records of violations and notices of violations shall be serially

numbered. For each month and year written record shall be kept available to the public showing the disposal of those forms.

(3) All such records and reports shall be public records.

6.0204 Traffic Division to Investigate Accidents

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

6.0205 Traffic Accident Studies

Whenever the accidents at any particular location become numerous, the traffic division shall cooperate with the city traffic engineer in conducting studies of those accidents and determining remedial measures.

6.0206 Traffic Accident Reports

The traffic division shall maintain a suitable system of filing traffic accident reports. Accident reports or cards referring to them shall be filed alphabetically by location. Those reports shall be available for the use and information of the city traffic engineer.

6.0207 Drivers Files to be Maintained

- (1) The police department or the traffic division thereof shall maintain a suitable record of all traffic accidents, warnings, arrests, convictions and complaints reported for each driver, which shall be filed alphabetically under the name of the driver concerned.
- (2) Said division shall study the cases of all drivers charged with frequent or serious violations of the traffic laws or involved in frequent traffic accidents or any serious accident, and report that information to the Highway Department or other appropriate state agencies.
- (3) Traffic records shall accumulate during at least a five-year period and from there on from those records shall be maintained complete for at least the most recent five year period.

CHAPTER 3 - Enforcement and Obedience to Traffic Regulations

6.0301 Authority of Police and Fire Department Officials

- (1) It shall be the duty of the officers of the police department or those officers as are assigned by the chief of police to enforce all street traffic laws of this city and all of the State vehicle laws.
- (2) Officers of the police department or those officers as are assigned by the chief of police are hereby authorized to direct all traffic by voice, hand signal in conformance with traffic laws, provided that, in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the police department may direct traffic laws.
- (3) Officers of the fire department, when at the scene of a fire, may direct or assist the police in directing traffic thereat or in the immediate vicinity.

6.0302 Obedience to Traffic Ordinance

It shall be unlawful for any person to do any act forbidden or fail to perform any act required by the provisions of this Title, and upon conviction of a violation of any of the provisions of this Title every person firm or corporation shall be punished as provided in 20-11

of this Title.

6.0303 Obedience to Police Officers or Fireman

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

6.0304 Certain non Motorized Traffic to Obey Traffic Regulations

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

6.0305 Use of Coasters, Roller Skates and Similar Devices Restricted

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

6.0306 Public Employees to Obey Traffic Regulations

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

6.0307 Emergency Vehicles

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

- (1) Class A authorized emergency vehicles.
 - A. The driver of a class A authorized emergency vehicle may;
 - 1) Park or stand, irrespective of the provisions of this Title;
 - 2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.
 - 3) Exceed the speed limit so long as he or she does not endanger life or property.
 - 4) Disregard regulations governing direction of movement or turning in specified directions.
 - B. The exceptions herein granted to a class A authorized emergency vehicle shall apply only;
 - 1) When the authorized emergency vehicle is on pursuit of or apprehension of a violator or a suspected violator requiring the use of these exemptions;
 - 2) When a Class A authorized emergency vehicle is being operated in response to a reported emergency involving a possible personal injury, death or damage to property, and when giving audible signal by siren or when giving adequate warning by siren or when giving adequate warning by use of a flashing red light which is visible under normal atmospheric conditions for at

least five hundred feet.

- 3) In any instance when the head of law enforcement agency deems advisable within the area of his or her jurisdiction for the protection of person and property and when giving audible signal by siren or when giving adequate warning by use of a flashing red light which is visible under normal atmospheric conditions for at least five hundred feet.
- C. No emergency vehicle shall display or permit to be displayed any red lamp except when operated on official business.
- D. Vehicles operated as emergency fire apparatus owned or operated by a duly organized fire department while responding to and emergency may use revolving white and red light, other vehicles may use revolving white lights.
- 2) Class B authorized emergency vehicles
 - A. The driver of class B authorized emergency vehicles may;
 - 1) Park or stand, irrespective of the provisions of this title.
 - 2) Exceed the speed limit so long as he or she does not endanger life or property during the time of a local or national disaster;
 - 3) Disregard regulations governing direction of movement or turning on specified directions.
 - B. The exceptions herein granted to a class B authorized emergency vehicle shall apply only when the authorized emergency vehicle in displaying on amber light visible under normal atmospheric conditions for distance of five hundred feet in any direction, and
 - 1) When it is necessary for the authorized emergency vehicle to use these exemptions for the immediate protection of life or property,
 - 2) When an authorized emergency vehicle is stopped on a highway for the purpose of performing a duty as required; or,
 - 3) When traveling at a speed slower than the normal flow of traffic.
3. Class C authorized emergency vehicles. All class B specifications shall apply except that a rotating blue flashing light shall be displayed.

6.0308 Operation of Vehicles on Approach of Authorized Emergency Vehicles

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

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

from the duty to drive with due regard for the safety of all persons using the highway.

6.0309 Written Report of Accident

1. Immediate notice and written report of accident. The driver of a vehicle involved in an accident resulting on injury to or death of any person or property damage to an apparent extent of ONE THOUSAND DOLLARS or more shall immediately give notice of that accident to the local police department.
2. When it shall appear to the municipal judge that any person has failed to file a written report in compliance with this section he or she shall notify the Department of Transportation of the failure so that appropriate action may be taken pursuant to NDCC 39-03-09.
3.
 - a) An accident notice is not required from any person who is physically incapable of making the report during the period of the incapacity.
 - b) Whenever the driver of a vehicle is physically incapable of giving an immediate notice of an accident and there was another occupant in the vehicle at the time of the accident capable of doing so, that occupant shall make or cause to be given the notice by the driver.
 - c) Whenever the driver is physically incapable if making a written report of an accident and that driver is not the owner of the vehicle then of the vehicle involved shall immediate notice after learning of the accident.
4. Garages to report. The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in a reportable accident as provided in section 3-9 (a) or of being struck by any bullet, shall report or cause a report to be made to a police officer within twenty-four hours after that motor vehicle is received, and before any repairs are made to that vehicle, giving the registration number, and the name and address of the owner, operator, or person in control of that vehicle with a description of the location and type of damage to the vehicle, or any missing parts, if the vehicle does not have a sticker on a window thereof issued by a police officer, sheriff or highway patrolman, bearing information to show that the accident in which the vehicle was involved had been investigated. The police officer investigating any reportable accident shall attach a sticker to window of any vehicle showing that the accident in which such vehicle was involved has been investigated. If the vehicle does bear that sticker the garage or repair shop need not make the report this section requires and may begin repairs immediately. After repairs have been made and before the vehicle is released, the sticker provided herein shall be removed.
5. Any person who gives information reports as required in this section, knowing or having reason to believe that such information is false shall be guilty of a violation of this ordinance.

CHAPTER 4 - Traffic Control Devices

6.0401 Authority to Install

The city engineer or any person authorized by the governing body shall place and maintain traffic-control signs, signals, and devices when and as required under the traffic ordinances of this city to make effective the provisions of those ordinances, and may place and

maintain additional traffic-control devices as he or she may deem necessary to regulate traffic under the traffic ordinances of this city or under state law, or to guide or warn traffic.

6.0402 Specifications for

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

6.0403 Traffic-Control Signal Legend

The provisions of NDCC 39-10-05 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance. Whenever traffic is controlled by traffic-control signals exhibiting the word "Go", "Caution", or "Stop" or exhibiting different colored lights successively one at a time or with arrows, the following colors only shall be used and those terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows.

1. Green alone or "Go"
 - a. Vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign at that place prohibits either turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time signal is exhibited;
 - b. Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.
2. Yellow alone or "Caution" when shown following the green or "Go" signal;
 - a. Vehicular traffic facing the signal is thereby warned that the red or "Stop" signal will be exhibited immediately thereafter and such vehicular traffic shall not enter or be crossing the intersection when the red or "Stop" signal is exhibited;
 - b. Pedestrians facing the signal are thereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right of way to all vehicles.
3. Red alone or "Stop"
 - a. Vehicular traffic facing a steady red signal alone shall stop at a clearly marked stop line, but if none, then before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until an indication to proceed is shown except as provided in subdivision b of subsection 3;
 - b. Vehicular traffic facing a steady red signal may cautiously enter the intersection to make a right turn after stopping as required by subdivision a of subsection 3 unless a sign is in place prohibiting that turn. Vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection;
 - c. Unless otherwise directed by a pedestrian-control signal as provided in 4-5, pedestrians facing a steady red signal alone shall not enter the roadway.
4. Red with green arrow
 - a. Vehicular traffic facing that signal may cautiously enter the intersection only to make the movement indicated by the arrow but shall yield the right of way to

pedestrians lawfully within a crosswalk and to other traffic lawfully using the intersection;

- b. No pedestrian facing a signal shall enter the roadway unless he or she can do so safely and without interfering with any vehicular traffic.
5. In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions which by their nature can have no application except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any sign or marking the stop shall be made at the signal.

6.0404 Flashing Signals

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

1. Whenever an illuminated flashing red or yellow light is used in a traffic signal or with a traffic sign, it shall require obedience by vehicular traffic as follows;
 - a. Flashing red (Stop signal). When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line, or, if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.
 - b. Flashing yellow (Caution Signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.
2. This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in 8-5.

6.0405 Pedestrian Control Signals

The provisions of NDCC 39-10-06 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.0406 Designation of Walks, Lanes, etc.

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

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

preparatory to making a lawful turning movement or performing other lawful traffic movements.

6.0407 Obedience to and Required Traffic-Control Devices

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

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

6.0408 Unauthorized Signs

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

6.0409 Interference with Official Traffic-Control Devices or Railroad Signs or Signals

The provisions on NDCC 39-10-07.3 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

CHAPTER 5 - Speed Regulations

6.0501 Basic Rule

The provisions of NDCC 39-09-01 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when

special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions. Any person who shall drive a vehicle upon a highway or private or public property open to the public for the operation of motor vehicles without heed to requirements or restrictions of this section shall have committed careless driving, and shall be assessed a fee of thirty dollars.

6.0502 Speed Limitations

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

Subject to the provisions of 6-05-1 and except in those instances where a lower speed is specified in this Title, it presumably shall be lawful for the driver of a vehicle to drive the same at a speed not exceeding.

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

6.0503 When Local Authorities may or shall Alter Maximum Speed-Limits Signs Posted

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

1. Whenever the City, on the basis of engineering and traffic investigation, determines

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

6.0504 Speed Limitations Inapplicable to Whom-Liability of Exempt Driver for Reckless Driving

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

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

6.0505 Minimum Speed Limits

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

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

6.0506 Regulations of Speed by Traffic Signals

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

6.0507 Exhibition Driving and Drag Racing- Definitions-Penalty

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

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

6.0508 Radar Evidence in Speed Violations

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

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

CHAPTER 6 - Turning Movements

6.0601 Authority to Place Devices Altering Normal Course for Turns

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

6.0602 Authority to Place Restricted Turn Signs

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

6.0603 Turning Signs-Obedience

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

6.0604 Required Position and Method of Turning at Intersections

The provisions of NDCC 39-10-35 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.
2. Left turns on two-way roadways. At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to enter the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.
3. Left turns on the other than two-way roadways. At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any of those intersections shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of that vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in the direction upon the roadway being entered.
4. The City may cause markers, buttons, or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specifically in this section be traveled by vehicles turning at an intersection, and when markers, buttons, or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by those markers, buttons, or signs.

6.0605 Vehicle Turning Left at Intersection

The provisions of NDCC 39-10-23 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.0606 Turning on Curve or Crest of Grade Prohibited

The provisions of NDCC 39-10-36 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.0607 Turning Movements and Required Signals

The provisions of NDCC 39-10-38 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in 6-06-4 or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until the movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by that movement.
2. A signal of intention to turn right or left when required shall be given continuously during not less than the one hundred feet traveled by the vehicle before turning.
3. No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give that signal.

6.0608 Signals by Hand and Arm or Signal Lamps

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

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

6.0609 Methods of Giving Hand-and-Arm Signals

The provisions of NDCC 39-10-40 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

1. Left turn, hand and arm extended horizontally.
2. Right turn, hand and arm extended upward.

3. Stop or decrease speed, hand and arm extended downward

CHAPTER 7 - One-way Streets and Alleys

6.0701 Authority to Sign One-Way Streets and Alleys

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

6.0702 Authority to Restrict Direction of Movement on Streets during Certain periods

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

6.0703 Streets and Alleys Declared to be One-Way

In accordance with 6-07-1 and 6-07-2 of this Title, and when properly posted traffic shall move in the following streets and alleys only in the direction herein stated.

CHAPTER 8 - Stop and Yield Intersections

6.0801 (a) Through Highways Designated by Commissioner and Local Authorities "Stop" and "Yield" Intersections

The provisions of NDCC 39-07-03 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The commissioner with reference to state highways, and the City, with reference to highways under its jurisdiction, may, by proclamation, designate as through highways, any highway, street, or part thereof, and erect stop signs and yield signs at specified entrances thereto, or may designate any intersection as a stop intersection or as a yield intersection and erect stop signs or yield signs at one or more entrances to that intersection.

(b) Through Streets Designated

The following streets and parts of streets are hereby declared to be through streets for purposes of this Title.

6.0802 Stop Signs and Yield Signs

The provisions of NDCC 39-10-44 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Preferential right or way at an intersection may be indicated by stop signs as authorized in 6.0801.
2. Every stop sign and every yield sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is no crosswalk, then as near as practicable to the nearest line of the intersecting roadway.
3. Except when directed to proceed by a police officer or traffic control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop before entering the crosswalk on the near side of the

intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.

4. The driver of a vehicle approaching a yield sign if required for safety to stop shall stop before entering the crosswalk of the near side marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting highway.

6.0803 Stop Signs and Yield Signs

The provisions on NDCC 39-10-24 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Preferential right-of-way may be indicated by stop signs or yield signs as authorized in 6.0801.
2. Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, or, if none, then at the point of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when that driver is moving across or within the intersection or junction of the roadways.
3. The driver of a vehicle approaching a yield sign shall in obedience to that sign slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line, or, if none, than at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After slowing or stopping, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection or junction of roadways. Provided, however, that if a driver is involved in a collision with a vehicle in the intersection or junction of roadways after driving past a yield sign without stopping, that collision shall be deemed prima facie evidence of his or her failure to yield the right-of-way.

6.0804 Emerging from Alley, Driveway, Private Road, or Building

The provisions of NDCC 39-10-45 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.0805 Obedience to Signal Indicating Approach of Train

The provisions of NDCC 39-10-41 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Whenever any person driving a vehicle approaching a railroad grade crossing under any of the circumstances stated in this section, the driver of that vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of the railroad, and shall not proceed until he or she can do so safely. The foregoing requirements shall

apply when;

- a. A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;
 - b. A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;
 - c. A railroad train approaching within approximately one thousand three hundred and twenty feet of the highway crossing emits a signal audible from that distance and that railroad train, by reason of its speed or nearness to the crossing, is an immediate hazard; or
 - d. An approaching railroad train is plainly visible and is in hazardous proximity to the crossing.
2. No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed. No person shall drive any vehicle past any human flag-man at a railroad crossing until the flag-man signals that the way is clear to proceed.

6.0806 All Vehicles must Stop at Certain Railroad Grade Crossings

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

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

6.0807 Certain Vehicles must stop at all Railroad Grade Crossing

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

1. The driver of a bus carrying passengers, or of any school bus carrying any school child, or of any vehicle carrying any chlorine, empty or loaded cargo tank vehicles used to transport dangerous articles or any liquid having a flash point below two hundred degrees Fahrenheit, cargo tank vehicles transporting a commodity having a temperature above its flash-point at the time of loading, certain cargo tank vehicles transporting commodities under special permits issued by the hazardous materials regulations board, and every motor vehicle must have the following placards: "Explosives", "Poison", "Flammable oxidizers", "Compressed gas", "Corrosives", "Flammable gas", "Radioactive", or "Dangerous", before crossing at grade any track or tracks of a railroad, shall stop that vehicle within fifty feet but not less than fifteen feet from the nearest rail of the railroad and while so stopped shall listen and look in both directions along the track for any approaching train, and for signals indicating the approach of a train and shall not proceed until he or she can do so safely. After stopping as required herein and upon proceeding when it is safe to do so the driver of any said vehicle shall cross only in the gear of the vehicle that there will be no necessity for manually changing gears while traversing the crossing and the driver shall not manually shift gears while crossing the track or tracks.

CHAPTER 9 - Miscellaneous Driving Rules

6.0901 When Traffic Obstructed

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

6.0902 Driving through Funeral or other Procession

No driver of a vehicle (Or motorman of a streetcar) shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when those vehicles are conspicuously designated as required in this ordinance. This provision shall not apply at intersections where traffic is controlled by traffic-control signals or police officers.

6.0903 Drivers in a Procession

Each driver in a funeral or other procession shall drive as near to the right-hand edge of the roadway as practicable and shall follow the vehicle ahead as close as is practicable and safe.

6.0904 Funeral Processions to be Identified

A funeral composed of a procession of vehicles shall be identified as such by headlights burning in daylight hours on all vehicles in the procession, or by such other methods as may be determined and designated by the Chief of Police.

6.0905 When Permits Required for Parades and Processions

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

6.0906 Drive on Right Side of Roadway - Exceptions

The provisions of NDCC 39-10-08 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows;
 - a. When overtaking and passing another vehicle proceeding in the same direction under the rules governing that movement;
 - b. When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within a distance as to constitute an immediate hazard;
 - c. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or
 - d. Upon a roadway restricted to one-way traffic.
2. Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn in an intersection or into a private road or driveway.

3. Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center line of the roadway, except when authorized by official traffic-control devices designating certain lanes to the left of the center of the roadway for use by traffic not otherwise permitted to use those lanes, or except as permitted under subdivision b of section 1 hereof. However, this subsection shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road, or driveway.

6.0907 Passing Vehicles Proceeding in Opposite Directions

The provisions of NDCC 39-10-09 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.0908 Overtaking a Vehicle on the Left

The provisions of NDCC 39-10-11 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

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

6.0909 When Overtaking on the Right is Permitted

The provisions of NDCC 39-10-12 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.0910 Limitations on Overtaking on the Left

The provisions of NDCC 39-10-13 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

No vehicle shall be driven to the left side of the center of the road-way in overtaking and passing another vehicle proceeding in the same direction unless the left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit the overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the

opposite way until safely clear of the overtaken vehicle. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable, and in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within two hundred feet of any approaching vehicle.

6.0911 Further Limitations on Driving on Left of Center of Roadway

The provisions of NDCC 39-10-14 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. No vehicle shall be driven to the left side of the roadway under the following conditions;
 - a. When approaching or upon the crest of a grade or a curve in the highway where the driver's view is obstructed within a distance as to create a hazard in the event another vehicle might approach from the opposite direction;
 - b. When approaching within one hundred feet of a traversing any intersection or railroad grade crossing, or
 - c. When the view is obstructed upon approaching within one hundred feet of any bridge, viaduct, or tunnel.
2. The foregoing limitations shall not apply upon a one-way roadway, nor under the conditions described in 6-09-6 nor to the driver of a vehicle turning left into or from an alley, private road, or driveway.

6.0912 No-Passing Zones

The provisions of NDCC 39-10-15 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. The state Department of Transportation and local authorities are hereby authorized to determine those portions of any highway under their respective jurisdiction where overtaking and passing or driving on the left side of the roadway would be especially hazardous and may be appropriate signs or markings on the roadway indicate the beginning and end of those zones and when signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions thereof.
2. Where signs or markings are on place to define a no-passing zone as set forth in subsection 1, no driver shall at any time drive on the left side of the roadway within a no-passing zone or on the left side of any pavement striping designed to mark a no-passing zone throughout its length.
3. This section does not apply under the conditions described in 6-09-6 nor to the driver of a vehicle turning left into or from an alley, private road, or driveway.

6.0913 Driving on Roadways Lane for Traffic

The provisions of NDCC 39-10-17 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

1. A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from that lane until the driver has first ascertained that such movement can be made with safety.
2. Upon a roadway which is divided into three lanes and provides for two-way traffic, a vehicle shall not be driven in the center lane except when overtaking and passing

another vehicle traveling in the same direction when the center lane is clear of traffic within a safe distance, or in preparation for making a left turn or where the center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and the allocation is designated by official traffic-control devices.

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

6.0914 Following too Closely

The provisions of NDCC 39-10-18 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.0915 Driving on Divided Highways

The provisions of NDCC 39-10-19 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.0916 Restricted Areas

The provisions of NDCC 39-10-20 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.0917 Restrictions on use of Controlled-Access Roadway

The provisions of NDCC 39-10-21 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The state Department of Transportation may by order, and the City may by ordinance, with respect to any controlled-access roadway under their respective jurisdictions, prohibit the use of any roadway by pedestrians, bicycles, or other non motorized traffic or by any person operating a motor-driven cycle.

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

6.0918 Vehicle Entering Roadway

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

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

6.0919 Vehicle Approaching or Entering Intersection

The provisions of NDCC 39-10-22 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. When two vehicles approach or enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.
2. The right-of-way rule declared in this section is modified at through highways and otherwise as stated in this title.

6.0920 Overtaking and Passing School Bus

The provisions of NDCC 39-10-46 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. The driver of a vehicle meeting or overtaking from either direction any school bus stopped on the highway shall stop the vehicle before reaching the school bus when there in operation on said school bus the flashing red lights specified in NDCC 39.2118, and said driver shall not proceed until the school bus resumes motion or he or she is signaled by the school bus driver to proceed or the flashing red lights are no longer actuated.
2. Every school bus shall bear upon the front and rear thereof plainly visible signs containing the words "SCHOOL BUS" in letters not less than eight inches in height. When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or for a school sanctioned activity, all markings thereon indicating "SCHOOL BUS" shall be covered or concealed.
3. Every school bus shall be equipped with red visual signals meeting the requirements of NDCC 39.2118, which may be actuated by the driver of the school bus whenever, but only wherever, that vehicle is stopped on the highway for the purpose of receiving or discharging school children. A school bus driver shall not actuate the special visual signals:
 - a. On city streets on which the receiving or discharging of school children is prohibited by ordinance.

- b. At intersections or other places where traffic is controlled by traffic-control signals or police officers.
- c. In designated school bus loading areas where the bus is entirely off the roadway.
- 4. The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which in a part of or adjacent to that highway and where pedestrians are not permitted to cross the highway.

6.0921 Unattended Motor Vehicles

The provisions of NDCC 39-10-51 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.0922 Limitations on Backing

The provisions of NDCC 39-10-52 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.0923 Obstruction of Driver's View or Driving Mechanism

The provisions of NDCC 39-10-54 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.0924 Opening and Closing Vehicle Doors

The provisions of NDCC 39-10-54.1 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.0925 Coasting Prohibited

The provisions of NDCC 39-10-56 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

- 1. The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears or transmission or such vehicle in neutral.

2. The driver of a truck or bus when traveling upon a down grade shall not coast with the clutch disengaged.

6.0926 Following Fire Apparatus Prohibited

The provisions of NDCC 39-10-57 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The driver of any vehicle other than one of official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet or stop that vehicle within five hundred feet of any fire apparatus stopped in answer to a fire alarm.

6.0927 Crossing Fire Hose

The provisions of NDCC 39-10-58 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.0928 Garbage, Glass, etc. on Highways Prohibited

The provisions of NDCC 39-10-59 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.0929 Driving Through Safety Zone Prohibited

The provisions of NDCC 39-10-64 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.0930 Moving Heavy Equipment at Railroad Grade Crossings

The provisions of NDCC 39-10-67 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

If a flag-man is provided by the railroad, movement over the crossing shall be under his or her direction.

6.0931 Alteration of Odometers or other Mileage Recorders, Hour Meters on Tachometers or other Hour Recorders

The provisions of NDCC 39-21-51 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Any person altering a motor vehicle odometer or other mileage recorder, hour meter on tachometer or other hour recorder for the purpose of deceiving another.

6.0932 Open Bottle Law

The provisions of NDCC 39-08-18 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

No person shall drink or consume alcoholic beverages, as defined in the North Dakota Century Code, in or on any motor vehicle when that vehicle is upon a public highway or in an area used principally for public parking. No person shall have in his or her possession on his or her person while in or on a private motor vehicle upon a public highway or in an area used principally for public parking, any bottle or receptacle containing alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed. It shall be unlawful for the owner of any private motor vehicle or the driver, if the owner be not then present in or on the motor vehicle, to keep or allow to be kept in a motor vehicle when that vehicle is upon the public highway or in an area used principally for public parking any bottle or receptacle containing alcoholic beverages which has been opened, or the seal broken, or the contents of which has been partially removed except when that bottle or receptacle shall be kept in the trunk of the motor vehicle when that vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers. Any person violating the provisions of this section shall be assessed a fee of twenty dollars; however, the licensing authority shall not record the violation against the driving record of that person unless he or she was the driver of the automobile at the time that the violation occurred.

6.0933 Permitting Unauthorized Minor to Drive

No person shall cause or knowingly permit his or her child or ward under the age of eighteen years to drive a motor vehicle upon any highway when such minor is not authorized under the laws of this state.

6.0934 Permitting Unauthorized Person to Drive

No person shall authorize or knowingly permit a motor vehicle owned by him or her or under his or her control to be driven upon any highway by any person who is not authorized under the laws of this state.

CHAPTER 10 - Pedestrians Rights and Duties

6.1001 Pedestrian Obedience to Traffic-Control Devices and Traffic Regulations

The provisions of NDCC 39-10-27 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. A pedestrian shall obey the instructions of any official traffic control device specially applicable to him or her, unless otherwise directed by a police officer.

2. Pedestrians shall be subject to traffic and pedestrian control signals as provided for in 6.0403 and 6.0405.

6.1002 Pedestrians Right-of-Way in Crosswalks

The provisions of NDCC 39-10-28 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.
2. No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close as to constitute an immediate hazard.
3. Subsection 1 of this section shall not apply under the conditions stated in subsection 2 of 6.1103.
4. Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross highway, the driver of any other vehicle approaching from the rear shall not overtake and pass that stopped vehicle.

6.1003 Crossing at other than Crosswalks

The provisions of NDCC 39-10-29 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.
2. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.
3. Between adjacent intersections at which traffic-control devices are in operation pedestrians shall not cross at any place except in a marked crosswalk.
4. No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic-control devices, and when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to those crossing movements.

6.1004 Drivers to Exercise Due Care

The provisions of NDCC 39-10-30 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.1005 Protection to use Right Half of Crosswalks

The provisions of NDCC 39-10-32 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.1006 Pedestrians on Roadways

The provisions of NDCC 39-10-33 and all subsequent amendments shall be and are

hereby incorporated by reference in this ordinance.

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

6.1007 Pedestrians Right-of-Way on Sidewalks

The provisions of NDCC 39-10-33.1 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The driver of a vehicle shall yield the right-of-way to any pedestrian on a sidewalk.

6.1008 Pedestrians Yield to Authorized Emergency Vehicles

The provisions of NDCC 39-10-33.2 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Upon the immediate approach of an authorized emergency vehicle making use of an audible signal by bell, siren, or exhaust whistle and displaying a visible flashing, revolving, or rotating blue, white, or red light, every pedestrian shall yield the right-of-way to the authorized emergency vehicle.
2. This section shall not relieve the driver is an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway nor from the duty to exercise due care to avoid colliding with any pedestrian.

6.1009 Blind Pedestrian Right-of-Way

The provisions of NDCC 39-10-33.3 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.1010 Pedestrians Under Influence of Alcohol or Drugs

The provisions of NDCC 39-10-33.4 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.1011 Bridge and Railroad Signals

The provisions of NDCC 39-10-33.5 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.1012 Pedestrians Soliciting Rides or Business

The provisions of NDCC 39-10-34 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. No person shall stand in a roadway for the purpose of soliciting a ride.
2. No person shall stand in a roadway for the purpose of soliciting employment, business,

- or contributions from the occupant of any vehicle.
3. No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

CHAPTER 11 - Regulations for Motorcycles

6.1101 Traffic Laws Apply to Persons Operating Motorcycles

The provisions of NDCC 39-10.2-01 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Every person operating a motorcycle shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under this title, except as to special regulations in this title and except as to those provisions of this title which by their nature can have no application.

6.1102 Riding on Motorcycles

The provisions of NDCC 39-10.2-02 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.1103 Operating Motorcycles on Roadways Lane for Traffic

The provisions of NDCC 39-10.2-03 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.1104 Clinging to other Vehicles

The provisions of NDCC 39-10.2-04 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

No person riding upon a motorcycle shall attach himself or herself or the motorcycle to any other vehicle on a roadway.

6.1105 Footrests

The provisions of NDCC 39-10.2-05 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

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

6.1106 Equipment for Motorcycle Riders

The provisions of NDCC 39-10.2-06 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. No person shall operate or ride upon a motorcycle that is under 18 years of age unless he or she is wearing protective headgear which complies with standards established by the motor vehicle department, except when participating in a lawful parade.
2. This section shall not apply to persons riding within an enclosed cab or on a golf cart.

6.1107 Other applicable law

The provisions of NDCC 39-10.2-07 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

All of the provisions of Chapter 6.20 pertaining to the disposition of traffic offenses shall apply to this chapter, and 6.1102 through 6.1104 shall be considered moving violations within the definition in 6.2010.

CHAPTER 12 - Regulations for Bicycles

6.1201 Effect of Regulations

1. It is a violation of this ordinance for any person to do any act forbidden or fail to perform any act required in this chapter.
2. The parent of any child and the guardian of any ward shall not authorize or knowingly permit any child or ward to violate any of the provisions of this ordinance.
3. These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.

6.1202 Traffic Ordinances Apply to Persons Riding Bicycles

Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to a driver of a vehicle by this ordinance, except as to special regulations in this chapter and except as to those provisions of this ordinance which by their nature can have no application.

6.1203 Obedience to Traffic-Control Devices

1. Any person operating a bicycle shall obey the instructions of official traffic-control devices applicable to vehicles, unless otherwise directed by a police officer.
2. Whenever authorized signs are erected indicating that no right or left or U turn is permitted, no person operating a bicycle shall disobey the direction of any sign, except where a person dismounts from the bicycle to make any turn, in which event

the person shall then obey the regulations applicable to pedestrians.

6.1204 Riding on Sidewalks

1. No person shall ride a bicycle upon a sidewalk within a business district.
2. The chief of police or authorized person may erect signs on any sidewalk or roadway prohibiting the riding of bicycles thereon by any person and when those signs are in place no person shall disobey the same.
3. Whenever any person is riding a bicycle upon a sidewalk, that person shall yield the right of way to any pedestrian and shall give an audible signal before overtaking and passing a pedestrian.

6.1205 Riding on Roadways and Bicycle Paths

The provisions of NDCC 39-10.1-05 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.
2. Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.
3. Wherever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use that path and shall not use the roadway.

6.1206 Clinging to Vehicles

The provisions of NDCC 39-10.1-04 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

No person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle shall attach the same or himself or herself to any vehicle upon a roadway, except a sled being pulled by a snowmobile.

6.1207 Carrying Articles

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

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

6.1208 Lamps and Other Equipment on Bicycles

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

Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred feet to the front and with a red reflector on the rear of a type approved by the Department of Transportation. A lamp omitting a red light visible from a distance of five hundred feet to the rear may be used in addition to the red reflector.

6.1209 Riding on Bicycles

The provisions of NDCC 39-10.1-03 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.
2. No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

6.1210 Parking

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

6.1211 Penalties

Every person convicted of a violation of any provision of this chapter shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than ten days or by impounding of that persons' bicycle for a period not to exceed thirty days or by any combination thereof.

6.1212 Point System not Applicable

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

Any violation of the provisions of this title, or any moving violation as defined in 6.2010, or any non moving violation as defined in 6-20-9 when committed on a bicycle as defined in 6-01 shall not be cause for the licensing authority to assess points against the driving record of the violator pursuant to NDCC 39-06.1-10. Any other legally authorized penalty for a criminal traffic offense or non-criminal traffic violation shall be applicable to bicyclists.

CHAPTER 13 - Angle parking

6.1301 Angle Parking

The city engineer or other person authorized by the governing body shall mark or sign streets upon which angle parking will be permitted (other than federal aid or state highways). Upon those streets which have been signed or marked for angle parking, no person shall park or stand a vehicle other than at the angle to the curb or edge of the roadway indicated by the signs or markings.

6.1302 Angle Parking - Where

Angle parking shall be permitted on the following streets:
MAIN STREET IN BUSINESS DISTRICT.

CHAPTER 14 - Stopping, Standing or parking prohibited

6.1401 Stopping, Standing or Parking outside of Business or Residence Districts

The provisions on NDCC 39-10-47 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Upon any highway outside of a business or residence district no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practicable to stop, park, or so leave the vehicle off that part of said highway, but in every event an unobstructed width of the highway of not less than twelve feet opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of the stopped vehicles shall be available from a distance of two hundred feet in each direction upon that highway.
2. 6.1401, 6.1403, and 6.1404 shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in a manner and to such extent that it is impossible to avoid stopping and temporarily leaving the disabled

vehicle in that position.

6.1402 Officers Authorized to Remove Illegally Stopped Vehicles

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

1. Whenever any police officer finds a vehicle standing upon a highway in violation of any of the provisions of 6-14-01, the officer is hereby authorized to move that vehicle, or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or main-traveled part of the highway.
2. Whenever any police officer finds a vehicle unattended upon any highway, bridge, or causeway, or in any tunnel he or she is hereby authorized to provide for the removal of that vehicle to the nearest garage or other place of safety.
3. Any police officer is hereby authorized to remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon a highway when;
 - a. A report has been made that the vehicle has been stolen or taken without the consent of its owner;
 - b. The person or persons in charge of the vehicle are unable to provide for its custody or removal;
 - c. When the person driving or in control of the vehicle is arrested for an alleged offense for which the officer is required by law to take the person arrested before a proper magistrate without unnecessary delay.

6.1403 Stopping, Standing, or Parking Prohibited in Specified Places

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

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

1. On a sidewalk;
2. In front of a public or private driveway;
3. Within an intersection;
4. Within ten feet of a fire hydrant;
5. On a crosswalk;
6. Within ten feet of a crosswalk at an intersection;
7. Within fifteen feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a roadway;
8. Between safety zone and the adjacent curb or within fifteen feet points on the curb immediately opposite the ends of a safety zone, unless the state Department of Transportation the City indicates a different length by signs or markings;
9. Within fifteen feet of the nearest rail of a railroad crossing;
10. Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of said entrance when properly sign posted;
11. Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;
12. On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
13. Upon any bridge or other elevated structure upon a highway or within a highway

tunnel;

14. At any place where official signs prohibit stopping.
15. No person shall move a vehicle not lawfully under his or her control into any prohibited area or away from a curb for a distance as is unlawful.

6.1404 Additional Parking Regulations

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

1. Except as otherwise provided in this section, every vehicle stopped or parked upon a two-way roadway shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within twelve inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder.
2. Except where otherwise provided by ordinance, every vehicle stopped or parked upon a one-way roadway shall be so stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right-hand wheels within twelve inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder, or with its left-hand wheels within twelve inches of the left-hand curb or as close as practicable to the left edge of the left-hand shoulder.
3. The City may permit angle parking on any roadway, except that angle parking shall not be permitted on any federal-aid or state highway without first obtaining the written authorization of the state Department of Transportation.
4. The state Department of Transportation with respect to highways under its jurisdiction may place official traffic-control devices prohibiting or restriction the stopping, standing, or parking of vehicles on any highway where in its opinion stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic thereon. No person shall stop, stand, or park any vehicle in violation of the restrictions indicated by those devices.

6.1405 Parking Prohibited - All times

When signs are erected giving notice thereof, it shall be unlawful for any person, firm, or corporation to park or leave standing, either attended or unattended, any motor vehicle in the following areas. Fire Department

6.1406 Stopping - Parking - Certain purposes prohibited

No person shall park a vehicle upon any roadway for the principal purpose of;

1. Displaying the vehicle for sale.
2. Washing, greasing, or repairing the vehicle except repairing the vehicle necessitated by an emergency.

6.1407 Stopping-parking - Congested - Hazardous places

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

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

6.1408 Stopping - Parking - In Alleys

No person shall park a vehicle within an alley, nor shall he or she stop a commercial vehicle to leave available less than twelve (12) feet of the width thereof for free movement of

vehicular traffic, nor shall he or she stop in a position to block the driveway entrance to any abutting property.

6.1409 Parking Adjacent to Schools

1. The city traffic engineer or authorized person may erect signs indicting no parking upon either or both sides of any street adjacent to any school property when parking there would, in his or her opinion, interfere with traffic or create a hazardous situation.
2. When official signs are erected indicating no parking upon either side of a street adjacent to any school property as authorized herein, no person shall park a vehicle in any of those designated places.

6.1410 Parking Prohibited on Narrow Streets

1. The city traffic engineer or authorized person may erect signs indicating no parking upon any street when the width of the roadway does not exceed (20) feet, or upon one side of a street as indicated by signs when the width of the roadway does not exceed (30) feet.
2. When official signs prohibiting parking are erected upon narrow streets as authorized herein, no person shall park a vehicle upon any street in violation of any of those signs.

6.1411 Standing or Parking on One-Way Streets

The city traffic engineer or authorized person may erect signs upon the left-hand side of any one-way street to prohibit the standing or parking of vehicles, and when those signs are in place, no person shall stand or park a vehicle upon the left-hand side in violation of any of those signs.

6.1412 Standing or Parking on One-Way Roadways

In the event a highway includes two or more separate roadways and traffic is restricted to one direction upon any of those roadways no person shall stand or park a vehicle upon the left-hand side of that one-way roadway unless signs are erected to permit standing or parking. The city traffic engineer is authorized to determine when standing or parking may be permitted upon the left hand side of any one-way roadway and to erect signs giving notice thereof.

6.1413 Parking Privileges for Mobility-Impaired - Certificate - Revocation

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

1. Any mobility-impaired person who prominently displays upon an automobile parked by him or her or under his or her direction and for his or her use, the distinguishing certificate or insignia specified in subsection 3 shall entitled to courtesy in the parking of his or her automobile. Provided, however that the City may, by ordinance, prohibit parking on any street or highway for the purpose of creation a fire lane, or to provide for the accommodation of heavy traffic during morning and afternoon rush hours, and the privileges extended to handicapped persons shall not apply on streets or highways where and during the times as parking is prohibited.
2. A mobility-impaired person as used in this section shall include any person who uses portable oxygen; requires personal assistance or the use of crutches, a wheelchair, or a walker to walk two hundred feet without rest; is restricted by cardiac, pulmonary, or vascular disease from walking two hundred feet without rest; has a forced expiratory volume of less than one liter for one second or an arterial oxygen tension of less than sixty millimeters of mercury on room air while at rest and is classified 3 or 4 by

standards for cardiac disease set by American Heart Association; or has an orthopedic, neurologic or other medical condition that makes it impossible for the person to walk two hundred feet without assistance or rest.

3. The director may issue, for a fee of three dollars per year or part of a year, a special identifying certificate to any mobility-impaired applicant upon submission by the applicant of a completed application and a written statement issued by a qualified physician to the director that the applicant is a mobility-impaired person within the criteria of subsection 2.
4. If the police of the City shall find that the certificate or insignia is being improperly used, they shall report to the Department of Transportation any such violation. Any person who is not physically handicapped and who exercises the privileges granted a physically handicapped person under subsection 1 shall be guilty of an infraction for which a fine of one hundred dollars must be imposed.

6.1414 Parking of Certain Vehicles and Equipment

The following vehicles and equipment shall not park within the City limits of Ashley, except under the condition set out below:

- (1) Any vehicle or equipment used for the purpose of applying agricultural herbicides and like chemicals - i.e. sprayers and spraying equipment - except as follows:
 - (a) For the purpose of sale or lease by a qualified dealer.
 - (b) For the purpose of repair of maintenance to that equipment.

6.1415 Unattended Parked Vehicles

Prohibit the parking of any vehicles upon the streets or alleys and leave unattended for a period of 72 hours or more.

Any person violating this section shall be guilty of an infraction and punishable by a fine of Ten Dollars (\$10.00). The City may, after notice to the violator, remove the vehicle at the owner's expense.

CHAPTER 15 - Reserved Parking Areas

6.1501 Reserved Parking Areas

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

The city engineer or authorized person shall establish from time to time areas for loading and unloading, bus parking, guest parking, taxi parking, emergency parking, no parking, police and fire use on public streets in places and in numbers as he or she shall determine or as the governing body may specifically designate to be of greatest benefit and convenience to the public and to promote the best use of the streets for traffic to pedestrians and designate the same by appropriate signs.

CHAPTER 16 - Time Limit Parking Zones

6.1601 Time Limit Parking Zones

When signs are erected giving notice thereof, no person, firm or corporation shall park or

leave standing, either attended or unattended, any motor vehicle for more than five (5) consecutive minutes on street areas so posted or for more than ten (10) consecutive minutes on street areas so posted, or more than thirty (30) consecutive minutes on street areas so posted, or more than sixty (60) consecutive minutes on street areas so posted, or for more than one hundred twenty (120) consecutive minutes on street areas so posted, when said areas have been made available for parking.

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

CHAPTER 17 - Parking Meters

6.1701 Parking Meters

(RESERVED FOR FUTURE USE)

CHAPTER 18 - Regulating the Kinds and Classes of Traffic on Certain Roadways

6.1801 Load Restrictions upon Vehicles using Certain Roadways

When signs are erected giving notice thereof, no person shall operate any vehicle with a gross weight in excess of weight as posted at any time upon any of the following streets or parts of streets: Any posted street.

6.1802 Commercial Vehicles Prohibited from Certain Streets

When signs are erected giving notice thereof, no person shall operate any commercial vehicle exceeding weight as posted pounds gross weight at any time upon any of the following streets or parts of streets except that those vehicles may be operated thereon for the purpose of delivering or picking up materials or merchandise and then only by entering the street at the intersection nearest the destination of the vehicle and proceeding thereon no farther than the nearest intersection thereafter:

6.1803 Size Restrictions upon Vehicles using Certain Highways

1. It is hereby determined upon the basis of an engineering and traffic investigation that the size permitted by State law is greater than physical conditions will allow upon the streets or parts of streets described below.
2. When signs are erected giving notice thereof, no person shall operate any vehicle exceeding the dimensions specified above.

6.1804 Restrictions Upon use Streets by Certain Vehicles

1. The city traffic engineer or authorized person may determine and designate those heavily traveled streets upon which shall be prohibited the use of the roadway by motor-driven cycles, bicycles, horse drawn vehicles or other non-motorized traffic and shall erect appropriate signs giving notice thereof.
2. When signs are so erected giving notice thereof, no person shall disobey the restrictions stated on those signs.

CHAPTER 19 - Criminal Traffic Violations

6.1901 Person under the influence of intoxicating liquor or narcotic drugs no to operate vehicle

The provisions of NDCC 39-08-01 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public use in this state if any of the following apply;
 - a. That person has an alcohol concentration of at least ten one-hundredths-of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle.
 - b. That person is under the influence of intoxicating liquor.
 - c. That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.
 - d. That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving. The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section, unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.
2. A person convicted of violating this section, or an equivalent ordinance must be sentenced in accordance with subsection.
 - a. For a first offense, the sentence must include both a fine of at least two hundred fifty dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - b. For a second offense within five years, the sentence must include at least four days imprisonment of which forty-eight hours must be served consecutively, or ten days community service; a fine of at least five hundred dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - c. For a third offense within five years, the sentence must include at least sixty days imprisonment, of which forty-eight hours must be served consecutively; a fine of one thousand dollars, and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - d. For a fourth offense within seven years, the sentence must include one hundred eighty-days imprisonment, of which forty-eight hours must be served consecutively and a fine of one thousand dollars.

6.1902 Reckless Driving - Aggravated Reckless Driving

The provisions of NDCC 39-08-03 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Any person shall be guilty of reckless driving of he drives a vehicle;

1. Recklessly in disregard of the rights or safety or others; or
2. Without due caution and circumstances and at a speed or in a manner to endanger or be likely to endanger any person or the property of another. Except as otherwise herein provided, any person violating the provisions of this section shall be guilty of

an offense.

6.1903 Accidents Involving Damage to Vehicle

The provisions of NDCC 39-08-05 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of the accident until he or she has fulfilled the requirements of 6-19-04. Every stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances shall be guilty of an offense.

6.1904 Duty upon Striking Unattended Vehicle

The provisions of NDCC 39-08-07 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of the vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and the owner of the vehicle doing the striking and a statement of the circumstances thereof.

6.1905 Duty upon Striking Fixtures upon a Highway

The provisions of NDCC 39-08-08 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The driver of any vehicle involved in an accident resulting only in damage to fixtures of other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of that property of the fact and of his or her name and address and the registration number of the vehicle he or she is driving and shall upon request and if available exhibit his or her operator's or chauffeur's license and shall make report of the accident when and as required in 6-03-09.

6.1906 Penalty for Driving while License Suspended and Revoked

The provisions of NDCC 39-06-42 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Except as provided in NDCC chapters 39-16 and 39-16.1, and in NDCC 39-06.1-11, any person who drives a motor vehicle on any public highway of this state at a time when his license or privilege so to do is suspended or revoked shall be guilty of an offense.

Section 6-19-07 of the Ashley Municipal Code is hereby amended and re-enacted to read as follows:

6.1907 Operation of Snowmobiles

The provisions of Section 39-24-09 of the NDCC and all subsequent amendments thereto shall be and are hereby incorporated by reference into this ordinance.

- 1) For the purpose of this section, the following definitions are hereby adopted:
 - a) "Person" includes an individual, firm, partnership, corporation, trustee, association, the state and its agencies and subdivisions, and any body of individuals, whether incorporated or not, and with respect to acts prohibited or required herein shall include employees and licenses.
 - b) "Snowmobile" means a self-propelled vehicle designed for travel on snow or ice or a

- natural terrain steered by wheels, skis, or runners.
- c) "Owner" means a person, other than a lien holder, having the property in or title to a snowmobile and entitled to the use or possession thereof.
 - d) "Operate" means to ride in or on and control the operation of a snowmobile.
 - e) "Operator" means every person who operates or is in actual physical control of a snowmobile.
 - f) "Roadway" means that portion of a highway, street or alley improved, designed or ordinarily used for vehicular travel.
 - g) "Street" or "Highway" means the entire width between the boundary lines of the way or place when any part thereof is open to the use of the general public in the city, as a matter of right, for the purpose of vehicular travel, and includes all alleys within the City.
 - h) "Daylight Hours" means any time except from one half hour after sunset to one half hour before sunrise or at any other time when there is not sufficient light to render persons or vehicles clearly discernible at a distance of 500 feet.
2. It shall be unlawful for any person to drive or operate any snowmobile in the following ways or under the following circumstances, which are hereby declared to be unsafe and a public nuisance:
- a. At a rate of speed greater than reasonable or proper under all the surrounding circumstances.
 - b. In a careless, reckless, or negligent manner to endanger the person or property of another or to cause injury or damage to any person or property.
 - c. While under the influence of intoxicating liquor or a controlled substance.
 - d. While operating or in actual physical control of a snowmobile with a blood alcohol concentration of at least ten on-hundredths of one percent by weight at the time of performance of a chemical test within two hours after the operation of the snowmobile.
 - e. Without a lighted headlamp and tail lamp when not in daylight hours or when required for safety.
 - f. In any tree nursery or planting in a manner which damages or destroys growing stock.
 - g. In any public park or in any golf course.
 - h. Without a manufacturer-installed or equivalent muffler in good working order and connected to the snowmobile's exhaust system.
 - i. Under the age of fourteen years.
 - j. On direct crossing of a street or highway unless:
 - 1) The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing; and
 - 2) The snowmobile is brought to a complete stop before crossing the shoulder or main traveled way of the highway; and
 - 3) The operator yields the right of way to all oncoming traffic which constitutes an immediate hazard.
 - k. In violation of any rule or regulation promulgated for regulating the use of snowmobiles by the State of North Dakota or any of its agencies where applicable within the corporate limits of the city.

- l. At a speed in excess of ten miles per hour at any time upon any street, alley, highway or other public way or ground within the city.
 - m. While towing a sled, skid, or any other vehicle, unless the sled, skid or other vehicle is connected to the snowmobile by a hinged swivel and secure hitch.
 - n. Passing another snowmobile while the snowmobile is in operation and underway on any street, alley, highway or other public ground or place in the city.
 - o. If the operator does not hold a valid, current driver's license or is not accompanied by a licensed driver who is actually occupying a seat in the snowmobile.
 - p. Abreast of another snowmobile upon any street, alley, highway or other public ground or place.
 - q. Between the hours of 12:01 a.m. and 7:30 a.m.
 - r. Upon any private land other than that of the snowmobile owner, or operator, without the express permission of the property owner.
 - s. While carrying a strung bow or loaded firearm.
 - t. Leaving or allowing a snowmobile to be or remain unattended on public property, streets, highways, or other public ground or places while the motor is running or with keys to start the same in the ignition switch.
 - u. At any time with more than two persons riding thereon in addition to the operator.
 - v. Without observing all traffic signs, signals, rules and regulations applying to motor vehicles when also applicable to snowmobiles.
3. No person shall operate a snowmobile upon any street, highway or alley in the City of Ashley, except:
- a) During a period of emergency when travel by other vehicles is not possible.
 - b) For a special snowmobile event of limited duration when conducted on a prearranged schedule under permit from the city council.
 - c) In crossing a street as herein provided.
 - d) In traveling from the operator's place of residence to the corporate limits of the city, using the shortest route from said residence to the corporate limits of the city.
4. No person shall operate a snowmobile upon the roadway, shoulder, or inside bank or slope of any street or highway in the city except as provided in this section. No snowmobiles shall be operated upon any street or highway unless it is equipped with at least one head lamp, one tail lamp, and brakes all in good working order which conform to standards prescribed by rules of the North Dakota Department of Transportation. When snowmobiles are operated within the right of way of any street, or highway intersection city pursuant to this section during times or conditions that warrant the use of lights, snowmobiles shall travel in the same direction as motor vehicles on the same side of the roadway immediately adjacent to the side of the right of way traveled by the snowmobile.

6.1908 Penalty for Harassment of Domestic Animals

The provisions of NDCC 39-08-19 and all subsequent amendments shall be and hereby incorporated by reference in this ordinance.

Any person operating a motorcycle, snowmobile, or other motor vehicle as defined in NDCC subsection 38 of section 39-01-01 who willfully harasses or frightens any domestic animal, is, upon conviction, guilty of a class B misdemeanor. If injury or death results to the animal due to that action, the person is liable for the value of the animal and exemplary damages

as provided in NDCC section 36-21-13.

6.1909 Operation of Motor Vehicle, Tractor, or Other Vehicle Prohibited on Flood Protective Works - Exception - Penalty

The provisions of NDCC 39-10-65 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. Unless authorized by the authority in charge thereof no person shall operate a motor vehicle, tractor, or other vehicle upon or across any flood protective works, including but not limited to, any dike or flood protective works constructed by a state or federal agency, or by any municipality or local subdivision of the state.
2. Any person violating the provisions of this section shall be liable to any person suffering injury as a result of the violation; and in addition, shall be guilty of a class B misdemeanor.

6.1910 Driving Without a License

No person shall drive any motor vehicle upon a highway in this city unless such person has a valid license as an operator, or is expressly exempted from licensing requirements, by the laws of this state.

6.1911 License to be Carried and Exhibited on Demand

The provisions of NDCC 39-06-16 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Every licensee shall have the licensee's operator's license or permit in the licensee's immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of any district court, municipal court, a patrolman, peace officer, or a field deputy or inspector of the highway department. However, no person charged with violating this section may be convicted or assessed any court costs if the person produces in court, to the chief of police or in the office of the arresting officer an operator's license or permit theretofore issued to that person and valid and not under suspension, revocation, or cancellation at the time of the person's arrest.

6.1912 Penalty

The provisions of NDCC 39-12-21 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Any driver of a vehicle who refuses to stop and submit the vehicle and load to a weighing when directed to do so by any police officer or any agent of this state having police powers relating to motor vehicles is guilty of a class B misdemeanor.

CHAPTER 20 - Disposition of Traffic Offenses

6.2001 Halting Person for Violating Traffic Regulations - Duty of Officer Halting

The provisions of NDCC 39-07-07 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Whenever any person is halted for the violation of any of the provisions of NDCC chapters 39-01 through 39-13, 39-18, 39-21, and 39-24, or of equivalent city ordinances, the officer halting that person, except as otherwise provided in NDCC section 39-07-09 and NDCC section 39-20-03.1 or 39-20-03.2, or 6-20-03 may:

1. Take the name and address of the person;
2. Take the license number of the person's motor vehicle; and

3. If a city ordinance or state criminal traffic violation. Issue a summons or otherwise notify that person in writing to appear at a time and place to be specified in the summons or notice or, if a state non-criminal traffic violation, notify the person of the right to request a hearing when posting bond by mail.

A halting officer employed by any political subdivision of the state may not take a person into custody or require that person to proceed with the officer to any other location for the purpose of posting bond, where the traffic violation was a noncriminal offense under NDCC section 39-06.1-02. The officer shall provide the person with an envelope for use in mailing the bond.

6.2002 Hearing - Time - Promise of Defendant to Appear - Failure to Appear - Penalty

The provisions of NDCC 39-07-08 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The time to be specified in the summons or notice provided for in 6-20-01 must be within thirty-five days after the issuance of the summons or notice or earlier if so ordered by the judge of the city or county having jurisdiction over the offense or if the person halted demands an earlier hearing. If the person halted desires, the person may have the right, at a convenient hour, to an immediate hearing or to a hearing within twenty-four hours. The hearing must be before a judge of the city or county in which the offense was committed. If an immediate hearing is demanded, the hearing shall be before the municipal court. Upon the receipt from the person halted of a written promise to appear at the time and place mentioned in the summons or notice, the officer shall release the person from custody, any person refusing to give a written promise to appear must be taken immediately by the halting officer before the nearest or most accessible judge, or to another place or before another person as may be provided by a statute or ordinance authorizing the giving of bail. Any person willfully violating the person's written promise to appear is guilty of a class B misdemeanor, regardless of the disposition of the charge upon which the person originally was halted. The time limitations for a hearing as provided by this section do not preclude a recharging of the alleged violation if the person being charged receives a new summons or notice subject to the provisions of this section.

6.2003 Offenses under which person halted may not be entitled to release upon promise to appear

The provisions of NDCC 39-07-09 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The provisions of 6-20-01 shall not apply to a person if:

1. The halting officer has good reason to believe the person guilty of any felony or if the person is halted and charged with an offense listed in 6-20-07 but not listed in subsection 2;
2. The halting officer, acting within the officer's discretion, determines that it is inadvisable to release the person upon a promise to appear and if the person has been halted and charged with any of the following offenses:
 - a. Reckless driving.
 - b. Driving in excess of speed limitations established by the state or by local authorities in their respective jurisdictions.
 - c. Driving while license or driving privilege is suspended or revoked for violation of NDCC section 39-06-42, or an equivalent ordinance.
 - d. Operating a modified vehicle.

- e. Driving without liability insurance in violation of NDCC section 39-08-20.
- f. Failing to display a placard or flag, in violation of any rule implementing NDCC section 39-21-44, while transporting explosive or hazardous materials.
- g. Operating an unsafe vehicle in violation of subsection 1 of NDCC section 39-21-46. The halting officer forthwith shall take any person not released upon a promise to appear before the nearest or most accessible judge.

6.2004 Traffic Violations Non-criminal - Exceptions - Procedures

The provisions of NDCC 39-06.1-02 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Any person cited, in accordance with the provisions of 6-20-01 and 6-20-02 for a traffic violation under state law or municipal ordinance, other than an offense listed in 6-20-07, is deemed to be charged with a non-criminal offense. The person may appear before the designated official and pay the statutory fee for the violation charged at or before the time scheduled for a hearing. If the person has posted bond in person or by mail, the person may forfeit bond by not appearing at the designated time. If the person is cited for a traffic violation under state law and posts bond by mail, the bond must be submitted within fourteen days of the date of the citation. When posting bond by mail, the person cited shall indicate on the envelope of citation whether a hearing is requested. If the person does not request a hearing within fourteen days of the date of the citation, the bond is deemed forfeited and the violation admitted, if the person requests a hearing, the court for the city in which the citation is issued shall issue a summons to the person requesting the hearing notifying the person of the date of the hearing before the designated official in accordance with 6-20-05. Upon appearing at the hearing scheduled in the citation or otherwise scheduled at the person's request, the person may make a statement in explanation of the person's action. The official may waive, reduce, or suspend the statutory fee or bond, or both if the person cited follows the foregoing procedures, the person is deemed to have admitted the violation and to have waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance must be identical to the statutory fee established by 6.2008. Within ten days after forfeiture of bond or payment of the statutory fee, the official having jurisdiction over the violation shall certify to the licensing authority:

1. Admission of the violation; and
2. In speeding violations, whether the speed charged was in excess of the lawful speed limit by more than nine miles [14.48 kilometers] per hour and the miles [kilometers] per hour by which the speed limit was exceeded.

This section does not allow a halting officer to receive the statutory fee or bond, unless the officer is otherwise authorized by law to do so.

6.2005 Administrative Hearing - Prepaid Costs - Procedures -Appeals - Stay orders

The provisions of NDCC 39-06.1-03 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

1. If a person cited for a traffic violation, other than an offense listed in section 6-20-07, does not choose to follow one of the procedures set forth in section 6-20-04, he or she may request a hearing on the issue of his commission of the violation charged, such hearing to be held at time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance.
2. At the time if a request for a hearing on the issue of commission of the violation, the

person charged shall deposit with the official having jurisdiction an appearance bond equal to the statutory fee for the violation charged.

3. If a person cited for a traffic violation, other than an offense listed in 6-20-07, has requested a hearing on the issue of the commission of the violation charged and appears at the time scheduled for the hearing, and the state or city, as the case may be, does not appear or is not ready to prove the commission of a charged violation at the hearing, the official shall dismiss the charge.
4. If the official finds that the person had committed the traffic violation, the official shall notify the licensing authority of that fact, and whether the person was driving more than nine miles per hour in excess of the lawful limit, stating specifically the miles per hour in excess of the lawful limit, if charged with a speeding violation, within ten days of the date of the hearing. The fact that a person has admitted a violation, may not be referred to in any way, nor be admissible as evidence in any court, civil, equity, or criminal, except in an action or proceeding involving that person's driving license or privilege.
5. If a person is aggrieved by a finding that the person committed the violation, he may, without payment of a filing fee, appeal that finding to the district court for trial anew, and the case may be tried to a jury, if requested. If after trial in the district court, the person is again found to have committed the violation, there may be no further appeal. Notice of appeal under this subsection must be given within thirty days after a finding of commission of a violation is entered by the official. Oral notice of appeal may be given to the official at the time that the official adjudges that a violation has been committed. Otherwise, notice of appeal must be in writing and filed with the official, and a copy of the notice must be served upon the city attorney. An appeal taken under this subsection may not operate to stay the reporting requirement of subsection 3 of this section, nor to stay appropriate action by the licensing authority upon receipt of the report.
 - a. The appellate court, upon application by the appellant, may:
 1. Order a stay of any action by the licensing authority during pendency of the appeal, but not to exceed a period of one hundred twenty days.
 2. Order a stay and that the appellant be issued a temporary restricted driving certificate by the licensing authority to be effective for no more than one hundred twenty day.
 3. Deny the application.

An application for a stay or temporary certificate under this subdivision shall be accompanied by a certified copy of the appellant's driving record, for the furnishing of which the licensing authority may charge a fee of two dollars. Any other granting a stay or temporary certificate shall be forwarded forthwith by the clerk of court to the licensing authority, which shall issue a temporary certificate in accordance with the order in the manner provided by law. A court shall not make a determination on an application under this subdivision without notice to the appropriate prosecuting attorney. A person who violates or exceeds the restrictions contained in any temporary restricted driving certificate issued pursuant to this subdivision shall be guilty of a traffic violation and shall be assessed a fee of twenty dollars.

- b. If the person charged is found not to have committed the violation by the district court or the jury, the clerk of court shall report that fact to the licensing authority

immediately. The city attorney shall prosecute the appeal.

5. The state or the City, as the case may be, must prove the commission of a charged violation at the hearing or appeal under this section by a fair preponderance of the evidence. Upon an appeal under subsection 5, the court and parties shall follow, to the extent applicable, the North Dakota Rules of Civil Procedure. If on the appeal from the finding of the official the finding is affirmed, costs may be assessed at the discretion of the trial judge.
6. As used in 6-20-04 through 6-20-06 the word "official" means the municipal judge or other qualified person appointed by the presiding judge of the judicial district, to serve as such official for all or a specified part of the judicial district..

6.2006 Failure to Appear, Pay Statutory Fee, Post Bond-Procedure - Penalty

The provisions of NDCC 39-06.1-04 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

If a person fails to choose one of the methods of proceeding set forth in 6-20-04 or 6-20-05, he or she shall be deemed to have admitted to commission of the violation charged, and the municipal court shall report that fact to the licensing authority within ten days after the date set for the hearing. Failure to appear at the time designated, after signing a promise to appear, without paying the statutory fee or posting forfeiting bond shall be an offense. Failure to appear without just cause at the hearing shall also to deemed an admission of commission of the violation charged.

6.2007 Offenses Excepted

The provisions of NDCC 39-06.1-05 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The procedures authorized under 6-20-04 and 6-20-05 may not be utilized by a person charged with one of the following offenses:

1. Driving or being in actual physical control of a vehicle while under the influence of a controlled substance or intoxicating liquor in violation of 6.1901.
2. Reckless driving or aggravated reckless driving in violation of 6.1902
3. Leaving the scene of an accident in violation of 6.1903 through 6.1905.
4. Driving while license or driving privilege is suspended or revoked in violation of 6.1906.
5. Violating 6.1907.
6. Driving without a license in violation of 6.1910.

6.2008 Amount of Statutory Fees

The provisions of NDCC 39-06.1-06 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

The fees required for a non-criminal disposition pursuant to either 6.2004 or 6.2005 shall be as follows.

1. For a nonmoving violation as defined in 6.2009, a fee in the amount of ten dollars.
2. For a moving violation as defined in 6.2010, a fee in the amount of twenty dollars.
3. For a violation of 6.0502, involving a speed of more than fifteen miles per hour in excess of the lawful speed limit, a fee in the amount of forty dollars.
4. For a violation of 6.0501 defining careless driving, a fee in the amount of thirty dollars.

6.2009 "Nonmoving Violation" Defined

The provisions of NDCC 39-06.1-08 and all subsequent amendments shall be and are

hereby incorporated by reference in this ordinance.

For the purposes of 6.2008, "Nonmoving violation" shall mean 6.0924, 6.0933, 6.0934, or the provisions of Chapter 6-14.

6.2010 "Moving Violation" Defined

The provisions of NDCC 39-06.1-09 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

For the purposes of 6.2008, a "moving violation" shall mean a violation of 6.0501, 6.0502 involving speeds of fifteen miles per hour or less in excess of the lawful speed limit, 6.1910, 6.1911, 6.0309, 6.0932, 6.0505 or a violation of the provisions of chapter 6.09 except those sections within those titles which are specifically listed in 6.2009.

6.2011 General Penalty for Violation of Chapter

The provisions of NDCC 39-07-06 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

Any person violating any of the provisions of this title for which another criminal penalty is not provided specifically shall be guilty of an infraction. As used in this section, the phrase "Another criminal penalty" includes provision for payment of a fixed fee for violating another section in this title, but does not include any other administrative sanction which may be imposed.

6.2012 This Title

It is hereby specifically provided that it is intended that this Title remain similar to the North Dakota Century Code, and that any change incorporated into the Century Code is hereby adopted by reference, and if there is a conflict between the Century Code and the provisions of this Title, the provisions of the Century Code shall prevail.

TITLE 7

OFFENSES

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TITLE 7

OFFENSES

CHAPTER 1 - Offenses Against Public Peace

7.0101 Disorderly Conduct

1. An individual is guilty of a class B misdemeanor if, with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another person is harassed, annoyed, or alarmed by the individual's behavior, the individual;
 - a. Engages in fighting, or in violent, tumultuous, or threatening behavior.
 - b. Makes unreasonable noise.
 - c. In a public place, uses abusive or obscene language, or makes an obscene gesture.
 - d. Obstructs vehicular or pedestrian traffic, or the use of a public facility.
 - e. Persistently follows a person in or about a public place or places.
 - f. While loitering in a public place for the purpose of soliciting sexual contact, the individual solicits the contact.
 - g. Creates a hazardous, physically offensive, or seriously alarming condition by any act that serves no legitimate purpose.
 - h. Engages in harassing conduct by means of intrusive or unwanted acts, words or gestures that are intended adversely affect the safety, security, or privacy of another person.

7.0102 False Alarm

It shall be unlawful for any person or persons to give or create any false alarm as by crying "fire" or "police" nor shall any person other than the police officer, or city officer in the discharge of his or her duty, give, make, or sound any alarm, or call on or with any policeman's whistle, or rattle, or other instrument commonly known or used by any of the police officers of the city in making alarms or calls while in the discharge of his or her duty.

CHAPTER 2 - Offenses Against Public Safety

7.0201 Opiates

1. It shall be unlawful for any person to permit any room, building, cellar, or any other place or premises to be used for the smoking of opium, marijuana, or any of their preparations.
2. It shall be unlawful for any person to have or keep in his or her possession any marijuana, cocaine, opium, opium pipe, or any other appliances ordinarily used in smoking of opium, or any of its preparation.

3. It shall be unlawful for any person to visit or resort to any place for the purpose of smoking opium, marijuana, or any of their preparations, or to remain in that place.

7.0202 Weapons

1. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches or more; any throwing star, numchuck, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any stun gun, any slingshot; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.

7.0202.1 Forfeiture of Dangerous Weapon or Firearm by Person Arrested and Convicted of a Crime

Any firearm or dangerous weapon used or possessed while in the commission of a felony or a misdemeanor involving violence or intimidation must be seized and, upon conviction and by motion, forfeited to the jurisdiction in which the arrest was made or the jurisdiction in stolen property, the forfeited firearm or dangerous weapon may be, pursuant to court order, sold at public auction, sold or traded to other law enforcement agencies or authorized firearm dealers, retained for use or destroyed.

7.0202.2 Who Not to Possess Firearms

- A. A person who has been convicted anywhere for a felony involving violence or intimidation, as defined in chapters 12.1-16 NDCC through 12.1-25 NDCC is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of ten years after the date of conviction or release from incarceration or probation, whichever is the latter.
- B. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in North Dakota or elsewhere by a court of competent jurisdiction, as a mentally ill person as defined in section 25-03.1-02 NDCC or as a mentally deficient person as defined in section 25-01-01 NDCC, is prohibited from purchasing a firearm or having one in possession or under control. This limitation does not apply to a person who has not suffered from the disability for the previous three years.
- C. A person under the age of eighteen years may not possess a handgun except that said person may, while under the direct supervision of an adult, possess a handgun for the purposes of firearm safety training, target shooting, or hunting.

7.0202.3 Discharge of Firearm within City

A person who discharges a firearm within a city is guilty of a class B misdemeanor.

7.0203 Report Treatment of Wounds

Every physician or surgeon duly admitted to the practice of medicine or surgery in the State of North Dakota, whenever he or she shall treat any person in the city for a wound inflicted by a dangerous or deadly weapon of any kind, shall notify the Chief of Police within one hour of the time within one hour of the time when he or she renders such professional service, or is called upon to render the same.

7.0204 Possession of Burglars Tools

No person in the city shall possess any nippers known as burglars nippers, any pick lock,

skeleton key, key to be used with bit or bits, jimmy, or any other burglars instruments or tools of whatever kind or description, unless it be shown that possession is innocent or for lawful purposes.

7.0205 Throwing of Missiles

No person in the city shall throw any stone, snowball, or any other missile upon or at any vehicle, building, tree, or other public or private property, or upon or at any person in any public or private way or place or enclosed or unenclosed ground.

7.0206 Fireworks Prohibited in City Parks

No person shall shoot or discharge any fireworks in the city parks that are within the corporate limits of the City or Ashley at any time.

"Fireworks" as used in this chapter shall mean all items defined, listed set forth in Section 23.1501 of the North Dakota Century Code, as amended from time to time, which statute is hereby incorporated into this section by reference thereto.

7.0207 Swimming or Bathing in Public Waters

No person in the city shall swim or bathe in public water in the city where such conduct is allowed unless wearing a bathing suit or other suitable garment to protect his or her person from exposure.

7.0208 Bonfires

No person in the city shall make or assist in making any bonfire in or upon any public street or place within the city without permission of the Fire Chief.

7.0209 False Alarm of Fire or Need for Police or Ambulance Assistance

No person in the city shall intentionally make, turn in, or give a false alarm of a fire, or need for police, or ambulance assistance, or aid or abet in the commission of that act.

7.0210 False Report of Crime

No person in the city shall make to, or file with, the Police Department a false, misleading, or unfounded statement or report concerning the commission or alleged commission of any crime occurring within the city.

7.0211 Interference With Police Department

1. No person in the city shall resist any police officer, any member of the Police Department, or any person duly empowered with police authority, while in the discharge or apparent discharge of his or her duty, or in any way interfere with or hinder him or her in the discharge of his or her duty.
2. No person in the city shall offer or endeavor to assist any person in the custody of a police officer, a member of the Police Department, or a person duly empowered with police authority to escape or to attempt to escape from custody.
3. No person, other than an official police officer of the city, shall wear or carry the uniform, apparel, badge, identification card, or any other insignia of office like or similar to, or a color-able imitation of that adopted and worn or carried by the official police officers of the city.

7.0212 Escape of Prisoners

1. No person in the city shall make available to, present to, or place within the reach of, any person confined under authority of the city any intoxicating or malt liquors, or any tool, implement, or other thing calculated to aid in the escape of that person so confined or any other person confined under authority of the city.
2. No person shall assist or aid, or attempt to assist or aid any person in the custody or

confined under the authority of the city to escape from jail, place of confinement, or custody.

7.0213 Statutory Violations Made Ordinance Violations

No person shall, within the limits of the City of Ashley, do perform, or commit any act or acts, or participate therein in part or in whole, or aid, abet, or encourage another or other therein, or fail, refuse, or neglect to do or perform any act or acts, no otherwise prohibited or commanded by any ordinance of the City of Ashley, and which act, acts or conduct is either prohibited or commanded by the statues of the State of North Dakota, and the doing and commission of which, or failure to do or perform which, is under and pursuant to the statues of the State of North Dakota and shall be and constitute a crime or offense against the State of North Dakota.

7.0214 Accessory to Violation of Ordinances

No person or persons shall aid or abet, or assist, or advise, or encourage another in any violation of any ordinance of the City of Ashley, nor shall before or after any violation thereof by another or others with knowledge thereof, aid, abet, assist, advise, or conceal that person or persons with the intent that the person or persons may avoid arrest, trial, conviction, or punishment.

7.0215 Nudeness, Indecent Dress or Behavior

No person in the city shall appear in any public place in a state of nudity, or in a dress not belonging to his or her sex, or in an indecent or lewd dress, or shall make any indecent exposure of his or her person, or shall be guilty of any indecent, obscene, or lewd act or behavior, or shall exhibit, sell or offer to sell any indecent or lewd book, picture, or other thing, or shall exhibit or perform any indecent, immoral, or lewd play, or other representation.

7.0216 Obscene and Immoral Literature, Pictures, Notices Unlawful

No person in the city shall in any public or private place open to the view of any class or collection of persons, post up, place, write, mark, draw, cut, or make any obscene, lewd, or indecent notice, hand-bill, advertisement, picture, drawing, sentence, word, design, or figure.

7.0217 Indecent Motion Pictures Prohibited

It shall be unlawful for any person to exhibit any lewd, suggestive, or indecent motion pictures within the city.

CHAPTER 3 - Offenses Against Public Health

7.0301 Paraffin Containers

No person in the city shall sell or offer to sell any confection, candy, liquid, or other refreshment in wax or paraffin containers, or other containers which when discarded upon a sidewalk or street will create a waxy, oily, or greasy condition.

7.0302 Stench Bombs

1. No person in the city shall throw, drop, pour, deposit, or discharge, upon the person or property of another, any liquid, gaseous, or solid substance which is injurious to person or property, or which is nauseous, sickening, irritating, or offensive to any of the senses with intent to wrongfully injure, or control of his person or property. No person shall attempt, or aid in the attempt or commission of any of these prohibited acts.
2. No person in the city shall manufacture or prepare or have in his possession or under his control, any liquid, gaseous, or solid substance or matter of any kind which is injurious to person or property, or which is nauseous, sickening irritating, or offensive to any of

the senses with intent to use the same in violation of subsection (1) of this section or with the intent that the same shall be used in violation of subsection (1) of this section. The possession or control by any person of any such liquid, gaseous, or solid substance or matter shall be deemed prima facie evidence of intent to use the same or cause the same to be used in the subsection (1) of this section.

3. The prohibition of subsections (1) and (2) of this section shall not apply to police officers acting in the line of duty or to proprietors of business places or their employees using such substances for the protection of their property and their business place when the substance referred to herein are kept solely for the purpose of repelling robbers, thieves, murderers, or other law violators.

7.0303 Expectoration

No person in the city shall expectorate upon any sidewalk, street, floor in public buildings, or upon any other public place.

CHAPTER 4 - Offenses Against Property

7.0401 Against Public and Private Property

1. No person in the city shall willfully, maliciously, wantonly, negligently, or otherwise injure, deface, destroy, or remove real property or improvements thereto, or moveable or personal property, belonging to the city or to any person in the city.
2. No person in the city shall throw or permit to be deposited or scattered upon any sidewalk, alley, street, bridge, or public passageway, or upon any private property, any waste or other material of any kind.
3. No person in the city shall fasten in any way any show-card, poster, or other advertising device upon public or private property, including telephone and light poles in the city unless legally authorized to do so.

7.0402 Against Public Property

1. No person in the city shall tamper with, injure, deface, destroy, or remove any sign, notice, marker, fire-alarm box, fire-plug, topographical survey monument, or any other personal property erected or placed by the city.
2. No person in the city shall place or erect upon public ways or passageways to any building an obstruction of any type, provided that this subsection shall not prevent the duly authorized or required placing of temporary barriers or warning signs for the purpose of safeguarding the public.
3. No person in the city shall move, disturb, or take any earth, stone, or other material from any public street, alley, park, or other public ground.

CHAPTER 5 - Offenses Against Morals

7.0501 Prostitution

A person is guilty of prostitution, a class B misdemeanor.

1. Is and inmate of a house of prostitution or is otherwise engaged in sexual activity as a business.
2. Solicits another person with the intention of being hired to engage in sexual activity.
3. No person in the city shall make a meretricious display in or near any public place, any

place frequented by the public, or place open to the public.

7.0502 Solicitation of Drinks

No female person shall frequent or loiter in any tavern, cabaret, or night club, with the purpose of soliciting men to purchase drinks. No proprietor or operator of any establishment shall allow the presence in the establishment of any woman who violates the provisions of this section.

7.0503 Window Peeping

No person in the city shall look, peer, or peep into, or be found loitering around or within view of, any window not on his or her own property with the intent of watching or looking through said window.

7.0504 Gambling

No person in the city shall engage in a game of chance prohibited by the statutes of the State of North Dakota or the ordinances of the city.

7.0505 Animals

1. No person in the city shall overdrive, overload, drive when overloaded, overwork, torture, cruelly beat, mutilate, or needlessly kill, or carry or transport in any vehicle or other conveyance in a cruel and inhuman manner, any animal, or cause any of these acts to be done.
2. No person in the city shall fail to provide any animal in his or her charge of custody with necessary sustenance, drink, and protection from the elements or cause any of these acts to be done.
3. No person in the city shall abandon any animal, or cause that act to be done.
4. No person in the city shall maintain any place where fowls or any animals are suffered to fight upon exhibition, or for sport upon any wager.
5. No person in the city shall poison any dog or dogs or distribute poison in any manner whatsoever with the intent of or the purpose of poisoning any dog or dogs.
6. No person in the city shall shoot at, wound, kill, take, capture, ensnare net, trap or in any other manner molest or injure any bird protected by the statutes of the State Of North Dakota or the United States of America, or in any manner molest or injure the nest, eggs, young, or body of any such bird, unless duly authorized by law to do so.
7. No person in the city shall exhibit any stud horse or bull or other animal indecently, nor shall any person let any male animal to any female animal unless the same be done in the place wholly enclosed and out of public view.

7.0506 Lookouts For Illegal Acts

No person in the city shall act as a guard or lookout for any building, premises or establishment used for gambling, prostitution, or any other form of vice or illegal act, or where intoxicating liquors are illegally kept, sold or purchased, or for any person soliciting, offering, or engaging in prostitution, gambling, or any other form of vice, or illegal act, or any prostitute, on any street or sidewalk. Nor shall any person give any signal intended to, or calculated to warn, or give warning or the approach of any peace officer to any person in or about such building or premises or places mentioned herein.

CHAPTER 6 - Offenses Involving Children

7.0601 Presence in Gambling and Drinking Houses

No person who is the proprietor or keeper of a tavern, shall employ or permit any person under the age of twenty-one (21) years to frequent or be in or about that place, or to drink any intoxicating liquors or beer or any other fermented malt beverage in or about the same, or engage or participate in any game of billiards, or any game, bet, or wager with any cards or any other gambling device, or any other game whatsoever, in or about that place.

It shall be the duty of any person who is the proprietor or keeper of a tavern to post conspicuously in his or her place of business the following sign: "PERSONS UNDER THE AGE OF TWENTY-ONE (21) YEARS NOT ALLOWED HERE."

7.0602 Purchase for Minor

No person in the city shall procure for any minor any article which the minor is forbidden by law to purchase.

7.0603 Transactions With Children

No person licensed as a peddler or itinerant merchant or vendor, or any agent, employee, or servant of such licensee, shall sell to or in any manner deal with any minor under the age of sixteen (16) years.

7.0604 False Statements by Children

It shall be unlawful for a minor to make false statements, or to furnish, present, or exhibit any fictitious or false registration card, identification card, or note or other document, or to furnish, present, or exhibit a document or documents issued to a person other than the one presenting the same, for the purpose of gaining or procuring the sale, gift, or delivery of prohibited articles, including beer, liquor, and wine.

7.0605 Procuring Unlawful Services of Others

It shall be unlawful for a minor to engage or utilize the services of any other person, whether for remuneration or not, to procure for the minor any article which the minor is forbidden by law to purchase.

7.0606 Hanging on Vehicles

It shall be unlawful for any person to hang on to any moving vehicle.

7.0607 Possession of Alcoholic Beverages

It shall be unlawful for any person under twenty-one (21) years of age to have in his or her possession at any time any alcoholic beverage or intoxicating liquor as defined in this code.

7.0608 Duty of Municipal Judge

The Municipal Judge at the time of apprehension of any person coming within the provisions of this chapter who has violated this chapter, shall refer the matter to the juvenile authorities to ascertain whether or not the Juvenile Court desires to take jurisdiction of that person, in the event that the Juvenile Court waives jurisdiction over the person then the penalty set forth in this code shall apply to that person upon conviction.

7.0609 Curfew

Section 1 Curfew - Loitering, idling, etc. of minors prohibited during certain hours.
It shall be unlawful for any minor age of seventeen (17) years and under to loiter, idle, wander, stroll, play, or drive or ride in cars in or upon the public streets, highways, roads, alleys, parks, playgrounds, public places and public buildings, places of amusement and entertainment, vacant lots or other unsupervised places, between the hours of 11:00 p.m. and 5:00 a.m. on any night preceeding a school day and 12:00 a.m. to 5:00 a.m. on any other night.

Section 2 Curfew - Restrictions

1. It shall be unlawful for any minor to remain in any public place or on the premises of any establishment within the City during curfew hours.
2. It shall be unlawful for any parent or guardian of a minor to knowingly permit, or by insufficient control allow, the minor to remain in any public place or on the premises of any establishment within the City during curfew hours. The term “knowingly” includes knowledge that a parent or guardian should reasonably be expected to have concerning the whereabouts of a minor in the legal custody of that parent or guardian.
3. It shall be unlawful for any owner, operator, or any employee of an establishment to knowingly allow a minor to remain upon the premises of the establishment during curfew hours.

Section 3 Curfew - Exceptions

1. The following shall constitute to all the operations of the curfew.
That the minor is:
 - A. Accompanied by the minor’s parent or guardian:
 - B. On an errand at the direction of the minor’s parents or guardian, without any detour or stop.
 - C. In a vehicle involved in interstate travel.
 - D. Engaged in an employment activity, or going or returning home from any employment activity, without any detour or stop.
 - E. Involved in an Emergency.
 - F. On the sidewalk abutting the minor’s residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor’s presence.
 - G. Attending an official school, religious, or recreational activity supervised by adults and sponsored by the City of Ashley, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop.
 - H. Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
 - I. Married or had been married
2. It is to prosecution under Section 2 that the owner, operator or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

Section 4 Curfew - Enforcement

Before taking any enforcement action under this section, a police officer shall ask the apparent offender’s age and reason for being in the public place. The officer shall issue a citation or make an arrest under this section unless the officer has

probable cause to believe that an offense has occurred and that, based on any response and other circumstances, no defense in section 3 is present.

Section 5 Curfew – Penalties

1. The parent or guardian of any person in violation of this ordinance shall be fined a sum not to exceed Fifty (\$50.00) dollars.

CHAPTER 7 - Miscellaneous

7.0701 Interference With Labor Unlawful

It shall be unlawful for any person within the City of Ashley, by use of force threats, intimidations, or argument, to prevent or endeavor to prevent any person from continuing in his or her employment or performing his or her work or from accepting any new work or employment or to induce any person to relinquish his or her work, or employment which he or she has on hand, or to refuse to return to his or her work he or she has on hand before it is finished.

7.0702 Interference With Free Employment Unlawful

It shall be unlawful for any person within the City of Ashley by force, threats, intimidation, or argument, to prevent or endeavor to prevent another from employing a person or to compel another to employ any person, or to force or induce any person to alter his or her mode of carrying on his or her business, or to limit or increase the number of persons to be employed in that work or their rate of wages, or time of service.

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TITLE 8

LICENSES AND PERMITS

CHAPTER 1 - General Rules Governing Licenses and Permits

8.0101 General Rules Governing Licenses

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

8.0102 Manner of Granting Licenses When Not Specifically Provided

The City Auditor shall receive applications for licenses and permits and grant the same in all cases where expressly authorized upon the terms and conditions specified by ordinance. If he or she shall not feel authorized to grant any particular application for license or permit for any purpose not named by ordinance, he or she shall report that application at the next meeting of the City Council for its action thereon.

8.0103 Making Application For license

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

8.0104 Issuance of License

When the City Council shall grant such application, the City Auditor shall issue to the applicant or applicants a license for the purpose and time specified upon payment of the required fee prescribed in this Code for that license.

8.0105 Term of Licenses

- (1) No license or permit shall be granted for a longer period than one (1) year.
- (2) All annual licenses or permits shall commence on the first day of January of each year and expire on the thirty-first day of December of that year.
- (3) No license or permit shall be valid until signed and sealed, nor shall any person be deemed licensed until a license shall be duly issued.
- (4) Each license shall be dated the day of issuance thereof, but if the applicant or applicants shall have been acting without a license, the license shall commence with the date business commenced, if the business calls for an annual license, then the license shall commence on the first day of January of the year for which the license shall be issued.
- (5) The date of issuance of the license, together with the time of commencing and expiration shall be given in the license and license record.

8.0106 Licenses Not Transferable

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

permission to be certified on the license by the City Auditor. No license shall authorize any person to act under it at more than one (1) place at the same time, or at any other place than is therein specified. Whoever shall violate any of the provisions of this section shall be subject to the same penalty as prescribed for acting without a license.

8.0107 Licenses Subject or Ordinances

All licenses granted shall be subject to ordinances in force at the time of issuing thereof or which may be subsequently passed by the City Council. Any person who shall violate any provision of this title relating to a license may be proceeded against for any fine or penalty imposed by this Code, and the license may be revoked or forfeited in the discretion of the City Council or the Court before which any action may be brought for the recovery of any fine or penalty.

8.0108 Licensed Business to be Conducted Quietly

Every person holding a license as herein provided, shall conduct the business in a quiet and orderly manner, and shall observe, conform to, and obey the laws of the State of North Dakota, and the ordinances and regulations of the City of Ashley.

8.0109 Licenses Must be Posted

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

8.0110 Alteration of Licenses Prohibited

It shall be unlawful for any person holding a license or permit to post that license or to allow that license or permit to be posted upon premises other than the premises licensed, or knowingly of deface, destroy, or alter any such license in any respect.

8.0111 Short Term Licenses Not Granted

No license, unless otherwise specified in this Code or granted by the City Council, shall be issued for a fractional part of a year, but shall relate back if taken out subsequent to the first day of January of each year.

8.0112 Revocation of Licenses

Where not otherwise provided, any license may be revoked by the City Council at any time for cause, upon due notice to the licensee and hearing thereon. "Cause" shall include, but shall not be limited to the following:

- (1) Violation of the laws of the State of North Dakota, or any of the ordinances of the City of Ashley dealing with or pertaining to the business or trade licensed.
- (2) The willful making of any false statement as to a material fact in the application for license.
- (3) Permitting any disorderly or immoral practices upon the premises where the licensee is licensed to carry on the business or trade.
- (4) The death of the licensee.
- (5) When the licensee ceases business at the location licensed.
- (6) When the licensee ceases to be a legal and bona fide resident of the State of North Dakota.

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

the city.

8.0113 No Rebate on Unexpired Revoked License

No rebate will be made for the unexpired term of a revoked or terminated license, unless otherwise ordered by the City Council.

8.0114 Licenses May be Issued to Husband and Wife as Joint Tenants

The City Council or the City Auditor, as the case may be, may issue any license provided for in this title to applicants who are husband and wife in their joint names to be held as joint tenants and not as tenants in common.

CHAPTER 2 - Beer and Liquor Licenses

8.0201 Definitions

- (1) "Alcoholic Beverage" shall include alcohol, brandy, whiskey, rum, gin, beer, ale, porter, hard cider, vodka, wine, and in addition thereto, any spirituous, vinous, malt, or fermented liquor, liquids, and compounds, whether medicated, proprietary or not, and by whatever name called, containing one-half of one percent or more of alcohol by volume, which are fit or intended for use for beverage purposes. All alcoholic beverages shall be deemed intoxicating.
- (2) "Liquor" shall mean and include any alcoholic, spirituous, vinous, ferment, malt, or other beverage which contains more than four (4) percent of alcohol by weight.
- (3) "Beer" as used in this chapter shall be construed to be of such alcoholic content as is provided by the North Dakota Century Code, as amended, in defining the word, "beer"
- (4) "Retail Sale," "Sell at Retail," and "Sale at Retail," when used in this chapter shall have reference to a sale to a consumer for use or consumption and not for the purpose of resale in any form.
- (5) "Person" shall include persons, corporations, partnerships, and other unincorporated associations.
- (6) "Sale" is defined to mean and include any transaction, exchange, or barter in any manner or by any means whatsoever for a consideration, and includes and means all sales made by any person, whether principal proprietor, agent, servant, or employee.
- (7) "Off-Sale" shall mean the sale of alcoholic beverages in original package for consumption off or away from the licensed premises where sold.
- (8) "On-Sale" Shall mean the sale of alcoholic beverages for consumption on the licensed premises where sold only.
- (9) "Package" and "Original Package" shall mean and include any container or receptacle holding alcoholic beverages, which container and receptacle is corked or sealed by the manufacturer thereof and which cork or seal has not been removed or broken prior to the sale of the package to the purchaser.
- (10) "Wholesaler" Shall be deemed to mean and include any person engaged in the sale and distribution of alcoholic beverages at wholesale to persons holding a retail license for the sale and distribution of alcoholic beverages within the State of North Dakota or in interstate commerce, or both.
- (11) "Minor" shall mean any male or female person under the age of twenty-one (21) years of age.

8.0202 Classification of Beer and Liquor Licenses

The City of Ashley shall have three (3) separate and distinct licenses pertaining to the sale of alcoholic beverages, as herein defined, which licenses shall be as follows:

- (1) Beer License (retail)
- (2) Liquor License (retail)
- (3) Wholesale License

Each applicant for any such license shall specify on the application for what type of license he or she is making application. If the license is issued, the license shall specify the type of business for which issued.

8.0203 License Required

It shall be unlawful for any person to engage in the retail sale of beer, liquor, and alcoholic beverages, or any combination of those products, within the City of Ashley without first obtaining a license for that sale. Application forms will be provided by the City Auditor.

8.0204 Qualifications of Applicant

In addition to qualifications now prescribed by law, no license authorizing the sale of beer or alcoholic beverages, shall be issued to any person by the City of Ashley unless the applicant shall file a sworn application therefore, accompanied by the required fee, and shall show in the application that he or she possesses the following qualifications:

- (1) Applicant other than corporate must be a citizen of the United States and of the State of North Dakota and have a legal and bona fide residence in the State of North Dakota, and be a person of good moral character.
- (2) Applicant shall not have been convicted of a felony, or of pandering or keeping a house of prostitution, or have been convicted within five (5) years of the date of the application of any violation of the laws of the State of North Dakota or of the United States relating to beer, liquor, or alcoholic beverages.
- (3) Applicant shall not have had revoked, within five (5) years next preceding the application, any license issued to him or her pursuant to the ordinances or resolutions of the city, village or board of county commissioners, to the laws of this state, or any state, to sell beer, liquor or alcoholic beverages.
- (4) If applicant is a partnership, all members of the partnership must be personally qualified to obtain a license.
- (5) If applicant is a private corporation, all officers and directors thereof and any stockholder owning more than twenty per cent of the stock of that corporation, and the person or persons who shall conduct and manage the licensed premises for the corporation shall possess all the qualifications required herein for an individual licensee, provided, however, that the requirements as to being a resident and citizen of the state shall not apply to non-resident officers, directors, and stockholders of the corporation, but those requirements shall apply to any officer, director, or stockholder who is also the manager of the licensed premises or who is engaged or employed at the license premises, in any capacity, in the conduct or operation of the licensed premises.

8.0205 Licenses Issued to Owners Only

No license shall be issued to any person, firm, or corporation engaged in business as the representative or agent of another. The license shall be issued only to the owner or owners of the business being conducted at the location sought to be licensed.

8.0206 License Applicant to be Investigated

The City Council, or a person or officer as may be directed by the City Council, shall, upon the application being filed, investigate the facts as stated in the application and the character, reputation, and fitness of the applicant. If the investigation is made by a person other than the City Council, he or she shall report all such matters to the City Council.

8.0207 Application to be Approved Before License Issued

Every application, whether for the sale of beer or of intoxicating liquors, must be approved by the City Council before a license shall be issued.

8.0208 Application For License; To Contain Waiver or Unreasonable Searches and Seizures

Any person within the class defined in section 8-02-04, may obtain a license to sell beer or liquor within the City of Ashley, by executing under oath and filing with the City Auditor a written application therefore on forms provided by the City Auditor, setting forth the name, citizenship, and place of the residence of the applicant, and the legal description of the premises where it is proposed to sell beer or liquor, and any other information as the City Auditor may reasonably require. The following shall be part of the application form:

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

The applicant shall also furnish as part of the application satisfactory proof that the applicant is duly authorized to sell beer or liquor at the location stated pursuant to the license or permit of the United States and State of North Dakota. The application shall be accompanied by the amount of the license fee required by this chapter. The City Auditor shall submit the application to the City Council for approval at its next meeting. If approved, the City Auditor shall issue to the applicant a receipt showing the date and amount paid and by whom and for what location, and what class of license has been granted him, which shall constitute the license.

Each license must be given an identification number and a permanent record thereof must be kept by the City Auditor, showing the name and address of the licensee and the legal description of the place licensed. If the application for license provided for in this chapter be denied, the City Auditor shall return to the applicant the amount deposited by the applicant with the City Auditor as a license fee.

8.0209 License to be Issued Only if Premises Comply With Sanitary Requirements

No retailer's license shall be issued unless the premises to be licensed conform to the sanitary, safety, and health requirements of the City of Ashley and have been approved by the City Health Officer.

8.0210 Limitations as to Number of Licenses Issued

There shall be issued not more than four (4) retail liquor licenses, and not more than four (4) retail beer licenses, and a retail liquor license and a retail beer license shall be held by the same licensee. Provided, however, that the City Council may issue special retail liquor and beer licenses as hereinafter provided.

8.0210.1 Special Retail Liquor and Beer Licenses

The City Council shall have the power and authority to issue a special retail liquor license

and a special retail beer license upon the following terms and conditions:

- (1) The licensee shall be allowed to sell liquor and beer at retail on only thirty (30) calendar days during any one calendar year, with the dates to be selected by the licensee.
- (2) The licensee shall provide to the City Council on a calendar quarterly basis the dates when the licensee has operated under its license during that quarter. The report shall be made within fifteen (15) days after the end of each calendar quarter.
- (3) The license fee for a special retail liquor license shall be two hundred dollars (\$200.00) per year, and the license fee for a special retail beer license shall be one hundred dollars (\$ 100.00) per year, and either of said license fees may be pro-rated if issued during the calendar year.
- (4) A holder of a special retail liquor license or a special retail beer license shall not sell, give away, dispense or permit the consumption of alcoholic beverages on licensed premises after one o'clock A.M. on Sundays, before eight o'clock A.M. on Mondays, or between the hours of one o'clock A.M. and eight o'clock A.M. on all other days of the week, or after one o'clock A.M. on Thanksgiving day, or after six o'clock P.M. on Christmas Eve, or on Christmas Day.
- (5) The holder of a special retail liquor license or a special retail beer license shall comply with all other provisions of Ashley Municipal Code and the statutes of the State of North Dakota.
- (6) This section shall be effective on January 1, 1992.

8.0211 Grounds For Revocation of Licenses

The City Council shall have power to revoke any license issued under the provisions of this chapter for any one or more of the following reasons:

- (1) Violation of the statutes of the State of North Dakota, or of any of the provisions of this Code;
- (2) The willful making of any false statement as to a material fact in the application for license;
- (3) Permitting any disorderly or immoral practices upon the premises what the licensee is licensed to sell beer or liquor;
- (4) The death of the licensee;
- (5) When the licensee ceases business at the location licensed;
- (6) When the licensee ceases to be a legal and bona fide resident of the State of North Dakota; and
- (7) When the license or permit of the licensee from the United States or the State of North Dakota to sill beer or liquor at the location licensed is terminated or has been revoked. When the license is terminated or revoked for cause, the licensee or those claiming under him or her, shall not be entitled to any return of any portion of the license fee previously paid to the city.

The causes enumerated above shall not be deemed to be exclusive and the city council does hereby retain and reserve unto itself the right to cancel the license for any cause which it may deem satisfactory.

8.0212 Revocation and Expiration of License

- (1) Where a license for any premises licensed has been revoked, no license shall be thereafter issued to the licensee for a period of one year after that revocation.

(2) Every license issued hereunder shall not be deemed a property or vested right and that license may be revoked at any time prior to the expiration date.

8.0213 Location of stores; Required Distance From Churches Schools

No retail license shall be granted for any premises, not licensed of the effective date of this Code, within two hundred (200) feet of a building occupied exclusively as a school, church, synagogue, or other place of worship the measurement to be taken in a straight line from the center of the nearest entrance to the building used for such school, church, synagogue, or other place of worship to the center of the nearest entrance of the premises to be licensed.

8.0214 Hours of Sale

No person shall serve, sell, give away, dispense or permit the consumption of alcoholic beverages on licensed premises before eight (8) o'clock A.M. or after one (1) o'clock A.M. on any day of the week except Sundays, when they cannot open until twelve (12) o'clock P.M. Further this ban applies to after one (1) o'clock A.M. on Christmas Day, Thanksgiving Day, or after six (6) o'clock P.M. on Christmas Eve.

During the hours when closed all blinds shall be removed from windows and doors so that a clear vision may be had of the interior of the licensed premises.

8.0215 Sale of Beer or Liquor Prohibited to Certain Persons

No retailer of beer or liquor shall be permitted under the provisions of this chapter to sell, serve, or give beer, liquor or alcoholic beverages to any person under the age of twenty-one (21) years, an incompetent person, or a person who is an inebriate or habitual drunkard; nor shall a retailer permit beer, liquor, or alcoholic beverages to be served, given to, or consumed by any person upon the premises licensed. No retailer shall allow any person under twenty-one (21) years of age to be upon the licensed premises for any purpose whatsoever.

8.0216 Retail Liquor License Fee

The fee for a retail liquor license shall be the sum of \$1000.00 per year for both on and off sale liquor.

All liquor license fees shall be payable at \$500.00 on January 1st of each year and \$500.00 on July 1st of each year. No license shall be issued for less than one year and the failure to pay the license fee on the date when due shall automatically cancel said license.

8.0217 Retail Beer License Fee

The fee for a retail beer license shall be the sum of \$400.00 per year, for both on and off sale beer. All beer license fees shall be payable at \$200.00 on January 1st of each year and \$200.00 on July 1st of each year. No license shall be issued for less than one year and the failure to pay the license fee on the date when due shall automatically cancel said license. A special provision to the beer and liquor license is made for the Ashley American Legion who will be assessed a fee of \$225.00 per year. Fees shall be payable semiannually with \$112.50 due on January 1, and \$112.50 due July 1, of each year. If not paid when due, the license will be canceled.

8.0218 Total of Retail Liquor and Beer License Income to Remain Constant

Revised January 12, 2015

8.0219 Application of Chapter

This Chapter is declared to be an exercise of the police power directly affecting and designed to promote the peace, safety, good order, health, and well being of the people of the city. This chapter shall apply to all territory within the corporate limits of this city and to that outlying contiguous territory without the corporate limits within which the city may exercise

police jurisdiction as defined by law.

8.0220 Total Dollar Amount of Retail Licenses to Remain Constant

Repealed April 7, 1997.

CHAPTER 3 - Solicitors and Canvassers

8.0301 Permit and License Required

It shall be unlawful for any solicitor or canvasser as defined in section 8-03-02 of this chapter to engage in that business within the corporate limits of the City of Ashley without first obtaining a permit and license therefore in compliance with the provisions of this title.

8.0302 Definition

A canvasser or solicitor is defined as any individual, not a resident of City of Ashley, traveling either by foot, wagon, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares, merchandise or personal property of any nature whatsoever, for future delivery, or for services to be furnished or performed in the future, whether or not that individual has, carries, or exposes for sale a sample of the subject of that sale, whether he or she is collecting advance payments on those sales or not, or whether he or she have been invited on to any premises by the householder; provided that this definition shall not include any person who, for himself or herself, or for another person, firm, or corporation, hires, leases, uses, or occupies any building, structure, tent, railroad box car, hotel or motel room, lodging house, apartment, shop, or any other place within the city for the sole purpose of exhibiting samples and taking orders for future delivery.

8.0303 Application

Applicants for permit and license under this chapter must file with the City Auditor a sworn application in writing, and in duplicate, on a form to be furnished by the City Auditor, which shall give the following information:

- (1) Name and description of the applicant;
- (2) Permanent home address and full local address of the applicant;
- (3) A brief description of the nature of the business and the goods to be sold;
- (4) If employed, the name and address of the employer, together with credentials establishing the exact relationship;
- (5) The length of time for which the right to do business is desired;
- (6) The place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced, where those goods or products are located at the time said application is filed, and the proposed method of delivery;
- (7) A photograph of the applicant, taken within sixty (60) days immediately prior to the date of filing of the application, which picture shall be two inches by two inches showing the head and shoulders of the applicant in a clear and distinguishing manner;
- (8) A statement as to whether or not the applicant has been convicted of a crime, misdemeanor, or violation of any municipal ordinance, or state statute the nature of the offense and the punishment or penalty assessed therefore;
- (9) A statement by a reputable physician, or Health Officer of the City of Ashley, dated not more than ten (10) days prior to submission of the application, certifying the applicant to be free of contagious, infectious, or communicable disease.

8.0304 Investigation and Issuance

- (1) Upon receipt of the application, the original shall be referred to the Chief of Police, who shall cause an investigation of the applicant's business and moral character to be made as is deemed necessary for the protection of public good.
- (2) If as a result of that investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Chief of Police shall endorse on the application his or her disapproval and the reasons for the same, and return the application the City Auditor, who shall notify the applicant that the application is disapproved and that no permit or license will be issued.
- (3) If as a result of the investigation, the character and business responsibility of the applicant are found to be satisfactory, the Chief of Police shall endorse on the application his or her approval, execute a permit addressed to the applicant for the carrying on of the business applied for and return said permit, along with the application to the City Auditor, who shall, upon payment of the prescribed license fee as set forth in this chapter, deliver to the applicant the permit and issue a license. The license shall contain the signature and seal of the issuing officer and shall show the name, address, and photograph of the licensee the amount of fee paid, the date of issuance and the length of time the same shall be operative, as well as the license number and other identifying description of any vehicle used in soliciting or canvassing. The City Auditor shall keep a permanent record of all licenses issued

8.0305 Bond

Every such applicant shall file with the City Auditor a surety bond, running to the city in the amount of \$1000.00, with surety acceptable to and approved by the City Attorney, conditioned that the applicant shall comply fully with all the provisions of the ordinances of the City of Ashley and the statutes of the State of North Dakota regulating and concerning the business of solicitor or canvasser and guarantying to any resident of the City of Ashley that all money paid as a down payment will be accounted for and applied according to the representation of the solicitor and further guaranteeing to any citizen the City of Ashley doing business with the solicitor or canvasser, that the property purchased will be delivered according to the representations of the solicitor or canvasser. Action on the bond may be brought in the name of the city to the use or benefit of the aggrieved person.

8.0306 Badges

The City Auditor shall issue to each licensee at the time of delivery of the license a badge which shall contain the words "Licensed Solicitor," the period for which the license is issued and number of license, in letters and figures easily discernible from a distance of ten feet. The badge shall, during the time such licensee is engaged in soliciting, be worn constantly by the licensee on the front of his or her outer garment in a way as to be conspicuous.

8.0307 Exhibition of License

Solicitors and canvassers are required to exhibit their licenses at the request of any person.

8.0308 Duty of Police to Enforce

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

8.0309 Records

The Chief of Police shall report to the City Auditor all convictions for violation of this chapter and the City Auditor shall maintain a record for each license issued and record the reports of violation therein.

8.0310 Revocation of License

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

8.0311 Appeal

Any person aggrieved by the action of the Chief of Police or the City Auditor in the denial of a permit or license as provided in section 8-03-04 of this chapter shall have the right of appeal to the City Council of the City of Ashley. That appeal shall be taken by filing with the Council, within fourteen (14) days after notice of the action complained of has been mailed to the person's last known address, a written statement setting forth fully the grounds for the appeal. The Council shall set a time and place for a hearing on the appeal and notice of the hearing shall be given to the appellant in the same manner as provided in section 8-03-10 of this chapter for notice of hearing on revocation. The decision and order of the Council on the appeal shall be final and conclusive.

8.0312 Expiration of License

All annual licenses issued under the provisions of this chapter shall expire on the following 31st day of December. Other than annual licenses shall expire on the date specified in the license.

8.0313 Fees

The fee required to be paid by solicitors or canvassers as herein defined for the procuring of a license shall be \$5.00 per day, \$25.00 per week, \$50.00 per month or \$100.00 per year, the license fee shall be paid to the City Auditor at the time of making the application.

CHAPTER 4 - Transient Merchants, Itinerant Merchants, and Itinerant Vendors

8.0401 License Required

It shall be unlawful for a transient merchant, itinerant merchant, or itinerant vendor as defined in section 8-04-02 of this chapter to engage in that business within the City of Ashley without first obtaining a license therefore in compliance with the provisions of this chapter.

8.0402 Definitions

For the purpose of this chapter a transient merchant, itinerant merchant, or itinerant vendor is defined as any person, firm, or corporation whether as owner, agent, consignee, or employee, not resident of the City of Ashley, who engages in a temporary business of selling and delivering goods, wares, and merchandise and, leases, uses, or occupies any building, structure, motor vehicle, tent, railroad boxcar, public room in hotels, motels, lodging houses, apartments, shops, or any street, alley, or other place within the city, for the exhibition and sale of those goods, wares, and merchandise, either privately or at public auction, provided that this definition shall not be construed to include any person, firm, or corporation who, while occupying a temporary location, does not sell from stock, but exhibits samples for the purpose of securing orders for future delivery only. The person, firm, or corporation so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant, or auctioneer, or by conducting a transient business in connection with, as a part of, or in the name of an local dealer, trader, merchant, or auctioneer.

8.0403 Application

Applicants for license under this chapter, whether a person, firm, or corporation, shall file a written sworn application signed by the applicant, if an individual, by all partners if a partnership, and by the president if a corporation, with the City Auditor, showing;

- (1) The name or names of the person or persons having the management or supervision of the applicant's business during the time that it is proposed that it will be carried on in the City of Ashley; the local address or addresses of the person or persons while engaged in the business; the permanent address or addresses of the person or persons; the capacity in which the person or persons will act (that is, whether as proprietor, agent, or otherwise); The name and address of the person, firm, or corporation for whose account the business will be carried on, if any; and if a corporation, under the laws of what state the same is incorporated.
- (2) The place or places in the City of Ashley where it is proposed to carry on the applicant's business, and the length of time during which it is proposed that said business shall be conducted.
- (3) The place or places, other than the permanent place of business of the applicant, where applicant within the six (6) months next preceding the date of said application conducted a transient business, stating the nature thereof and giving the post office and street address of any building or office in which the business was conducted.
- (4) A statement of the nature, character, and quality of the goods, wares, or merchandise to be sold or offered for sale by applicant in the City of Ashley, the invoice value and quality of the goods, wares, and merchandise, whether the same are proposed to be sold from stock in possession or from stock in possession and by sample; at auction, by direct sale, and by taking orders for future delivery; where the goods or property proposed to be sold are manufactured or produced and where the goods are placed or located and the application is filed.
- (5) A brief statement of the nature and character of the advertising done or proposed to be done in order to attract customers, and, if required by the City Auditor, copies of all the advertising whether by handbills, circular newspaper advertising, or otherwise, shall be attached to the application as exhibits thereto.
- (6) Whether or not the person or persons having the management or supervision of the

applicant's business have been convicted of a crime, misdemeanor, or the violation of any municipal ordinance, the nature of the offense and the punishment assessed therefore.

- (7) Credentials from the person, firm, or corporation for which the applicant proposes to do business, authorizing the applicant to act as that representative.
- (8) Any other reasonable information as to the identity or character of the person or persons having the management or supervision of applicant's business or the method or plan of doing business as the City Auditor may deem proper to fulfill the purpose of this chapter in the protection of the public good.

8.0404 Investigation and Issuance

Upon receipt of the application, the City Auditor shall cause an investigation of the person or person's business responsibility or moral character to be made as is deemed necessary to properly protect the public good. If, as a result of the investigation, the character and business reputation appear to be satisfactory, the City Auditor shall so certify in writing, and a license shall be issued by the City Auditor for the period requested upon payment of the fee and the filing of a bond as prescribed in this chapter. The City Auditor shall keep a full record of all licenses issued. The license shall contain the number of the license, the same is issued, the nature of the business authorized to be carried on, the amount of the license fee paid, the expiration date of the license, the place where the business may be carried on under the license, and the name or names of the person or persons authorized to carry on the same. No license shall be issued until the state license for a transient merchant is secured or held by the applicant, if the same be required.

8.0405 Bond

Before any license, as provided by this chapter, shall be issued for engaging in a transient or itinerant business as defined in section 8-04-02 of this chapter in the City of Ashley, the applicant shall file with the City Auditor a bond running to the City of Ashley in the sum of \$1,000.00 executed by the applicant, as principal, and a surety company authorized to do business in the State of North Dakota, as surety; said bond to be approved by the City Attorney, conditioned that the said applicant shall comply fully with all of the provisions of the ordinances of the City of Ashley and the statutes of the State of North Dakota, regulating and concerning the sale of goods, wares, and merchandise, and will pay all judgments rendered against the applicant for any violation of those ordinances or statutes, or any of them together with all judgments and costs that may be recovered against him or her by any person or persons for damage growing out of any misrepresentation or deception practiced on any person transacting business with the applicant, whether said misrepresentations or deceptions were made or practiced by the owners or by their servants, agents, or employees, either at the time of making the sale or through any advertisement of any character whatsoever, printed or circulated with reference to the goods, wares, and merchandise sold or any part thereof. Action on the bond may be brought in the name of the city for the use of the aggrieved person.

8.0406 Service of Process

Before any license as herein provided shall be issued for engaging in business as an itinerant merchant, as herein defined, in the City of Ashley, the applicant shall file with the City Auditor an instrument nominating and appointing the City Auditor, or the person performing the duties of that position, his or her true and lawful agent with full power and authority to acknowledge service of notice of process for and on behalf of the applicant in respect to any

matters connected with or arising out of the business transacted under the license and the bond given as required by section 8.0405, or for the performance of the conditions of the bond or for any breach thereof, which instrument shall also contain recitals to the effect that the applicant for the license consents and agrees that service of any notice or process may be made upon the agent, and when so made shall be taken and held to be as valid as if personally served upon the person or persons applying for the license under this chapter, according to the law of this or any other state, and waiving all claim or right of error by reason of acknowledgment of service or manner of service. Immediately upon service of process upon the City Auditor, as herein provided, the City Auditor shall send to the licensee at his or her last known address, by registered mail, a copy of said process.

8.0407 Exhibition of License

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

8.0408 Transfer

No license shall be transferred without written consent from the City Council as evidenced by an endorsement on the face of the license by the City Auditor showing to whom the license is transferred and the date of the transfer.

8.0409 Loud Noises and Speaking Devices

No licensee under this chapter, nor anyone in his or her behalf shall shout, make any outcry, blow a horn, ring a bell, or use any other sound device including any loud speaking radio or amplifying system upon any of the streets, alleys, parks or other public places of the city or upon any private premises in the city where sound of sufficient volume is emitted or produced there from capable of being plainly heard upon the streets, avenues, alleys or parks or other public places, for the purpose of attracting attention to any goods, wares, or merchandise which the licensee proposes to sell.

8.0410 Duty of Police to Enforce

It shall be the duty of the police officers of the City of Ashley to examine all places of business and persons in their respective territories subject to the provisions of this chapter, to determine if this chapter has been complied with and to enforce the provisions of this chapter against any person found to be violating the same.

8.0411 Record

The City Auditor shall deposit the record of the license number of each license issued hereunder with the Chief of Police; the Chief of Police shall report of the City Auditor any complaints against any person licensed under the provisions of this chapter and any convictions for violation of this chapter; and the City Auditor shall keep a record of all licenses and of the complaints.

8.0412 Revocation of License

- (1) The permits and licenses issued pursuant to this chapter may be revoked by the City Council, after notice and hearing, for any of the following causes.
 - (a) Any fraud, misrepresentation, or false statement made in contained in the application for license.
 - (b) Any fraud, misrepresentation, or false statement made in connection with the selling of goods, wares, or merchandise.

- (c) Any violation of this code.
 - (d) Conviction of the licensee of any felony or of a misdemeanor involving moral turpitude.
 - (e) Conducting the business licensed under this chapter in an unlawful manner or in a manner to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.
- (2) Notice of hearing for revocation of a license shall be given in writing setting forth specifically the grounds of the complaint and the time and place of the hearing. The notice shall be mailed, postage prepaid, to the licensee, at his or her last known address, at least five (5) days prior to the date set for the hearing.

8.0413 Appeal

Any person aggrieved by the decision of the City Auditor in regard to the denial of application for a license as provided for in Section 8.0404 or in connection with the revocation of a license as provided for in Section 8.0412, shall have the right to appeal to the City Council of the City of Ashley. The appeal shall be taken by filing with the Council within fourteen (14) days after notice of the decision by the City Auditor has been mailed to that person's last known address, a written statement setting forth the grounds for the appeal. The Council shall set the time and place for a hearing on the appeal and notice of the hearing shall be given to the person in the same manner as provided in section 8.0412 for notification of hearing on revocation. The order of the City Council on the appeal shall be final.

8.0414 Expiration of License

All annual licenses issued under the provisions of this chapter shall expire on the following 31st day of December. Other than annual licenses shall expire on the date specified in the license.

8.0415 Fees

The fee required to be paid by an itinerant merchant, transient merchant, or itinerant vendor as herein defined for the procuring of the license shall be \$25.00 per day, \$50.00 per week, \$100.00 per month, and the license fee shall be paid to the City Auditor at the time of making the application.

CHAPTER 5 - Peddlers

8.0501 Permit and License Required

It shall be unlawful for any person to engage in the business of peddler as defined in Section 8-05-02 within the City of Ashley without first obtaining a permit and license therefor as provided herein. No license shall be needed for the sale of products grown in the State of North Dakota.

8.0502 Definitions

- (1) The word, "person," as used herein shall include the singular and the plural and shall also mean and include any person, firm, or corporation, association, club, partnership, or society, or any other organization.
- (2) The word, "Peddler," as used herein shall include any person, not as resident of the City of Ashley, traveling by foot, wagon, automotive vehicle, or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying, or transporting goods, wares, merchandise, meats, fish,

vegetables, fruits, garden truck, dairy products, farm products and provisions, except when raised in the State of North Dakota, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle, railroad car, or other vehicle or conveyance, and further including the selling or offering to sell services of any kind or nature whether to be performed at the premises sold or at some other place, and further provided that one who solicits orders and as a separate transaction makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this chapter shall be deemed a peddler subject to the provisions of this chapter. The word, "peddler," shall include the words, "hawker" and "huckster."

8.0503 Application

Applicants for permit and license under this chapter must file with the City Auditor a sworn application in writing (in duplicate) on a form to be furnished by the City Auditor, which shall give the following information;

- (1) Name and description of the applicant.
- (2) The local and the permanent address of the applicant.
- (3) A brief description of the nature of the business and the goods to be sold and in case of products of farm or orchard, whether produced or grown by the applicant in the State of North Dakota.
- (4) If employed, the name and address of the employer, together with credentials establishing the exact relationship.
- (5) The length of time for which the right to do business is desired.
- (6) If a vehicle is to be used, a description of the same, together with license number or other means of identification.
- (7) A photograph of the applicant, taken within 60 days prior of the date of the filing of the application, which picture shall be two inches by two inches showing the head and shoulders of the applicant in a clear distinguishing manner.
- (8) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor, or violation of any municipal ordinance, the nature of the offense. A punishment or penalty assessed therefore.
- (9) Applicant shall file with the application a statement by a reputable physician, or the City Health Officer of the City of Ashley, dated not more than ten (10) days prior to submission of the application, certifying the applicant to be free of infectious, contagious, or communicable disease.

8.0504 Investigation and Issuance

- (1) Upon receipt of the application, the original shall be referred to the Chief of Police, who shall cause an investigation of the applicant's business and moral character to be made as is deemed necessary for the protection of the public.
- (2) If as a result of the investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Chief of Police shall endorse on the application disapproval and the reasons for the same, and shall return the application to the City Auditor, who shall notify the applicant that the application is disapproved and that no permit and license will be issued.
- (3) If as a result of the investigation, the character and business responsibility of the

applicant are found to be satisfactory, the Chief of Police shall endorse on the application approval, execute a permit addressed to the applicant for the carrying on of the business applied for and return the permit, along with the application to the City Auditor, who shall, upon payment of the fee prescribed by this chapter for the license, deliver the license to the applicant. The license shall contain the signature and seal of the issuing officer and shall show the name, address, and photograph of the licensee, the class of license issued and the kind of goods to be sold thereunder, the amount of fee paid, the date of issuance and the length of time the license shall be operative, as well as the license number and other identifying description of any vehicle used in peddling. The City Auditor shall keep a permanent record of all licenses issued.

8.0505 Transfer

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

8.0506 Loud Noises and Speaking Devices

No peddler, nor any person in his or her behalf, shall shout, make any outcry, blow a horn, ring a bell, or use any sound device, including any loud speaking radio or sound amplifying system upon any of the streets, alleys, parks, or other public places of the city or upon any private premises in the city where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, avenues, alleys, parks, or other public places, for the purpose of attracting attention to any goods, wares, or merchandise which the licensee proposes to sell.

8.0507 Use of Streets

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

8.0508 Exhibition of License

Peddlers are required to exhibit their licenses at the request of any person.

8.0509 Duty of Police to Enforce

It shall be the duty of any police officer of the City of Ashley to require any person seen peddling, and who is not known by the officer to be duly licensed, to produce the peddler's license and to enforce the provisions of this chapter against any person found to be violating the same.

8.0510 Records

The Chief of Police shall report to the City Auditor all convictions for violation of this chapter, and the City Auditor shall maintain a record for each license issued and record the reports of violation therein.

8.0511 Revocation of License

- (1) Permits and licenses issued under the provisions of this chapter may be revoked by the City Council of the City of Ashley after notice and hearing, for any of the following reasons;
 - (a) Fraud, misrepresentation, or false statement contained in the application for license.

- (b) Fraud, misrepresentation, or false statement made in the course of carrying on the business as peddler.
 - (c) Any violation of this Code.
 - (d) Conviction of any crime or misdemeanor involving moral turpitude.
 - (e) Conducting the business of peddling in an unlawful manner or in a manner to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.
- (2) Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. The notice shall be mailed, postage prepaid, to the licensee at his or her last known address at least five (5) days prior to the date set for hearing.

8.0512 Appeal

Any person aggrieved by the action of the Chief of Police or the City Auditor in the denial of an application for permit or license as provided in Section 8.0504 or in decision with reference to the revocation of a license as provided in Section 8.0511, shall have the right of appeal to the City Council of the City of Ashley. The appeal shall be taken by filing with Council, within fourteen (14) days after notice of the action complained of has been mailed to the person's last known address, a written statement setting forth fully the grounds for the appeal. The Council shall set a time and place for a hearing on the appeal and notice of the hearing shall be given to the appellant in the same manner as provided in Section 8.0511 for notice of hearing on revocation. The decision and order of the Council on the appeal shall be final and conclusive.

8.0513 Expiration of License

All annual licenses issued under the provisions of this chapter shall expire on the 31st day of December following issuance. Other than annual licenses shall expire in the date specified in the license.

8.0514 Fees

The fee required to be paid by peddlers as herein defined for the procuring of a license shall be \$5.00 per day, \$25.00 per week, or \$50.00 per month, and the license fee shall be paid to the City Auditor at the time of making the application.

CHAPTER 6 - Miscellaneous

8.0601 License Required for Popcorn Stand

It shall be unlawful for any person to run, conduct, or maintain a popcorn stand within the City of Ashley without first obtaining a license from the city; provided, however, that this section shall not apply to a popcorn machine located in a movie theater or school premises.

8.0602 Application for Popcorn Stand License

Upon application to the City Auditor, a license may be granted to any person for the running, maintaining, and conducting of a popcorn stand upon the payment to the City Auditor of the fee prescribed in this chapter.

8.0603 Fee

The fee for a popcorn stand licensed under the provisions of Section 8.0602 shall be \$10.00 annually, and said license shall not be transferable.

8.0604 Dealer License

- a) Any storage container which is placed in the City for resale requires the individual

selling the storage container to have a dealer's license prior to placement.

b) The maximum number of storage containers located on a dealer's lot at any one time shall be ten (10).

c) The cost of a dealer's license permit shall be \$150.00 per year which must be renewed annually and is non-refundable.

TITLE 9

FIRE PROTECTION AND PREVENTION

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- 9.0102 Selection of Fire Chief
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TITLE 9

FIRE PROTECTION AND PREVENTION

CHAPTER 1 - Organization and Regulations of the Fire Department

9.0101 Personnel of Fire Department

The Ashley Volunteer Fire Department shall consist of a Chief and such number of firemen as the City Council shall from time to time determine.

9.0102 Selection of Fire Chief

The selection of the Chief of the Ashley Volunteer Fire department shall be made as the City Council may determine.

9.0103 Auditor and Council to Receive Report of Fire Chief

The City Auditor at the first regular meeting of the City Council in January shall lay before the Council the report of the Fire Chief.

9.0104 Firemen to Comply With rules and Regulations

Firemen shall strictly comply with all rules and regulations of the Fire Department, and promptly and implicitly obey all orders given by the Fire Chief or Acting Fire Chief.

9.0105 Police Power of the Fire Department

All members of the Ashley Volunteer Fire Department shall have, while on active duty, the same powers as policemen on duty, and are authorized to arrest any person who shall interfere or attempt to interfere with, or retard or attempt to retard, or hinder any member of the Fire Department in the performance of their duty.

9.0106 Acceptance of Rewards

Any member of the Fire Department may, with the consent of the City Council, and not otherwise, receive and retain any present or reward tendered to them for meritorious service in the discharge of their duty.

9.0107 Police Force to Assist Fire Department

All or any members of the Police Department, when requested by the Fire Chief, shall report themselves to all fires and shall assist in extinguishing the fire, and protect property and preserve order and lend their aid and assistance in any useful manner under the direction of the official in command.

9.0108 Taking or Receiving Apparatus Prohibited

No person shall take, receive or attempt to receive or take from the possession and control of any member of the Fire Department any of the apparatus, tools, possessions, or belongings of the Fire Department, or of the City of Ashley under the control of the Fire Department, without written consent of the Fire Chief.

9.0109 Use of Intoxicating Liquor Prohibited

No person connected with the Fire Department shall use any intoxicating liquors or beer while on duty. No person, during a fire, shall bring on the ground any intoxicating liquors or beer, or have or furnish any alcoholic beverages to any fireman when on duty unless by order of the Fire Chief or of a licensed physician.

9.0110 Permission to Enter or Occupy rooms Used by Fire Department

No person shall occupy any rooms in any building which are used exclusively by the Fire Department, or enter those rooms or handle any apparatus used by the Fire Department without permission.

9.0111 Obstructing Firemen

Any person obstructing any fireman of the Ashley Volunteer Fire Department in the performance of their duty, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to the penalties as provided in this Code.

9.0112 Fire Chief May Order Bystanders to Assist at Fires

In case of necessity therefore the Fire Chief or Acting Fire Chief may, while actively engaged in the extinction of fires, call upon able bodied bystanders for assistance in the work of extinguishing those fires and a failure, or refusal to render assistance, when so requested, shall subject the person guilty of neglect or refusal to the penalties provided in this Code.

9.0113 Buildings May be Destroyed

In case of extreme emergency the Fire Chief, or Acting Fire Chief, may order the destruction of buildings or property to prevent the spread of fires.

9.0114 Injuring Fire Apparatus

It shall be unlawful for any person to injure or destroy any of the apparatus or equipment of the Fire Department and in any manner to injure, mar, destroy, or tamper with any part or portion of the fire alarm system of the city, including poles, wires, fire alarm boxes, sirens, and all appliances and appurtenances connected with the fire alarm system.

9.0115 False Alarm

It shall be unlawful for any person to turn in any false alarm or call of fire, and any person knowingly or negligently doing so shall be subject to the penalties provided in this Code.

9.0116 Department May Assist at Fires Outside of City Limits

The Ashley Volunteer Fire Department is hereby authorized to use its members and equipment to attend fires and render assistance to other municipalities within or without this state, or to private property, including farm buildings located outside the city limits, to an extent and for distances as the City Council and the Fire Chief shall determine from time to time.

CHAPTER 2 - Fire Prevention Restrictions

9.0201 Boundaries of Fire District No.1

Fire District No.1 shall include all that area within the City of Ashley included within the following boundaries, to-wit: Beginning at a point on the section lines between Section 36-130-70 and section 31-130-69 which is at the center of First Street Northwest, thence east along the center line of First Street Northwest to the center of Second Avenue Northwest, thence north along the center line of Second Avenue Northwest to a point due east of the boundary line between Lots 14 and 15 of Block 4, thence east along a line extended on either side of the boundary line between Lots 14 and 15 of Block 4 to the center of First Avenue Northwest, to the center of First Street Northwest, thence east along the center line of First Street Northwest and First Street Northeast to the center of First Avenue Northeast, thence south along the center line of First Avenue Northeast to the center of Main Street, thence east along the center line of Main Street, thence east along the center line of Main Street to the center of Second Avenue Southeast, thence south along the center line of Second Avenue Southeast to a point due west of the center

of the alley running east-west through Block 15, thence west along a line extended on either side of the center line of the alley running east-west through Block 15 to the center of First Avenue Southwest, thence south along the center line of First Avenue Southwest to the center of First Street Southwest, thence west along the center line of First Street Southwest to the section line between Section 36-130-70 and Section 31-130-69, thence north along the section line to the point of beginning.

9.0202 Restrictions on Buildings Within Fire district No.1

Unless expressly allowed by the City Council, no building shall be erected or placed within the limits of Fire District No.1 unless the roof, siding, and other exposed portions of that building are constructed of a non-combustible substance.

9.0203 Storage of Flammable Liquids

The storage of flammable liquids, including but not limited to, gasoline, kerosene, diesel fuel, fuel oil, any hydrocarbon, whether gaseous or liquid, or whether stored under pressure or not, which shall be kept in containers exceeding three hundred (300) gallons in capacity, shall be permitted only under permit from the City Council.

CHAPTER 3 - Fires in Public Places

9.0301 Careless Smoking

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

9.0302 Notice to be Posted

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

9.0303 Fire to be Reported Immediately

Every fire of any kind, and from whatever source, occurring in or about any building in the City of Ashley, shall be reported immediately to the Fire Department.

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COLLECTION AND DISPOSAL OF REFUSE

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TITLE 10

COLLECTION AND DISPOSAL OF REFUSE

CHAPTER 1 - Garbage and Sanitation

10.0101 Definitions

For the purposes of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein:

- (1) "Ashes" is the residue from the burning of wood, coal, coke or other combustible material.
- (2) "Garbage" is perishable animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.
- (3) "Refuse" is all perishable and nonperishable solid waste (except body wastes), including garbage, rubbish, ashes, street cleaning, dead animals, abandoned automobiles, and solid market and industrial wastes.
- (4) "Rubbish" is nonperishable solid waste (excluding ashes), consisting of both combustible and non-combustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.

10.0102 Collection to be Supervised by Street Commissioner

All garbage, refuse, rubbish, and ashes accumulated in the city shall be collected, conveyed and disposed of under the supervision of the Street Commissioner, who shall prepare and publish rules and regulations as are necessary in connection with the preparation, handling and disposal of garbage, refuse, rubbish and ashes from any premises within the city. The Street Commissioner may amend or alter the rules and regulations as may be necessary.

10.0103 Collection of Garbage and Trash

Any person possessing a valid City Dump permit may collect from the city all garbage, trash, refuse and waste accumulating on private or public property and shall haul the same to the garbage disposal area to be disposed of in compliance with health and fire prevention laws of the State of North Dakota.

Garbage, rubbish, trash and waste shall be picked up and hauled away as often as necessary as required by the Street Commissioner.

This chapter shall not prohibit property owners from hauling their own garbage and other waste and disposing of the same in accordance with this Code and the laws of the State of North Dakota.

10.0104 Scattering of Rubbish or Garbage a Nuisance

It shall be unlawful for any person to permit garbage, rubbish, refuse, or ashes to be scattered over or about any premises owned, managed or under the control of that person. None of that material shall be thrown in or upon any street, alley or any other public place of the city, nor shall any owner or occupant of any premises within the city suffer or permit any of that material to be or remain in or upon any street, alley or other public place of said city adjacent to the premises owned or occupied by that owner.

10.0105 Depositing Garbage in City Prohibited, Exception

No person shall throw, place or deposit any garbage, refuse, rubbish or ashes in any street, alley, public or private property within the city except as permitted by this chapter.

10.0106 Leaving, Depositing Dead Animals, Manure or Refuse Prohibited

No person shall leave, deposit or maintain at any place within the city, or within one-half mile of the city limits, any dead animal, manure or refuse of any description.

10.0107 Burning, Material Causing Offensive Odor a Nuisance

The burning within the city limits of any material which throws off an offensive odor or which causes a dense smoke from which soot is deposited in the air adjacent to the place of burning is hereby declared to be a nuisance.

10.0108 Causing Odor, Smoke Prohibited

It shall be unlawful within the city to burn any substances which give off an offensive odor from the combustion thereof, or to burn any substance which produces a dense smoke and which substance and the burning thereof and the smoke therefrom precipitates soot in large quantities in the air adjacent to the place of burning.

10.0109 Bonfires and Rubbish Fires Prohibited During Certain Hours

A person shall burn or cause to be burned any bonfire or rubbish fire within the city limits at any time as long as the fire is contained in an enclosed fire pit and may not be left unattended. This section shall not apply to fires used exclusively for the preparation of food for human consumption.

CHAPTER 1.1 - Collection and Disposal of Refuse

10.011.01 Utility Established

There is herewith created a Public Utility of the City of Ashley to be known as Waste Collection and Disposal Utility. That Utility shall be responsible to carry out the provisions of this chapter and shall supervise and arrange for a refuse collection system, disposal grounds, and landfill disposal system. The utility shall have the power and authority to purchase or lease in the name of the City of Ashley such lands as are necessary for disposal of refuse and to purchase or lease the equipment as may be necessary.

10.011.02 Refuse Defined

The Term "refuse", as used in this chapter is defined to be all manner of kitchen and household garbage and rubbish and offal including both animal and vegetable matter, metal, plastic paper and glass food containers from which food has been removed, waste paper, and all other waste material and things produced or accumulated in the operation of kitchens or places where food is served or sold, produced, or consumed, including all waste matter from homes, stores or places of business of any nature, and including rubbish, lumber, concrete, leaves or other materials that constitute a menace to public health or create a fire hazard or an unsightly condition.

10.011.03 Billing

The City Auditor of the City of Ashley is hereby authorized to add the refuse disposal charges provided herein to its charge for water service and submit the same bill in connection with the water service bills and the City Auditor shall be authorized to discontinue services if the entire bill shall not be paid. In all places where water services are provided, the monthly charges set forth shall be added to and collected as a part of the water bill. In all places where water

service is not provided the charge above set forth shall be paid to the City Auditor upon monthly bills from the city.

10.011.04 Refuse pick-up

No person within the City of Ashley shall be permitted to refuse to accept refuse service and the failure to receive service shall not exempt anyone from payment of charges herein before set forth save and except only those persons residing in areas in which no refuse collection service is provided, and in those areas no charges shall be made.

10.011.05 Refuse Containers

Refuse containers shall be made of metal or plastic, be water tight, have close-fitting covers, and adequate handles to facilitate collection. The containers shall be not less than 15 gallons nor more than 32 gallons in capacity.

10.011.06 Storage of Refuse

Each property owner or occupant of any building or premises located within the City of Ashley used for business purposes, shall store all refuse in covered metal containers on a concrete platform or elevated rack at least 18 inches above ground level. In case of residential property, refuse cans shall be kept at or near the rear door of the building using the same or at the rear of the property if there is an alley, and shall be placed on racks or stands not less then 16 inches and shall be so enclosed to prevent access thereto by dogs, rats, flies and varmints. In either event, cans shall be readily accessible to the refuse collectors at all times.

10.011.07 Throwing of refuse in streets etc.

It shall be unlawful for any person, firm, or corporation to throw, place, or deposit, or permit to be thrown, placed, or deposited, any refuse as defined in Section 10-01.1-02 hereof, upon a street, alley, public way or public place, or on any private lot, piece or parcel of ground within the corporate limits of the City of Ashley except in the place hereinafter provided.

10.011.08 Hauling and Disposal of Refuse

No refuse shall be hauled on the streets of the City of Ashley unless the same is contained in metal or plastic receptacles as hereinbefore described, with covers tightly fitted thereon, or unless hauled in trucks, trailers, or vehicles which are covered in a manner as to prevent the scattering of refuse upon the streets. All refuse shall be disposed of in the place provided by the City of Ashley for that purpose and no refuse as herein defined shall be disposed if at any other place.

10.011.09 Burning of Refuse Prohibited

It shall be unlawful to burn refuse as defined in Section 10-01.1-02 herein, within the City of Ashley.

10.011.10 Private Disposal of Refuse

Any person other than a licensed refuse collector who shall wish to dispose of refuse at the City Disposal Grounds shall make the deposit at the time to be designated by the City Council.

10.011.11 License Required

No person shall collect and haul refuse for hire without first having secured a license to do so.

10.011.12 Procedure in Obtaining a License

Any person desiring to collect or haul refuse for hire shall make application for a license to the City of Ashley. The application shall set forth:

1. The name and address of the applicant.
2. List of vehicles and equipment which will be used.
3. The portion of the City in which collections are to be made.
4. A statement as to the frequency of refuse collections.
5. A schedule of fees to be charged.

No license shall be granted unless the application shows that the collector will make a collection at least once each week. That the equipment consists of sanitary tanks which will not leak or spill refuse. The license fee shall be \$15.00 per annum.

10.011.13 Penalties

Any person, firm, or corporation violating any of the terms or provisions of this ordinance shall be punished upon conviction thereof, by a fine of not more than \$100.00 imprisonment for not less than 5 days nor more than 30 days or both the fine and imprisonment.

10.011.14 Rates

Rates shall be based on weekly refuse pick-ups from residential areas and as needed, but at least weekly, from business and commercial areas. The residential rate shall be not less than \$1.50 per month per family occupying the residence or lot area. The business and commercial rates shall be adjusted according to need and number of pick-ups needed.

10.011.15 Effective Date

This ordinance shall be in full force and take effect immediately upon its final passage and the publication of its title and penalty clause.

CHAPTER 2 - City Dump Grounds

10.0201 City Dump Grounds Open to Residents

The premises now or hereafter provided by the City of Ashley as a city dump grounds, shall be open and accessible for the use of residents of the City of Ashley under the terms of this chapter.

10.0202 Regulations Governing City Dump Grounds

The person placed in charge of the City dump grounds shall be, and is hereby vested with full and complete authority to require those offering to dump materials upon the dump grounds, to place the same at the location on said grounds as directed, and in any case of any carcasses of dead animals, or any foul, odorous, offensive, nauseous, or decomposed matter, or matter which if exposed to air would become foul, offensive, nauseous, unwholesome, or decomposed, the person in charge of the dump grounds shall have the authority to require that the person offering to place the same upon the city dump grounds, shall bury and cover, burn, or otherwise dispose of the same at the expense of the person offering to leave that matter upon the dump grounds, all subject, however, to the control and supervision of the City Council.

The dumping of any refuse or other matter upon the dump grounds at any place, or in any manner other than as herein permitted and in accordance with the orders of the city employee in charge of the dump grounds, shall constitute a violation of this section.

10.0203 Permit Holders Only Permitted on City Dump Grounds

Only those persons possessing valid city dump grounds permits shall be allowed to dump any material upon the city dump grounds.

10.0204 City Dump Grounds Permit

A city dump grounds permit may be obtained by making application to the City Auditor.

Permits shall be issued to residents of the City of Ashley only, and shall be on an annual basis. All permits shall expire on December 31st of the year of issue, and the fee for the permit shall be \$15.00.

CHAPTER 3 - Promotion of Health, Suppression of Disease, Eradication of Rats

10.0301 Definitions

Terms used in this chapter, unless the context otherwise plainly requires, shall mean:

- (1) **Business Building:** Any structure, either public or private, that is adapted for occupancy for transaction of business, for rendering of professional service, for amusement, for the display, sale or storage of goods, wares or merchandise, or for the performance of work or labor, including, but not limited in its application to, hotels, motels, rooming houses, office buildings, public buildings, stores, theaters, markets, restaurants, grain elevators, abattoirs, warehouses, work shops, factories, and all outbuildings, sheds, barns, and other structures on premises used for business purposes.
- (2) **Rat-proofing:** A form of construction to prevent the ingress into business buildings, from the exterior or from one building to another. It consists essentially of the closing, with material impervious to rat gnawing of all openings in the exterior walls, ground or first floors, basements, and foundations that may be reached by rats from the ground by climbing or by burrowing.
- (3) **Rat Harborage:** Any conditions which provides shelter or protection for rats, thus favoring their multiplication and continuous existence in, under, or outside of a structure of any kind.
- (4) **Health Officer:** The City Health Officer or a duly authorized representative.
- (5) **Owner:** The actual owner of the business building, either individual, partnership or corporation, the agent of the owner in charge of the building, the person having custody of the building, and the person to whom any rental upon the building is paid. In the case of business buildings leased under agreement that the lessee is responsible for maintenance and repairs, the lessee will in those cases also be considered as the "owner" for the purposes of this chapter.
- (6) **Occupant:** The individual or partnership who, or the corporation that, has the deed occupies any business building, or a part or portion thereof, whether the actual owner, tenant or sub-tenant. In the case of vacant buildings, the owner, agent, or other person having custody of the building, shall have the responsibilities of an "occupant" of the building.

10.0302 Business Buildings to be Freed of Rats

It is hereby provided and required that all business buildings in the City of Ashley shall be rat-proofed, freed of rats, and maintained in a rat-proof and rat free condition under the direction and supervision of the City Health Officer.

10.0303 On Notice From Health Officer Improvements Must be Made

Upon receipt of written notice and/or order from the Health Officer, the owner of any building specified therein shall take immediate steps for rat-proofing the building and unless the work and improvement required for the rat-proofing have been completed by the owner of the building in the time specified in the written notice or order, or within the time to which a written extension may have been granted by the Health Officer, then the owner shall be deemed to have

violated a provision of this chapter.

10.0304 Improvements to be Made Within Five Days

Whenever the Health Officer notifies the occupant of a business building in writing that there is evidence of rat infestation of the building, the occupant shall immediately institute rat eradication measures and shall continuously maintain those measures in a satisfactory manner until the premises are declared by the Health Officer to be free of rat infestation. Unless measures are undertaken within five (5) days after receipt of notice, it shall be construed a violation of the provisions of this chapter and the occupant shall be held responsible therefore.

10.0305 Owners to Keep Premises in Rat-Proof Condition

The owners of all rat-proofed business buildings are required to maintain the premises in a rat-proof condition and to repair all breaks and leaks that may occur in the rat-proofing.

10.0306 Health Officer to Make Inspections

The Health Officer is empowered to make unannounced inspections at reasonable hours of both the interior and exterior of business buildings within the City of Ashley as in his or her opinion may be necessary to determine whether there has been a full compliance with this chapter, and to require a full compliance with this chapter. If, at the time of any inspection, the Health Officer finds evidence of rat infestation, and/or the existence of breaks or leaks in the rat-proofing, or new openings through which rats may again enter the building, the Health Officer shall serve upon the owner or occupant of the building a notice and/or order to abate the conditions so found.

10.0307 Health Officer May Require Owner to Install New Floors

Whenever conditions inside or under business buildings provide extensive harborage for rats that the Health Officer deems it necessary to eliminate the harborage he or she may require the owner to install suitable cement floors in basements, or to replace wooden first floors or ground floors, or require the owner to correct other interior rat harborage as may be necessary to facilitate the eradication of rats in a reasonable length of time.

10.0308 Health Officer Has Power to Destroy Buildings

Whenever conditions inside or under unoccupied business buildings provide extensive harborage for rats, in the opinion of the Health Officer, he or she is empowered to require compliance with section 10.0307, and, in the event that the conditions are not corrected in a period of sixty (60) days, or within the time to which a written extension may have been granted by the Health Officer, the Health Officer is empowered to institute condemnation and destruction proceedings.

10.0309 Unlawful to Remove Rat-proofing

It shall be unlawful for the occupant, owner, contractor, public utility company plumber, or any other person to remove the rat-proofing from any business building for any purpose and failure to promptly restore the same in a satisfactory condition; and, in like manner, it shall be unlawful for any such person to make any new openings that are not sealed or closed against the entrance of rats.

10.0310 Repaired or Remodeled Buildings Must be Rat-proofed

It is unlawful for any person to construct, repair, or remodel any building, dwelling, stable or market, or other structure whatsoever, unless the construction, repair, remodeling or installation shall render the building or other structure rat-proof in accordance with the regulations prescribed herein and hereunder. The provisions of this section apply only to construction, repairs, remodeling or installation as affect the rat-proof condition of any building

or other structure.

10.0311 Buildings in Which Food is Stored or Sold Must be Rat-proof

It is unlawful for any person to occupy any new or existing business building wherein food for human consumption is to be stored, kept, handled, sold, held or offered for sale without complying with section 10-03-02.

10.0312 Animal Feed to be kept in Rat-proof Building

All food and feed kept within the city for feeding poultry, cattle, swine, horses, or other animals, shall be kept and stored in rat-free and rat-proof containers, compartments or rooms, unless kept in a rat-proof building.

10.0313 Wastes to be Stored in Covered Metal or Plastic Containers For Collection

That everywhere within the City of Ashley, all garbage or other refuse consisting of waste, animal or vegetable matter upon which rats may feed, and all small dead animals, shall be placed and stored, until collected for disposal, in covered metal or plastic containers, as approved by the Health Officer. The Health Officer is hereby authorized to require, where deemed necessary, that all garbage cans be so placed or anchored to prevent the cans from being overturned, and it is hereby declared to be a violation of this chapter for any person to dump or place on any premises any dead animals, or any waste, vegetable or animal matter of any kind.

10.0314 Unlawful to Collect Trash in Building Which May Provide Food for Rats

It shall be unlawful for any person to place leave, dump, or permit the accumulation of any garbage, rubbish or trash in any building or upon any premises in the City of Ashley so that the same shall or may provide food or harborage for rats.

10.0315 Purpose of this Chapter

This chapter is necessary and expedient for the promotion of the general welfare, the suppression of disease and the protection of the public health.

CHAPTER 4 - Storing and Skinning of Animals

10.0401 Regulation Provisions

All places within the City of Ashley where green or salted hides, raw pelts, furs or fur bearing animals are stored or kept, or purchased and handled, shall, in the interest of the public welfare, conform to the provisions of this chapter regulating the receipt, storage and disposal of hides, furs, or carcasses.

10.0402 Proper Facilities

It shall be unlawful for any person to maintain and operate any place or establishment wherein green or salted hides or furs are received and handled unless the establishment shall have adequate water and sewage disposal for the proper treatment of hides.

10.0403 Skunk Hides to be Kept in Air-tight Containers

It shall be unlawful to remove the hide or pelt of skunks within the city limits, and all skunk carcasses received by any hide and fur business place shall be placed in air-tight containers, and shall be removed from the said City of Ashley each day and shall not remain within the city limits overnight.

10.0404 Skinning and Storing of Carcasses in City a Nuisance

The skinning of the carcasses of dead fur bearing animals, except rabbits, within the City of Ashley, is hereby declared to be a nuisance.

10.0405 Hides Deodorized: Fly and Insect Control

It shall be unlawful to remove any hide from any animal or to prepare hides for shipment unless fly and insect control measures are taken during the removal, and unless deodorizing measures are taken during the removal.

10.0406 Rat Control Measure

It shall be unlawful to operate a business place unless an effective rat control program upon the premises is maintained. A certificate shall be obtained from the City Health Officer annually and filed with the City Auditor, which certificate shall state that there are no rats upon these premises, and that effective rat prevention methods are being carried out on those premises by the business place.

10.0407 Carcasses and Skins to be Removed from the City Limits Daily

It shall be unlawful to keep or store any carcass from skinned animals within the City of Ashley, and any carcass so skinned shall be removed from the city limits each day.

10.0408 Storing of Bones

It shall be unlawful to store the bones of animals at any place within the city limits during the months of April to October, both months inclusive, and during those months any bones accumulating in places of business shall be removed from the city limits each day.

CHAPTER 5 - Sanitary Disposal of Human Excreta

10.0501 Privies Unlawful: Exception

It shall be unlawful to maintain or use within the City of Ashley any residence, place of business or other building or place where persons reside, congregate, or are employed which is not provided with means for the disposal of human excreta, either by a flush toilet connected with a sewerage system approved by the City Health officer and the State Department of Health, or by a privy which meets the requirements of construction and maintenance as provided in this chapter.

10.0502 Connections Required to Sewer and Water

- (1) Every building, hereafter erected or placed, where persons reside, congregate, or are employed which abuts a street, or alley in which there is a public sanitary sewer, or which is within two hundred feet (200') of a public sanitary sewer, shall be connected to the sewer system, and with a separate connection for each house or building. This shall also apply to water connections.
- (2) No residence or establishment connected to the city sewerage system shall be allowed to build and maintain a privy or any description; provided that this does not apply where special permission is obtained from the City Health Officer.
- (3) Each connection and each fixture emptying through the connection shall be installed in the manner prescribed by the statutes of the State of North Dakota.
- (4) Buildings which are not habitable, as determined by the Building Inspector, shall not be connected to the city water and sewerage systems.
- (5) All buildings which are "dangerous buildings" as defined in section 13-02-01 of this code are hereby ordained to be not habitable.
- (6) A duplicate list of all residential structures, or structures used for residence where the City Health Officer shall require installation of sewer and water for health, sanitation and general safety, shall be transmitted by the City Health Officer to the Building Inspector.

10.0503 Construction of Permissible Private Privies

(1) Private Sewer System.

Upon permit obtained from the City Council, any residence, place of business, or other building where there is installed a water-flush system of excreta disposal which is not connected to a public sewer system approved by the City Health Officer and the State Department of Health, and where the customary users do not exceed ten (10) in number, there shall also be established or installed a private sewage disposal plant, said disposal plant to consist of a septic tank and a system of underground drains for the disposal of the tank effluent.

Said tank and drains shall be so constructed to meet the requirements of construction and maintenance hereinafter described and prescribed by the State Department of Health.

(a) Septic Tanks. The sizes of septic tanks shall be as follows:

Minimum size-----65 cu. ft.

Serving 8 persons-----70 cu. ft.

Serving 10 persons-----80 cu. ft.

Septic tanks shall have a covered manhole of sufficient size to allow cleaning of the tank.

(b) Drains. Sufficient open-jointed drains shall be provided and the construction shall be done so that sewage shall at no time flow over the top of the ground. Thirty (30) feet of drain per person shall be recognized as a minimum.

(c) Trenches. Drain-line trenches shall be two (2) feet in width and at least two (2) feet in depth. The drain lines shall be laid on a six (6) inch bed of crushed stone or clean gravel covering the full width of the trench and mounded up over the top of the tile. The back filling of the trench should provide an earth covering of twelve (12) inches for the tile at all points. Location of the septic tank and drainage line shall be so located that no drinking water supply shall be subject to contamination there from.

At any residence, place of business, or sister building where there is installed a water-flush system of excreta disposal which is not connected to a public sewer system, approved by the State Department of Health, and where the customary users exceed ten (10) in number, this shall be considered as a special case and must be approved by the City Health Officer before installation.

Each fixture connected to any private sewage disposal plant, and all piping and appurtenances thereto, shall be installed as prescribed by the statutes of the State of North Dakota.

(2) Pit Privy. Where at any time there shall be established or installed a pit privy, said pit privy shall be constructed in accordance with the plans, specifications and regulations of the City Health Officer.

10.0504 Repair of Defects in Privies

Should and defect occur in the privy which would cause it in any way to fail to meet the requirements as provided in this chapter, the defect shall be immediately corrected by the owner or agent of the premises on which the defect has occurred, unless the defect shall be caused by neglect, destructiveness or carelessness on the part of the occupant of the premises on which the defect has occurred, or through his agent, in which case the defect shall be immediately repaired

or corrected by the occupant, or the agent of the occupant, of the premises on which the defect has occurred.

10.0505 Cleanliness of Privies

All privy buildings shall be kept in a clean condition at all times; the owner shall be responsible for the proper maintenance and care of all privy buildings. In case the owner does not occupy the property, the responsibility for proper maintenance shall be with the lessee or occupant.

10.0506 When Privy or Private Sewer Declared a Nuisance

Any privy or private sewer existing or being maintained which does not conform to the requirements of this chapter shall be, and is hereby declared a nuisance, dangerous, and a menace to the public health, and the City of Ashley, North Dakota, shall have the power and the authority to abate any nuisance in accordance with law.

10.0507 Enforcement by City Health Officer

It shall be the duty of the City Health Officer, or the duly authorized representative, to enforce the provisions of this chapter, and in the performance of that duty the City Health Officer, or the duly authorized representative, is hereby authorized to enter, at any reasonable hour, any premises as may be necessary in the enforcement of this chapter.

CHAPTER 6 - Parking and Locating of Trailers

10.0601 Definitions

Whenever used in this chapter, unless a different meaning appears from the context:

- (1) An "automobile trailer," "trailer coach," "house trailer," "mobile home," or "trailer" means any vehicle or structure so designed and constructed in a manner to permit occupancy thereof as living quarters for one or more persons or the conduct of any business or profession, occupation or trade (or use as a selling or advertising device) and so designed that it is or may be mounted on wheels and used as a conveyance on highways or city streets, propelled or drawn by its own or other motive power excepting a device used exclusively upon stationary rails or tracks.
- (2) A "trailer camp" means any park, trailer park, trailer court, court, camp, site, lot, parcel or tract of land designed, maintained or intended for the purpose of supplying a location or accommodations for any trailer coach or trailer coaches and upon which any trailer coach or trailer coaches are parked and shall include all buildings used or intended for use as part of the equipment thereof whether a charge is made for the use of the trailer camp and its facilities or not. "Trailer camp" shall not include automobile or trailer sales lots on which unoccupied trailers are parked for purposes of inspection and sale.

10.0602 Administration

The administration of this chapter shall be under the supervision of the Board of Adjustment, as established in Title 17 of this Code, which Board of Adjustment is known as the Zoning Board, and the Board of Adjustment shall have supervision and jurisdiction over the enforcement of this chapter in the same manner as provided in Title 17. The Board of Adjustment or its duly authorized representatives shall have the right and are hereby empowered to enter upon any premises on which any automobile trailers or cabins are located or about to be

located and inspect the same and all accommodations connected therewith at any reasonable time. The Board of Adjustment is further empowered to issue orders granting, renewing and revoking permits as are provided for, in accordance with the provisions of this chapter.

10.0603 Location Outside Camps

- (1) After the effective date of this chapter, it shall be unlawful, within the limits of the City of Ashley, for any person to park any trailer on any street, alley or highway or other public place, or on any tract of land owned by any person, occupied or unoccupied, with the City of Ashley, without approval of the City Council.
- (2) Emergency or temporary stopping of parking is permitted on any street, alley or public way for not longer than one hour, subject to any other and further prohibitions, regulations, or limitations imposed by the traffic and parking regulations or ordinances for that street, alley or public way.
- (3) No person shall park or occupy any trailer on the premises of any occupied dwelling or on any lot which is not a part of the premises of any occupied dwelling either of which is situated outside any approved trailer camp except, the parking of only one unoccupied trailer in an accessory private garage building, or in a rear yard in any district, is permitted provided no living quarters shall be maintained or any business practiced in said trailer while that trailer is parked or stored; provided further that the use of trailers for display merchandise only by any person shall not be considered business or in any manner a violation of the provisions of this chapter.

10.0604 License For Trailer Camp

- (1) It shall be unlawful for any person to establish, operate, or maintain, or permit to be established, operated, or maintained upon any property owned or controlled by that person, a trailer camp within the limits of the City of Ashley, without having first secured a license therefore and for each of them from the City of Ashley granted and existing in compliance with the provisions of this chapter. All licenses shall expire on the 31st day of December of each year, but may be renewed under the provisions of this chapter for additional periods of one year.
- (2) The application for a license or the renewal thereof shall be filed with the City Auditor and shall be accompanied by license fees as prescribed by the City Auditor. The application for a license or a renewal thereof shall be made on the forms furnished by the City Auditor and shall include the name and address of the owner in fee of the tract (if the fee is vested in some person other than the applicant, a duly verified statement by that person, that the applicant is authorized to construct or maintain the trailer camp and make the application), and the legal description of the premises upon which the trailer camp is or will be located as will readily identify and definitely locate the premises. The application, except in the case of renewal, shall be accompanied by two copies of the camp plan showing the following, either existing or as proposed:
 - (a) The extent and area used for camp purposes.
 - (b) Roadways and driveways.
 - (c) Location of sites or units for trailer coaches.
 - (d) Location and number of sanitary conveniences, including toilets, washrooms, laundries and utility rooms to be used by occupants.
 - (e) Method and plan of sewage disposal.
 - (f) Method and plan of garbage removal.

- (g) Plan for water supply.
- (h) Plan for electrical lighting of units.
- (3) Before a license may be issued, there must be a favorable recommendation by a majority of the Board of Adjustment of the City of Ashley, and the premises must be inspected and approved by the City Building Inspector as complying with all of the provisions of this chapter and all other applicable ordinances of the City of Ashley.
- (4) Licenses issued under the terms of this chapter convey no right to erect any building, to do any plumbing work or to do any electrical work.

10.0605 Zoning of Trailer Camps

- (1) No trailer camp shall be located in any primary fire zone or in any other zone other than a business or commercial zone, as defined or as may be hereafter defined by Title 17 of this Code.
- (2) The Board of Adjustment may issue a license for the location of a trailer camp in any district in which licenses are herein prohibited after a public hearing, if upon such hearing said Board finds that denial of the hearing the Board finds that denial of the license will cause unnecessary hardship on the applicant, and finds in addition that the owners of all property within 200 yards of the proposed camp will not suffer unnecessary hardship by reason of the operation of the camp at the proposed location. Notice of the public hearing shall be given by publication once at least one week prior to the date set for the hearing.
- (3) No trailer camp shall be located within the limits of the City of Ashley, unless city water and sewer connections and fire protection facilities are available.
- (4) No occupied trailer or other building shall be located within the city limits of the City of Ashley, within the recognized set back line of the zoning district in which the trailer is located, nor less than ten (10) feet from any other building or vehicle or five (5) feet from the boundary line of the tract on which located.

10.0606 Camp Plan

- (1) Every trailer camp shall be located on a well drained area, and the premises shall be properly graded to prevent the accumulation of storm or other waters.
- (2) Units shall be clearly designated and the camp so arranged that all units shall face or abut on a driveway of not less than sixteen (16) feet in width, giving easy access from all units to a public street. The driveway shall be maintained in good condition, having natural drainage into a city street, be well lighted at night, and shall not be obstructed.
- (3) Every trailer unit shall be furnished with an electric service outlet. The outlet shall be equipped with an externally operated switch or fuse of not less than 30 ampere capacity and a heavy-duty outlet receptacle.

10.0607 Waste and Garbage Disposal

- (1) All waste from showers, toilets, laundries, faucets and lavatories shall be wasted into a sewer system extended from and connected with the city sewer system.
- (2) All sanitary facilities in any trailer which facilities are not connected with the city sewer system by means of pipe connections shall be sealed and their use is hereby declared unlawful.
- (3) Each faucet site shall be equipped with facilities for drainage of waste water into the sewer. In no case shall any waste water be thrown or discharged upon the surface of

the ground or disposed of by means other than as herein provided.
(4) Every unit shall be provided with a substantial fly-tight metal or plastic garbage depository.

10.0608 Revocation and Suspension

The Board of Adjustment is hereby authorized to revoke any license issued pursuant to the provisions of this chapter if after due investigation it determines that the holder thereof has violated any of the provisions of this chapter or that or is a nuisance.

10.0609 Hearing on Granting, Denial, Renewal, or Revocation of License

Any person aggrieved by an order granting, denying, renewing or revoking a license under this chapter may file a written request for a hearing before the City Council within ten (10) days after the issuance of the order, and the Council shall thereupon give notice of a public hearing to be held not less than seven (7) days after publication of notice of the hearing. The Council may also give notice of the hearing to other persons directly interested in the order in question by personal service of the notice, service to be made at least seven (7) days prior to the hearing. At the hearing the Council shall determine whether the granting, denial, renewal, or revocation of the license was in accordance with the provisions of this chapter and shall issue an order to carry out its findings and conclusions. The City Council at those hearings shall have the power to permit, in appropriate cases and subject to appropriate conditions and safeguards in harmony with the general public and intent of this chapter, the location and occupancy of a trailer in any location and for any purpose which, in the opinion of the City Council is reasonably necessary and does not violate the spirit of this chapter and where a literal enforcement of the provisions of this chapter would result in unnecessary hardship.

10.0610 Court Review

Any order granting, denying, renewing, or revoking any license under the provisions of this chapter may be appealed to the District Court in the manner provided by law.

TITLE 11

ANIMALS AND FOWL

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- 11.0102 Dog License Required
- 11.0103 Dog License Fees
- 11.0104 Dog License to be Displayed on Collar
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TITLE 11

ANIMALS AND FOWL

CHAPTER 1 – Dogs

11.0101 Definitions

As used in this chapter, unless the context requires a different meaning, the following terms shall be defined:

- (1) "Dog" shall be intended to mean both male and female.
- (2) "Owner" shall be intended to mean any person owning, keeping, or harboring a dog.
- (3) "At Large" shall be intended to mean off the premises of the owner and not under the control of the owner or member of his or her immediate family either by leash, cord, chain, or otherwise.

11.0102 Dog License Required

It shall be unlawful for any person to keep, own, or harbor within the City of Ashley more than four (4) male or female dogs and/or four (4) cats over the age of four months and owner must obtain a license therefore and comply with the provisions of this chapter without regard to whether the dog(s) or cat(s) is permitted to run at large or whether restrained or confined upon the premises of the owner of the dog(s). No license or renewal of a license shall be issued for any dog over four months of age unless a certificate signed by a qualified veterinarian is filed with the application, showing that the animal described in the application has been inoculated against rabies within two years of the application if the vaccine used was phenolized vaccine. Any dog licensed under four months of age shall be inoculated against rabies upon reaching the age of four months. The provisions of this section shall not apply to dogs whose owners are non-residents temporarily within the city, nor to dogs brought into the city to participate in shows.

11.0103 Dog License Fees

Any person keeping, owning, or harboring any dog in the city of Ashley shall pay annually to the City Auditor or Police Department a license fee of \$5.00 for each dog. If the license fees as provided in this section are not paid on or before the 1st day of March of each year, then there shall be paid in addition to the fees provided for in this section a penalty of \$2.00 a month for each month the license fee is not paid.

11.0104 Dog License to be Displayed on Collar

Upon payment of the license fee and compliance with the provisions of this chapter, the City Auditor or Police Department shall issue to the owner a copy of the printed application for license form with a stamp thereon "paid" and dated, which shall be evidence of the license, and a tag for each dog so licensed. The shape of the tag shall be changed every year and shall have stamped thereon the year for which it was issued and the number corresponding with the number of the certificate. Every owner shall be required to provide each dog licensed with a collar to which the license tag must be affixed, and shall see that the collar and tag are worn constantly. In case a tag is lost or destroyed, a duplicate will be issued by the City Auditor upon presentation of a receipt showing the payment of 50¢ for the duplicate. Dog tags shall not be transferable from

one dog to another and no refund shall be made on dog license fees for any reason whatsoever.

11.0105 When License Fees Due and Payable

Dog licenses shall be obtainable upon the 1st day of January in each year and shall become delinquent on the 1st day of March in each year. In case of failure by any keeper, owner, or harbinger to obtain a license and to pay the license fee for any dog, the dog shall be surrendered by the keeper, owner, or harbinger thereof for the purpose of being disposed of as provided in this chapter, upon the demand of any police officer of the city.

11.0106 Disposition of Dog License Fees

All money collected by the City Auditor or Police Department shall be credited to the general fund to the city. Money, as used in this section, shall mean dog license fees.

11.0107 Dogs Running at Large Prohibited

No owner, keeper, or harbinger of any dog shall permit or allow the dog to run at large within the City of Ashley at any time. For the purposes of this section the term "run at large" shall mean moving about without being restrained by the proper leash held by a person upon any real estate not owned or leased by the owner, keeper or harbinger of the dog.

11.0108 Certain Dogs Declared Nuisances

Any dog within the City of Ashley that:

- (1) Shall frighten, annoy, bark at, or chase any person or vehicle, or
- (2) Shall by loud and frequent barking, yelping, or howling annoy any person, or
- (3) Shall if a female dog, be in heat, or
- (4) Shall destroy any property not the property of the owner or keeper, or
- (5) Shall not have been inoculated against rabies if over four months of age, or
- (6) Shall not have a collar and license tag when required under section 11-01-02, is hereby declared to be a public nuisance.

11.0109 Impounding

It shall be the duty of every police officer to apprehend any dog found running at large contrary to the provisions of section 11.0107, or any dog found to be a public nuisance as provided in section 11.0108, and to impound the dog in the City Pound or other suitable place. The Pound Master or other official as may be designated upon receiving any dog shall make a complete registry entering the breed, name and address of the owner and the number of the tag. Licensed dogs shall be separated from unlicensed dogs.

11.0110 Notice to Owner and Redemption

Not later than the day after the impounding of any dog, the owner shall be notified or if the owner of the dog is unknown, written notice shall be posted for three days at the City Post Office and the Police Headquarters of the city, describing the dog and the place and time of taking. The owner of any dog so impounded may reclaim the dog upon payment of the license fee, if unpaid, and all costs and charges incurred by the City of Ashley for impounding and maintaining the dog.

11.0111 Disposition of Unclaimed Dogs

It shall be the duty of the Pound Master or other official designated by the City Council to keep all dogs so impounded for a period of four days from the date of notice to the owner or posting of notice as provided in this chapter. If, at the expiration of four days from the date of the notice to the owner or posting of the notice as provided in this chapter, the dog shall not have been redeemed, it may be destroyed.

11.0112 Breeding Kennels For Dogs Prohibited

A kennel for breeding dogs shall be construed to mean any place where a female dog is kept for breeding purposes where the enterprise of breeding dogs is carried on for commercial purposes or profit, and the maintaining of such a breeding kennel within the City of Ashley is prohibited.

11.0113 Rabies

The owner of any dog which has contracted rabies or which has been subject to the same or which is suspected of having rabies or which shall have bitten any person, shall, upon demand of the Chief of Police, or the City Health Officer, produce and surrender up that dog to the department to be held in quarantine for observation for a period determined by the City Health Officer. If upon examination any dog shall prove to be infected with rabies that dog shall be disposed of as directed by the City Health Officer.

11.0114 Failure to Report a Rabid Dog

It shall be unlawful for any person to knowingly keep or harbor any dog infected with rabies, or any dog known to have been bitten by a rabid animal, or who fails to report to the police or health department the existence of any dog which is known to be so infected.

11.0115 Vicious Dog

A vicious dog is hereby defined as being a dog which has bitten any person while the person bitten was not at the time of biting trespassing on the property of the owner of the dog or doing damage or injury to person or property of the owner.

11.0116 Keeping Vicious Dog Prohibited

No person shall harbor, keep or shelter a vicious dog within the City of Ashley.

11.0117 Seizure and Impounding of Vicious Dogs

Whenever any person makes a complaint in writing and verified under oath before the Municipal Judge, that any dog is a vicious dog, as defined in this chapter, the Municipal Judge shall issue a warrant for the arrest of the owner of that dog who shall be brought before the Municipal Judge for trial upon the charge as in other cases. If the person is found guilty, the Municipal Judge, in addition to other penalties, shall issue an order directing the owner forthwith to surrender the dog to the police department, and failure to do so shall constitute a violation of his section. In the event the owner fails to surrender the dog, it shall be seized by the police department. Whether the dog is surrendered or seized, the dog shall be impounded in the City Dog Pound or other suitable place for a period of five (5) days, during which time the owner of the dog may make arrangements to remove the dog from the city, and if he or she fails to do so within that time, the dog shall be taken by the Police Department to the local veterinary clinic to be euthanized.

CHAPTER 2 - Fowl

11.0201 Fowl in City

No person shall allow any ducks, geese, chickens, pigeons or turkeys, or other domestic fowl to run at large, nor shall any person keep enclosed or housed any geese, ducks, chickens, pigeons or turkeys, or other domestic fowl in any house, pen, coop, or enclosure situated within the distance of forty (40) feet of any dwelling house or store or other building which is used or occupied as the residence of any person not the owner of the fowl, or within forty (40) feet of any church, school or other public building. The house, pen, coop, or enclosure shall be maintained at all times in a clean and sanitary condition.

11.0202 Pigeons in City

No person owning or having in his or her charge, control or possession any pigeons shall suffer, allow or permit the same or any of them to roam or fly at large within the city.

CHAPTER 3 - Other Animals

11.0301 Duties of Pound Master

It shall be the duty of the Pound Master or other official appointed by the City Council to have charge of the pounds of the city, and receive into custody any animal declared to be a nuisance under this code, and shall cause sufficient and suitable food and drink to be provided for the animal so impounded.

11.0302 Release of Impounded Animal

Any animal so impounded shall be released to the owner thereof upon the owner paying reasonable fees for the impounding and keeping as determined by the City Council. In the event the property is not reclaimed within five (5) days after the date of impounding, the same may be sold as personal property under the provisions of this Code relating to the sale of abandoned property.

11.0303 Cruelty to Animals

No person shall cruelly or immoderately beat, torture, or injure any domestic animal, nor overload any working animal, nor shall any person willfully or negligently maltreat or abuse or treat or neglect in a cruel or inhuman manner any animal.

11.0304 Animals Running At Large

No person shall allow any horse, cattle, swine, sheep or goats to run at large.

11.0305 Horses, Cows, Sheep and Goats Prohibited Within City; Exceptions

No person shall keep any horse, cow, sheep or goat or erect or maintain any building or enclosure for use in keeping any of those animals within the corporate limits of the City of Ashley.

Provided, however, that any individual animal permanently kept within the City of Ashley on the effective date of this section shall be allowed to remain, but when that such animal is removed from the City or dies no replacement animal shall be permitted within the City.

This section shall not apply to animals which are being transported through the City and are moving through the City or are upon vehicles of transport, nor to animals which are temporarily within the City for parade, show or exhibition purposes.

11.0306 Pigs in City Prohibited

No person shall place, keep or maintain any live hogs within the City of Ashley, excepting hogs as are kept in the yards or pens of the railroad company for shipping purposes, or in pens, houses, or yards of the stockyards, packing houses, or butcher shops, and kept for the purpose of immediate shipment or slaughter.

11.0307 Picketing Animals

No person shall, within the City of Ashley, stake out any domestic animal in a manner to permit the animal to go upon any street, alley or sidewalk or to approach within two hundred feet (200') of any dwelling house or building used for human habitation other than that of the owner of the animal.

11.0308 Cats subject to all provisions of Chapter 11.01

Cats within the City of Ashley shall be subject to all of the provisions of Chapter 11.01 of the Ashley Municipal Code.

TITLE 12

WATER AND SEWER

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TITLE 12

WATER AND SEWER

CHAPTER 1 - Water and Sewer Utility

12.0101 Creation of Water and Sewer Utilities

The City of Ashley now owns various utility properties including plants, systems, works, instrumentalities, equipment, materials, supplies, lands, easements, rights in land, water rights, contract rights, franchises, reservoirs, sewage disposal works, intercepting sewers, trunk connections, sewer and water mains, filtration works, pumping stations and other facilities for providing water and sewer service. All those properties and all parts and appurtenances thereof which are used or useful in connection with the obtaining of a water supply and the conservation, treatment and disposal of water for public and private use shall henceforth be held, operated, maintained, improved, extended and administered as a single undertaking to be known as the Water Utility. All those properties and all parts and appurtenances thereof which are used or useful in connection with the collection, treatment and disposal of sewage, waste and storm waters shall be held, operated, maintained, improved, extended and administered as a separate undertaking to be known as the Sewer Utility. The properties of each utility and all future improvements, extensions and enlargements thereof, and all money to be derived from the services, facilities, products and by-products of each utility are appropriated and dedicated to the purpose of insuring the public health, safety and welfare by furnishing and making available water and sewer service to the city and its inhabitants and industries and those in the immediate vicinity who may desire or may be required to use those services. Each utility shall at all times be under the management and control of the City Council and shall be operated and maintained by it in a manner to provide its service with maximum efficiency and at the minimum cost compatible with the plan of operation described herein.

12.0102 Operation of Water and Sewer Utilities

Each utility shall at all times be operated and maintained, and rates and charges for its services, facilities, products and by-products shall be established, maintained and collected, to make the utility self-supporting and self-perpetuating. The rates and charges established for each utility shall be made and kept adequate to pay as incurred all costs of operation and maintenance thereof and to establish and maintain reasonable operating reserves; to produce net revenues in excess of these requirements from time to time which will be sufficient to pay the principal and interest when due on all obligations incurred by the city for the improvement, extension, and enlargement of the utility, to the extent that those obligations are by their terms made payable from net revenues, and to establish and maintain adequate reserves for the security of those obligations; and to produce surplus net revenues, in excess of all of the foregoing requirements, sufficient to provide reasonable allowances for depreciation and replacement of the utility and a reasonable return on the city's investment therein. Surplus net revenues actually on hand and not required as a reserve for depreciation and replacement may from time to time be appropriated by the City Council to pay or contribute to the cost of any other city functions, subject to the

limitations now or hereafter prescribed by law. Nothing in this Code shall preclude the city from paying any part or all of the expense of any improvement, enlargement or extension of the Water Utility or the Sewer Utility by the levy of special assessments or taxes or the issuance of general obligation bonds, whenever and to the extent that action is authorized in the manner provided by law and is considered by the City Council to be fair and equitable.

12.0103 Funds of Water and Sewer Utilities

- (1) All gross revenues received by the city in payment for services, facilities, products and by-products furnished and made available by each utility (not including collections of special assessments or taxes appropriated to water and sewer improvement district funds, or money borrowed for capital improvements to either utility), and all income received from any investment of those revenues, shall be paid into the treasury of the city and kept in a special fund which shall be permanently maintained on its official books and records, separate and distinct from all other funds, and designated as the Utilities Fund. This fund shall be divided into separate sub-funds designated as the Water Utility Fund and the Sewer Utility Fund, to which the Treasurer shall credit as received the revenues from water charges and from sewer charges, respectively, from and after October 1, 1964.
- (2) An operating Account shall be permanently maintained in the fund of each utility, to which all gross revenues thereof shall be credited initially, and in which the Treasurer shall retain a balance at all times as may be required to pay all claims due which under accepted accounting practices constitute normal, reasonable and current expenses of the operation and maintenance of the utility, and to pay all expenses estimated to accrue for a period of one month, and to provide a reasonable reserve for contingencies. Money in this account shall be used only to pay expenses of this type, and not for repairs or replacements or for capital improvements properly chargeable to replacement and depreciation reserves or to surplus funds. The balance on hand in the fund of each utility at any time, in excess of the minimum requirements of its Operating Account as defined in this sub-section, is referred to in this chapter as the net revenues of that utility.
- (3) In the event that revenue bonds are issued by the city at any time for the purposes of either the Water Utility or the Sewer Utility, pursuant to the provisions of Title 40, Chapter 35 or 36 of the North Dakota Century Code or any amendment or supplementary law, and upon the conditions stated in this chapter for the issuance of those bonds, a Revenue Bond Account shall be established within the fund of that utility, and the City Treasurer shall credit to this account at least once in each quarter annual period, out of and as a first and prior lien and charge upon the net revenues of that utility which are then on hand, a sum at least equal to one-fourth ($\frac{1}{4}$) of the total amount of principal and interest to become due within the then succeeding twelve (12) months on all revenue bonds which are then outstanding. A reserve shall also be accumulated in the Revenue Bond Account, over and above the amounts so credited, and when accumulated shall be maintained at all times in an amount at least equal to the maximum amount of principal and interest to become due on all revenue bonds payable from the account in any fiscal year thereafter. The reserve shall be accumulated or increased to the required amount within four years from and after the delivery of each issue of revenue bonds, by the transfer of additional net revenues in

not more than sixteen (16) equal quarterly installments. If net revenues on hand in any quarter annual period are not sufficient for compliance with the provisions of this paragraph, the deficiency shall be restored from the net revenues next thereafter received, and at any time when the reserve exceeds the amount herein required, the excess may be deducted from subsequent credits otherwise required to be made to the Revenue Bond Account. Money in this account shall be used only to pay principal and interest due on revenue bonds issued pursuant to this paragraph, and the reserve shall be used only when other money in the account is insufficient for this purpose and may be invested, until needed, in securities which are general obligations of the United States of America maturing within five (5) years from the time of purchase thereof. All bonds issued and made payable from the Revenue Bond Account of the fund of either utility upon the conditions stated in this chapter, shall constitute a first lien and charge on the net revenues of that utility as herein defined, without preference of one bond over any other, except that if at any time the balance in the Revenue Bond Account is less than the total amount of principal and interest due and payable there from, and cannot be made sufficient by the transfer of surplus net revenues as provided below, the balance on hand shall first be used to pay prorate the interest then due on all those bonds, and any remainder shall be used to pay the principal of the bonds in order of their maturity date, and in order of the dates of issue of bond maturing on the same date, and in order of the dates of issue of bonds maturing on the same date, and in order of the serial numbers of bonds issued and maturing on the same dates.

- (4) An Improvement Warrant Account shall also be established in the fund of each utility, for the purpose of segregating net revenues required for the payment of any portions of the cost of water and sewer improvements benefiting special improvement districts, and warrants issued on the funds of those districts, for which revenues have been pledged in accordance with the provisions of sections 40-22-15 and 40-22-16 of the North Dakota Century Code, as amended. Money sufficient for the requirements of the improvement district funds shall be credited and paid into the Improvement Warrant Account out of the net revenues from time to time remaining after provision for the current requirements of the Revenue Bound Account, and any pledge, when made in accordance with this chapter, shall constitute a lien and charge on the net revenues pledged subordinate only to the principal and interest and reserve requirements of bonds theretofore or thereafter issued and made payable from the Revenue Bond account of the utility whose net revenues are so pledged. The City Treasurer shall transfer from the Improvement Warrant Account of each utility fund to the fund of each improvement district for which a pledge has been made sums sufficient, together with collections of special assessments and taxes appropriated to the district funds, to pay when due the principal of and interest on all improvement warrants drawn upon these funds. If the balance in the Improvement Warrant Account of either utility is at any time less than the total amount required to be transferred to all improvement district funds to which net revenues of the utility have been pledged, in order to pay principal or interest then due on warrants issued against those funds, and cannot be made sufficient by the transfer of surplus net revenues then

on hand, the balance shall be distributed to the several improvement district funds in amounts proportionate to the then existing deficiencies in those funds for the payment of interest on the warrants drawn thereon, and if the money distributed is sufficient to pay all interest, any remainder shall be distributed to the several improvement district funds in amounts proportionate to the deficiencies then remaining therein for the payment of principal then due on warrants drawn thereon.

- (5) Finally, a separate Replacement and Depreciation Account shall be established in the fund of each of said utilities, to which the City Treasurer shall credit all net revenues, referred to in this chapter as surplus net revenues, which are received from the operation of the utility, in excess of the current requirements of its Operating Account and Revenue Bond Account as defined in this chapter, and the balance directed by the City Council to be maintained from time to time in the Improvement Warrant Account. The replacement and depreciation account shall be used whenever needed to restore any deficiency in the minimum balance required by this chapter to be maintained in any of the preceding accounts, in the order listed in this section, but when not needed for this purpose may be used to redeem before maturity obligations payable from the net revenues of the utility, or to replace worn out or obsolete properties of the utility, or to make extensions, enlargements or improvements thereof, as directed by the City Council, or may be invested pending use in accordance with the provisions of Section 40-33-12 of the North Dakota Century Code. Any balance in the account determined by the City Council to be surplus to these requirements may be transferred to other city funds in its discretion, in the manner and subject to the limitations set forth in said Section 40-33-12.
- (6) The city reserves the right to create additional accounts within the fund of either utility, for the purpose of segregating any surplus net revenues which may be pledged and appropriated to the payment of obligations not payable from the Revenue Bond Account or the Improvement Warrant Account, and to credit surplus net revenues thereto which would otherwise be required to be credited to the Replacement and Depreciation Account; provided that surplus net revenues shall be and remain subject to use for the restoration of deficiencies in other accounts of the utility fund, occurring prior to their expenditure in payment of principal or interest due on the obligations for which they are pledged.

12.0104 Payments From Water and Sewer Utility Funds

- (1) For the purpose of this section, whenever the net revenues herein appropriated to the Water Utility Fund or the Sewer Utility Fund are pledged to pay a portion of the cost of any improvement financed by the issuance of warrants against a special improvement district fund, those warrants and the interest accruing thereon or, if the warrants have been refunded pursuant to Title 40, Chapter 27 of the North Dakota Century Code, the refunding improvement bonds and the interest thereon, shall be deemed to be payable from net revenues in the proportion which that part of the cost for which the net revenues are pledged bears to the total principal amount of the warrants issued; and the portion of the cost for which the net revenues are pledged shall be deemed equal to the total principal amount of the warrants less the principal amount of all special assessments and taxes agreed to be levied for the payment thereof. The city has heretofore authorized the issuance of \$280,000 Water

Treatment Plant District No. 64-1 Improvement Warrants, and in accordance with the provisions of this chapter 80% of the principal and interest to become due on those warrants or, upon the refunding improvement bonds issued for that purpose, shall be deemed payable from the net revenues of the Water Utility.

- (2) Except as recited or authorized in this section, no additional obligations shall be issued and made payable from the Revenue Bond Account or the Improvement Warrant Account of either utility at any time unless the net revenues derived from the operation of that utility during the then next preceding fiscal year have been at least equal to 125% of the maximum amount of principal and interest payable from the Revenue Bond Account and the Improvement Warrant Account on all bonds that outstanding and all bonds then to be issued. The net revenues for the fiscal year shall be computed by ascertaining the gross revenues which were received or would have been received during that year by the application of the rates for the service of that utility which are in effect at the time of the issuance of those bonds to the quantities of service actually furnished to each class of customers during that year and deducting there from the reasonable and necessary expenses of the operation and maintenance of the utility actually paid during that year, except that in no case shall the net revenues so computed be deemed to exceed 125% of the net revenues actually received during that year.
- (3) In the event that any bonds payable from the Revenue Bond Account or the Improvement Warrant Account of either utility fund cannot be paid in full at maturity from money on hand and available for that purpose in accordance with the provisions of this chapter, the city reserves the right and privilege of providing for the payment thereof by the issuance and sale of bonds payable from the same account on a parity as to interest with all then outstanding bonds payable from that account but maturing on a date subsequent to the maturities of all those outstanding bonds. Nothing herein shall be deemed to require the holder of any bond to accept a refunding bond in exchange therefore.
- (4) Nothing herein shall affect the obligation of the city, under the provisions of Section 40-26-08 of the North Dakota Century Code, to levy taxes for the payment of deficiencies in improvement district funds for the payment of warrants issued thereon; provided that it shall be the policy of the city to restore to its general funds the amounts of any deficiency tax levies made for the payment of improvement warrants for which the net revenues of either of said utilities have been pledged, out of any surplus net revenues thereafter received from the operation of that utility, over and above the requirements of the several accounts of the utility fund as stated in section 12-01-03.
- (5) Except as authorized in this section, no obligations of any kind shall be issued or payable from the net revenues of either of said utilities unless expressly made junior and subordinate to the pledge and appropriation of the net revenues in favor of all bonds and warrants payable from the Revenue Bond Account and the Improvement Warrant Account of the utility fund.

12.0105 Covenants

- (1) The city covenants and agrees with the original purchaser and with each holder from time to time of each bond or warrant issued and made payable from the Revenue

- Bond Account or the Improvement Warrant Account of either the Water Utility Fund or the Sewer Utility Fund that it will comply promptly and fully with all provisions of the resolutions authorizing the issuance of those obligations and, except and to the extent which may be otherwise provided in the resolutions, with the provisions of this chapter.
- (2) It will complete all improvements financed by the issuance of those obligations with the greatest diligence and economy consistent with good workmanship and efficient operation, and without creating or permitting the creation of any liens or encumbrances on either utility or on the revenues thereof other than those created for the security of those obligations.
 - (3) Until all obligations incurred with respect to each utility are fully paid or otherwise discharged in accordance with the resolutions authorizing the same, the city will continue to own and to operate the utility in an efficient and economical manner and will not authorize or enfranchise the furnishing of similar service by others to any premises within its corporate limits for which the service of the utility is reasonably available.
 - (4) It will revise the schedule of rates, charges and rentals for all services, facilities, commodities and benefits furnished by each utility whenever and as often as needed to comply with section 12-01-02, and will include in each annual budget and pay from other funds a fair and equitable amount for any and all services, facilities, commodities, and benefits furnished by each utility to the city or any of its other departments, to be accounted for as part of the revenues.
 - (5) It will at all times maintain books of account adequate to show all receipts and disbursements of funds by the city with respect to each utility, and the segregation and application of receipts in the several accounts of the respective utility funds as provided in section 12-01-03, which books of account shall be made available for inspection during all reasonable business hours by the holder of any obligation for which net revenues of the utility have been pledged, or by an agent or attorney.
 - (6) It will cause the annual financial statement of the city required by the provisions of Section 40-16-05 of the North Dakota Century Code to include a statement as to the financial condition and the receipts and disbursements of the Water Utility Fund and the Sewer Utility Fund and of their several accounts during each fiscal year, and will furnish a copy of that statement, upon request, to the original purchaser of each issue of bonds or warrants for which net revenues of the utility have been pledged.
 - (7) Upon written demand of the holders of 20% or more of the outstanding bonds or warrants of any issue for which net revenues of either utility have been pledged, the city will cause an audit of the books of account of that utility to be made by a certified public accountant satisfactory to the holders of those obligations, and will pay the cost thereof as an operating expense of the utility, and will furnish a copy of the report of each audit to the party as shall be designated in the demand.
 - (8) It will at all time keep the properties of each utility insured in the amounts and against the risks for which similar properties are customarily insured by prudent owners thereof, and will maintain a balance in the Replacement and Depreciation Fund as will in the reasonable judgment of the City Council be sufficient, with the proceeds of insurance, to restore any loss or damage, and will carry public liability

insurance in an amount adequate to protect against any claim of person injury or property damage which is or might become a charge against the revenues of either utility, and will cause all persons handling funds of either utility to be bonded in amount sufficient for the protection of the city and the holders of all obligations. Insurance and bonds shall be carried with the State Fire and Tornado Fund or other reputable and responsible insurers selected by the City Council and the expense thereof shall be paid as an operating cost of each utility, and the city will use the proceeds of all insurance and bonds to restore the loss or damage compensated thereby.

- (9) The city and its governing body and each and all of its officers and employees will perform fully and promptly all duties with reference to each utility and its revenues and the obligations for which those revenues are pledged, which are imposed by law or by the ordinances and resolutions of the city, including this Code, in force on the date upon which any obligations are issued, and all provisions of the Constitution and laws of the State and of ordinances and resolutions which provide security for the holders of obligations are acknowledged to be a part of the city's contract with the holders thereof from time to time; provided nothing herein shall prevent the amendment of the rates and charges for utility services, to the extent consistent with other provisions of this Code.
- (10) The holders of 20% or more of the outstanding principal amount of each issue of bonds or warrants payable from the Revenue Bond Account or the Improvement Warrant Account of either utility fund shall be empowered to institute and maintain, in behalf of the holders of all outstanding obligations of the same issue, any suit or proceeding at law or in equity for the protection and enforcement of any covenant, agreement or stipulation made herein or in the resolution authorizing such obligations, whether or not any of those obligations are then in default as to principal or interest, and each and all of the rights and remedies specified in Sections 40-35-15 to 40-35-19 of the North Dakota Century Code are acknowledged to be available to the holders of those obligations. The parties to any suit or proceeding holding a majority in principal amount of the warrants of bonds held by all parties shall have power to determine the method of prosecution, compromise or satisfaction thereof. Nothing herein shall prevent the institution, compromise or satisfaction thereof. Nothing herein shall prevent the institution of action by any holder of a warrant or bond for the recovery of principal or interest in default.

12.0106 Charges For Water and Sewer Utilities

- (1) The owners and occupants of all premises receiving service from the Water Utility or the Sewer Utility shall be jointly and severally liable for all charges for that service. Charges shall be billed monthly, on or before the 15th day of month, based on water used as registered by the meter reading in the preceding monthly period.
- (2) A suitable place where a water meter can be installed shall be provided on all premises, and the city shall install and maintain the same, and if at any time the owner or occupant desires to have the meter tested for accuracy, a test shall be made by the city and a fee of \$1.00 charged therefore if the meter registers 98% or more accurate. Any meter registering less than 98% accurate shall be replaced. The meter reading for any premises may be estimated by authorized city employees for any quarter annual

period during which they cannot gain access to the premises upon two visits during reasonable daylight hours, and adjustment of any error in the estimate shall be made in the statement for the next quarter in which a reading is obtained.

- (3) Statements for water and sewer service to all premises shall become delinquent on the last day of the month in which they are rendered, and if not then paid, the water service to the premises shall be discontinued and shall not be resumed except upon payment of all bills for both services.
- (4) From and after October 1, 1964, the owner or occupant of each premise connected with the Water Utility shall pay for water consumed thereon and available.
- (5) The owner or occupant of each premise connected with the Sewer Utility shall pay for sewer service furnished and available.

CHAPTER 2 - Water Utility Regulations

12.0201 Water and Sewer Commissioner to Supervise Connections

The Water and Sewer Commissioner shall supervise the making of all connections with the Water Utility, shall follow the instructions of the City Auditor in turning on or turning off the water for any consumer, and shall see that all of the provisions of this title are strictly followed.

12.0202 Duties of the City Auditor

It shall be the duty of the City Auditor to perform the following acts as herein set forth or as may be set forth in other parts of this Code:

- (1) To issue permits to tap mains or make connections with the same, service pipes or extensions, or to make extensions, and to keep a record of all permits issued.
- (2) To keep a record of any and all applications issued for water service, and discontinue the same upon notice of failure to pay for water there under as hereinafter provided.
- (3) To notify the Water and Sewer Commissioner of the filing of all applications for water service, permits issued for tapping mains, making connections or extensions, and when application has been duly made and all requirements of this chapter followed order the Water and Sewer Commissioner to turn on the water under the application.
- (4) To furnish the Water and Sewer Commissioner a list showing the name of each and every person receiving a supply of water from the system, and a description of the premises supplied, who have not paid for the same, and order the Water and Sewer Commissioner to shut off the supply of water from the described premises forthwith.

12.0203 Application to Tap Mains, Service Pipe Required

Applications for the tapping of or connection with any water main or service pipe must be made in writing to the City Auditor upon blanks furnished for that purpose. The application shall be made at least one (1) day before any work is commenced.

12.0204 Who May Tap Mains

No person other than an authorized officer of the City of Ashley or any employee or assistant of the Water and Sewer Commissioner, shall tap or make any perforation or opening of any kind in any street, water main, or any public street, avenue, alley or public ground, or any other pipe, where ever the same may be, from which water from the city may be drawn.

12.0205 Permit to Excavate, Lay, Relay, Repair or Tap Pipe Required

Before any person or licensed plumber shall excavate to lay or relay, repair or tap any

branch or service water pipe, he or she shall first make application to the City Auditor for a permit to do that work. Information shall be entered upon the application as the City Auditor may require. If the Water and Sewer Commissioner shall approve the application, upon presentation to the City Auditor, together with the required fee, five hundred U.S. dollars (\$500.00), the City Auditor shall issue to the applicant a permit to do the work specified. The permit shall be issued in duplicate and the original copy shall be issued in duplicate and the original copy shall be presented to the Water and Sewer Commissioner shall cause the original copy of the permit to be returned to the City Auditor, together with information relative thereto as may be require.

12.0206 When Permit Provided in Section 12.0205 Granted

No permit shall be granted to any person to lay, relay, repair or extend any branch water service pipes, or to connect the same with the Water utility for water service for any property which is not within the assessed district or has not been assessed for the Water Utility, except where systems have been paid for without special assessments against the property benefitted, unless ordered by the City Council. In the event that the City Council shall direct the issuance of a permit for a sewer and/or water installation to connect property which was never assessed in any special assessment district there shall be deposited prior to the granting of any permit as payment for the assessment the sum of money as provided in this Title.

12.0207 Regulations Governing Service Pipes

No connection shall be made unless the service pipe between the water main and the water meter in the basement is of lead of that character designated as "Extra Strong" or of Mueller Copper Service pipe or other copper pipe conforming to the specifications of such Mueller Copper Service pipe, and no service pipe shall be less than three-fourths (3/4) of an inch in diameter, and it shall be unlawful for any person to connect more than one (1) house or building to each corporation cock of the water main distribution system of the City of Ashley, unless there shall be provided a separate and distinct shut off valve in the street for each residence or building.

A service pipe of not less that one (1) inch in size may run to the edge of the sidewalk, or curb, as the case may be, and branch to each house. Each branch shall have a separate cutoff and stop cock as provided herein.

12.0208 Curb Cock Requirements

The curb cock to be used in making all connections with the city mains shall be the Mueller Inverted Key, Minneapolis, Minnesota, patter, round way curb cock for either lead flange or copper service pipe as the case may be, or another make of curb cock as shall be determined by the City Council for lead or copper couplings with Minneapolis type stop box, to be approved by the City Council.

The top of cap of the stop box shall in all cases be on a level with the top of the curb, and if there is no curb the same shall be placed in the sidewalk, not more than six (6) inches from the roadway side of the walk.

Where there is a curb the stop box shall be placed inside the curb and as near thereto as possible. Should it become necessary to dig out the stop box for the purpose of turning the water on or off, the water user or the property holder will be required to stand the expense of the same.

12.0209 Payment For Connecting to the System

Person desirous of taking water from or connecting with the water utility in any manner must pay all the expenses thereof and shall pay the cost of the corporation cock, stop cock, and

the iron shutoff box attached.

12.0210 Consumer to Keep Pipes and Fixtures in Repair

All service pipes, stop cocks, corporation cocks, and other fixtures from the main to the curb line and including the shut off box, must be laid and attached and kept in repair and kept from frost at the expense of the applicant the applicant waiving and releasing all claim thereto or control thereof, except the duty of keeping the same in repair and protection the same as herein provided.

12.0211 Property Owner Liable For Repairs Made by City

At any time when the service pipe from the city water main to the meter becomes out of repair, is frozen up, or damaged by frost or otherwise, the Water and Sewer Commissioner shall immediately cause that service pipe to be repaired at the cost and expense of the property owner of the property served by that service pipe and upon the completion of the repair, the water shall be left turned off and shall remain turned off until the time the costs of the repair are paid by the owner.

12.0212 Water Meter Required

Any person desiring to tap the water mains of the City of Ashley and connect with any residence, business house, or other place where they may desire to use the water, shall install a water meter of the kind and style specified by the City Council. The water meter shall be so placed that the same will not freeze or be subject to hot water back pressure from house tanks or boilers.

12.0213 Installation and Cost of Water Meters

Every separate piece of property in the City of Ashley now connected or hereafter connected with the Water Utility shall be provided with a water meter for the measurement of the water consumed at that place, and shall pay the meter rates herein provided. Said meters shall be supplied by the city at cost or at a rate as established by the City Council, and shall be installed, tested, and repaired under the direction of the Water and Sewer Commissioner. The cost of the meter and of installing, testing, and repairing the same shall be paid by the owner or occupant of the premises where installed, unless otherwise provided by the City Council. The meters may be removed from the premises for the purpose of testing and repairing the same.

12.0214 Regulations Governing Connections of Water Meters

- (1) Immediately after any service pipe connected with the Water Utility has been placed within the property line and made ready for using water there-from, a water meter shall be installed on that service pipe.
- (2) Between the meter and the water main and at a place protected from freezing and conveniently located not less than one (1) foot nor more than four (4) feet from the floor, an approved brass angle compression stop and waste valve shall be installed for the protection of the occupants in turning off the water in case of leaks, and to drain the pipes and also to prevent freezing. Said valve is to be connected directly to the copper service pipe.
- (3) The meter shall be connected directly to the above mentioned angle valve in a position that it is convenient for the meter reader to get at and for removal in case of repairs.
- (4) No other connection shall be made between the meter and the main, except for the purpose of connecting another meter. An approved brass compression valve shall be installed next to the meter on the house side.

12.0215 Regulations Governing Excavating and Filling Trenches

- (1) The street must be opened in the manner which will occasion the least inconvenience to the public. No excavation in any street or alley shall be left open overnight unless properly guarded with barriers and red or amber lights which must be maintained from sunset to sunrise. Every precaution must be taken to insure public safety.
- (2) After the service pipe is properly laid and connected, the same shall be inspected. After the service pipe has been inspected, refilling must proceed at once and it must be thoroughly tamped and puddled, or both, and so done that there will be no surplus earth left. The plumber must supply sand or gravel to leave the street or alley in as good condition as previous to excavating. The plumber must keep the trench up to grade for a period of one (1) year from the date of finishing the work. On paved streets the openings or cuts shall be covered with blacktop or concrete.
- (3) All service pipe for water mains must be laid at least seven (7) feet six (6) inches below street grade from the water main to the inside of the building.

12.0216 Opening in Pipe Between Corporation Cock and Meter Prohibited

It shall be unlawful for any person to have any tap, lawn cock, sill cock, or other opening in the service pipe between the corporation cock and the water meter so placed.

12.0217 Water Rates to be Set by Council

The rates to be made for the payment of water furnished by the City of Ashley shall be those rates as set by the City Council.

12.0218 Other Rules and Regulations Governing Water Utility

- (1) Every person taking or using water from the Water Utility of the City of Ashley shall comply with and abide by all regulations applicable thereto.
- (2) In case of making of repairs or constructing new work, the city reserves the right to shut off the water at once and to keep the same shut off as long as may be necessary to accomplish those purposes. The Water and Sewer Commissioner shall, in case of users of steam boilers who are consumers of the city water, give reasonable notice of shutting off as may be practicable.
- (3) It is expressly provided that the City of Ashley shall in no event be or become liable to any consumer of water for a deficiency in the supply of water of the quality thereof, whether by shutting off the same to make repairs or to construct new work or for any other cause whatsoever.
- (4) It is expressly provided that the City of Ashley reserves the right to change the rates for the use of water from time to time as it may deem best, and at all times make other rules and regulations and restrictions as in the judgment of the City Council may be deemed necessary.
- (5) No person shall turn on or cause to be turned on the supply of water to any premises from which the supply of water has been shut off for any cause by the city, without first making the application for and obtaining the permit prescribed in this Title.
- (6) No person shall turn on or cause to be turned on the supply of water into any new supply pipe without first making application and obtaining the permit herein prescribed.
- (7) Whenever the Water and Sewer Commissioner shall have caused the water to be turned off from any service pipe he or she may, whenever he or she suspects any probability of tampering with the pipes, cause the same to be severed from the main.

- (8) No person except city employees in performance of their official duties shall open or cause to be opened any fire hydrant without the written permission of the Water and Sewer Commissioner.
- (9) No person shall open, interfere, or tamper with any hydrant connected with the Water Utility without permission from the Water and Sewer Commissioner. This section shall not apply when the opening is under the supervision of the Fire Department.
- (10) In case of fraudulent representation on the part of an applicant or user, or in the use of water not embraced in the application or lease, or of willful or unreasonable waste of water, the Water and Sewer Commissioner shall have the right to forfeit any payment made for water already used, and turn off the water and recover all damages.
- (11) No consumer shall supply water to any other person or families, or suffer them to take it, except for use on the premises, under a penalty as provided in this Code, and the person so taking it shall be liable to the same penalty.
- (12) Every owner, tenant, or occupant of any premises upon which there is a service pipe, and every person taking water from the city, shall at all reasonable hours permit the Water and Sewer Commissioner, or any agent or officer of the city, to enter the premises or buildings to examine the water pipes or fixtures therein, and the manner in which the water is used, and turn off the water either inside or outside the building, whenever, for any cause or purposes, he or she may desire to do so. If, in the opinion of the City Council or the Water and Sewer Commissioner, the water is turned off for insufficient reasons, upon application to them, they may order it turned on again. The water in no case must be left running, unless permitted by the Water and Sewer Commissioner, and all unnecessary waste of water must be prevented.
- (13) In all contracts with the city a gallon shall mean the standard gallon of two hundred thirty one (231) cubic inches, and a barrel shall mean thirty-two (32) standard gallons.
- (14) The party making the original application for the service pipe shall be responsible for the rent of all the water passing through the service pipe, and shall pay for the same, and no connection shall be made with any service pipe for any other person unless the owner of the property on which the service pipe is located, and the original applicant shall sign a request for the same.
- (15) For a violation of any of the foregoing regulations and for the nonpayment of water bills, the city reserves the right to turn off the water without notice.

12.0219 Improper Setting of Water Meters Prohibited

No plumber or other person shall connect or reconnect any water meter with the Water Utility of the City of Ashley in any manner other than that above prescribed. And no owner of any property or an agent, servant, or employee shall permit any meter on the property to remain connected in any manner except as prescribed in this Title. Each and every day any meter is allowed to remain connected except as herein provided for, after notice of that fact, shall constitute a separate offense.

12.0220 Deposit for Water Meter Required

A deposit of \$75.00 shall be made for each water meter so installed. Deposit of \$75.00 shall be returned to the depositor when the meter is returned in satisfactory condition, reasonable wear and tear excepted.

Chapter 3 - Sewer Utility Regulations

12.0301 Articles, Substances Prohibited in Sewer Utility

No person shall cast or throw or cause to be cast or thrown into any fixture, sewer, or drain connected with the Sewer Utility of the City of Ashley or the city sewage lagoon or system, and creamery waste, packing house waste, slaughter house or meat market waste, brewery mash, blood from animals or poultry, feather, grease, oil, milk, cream, or buttermilk, or any substance whatsoever that will or is liable to cause any obstruction, nuisance or injury in or to the Sewer Utility, or will or is liable to interfere with or obstruct the mechanical, chemical, or bacteriological action at or in connection with the Sewer Utility.

12.0302 Water Utility Rules Applicable to Sewer Connections

All rules and regulations governing the repairs and construction of the Water Utility and service pipe lines which are applicable to the construction of sewer connections shall apply to the construction and repair of the Sewer Utility.

12.0303 Permit Required

Before any plumber shall excavate, lay, relay, tap or repair any branch of Sewer Utility or make any connections with any sewer within any street, alley or other public ground within the City of Ashley, the plumber shall first make an application to the City Auditor for a permit to do the work. Information shall be entered on the application as the City Auditor may require. If the City Auditor shall have approved the application for the permit, then upon presentation thereof to the City Auditor together with the fee in the amount of three hundred U.S. dollars (\$300.00), the City Auditor shall issue to the applicant a permit to do the work specified. Permits shall be issued in duplicate, the original to be retained by the City Auditor, the other to be retained by the applicant.

12.0304 Permit to be Returned With Report

Each permit with a complete report thereon of the work done shall be completed by the person to whom it was issued and returned to the Water and Sewer Commissioner within five (5) days after the completion of any work relating to the laying, relaying, repairing, and extending of any sewer or drain or connection therewith in the City of Ashley.

12.0305 How Connections Made

No connections to the Sewer Utility shall be made to an opening without the permission of the Water and Sewer Commissioner. Measurements of these openings will be supplied by the Water and Sewer Commissioner upon presentation of a permit properly issued.

All connections to the Sewer Utility other than to the said openings shall be made by the use of the bell of a sewer pipe firmly cemented in place with the end of the pipe not protruding past the inner surface of the sewer pipe or by an approved fitting of similar type.

12.0306 Requirements of Drains and House Connections

- (1) Main drains and house connections shall be of glazed, vitrified earthenware pipes, with hub and spigot ends, with three (3) inch bell and not less than four (4) inches in diameter, and to extend not less than two (2) feet from outside of building wall.
- (2) The joints to be made watertight with caulked oakum and one (1) inch of approved sewer joint compound such as "Fitite" or "Equal".
- (3) Ordinary asphalt or tar shall not be allowed.
- (4) These drains shall be laid to a grade of not less than one-eighth (1/8) of an inch per foot, unless by special permission of the Water and Sewer Commissioner.

12.0307 Sewer Connection to Building Erected on Same Lot as Existing Building

Where one building exists or is erected in the rear of another lot or is erected on the same lot, and no private or public drain is available through the alley or driveway, the house sewer from the front building may be extended to the rear building.

12.0308 When Extension of Private Sewers Permissible

Private sewers may be extended to receive the house drain connection of several buildings situated on the same building site or single ownership, whenever that connection is made, plans of the same must be first submitted to the Water and Sewer Commissioner for approval.

12.0309 Drains Below Sewer Level

Drains below the level of the sewer shall discharge into a sump and be automatically lifted and discharged into the sewer.

12.0310 How Curved Pipe Laid

In case of length of pipe is curved, the same shall be laid with the curve to the side and the true grade preserved.

12.0311 Fee For Out of Town Sewer Connections

Every person owning property outside of the city limits of the City of Ashley desiring to make a connection to the Sewer Utility of the City of Ashley shall make written application therefore to the City Auditor and the application shall be accompanied by cash payment as provided by the City Council. Each application shall be submitted to the City Council for approval.

12.0312 Construction and Maintenance of Out of Town Sewer Connections

Persons shall enter into an agreement with the City of Ashley that they will construct and maintain in good repair at their own expense under the direction and supervision and according to instructions of the Water and Sewer Commissioner, the necessary service pipe to serve the premises, all in compliance with all ordinances and shall guarantee to construct, maintain and repair any or all manholes which may be required on the service sewer.

CHAPTER 4 - Main Connections to Non-Assessed Property

12.0401 Petition Required For Connection to Non-Assessed Property

Any person owning property that has not been assessed for the cost of sewer and water adjoining it, who is desirous of connecting sewer and water from the mains to the property, shall make application in writing to the City Council for a permit to make that connection.

12.0402 Examination by Council and Payment of Assessment

The City Council upon the receipt of a petition shall examine the property and inspect the property sought to be connected with sewer and water and if it is found that the property sought to be connected with the sewer and water mains was not assessed for any part of the cost of the contract of the sewer and water mains, it shall, as a condition for a permit to connect that property with the sewer and water mains, require the petitioner and owner of the property to pay into the special assessment sewer and water district fund of the district an amount equivalent to what other adjoining owners were assessed.

12.0403 Permit Issued Upon Payment

When payment of the amount has been made to the city for deposit and credited to the sewer and water district fund of the district and the City Auditor has issued a certificate to the fact of the payment, then the Water and Sewer Commissioner of the City of Ashley shall issue a

permit for the connections so desired and for which the petition has been filed.

12.0404 Connection Prohibited Without Permit

It shall be unlawful for any person owning or having charge of any property to connect or attempt to connect the property with the sewer and water mains of the City of Ashley where the property so sought to be connected has not been assessed for any part or portion of the cost thereof, unless a permit has been secured as provided in this chapter.

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TITLE 13

PUBLIC NUSIANCES

CHAPTER 1 - General Provisions

13.0101 Nuisances Prohibited

No person shall create, commit, maintain, or permit to be created, committed, or maintained any nuisance as defined in this chapter.

13.0102 Nuisances Defined

In addition to any nuisance specifically described hereafter in this chapter, whatever is dangerous to human health, whatever renders the ground, the water, the air, or food a hazard or injurious to human health, and the following specific acts, conditions, and things are, each and all of them, hereby declared to constitute nuisances:

- (1) Imperfect Plumbing. Any imperfect, leaking, unclean or filthy sink, water closet, urinal, or other plumbing fixture in any building, used or occupied by human beings.
- (2) Garbage and Refuse. Depositing, maintaining, or permitting to be maintained or to accumulate upon any public or private property, any household waste, water, sewage, garbage, tin cans, offal or excrement, any decaying fruit, vegetables, fish, meat, or bones, or any foul, putrid, or obnoxious liquid substance.
- (3) Impure Water. Any well or other supply of water used for drinking or household purposes which is polluted or which is so constructed or situated that it may become polluted.
- (4) Undressed Hides. Undressed hides kept longer than twenty-four hours, except at the place where they are to be manufactured, or in a storeroom, or basement whose construction is approved by the Health Officer.
- (5) Manure. The accumulation of manure, unless it be in a properly constructed fly-proof pit, bin or box.
- (6) Breeding Places for Flies. The accumulation of manure, garbage, or anything whatever in which flies breed.
- (7) Stagnant Water. Any excavation in which stagnant water is permitted to collect.
- (8) Poison Ivy. Permitting poison ivy to be or to grow upon any private property nearer than fifteen feet from the sidewalk of any public roadway.
- (9) Dead Animals. For the owner of a dead animal to permit it to remain un-disposed of longer than twenty-four hours after its death.
- (10) Polluting Bodies of Water. Throwing or leaving any dead animal or decayed animal or vegetable matter or any slop or filth whatever, either solid or liquid, into any pool of water.
- (11) Privies and Cesspools. Erecting or maintaining any privy or cesspool except such sanitary privies and cesspools, the plans of which are approved by the Health Officer.
- (12) Garbage Handling Improperly. Throwing or letting fall on or permitting to remain

- on any street, alley, or public ground any manure, garbage, rubbish, filth, fuel, or wood while engaged in handling or removing any of those substances.
- (13) Rodents. Accumulation of junk, old iron, automobiles or parts thereof, or anything whatever in which rodents may live or breed and accumulate.
 - (14) Bonfires in Public Places. Burning, causing or permitting to be burned in any street, alley, or public ground any dirt, filth, manure, garbage, sweepings, leaves, ashes, paper, rubbish or material of any kind.
 - (15) Parking Livestock Trucks or Trailers in Residence Districts. Parking or permitting a livestock truck or trailer to remain on any street, area, or public ground in a residence district when that truck or trailer gives off an offensive odor or is contaminated with manure or other filth.
 - (16) Junk. The accumulation of iron, wood, tires, automobiles or parts thereof, machinery or parts thereof, or any other junk at any point within the city, except at places where the City Council permits those conditions to exist.
 - (17) Haystacks. The stacking of hay for longer than one month outside of a building, except at places where the City Council permits those conditions to exist.

13.0103 Penalty

Any person violating any of the provisions of this title, or creating, committing, maintaining, or permitting to be created, committed, or maintained, any conditions that are defined in this title as public nuisances shall upon conviction thereof be subject to the penalties imposed hereafter in this title, or in lieu thereof, to the provisions of Title 21 of this Code.

CHAPTER 2 - Sub-Standard Structures

13.0201 Dangerous Buildings Defined

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

- (1) Those whose interior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of the base.
- (2) Those which, exclusive of the foundation, show thirty-three (33) per cent, or more, of damage or deterioration of the supporting member or members, or fifty (50) per cent or more, of damage or deterioration of the non-supporting members or outside walls or covering.
- (3) Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used.
- (4) Those which have been damaged by fire, wind or other causes to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the City of Ashley.
- (5) Those which have become or are so dilapidated, decayed, unsafe, unsanitary or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation, or are likely to cause sickness or disease, to work injury to the health, morals, safety or general welfare of those living therein.
- (6) Those having light, air, and sanitation facilities which are inadequate to protect the

health, morals, safety, or general welfare of human beings who live or may live therein.

- (7) Those having inadequate facilities for egress in case of fire or panic or those having insufficient stairways, elevators, fire escapes, or other means of communication.
- (8) Those which have parts thereof which are so attached that they may fall and injure members of the public or property.
- (9) Those which because of their condition are unsafe, unsanitary, or dangerous to the health, morals, safety or general welfare of the people of the City of Ashley.
- (10) Those buildings existing in violation of any provision of this Code, or any other ordinances of the City of Ashley.

13.0202 Standards For Repair, Vacation or Demolition

The following standards shall be followed in substance by the Building Inspector and the City Council in ordering repair, vacation or demolition:

- (1) If the "dangerous building" can reasonably be repaired so that it will no longer exist in violation of the terms of this chapter, it shall be ordered repaired.
- (2) If the "dangerous building" is in a condition to make it dangerous to the health, morals, safety, or general welfare of its occupants, it shall be ordered to be vacated.
- (3) In any case where a "dangerous building" is fifty (50) per cent, or more, damaged or decayed, or deteriorated from its original value or structure, it shall be demolished.
- (4) In all cases where a building cannot be repaired so that it will no longer exist in violation of the terms of this chapter, it shall be demolished.
- (5) In all cases where a "dangerous building" is a fire hazard existing or erected in violation of the terms of this chapter or any ordinance of the city or statute of the State of North Dakota, it shall be demolished.

13.0203 Dangerous Buildings Declared Nuisances

All "dangerous buildings" within the terms of section 13-02-01 are hereby declared to be public nuisances, and shall be repaired, vacated, or demolished as provided in this chapter.

13.0204 Duties of Building Inspector

- (1) To inspect or cause to be inspected as ordered by the City Council, all public buildings, schools, halls, churches, theaters, hotels, tenements, motels, clinics, hospitals, commercial, manufacturing, office buildings, and loft buildings for the purpose of determining whether any conditions exist which render those places a "dangerous building" within the terms of section 13-02-01.
- (2) To inspect any building, wall or structure about which complaints are filed by any person to the effect that a building, wall or structure is or may be existing in violation of this chapter.
- (3) To inspect any building, wall or structure reported (as hereinafter provided for) by the Fire or Police Departments of this city as probably existing in violation of the terms of this chapter.
- (4) To notify in writing by serving a copy of the findings and order provided in section 13-02-04(9), upon the owners, occupant, lessee, mortgagee, agent and all other persons having an interest in said building as shown by the land records of the Register of Deeds of the County of McIntosh, of any building found by the building inspector to be a "dangerous building" within the standards set forth in section 13-02-01, that:

- (a) The owner must vacate, repair or demolish said building in accordance with the terms of the notice and this chapter.
- (b) The owner, occupant or lessee must vacate said building or may have it repaired in accordance with the notice and remain in possession.

Any person notified under this sub-section to repair, vacate, or demolish any building shall be given a reasonable time, not exceeding thirty days, as may be necessary to do, or have done, the work or act required by the notice provided for herein.

- (5) To set forth in the notice provided in subsection (4) hereof, a description of the building, or structure deemed unsafe, a statement of the particulars which make the building or structure a "dangerous building" and an order requiring the same to be put in condition to comply with the terms of this chapter within a length of time not exceeding thirty days, as is reasonable.
- (6) To report to the City Council any non-compliance with the "notice" provided for in subsections (4) and (5) hereof.
- (7) To appear at all hearings conducted by the City council pursuant to the provisions of this chapter, and to testify as tot he condition of "dangerous buildings".
- (8) To place a notice on all "dangerous buildings" reading substantially as follows:
 "This building has been found to be a dangerous building by the Building Inspector of the City of Ashley, North Dakota. This notice is to remain on this building until It is repaired, vacated, or demolished in accordance with the notice which has been given the owner, occupant, lessee, mortgagee, or agent of this building, and all other persons having an interest in said building as shown by the land records of the Register of Deeds of the County of McIntosh. It is unlawful to remove this notice until it is complied with in all respects.
- (9) To make written findings of fact with respect to any building found by the building inspector to be a "dangerous building" within the terms of section 13-02-01, and to issue an order to repair, vacate or demolish that building as the case may be. The f findings and order shall be filed with the City Council, and a true copy thereof shall be served as required by statute for a summons in a civil action if the owner is a resident of this city, or served in accordance with section 13-02-09 if the owner is not a resident of this city.

13.0205 City Council Hearing; Appeal to District Court

- (1) It shall be mandatory upon the City Council of the City of Ashley, North Dakota, to hold a public hearing on any regular meeting date on any order and findings duly made and submitted by the Building Inspector, with regard to any "dangerous building", which order and findings shall have been dated at least ten full days prior to a regular meeting of the City Council of the City of Ashley, North Dakota.
- (2) At the hearing duly held by the City Council on any findings of fact and order made pursuant to section 13-02-04 (9), and after hearing any and all testimony submitted by the owner, mortgagees, occupant, lessee, agent or any other person having an interest in the building as shown by the land records of the Register of Deeds of the County of McIntosh, the City Council of the City of Ashley shall at that meeting issue a resolution ordering the sub-standard structure to be demolished if, in the opinion of the City Council, the findings of fact and order of demolition made by the Building Inspector are correct and should be affirmed; in the event that the City

Council of the City of Ashley is of the opinion that the order of the Building Inspector, together with the findings of fact of said Building Inspector should be modified or altered, then the City Council of the City of Ashley shall pass a resolution providing for modification of said findings of fact and order and the decision of the governing body of the City of Ashley is final.

- (3) If, after the hearing of the City Council of the City of Ashley has been concluded and the City Council has issued its resolution covering the disposition of the proceeding, and the owner of the premises is dissatisfied with the findings and order of the City Council, the owner may appeal to the District Court in and for McIntosh County, North Dakota within thirty (30) days after the findings and decision shall have been made by the City Council or within that time take other legal steps to enjoin the enforcement of the order as he or she may deem proper. Any person desiring to appeal from any resolution passed by the City Council under and by virtue of this chapter shall file an undertaking in the sum of at least \$500.00 to be approved by the City Auditor and conditioned that the appellant will prosecute the appeal without delay and will pay all costs that may be adjudged against him or her in the District Court. The undertaking shall be payable to the City of Ashley.

13.0206 Failure to Comply With Decision of the City Council

If the owner, occupant, mortgagee or lessee fails to comply with the decision of the City Council, or in the alternative fails to appeal to the District Court within the thirty (30) days as provided in section 13-02-05, the City Council shall cause that building or structure to be repaired, vacated or demolished as the facts may warrant under the decision of the City Council, and shall with the assistance of the City attorney cause the costs of that repair, vacation, or demolition to be charged against the land on which the building existed by special assessment, or as a municipal lien, or shall cause the cost of removal to be levied as a special tax against the land upon which the building stands, or did stand, or to be recovered in a civil action against the owner.

13.0207 Violation: Penalty For Disregarding Notices or Orders

- (1) The owner of any "dangerous building" who shall fail to comply with any notice or order to repair, vacate or demolish the building given by any person authorized by this chapter to give the notice or order shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding one hundred dollars (\$100.00) for each offense.
- (2) The occupant or lessee in possession who fails to comply with any notice to vacate and who fails to repair the building in accordance with any notice given as provided for in this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding one hundred dollars (\$100.00) for each offense. Every day subsequent to the notice in which the said owner shall fail to comply with any notice or order as above stated, shall be deemed a separate offense.
- (3) Any person removing the notice provided for in section 13-02-04 (8) shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding one hundred dollars (\$100.00) for each offense.

13.0208 Duties of City Attorney

- (1) To prosecute all persons failing to comply with the terms of any notices and orders provided for in this chapter.

- (2) To appear at all hearings before the City Council in regard to "dangerous buildings."
- (3) To bring suit to collect all municipal liens, assessments, or costs incurred by the Building Inspector or City Council in repairing or causing to be vacated or demolished "dangerous buildings."
- (4) To take any other legal action necessary to carry out the terms and provisions of this chapter.

13.0209 Where Owner Absent From the City

In cases, except emergency cases, where the owner, occupant, lessee, or mortgagee is absent from the city all notices or orders provided for in this chapter shall be sent by registered mail to the owner, occupant, mortgagee, lessee and all other persons having an interest in the building as shown by the land records of the Register of Deeds of the County of McIntosh to the last known address of each, and a copy of the notice or order shall be posted in a conspicuous place on the "dangerous building" to which it relates. Such mailing and posting shall be deemed adequate service.

13.0210 Administrative Liability

No officer, agent, or employee of the City of Ashley shall render himself personally liable for any damage that may accrue to person or property as a result of any act required or permitted in the discharge of duties under this chapter. Any suit brought against any officer, agent, or employee of the City of Ashley as a result of any act required or permitted in the discharge of duties under this chapter shall be defended by the City Attorney until the final determination of the proceedings therein.

13.0211 Duties of the Fire and Police Departments

The members of the Fire Department and the members of the Police Department shall make a report in writing to the Building Inspector of all buildings or structures which are, may be, or are suspected to be "dangerous buildings" within the terms of this chapter. Those reports must be delivered to the Building Inspector within seven days of the discovery of those buildings by any member of the Fire or Police Departments.

CHAPTER 3 - Weeds

13.0301 Weeds and Grass Prohibited

No owner of any lot, place or area within the City of Ashley, or the agent of the owner, shall permit on any lot, place or area, or upon any sidewalk abutting the same, any weeds, grass, or harmful, unhealthy growths, or other noxious matter, that may be growing, lying or located thereon.

As of October 5, 1998, Section 13.0302 was amended and re-enacted to read as follows:

13.0302 Notice to (Destroy) Cut Weed and Grass

The Street Commissioner is hereby authorized and empowered to notify, in writing, the owner of any lot, place or area within the City or the agent of the owner, where the grass and weeds are not cut, to cut, destroy and remove any weeds, grass or harmful, unhealthy growths, or other noxious matter, found growing, lying or located on said owner's property, or upon the sidewalk abutting the said property, or upon the one-half of the roadway abutting the property. The notice shall be sent by certified or registered mail, addressed to the owner, or the agent of the owner, or by personal service. This notice shall state the property to be moved and cleaned up within seven (7) days of the date of receipt of the notice. Hereafter during the year the property

will be cleaned up without further notice whenever the grass, weeds, or any other noxious matter reaches the height of eight (8) inches. If the City has to destroy or cut the weeds and grass, the owner shall be charged an equipment charge and labor and if not paid by the owner, assessed against the property.

13.0303 Action Upon Non-Compliance

Upon the failure, neglect, or refusal of any owner or agent so notified, to cut, destroy and remove weeds, grass, or deleterious, unhealthful growths, or other noxious matter, growing, lying, or located upon the owner's property or upon the sidewalk abutting the same or upon the one-half of the roadway abutting the same, within ten (10) days after receipt of the written notice provided for in section 13.0302, or within ten (10) days after the date of the notice, in the event the same is returned to the city because of the inability of the U.S. Postal Service to make delivery thereof, provided the same was properly addressed to the last known address of the owner, or agent, the Street Commissioner is hereby authorized and empowered to pay for the cutting, destroying and removal of the weeds, grass, or deleterious, unhealthful growths of other noxious matter or to order the removal of the same by the city.

13.0304 Cost to be Assessed Against Property

When the City has effected the removal of weeds, grass, or deleterious, unhealthful growths, or other noxious matter, or has paid for its removal, the actual cost thereof, if not paid by the owner prior thereto, shall be charged and assessed against the property upon which the weeds, grass, or deleterious, unhealthful growths, or other noxious matter were cut and destroyed. An assessment list showing the lots or tracts to be assessed with the cost against each lot or tract shall be prepared as are other special assessment lists, and shall be approved by the governing body and shall bear interest at seven per cent per annum. Those assessments shall be subject to the same procedure for certification to the county auditor, payment and collection as are other special assessments under the statutes of North Dakota.

CHAPTER 4 - Prohibiting Abandonment of Ices Boxes and Refrigerators

13.0401 Prohibiting Abandonment in Places Accessible to Children

It shall be unlawful for any person to leave or permit to remain outside of any dwelling, building or other structure, or within any unoccupied or abandoned building, dwelling or other structure under his or her control, in a place accessible to children, any abandoned, unattended or discarded ice box, refrigerator or other container which has an air-tight door or lid, snap-lock or other locking device which may not be released from the inside, without first removing the door or lid, snap-lock or other locking device from the ice box, refrigerator or container.

CHAPTER 5 - Prohibiting Unnecessary Noises

13.0501 Making of Unnecessary Noises Considered a Detriment

- (1) The making, creation or maintenance of loud, unnatural or unusual and disturbing noises are a detriment to public health, comfort, convenience, safety and welfare, and are hereby declared to be unlawful and a public nuisance.
- (2) The necessity in the public interest for the provisions and prohibitions contained and enacted in this chapter, is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions contained and

enacted in this chapter are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the City of Ashley and its inhabitants.

13.0502 Making of Unnecessary Noise Unlawful

It shall be unlawful for any person to make, continue, or cause to be made or continued any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the City of Ashley.

13.0503 Acts Declared to be Unnecessary, Loud or Disturbing

The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this chapter, but this enumeration shall not be deemed to be exclusive, to-wit:

- (1) Excessive noise on any motor vehicle or motorcycle on any street or public place except as a danger warning or their sounding for an unnecessary and unreasonable period of time.
- (2) Radios, Phonographs, etc. The using, operating, or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such a manner to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for the convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any set, instrument, phonograph, machine or device as to be plainly audible at a distance of fifty (50 feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.
- (3) Loud Speakers, Amplifiers for Advertising. The using, operating or permitting to be played, used, or operated of any radio receiving set, musical instrument, phonograph, or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure.
- (4) Yelling, Shouting, etc. Yelling, shouting, hooting, whistling, or singing on the public streets, particularly between the hours of eleven o'clock P.M. and seven o'clock A.M. or at any time or place to annoy or disturb the quiet, comports, or repose of persons in any office, dwelling, hotel, or other type of residence, or any person in the vicinity.
- (5) Schools, Courts, Churches, Hospitals. The creation of any excessive noise on any street adjacent to any school, institution of learning, church, or court while the same are in use, or adjacent to any hospital, which unreasonably interferes with the workings of that institution, which disturbs or unduly annoys patients in the hospital.
- (6) Jake Braking (Engine Braking) Prohibited. It shall be unlawful for the driver of any vehicle, including but not limited to motor carriers, trucks, semi and tractor trailers, to cause their vehicle to brake or slow by any method which increases the noise emission levels of the engine, including but not limited to the use of compression

brakes, commonly known as “jake braking”, which uses the vehicle’s engine compression to reduce the engine’s revolutions per minute.

Any person cited in accordance to this ordinance shall be deemed to have committed an infraction of the law, a non-criminal offense and may appear before the judge to explain his or her action, or he or she may waive their appearance by not appearing at the hearing. If a person fails to appear at the scheduled hearing, he or she shall be deemed to have admitted to the violation and waived the right to a hearing on the issue.

The court shall impose a monetary fine of \$100.00 for the first offense and a \$200.00 fine for offenses that occur within 30 days of the first infraction.

CHAPTER 6 - Radio and Television Interference

13.0601 Operation of Apparatus Interfering With Radio and Television Reception Prohibited

It shall be unlawful to operate, sell, or install electrical apparatus, appliances, or equipment that interferes with radio or television broadcast reception.

13.0602 Operation of Apparatus Generating High Frequency Oscillations Interfering With Radio and Television Prohibited

It shall be unlawful for any person, knowingly and want only, to operate or cause to be operated any apparatus, appliance or equipment of any kind whatsoever, within the City of Ashley, the operation of which will generate or cause high frequency oscillations, which interfere with broadcast or wireless radio or television reception.

13.0603 Operation of X-Ray, Diathermy May be Used; Exception

X-Ray, Diathermy, and Violet Ray machines or operation of any high frequency machine or device used for treatments by competent persons following that profession, may be used if the machines or apparatus used therefore are properly equipped with shields and filters to avoid all unnecessary or reasonable preventable interference with radio and television reception and are not negligently operated, as determined by the City Building Inspector.

13.0604 Sale of Devices Causing Interference Prohibited

It shall be unlawful for any person to sell or install within the City of Ashley any appliances, devices, or apparatus whose operation will cause high frequency oscillations that interfere with broadcast or wireless radio or television reception. All appliances that may or do cause high frequency oscillations shall first be inspected and tested by the City Building Inspector and if found to cause interference, shall be properly filtered and shall have the approval of the City Building Inspector before the same are sold or installed.

13.0605 Application of Sections 13-06-01 Through 13-06-04

The following electrical apparatus shall be considered as coming within the meaning of sections 13-06-01 through 13-06-04, to-wit: Violet Ray machines, machines using the Tesla coil or principle, X-Ray machines, open or quenched spark machines, or any machine including or incorporating a device producing high frequency oscillations.

13.0606 Building Inspector to Enforce

The administration and enforcement of this chapter is hereby imposed upon the City

Building Inspector.

13.0607 Right to Enter Premises

The City Building Inspector shall, upon presentation of evidence of authority, have the right of access to any premises at any reasonable hour for the purpose of inspecting any equipment, appliance, device or apparatus coming within the terms of this chapter to determine if that equipment, appliance, device or apparatus complies with the terms of this chapter, and it shall be unlawful for any person to interfere with the Building Inspector in making that inspection or to refuse to allow the Building Inspector to enter upon the premises for that purpose.

13.0608 Defective Equipment; Notice

When an inspection and test shall have been made by the Building Inspector, and defective equipment or apparatus coming within the terms of this chapter is found, the person responsible for the operation of that equipment shall be notified in writing to discontinue the use of that machine or to make additions, repairs, or modifications thereof, in order that the same may be operated in a manner which complies with the provisions of this chapter.

The mailing of a registered letter addressed to the owner or operator of the machine at the premises where the machine is located shall constitute a sufficient notice for the purpose of this section. In the event that the owner or operator of the machine or apparatus, fails within forty-eight (48) hours after receipt of notice to repair the same so that it complies with the provisions of this chapter, the owner shall be deemed to be operating the machine or apparatus in violation of the provisions of this chapter.

CHAPTER 7 - Abandoned Property

13.0701 Property Abandoned Upon Streets

Any personal property abandoned or left unclaimed upon the streets, alleys or public grounds of the city for a period exceeding ten (10) days shall be taken up by any police officer of the city, or any employee of the city under the direction of the Chief of Police, and shall be stored and held in a place as may be designated by the Chief of Police.

13.0702 Record of Property Taken Up

An accurate record of any property so taken up by any police officer or any employee of the city under the direction of the Chief of Police, shall be kept in the office of the Chief of Police with the date of the taking.

13.0703 Redemption by Owner

Any person who shall satisfactorily establish that he or she is the owner thereof, may reclaim any article of personal property from the Chief of Police at any time after the taking thereof and before the sale thereof as provided in this chapter, upon payment to the City Auditor of the necessary expense of taking and storing of the property, which expense shall be certified by the Chief of Police.

13.0704 Sale of Taken Up Personal Property

Whenever in the judgment of the Chief of Police sufficient articles have been accumulated and held as provided in this chapter for a period of sixty (60) days or more to justify expense of a sale thereof, the same may be sold under the direction of the Chief of Police at public auction. The Chief of Police may designate a person to conduct the public auction.

Each item of such abandoned property which has been held by the Chief of Police for

more than sixty (60) days shall be sold to the highest bidder for cash. The purchaser shall receive from the City of Ashley a bill of sale to the property. At any time within six (6) months after the sale, the owner of the property, upon written application, shall be entitled to receive the proceeds of the sale from the city, less the necessary expense of taking, storing and selling the property. The owner of the property may reclaim it at any time prior to the sale upon payment of the necessary expense of taking and storing.

The Chief of Police shall keep accurate records of each sale showing the price for which each article was sold.

13.0705 Notice of Sale of Taken Up Personal Property

Notice of the time and place of such sale, and a brief description of the articles to be sold, shall be published once each week for two successive weeks in the official newspaper of the city, the first publication to be not less than ten (10) days prior to the date of the sale.

13.0706 Report of Sale of Taken Up Property to the City Council

Immediately after the completion of the sale of the abandoned personal property, the Chief of Police shall report to the City Auditor of the proceedings upon the sale, together with the price of each article sold, and shall remit to the City Auditor the entire proceeds of the sale. Upon receipt of the report from the Chief of Police the City Auditor shall cause a synopsis of the same to be presented to the City Council for its information.

CHAPTER 8 - Automobiles and Personal Property

13.0801 Automobiles, Personal Property; When Declared Nuisance

Any vehicle, animal or other article of personal property located within the City of Ashley, the use, condition or status of which is in violation of any ordinance of the City of Ashley, or any law of the State of North Dakota, or which constitutes an obstruction, hazard or detriment to public traffic, snow removal operations, public safety or public health or morals, or which may be damaged, disabled or involved in an accident, or in the commission of any violation of any ordinance of the City of Ashley or any law of the State of North Dakota, or any vehicle or other article of personal property abandoned or unclaimed within the City of Ashley, is hereby declared to be a public nuisance and shall be abated in the manner provided by this chapter.

13.0802 Removal and Impounding by Police Department

The Police Department of the City of Ashley may remove or cause to be removed to the City Hall, or any other place within the City of Ashley selected for the purpose, any personal property described in section 13.0801, may impound and retain the same until the expense of removal, storage and impounding is paid, together with the amount of any fine, costs, bail or other claims of the City of Ashley against the owner, or any other person lawfully entitled to the possession thereof.

Any property so impounded may be considered abandoned property and shall be disposed of in accordance with chapter 7 of this Title.

CHAPTER 9 - Junk and Miscellaneous

13.0901 Barbed Wire Fences Prohibited

No person shall erect, construct, or maintain any fence or enclosure of any premises, piece, or parcel of ground with barbed wire within the City of Ashley. Any fence so existing is hereby declared to be a nuisance.

Provided, however, that barbed wire on the top of woven wire fences, the lowest strand of barbed wire is not less than six and one-half feet from the ground shall be lawful.

13.0902 Burning of Material Causing Offensive Odor

The burning of any material which throws off an offensive odor, or which causes a dense smoke from which soot is deposited in the air adjacent to the place of burning is within the City of Ashley, is hereby declared to be a nuisance.

13.0903 Burning of Substances Causing Odor, Smoke Prohibited

It shall be unlawful within the City of Ashley to burn any substance which produces a dense smoke and which substance and the burning thereof and the smoke there from precipitates soot in large quantities in the air adjacent to the place of burning.

13.0904 Filling of Basement and Cellar Holes

- 1) No person shall allow or permit any basement or cellar hole to remain unfilled for more than sixty (60) days after the removal or destruction of the building or structure which covered any basement or cellar.
- 2) Any basement or cellar hole remaining open at the time of the adoption of this section shall be filled in and properly tamped to avoid settling within sixty (60) days of said adoption.
- 3) Any basement or cellar hole being exposed or uncovered after the passage of this section shall be filled in and properly tamped to avoid settling within sixty (60) days of being exposed or uncovered.
- 4) Any uncovered or exposed basement or cellar hole left in that condition for more than sixty (60) days is hereby declared to be a public nuisance.

This ordinance was enacted on September 6, 1994. First reading was August 1, 1994 and the second reading was September 6, 1994.

13.0905 Junk; Automobiles, Demolition, Trash, etc.

For the Purpose of this article, the following words and phrases shall have the meanings respectively ascribe to them by this section:

Section 1 Definition

Abandoned vehicle: Any vehicle which has remained on private property for a period of forty-eight (48) continuous hours or more, without the consent of the owner or occupant of the property, or for the period of forty-eight (48) continuous hours or more after the consent of the owner or occupant has been revoked.

Blighted structure: Any dwelling, garage or outbuilding, or factory, shop, store, warehouse or any other structure or part of a structure which, because of fire, wind or other natural disaster, or physical deterioration, is no longer habitable as a dwelling, nor useful for the purpose for which it may have been intended.

Junk: Parts of machinery or motor vehicles, unused furniture, stoves, refrigerators or other appliances, remnants of wood, metal or any other castoff material of any kind, whether or not the

same could be put to any reasonable use.

Junk automobiles: Any motor vehicle which is not licensed for use upon the highways of the state for a period in excess of sixty days, and shall also include, whether licensed or not, any motor vehicle which is inoperative for any reason for a period of sixty days; provided, that there is excepted from this definition unlicensed, but operative, vehicle which are kept as the stock in trade of a regularly licensed and established new or used automobile dealer.

Demolition materials: Shall include, without limitation, debris resulting from the demolition of buildings, such as concrete, stone, plaster, bricks, concrete blocks, and other materials that are the result of demolition and construction.

Person: All natural persons, firms, co-partnership, corporations and all associations of natural persons incorporated or unincorporated, whether acting by themselves or by a servant, agent or employee shall, except as herein otherwise provided, be equally liable as principals.

Trash and rubbish: Any and all forms of debris not herein otherwise classified.

Section 2 Declared public nuisance

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

Section 3 Prohibited; Exception

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

Section 4 Dismantling vehicles, etc.

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

Notice to remove nuisance: Except where otherwise provided in the ordinance if any person within the limits of the City of Ashley shall permit or suffer on his premises, on premises of which be the occupant, any nuisance, any member of the City Council, or person authorized by the City Council shall cause notice to be given such person to remove or abate such nuisance. The notice shall set forth the specific nuisance to be removed and the period of time in which it must be removed. The time period allowed for abating the nuisance shall be no less than forty-

eight (48) hours after notice has been given, provided however, that the time period may be less if the nuisance has caused or may cause death or injury to any person within the City of Ashley. Provided further, that the provisions of the section shall in no way restrict any emergency authority granted to the City Council or other emergency authority delegated to and exercised by persons duly authorized by the City Council.

Failure to remove-Prosecution: If any person, as owner or occupant of any lot or tenant, after notice as provided in “Notice to remove nuisance” section, neglects or refuses to remove or abate the nuisance, the person giving such notice shall notify the City Attorney, who may commence prosecution of the offence in the Ashley City Court to seek injunctive relief in District Court of the State of North Dakota.

Failure to remove-civil penalty: The City official who sent notice of removal or abatement of the nuisance, may, in addition to the remedies set out in the previous section, if the nuisance is not abated within the time period set out in the notice, send notice to the violator of a hearing to be held by the City Council to determine whether or not City Officials should be directed to abate the nuisance. The violator must be given five (5) days written notice of the time of the hearing. If at that hearing the Council determines that City Officials should abate the nuisance, the council shall direct employees of the city to do so, and direct that all costs and expenses incurred in that abatement shall be assessed against the property concerned by the City Auditor. Provided, however, if the City Officials determine that the nuisance presents a clear and present danger of injury or death to a person in Ashley, that official can direct City Officials to abate the nuisance immediately without the need for Council action.

Penalty: Any person violating any section of this ordinance shall be guilty of an infraction and shall be subject to a fine not to exceed \$500.00. Each forty-eight (48) hour period that such violation continues shall be considered a separate offense.

CHAPTER 10 - Abatement of Nuisances and Assessment of Costs

13.1001 How Nuisances Abated

The City Auditor shall give written notice to any person creating, permitting or maintaining any nuisance to abate the nuisance forthwith, and if the person shall neglect or refuse to do so within a reasonable time after notice, he or she shall be deemed guilty of a violation of this Title. The Police Department shall cause to be removed or abated any nuisance upon the expiration of a reasonable time after the serving of the notice, and the city may recover the expenses so incurred from the person maintaining the nuisance, in a civil suit instituted for that purpose. In addition to the method herein provided, all nuisances may be abated in the manner as provided in Title 42 of the North Dakota Century Code.

13.1002 Expense of Removal or Sanitation Improvement Charged as Special Assessment

Whenever it becomes necessary for the general welfare, public health, fire protection or public safety to order an owner or occupant of property to do certain work provided for in any part of this Code, upon notice given, and the owner or occupant refuses to obey or comply with that order, the work shall be done by the city as hereafter set forth and the owner or occupant of

the property billed for the same by the city. If the charge for that work or service is not paid when due, as hereafter set forth, the same may be collected in a civil action, or the same may be assessed against the premises on which the work was done, or for which the service was rendered, to be certified by the City Auditor to the County Auditor for collection as herein provided and under authority of chapter 40-05 of the North Dakota Century Code, where applicable.

13.1003 When Work Done by City

Where a notice to remove refuse, rubbish, manure, offal, stagnant water, noxious weeds, dilapidated structures, dangerous conditions, or nuisances defined by ordinance has been given as required by any ordinance of the City of Ashley, and the work is not done by the owner within the time specified, the City of Ashley shall, under the direction of the City Auditor, proceed to remedy or correct the situation by removing the structure or condition deemed to be hazardous or dangerous to the public health, safety and welfare, at the expiration of any period of time prescribed for the remedy of the condition by this Code. In the event that no time for notice is specifically set by other sections of this Code, a ten (10) day notice to remove or correct the structure of condition shall be all that is required prior to the City Auditor proceeding to use city personnel and equipment to correct the condition.

13.1004 City Cost Charged to Owner or Occupant

Where the City of Ashley shall have used its equipment and personnel for removal of any nuisance, the cost of that service shall be carefully itemized by the employee in charge thereof, and certified to the City Auditor as being a true and correct itemization of the cost of the removal of the nuisance.

The appropriate official or employee shall certify at the end of the itemization substantially as follows:

I do hereby certify that the above and foregoing itemization is a true and correct copy of the labor, time, material, equipment and other expenses incurred by the City of Ashley in correcting or remedying the above and foregoing described condition and that the amount is the amount to which the City of Ashley is entitled to be reimbursed for the work performed.

Signed
Title

13.1005 Auditor to Transmit Statement

Upon receipt of an itemized statement the City Auditor shall cause the owner, or occupant, which ever applicable, to be billed for the work or services upon statement forms prepared by the City Auditor and shall also send a copy of the itemization referred to in section 13.1004 with the statement. Failure of the City Auditor to enclose a copy of the itemization required in section 13.1004 shall not in any manner invalidate the proceedings had under this chapter.

If not paid within fifteen (15) days from the date of the mailing of the statement, the City Auditor shall cause the bill to be referred to the City Council.

13.1006 Council to Certify as Special Assessment

Any account referred to the City Council from the City Auditor shall be examined by the City Council, and upon approval thereof, the City Council shall by resolution

(1) Direct the City Attorney to institute a civil action for the recovery thereof; or

- (2) Direct the City Auditor to certify the amount to the County Auditor as a special assessment against the real estate upon which the work was done or the service rendered.

The resolution shall identify the property involved, the owner or occupant thereof, and the amount of charges for work performed or services rendered.

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TITLE 14

STREETS AND SIDEWALKS

CHAPTER 1 - Curb Cuts and Alterations

14.0101 Permit Required

No person shall begin to construct, reconstruct, repair, alter, or grade any sidewalk, curb, curb cut, driveway or street on the public streets, alleys and/or public grounds without first obtaining a permit from the Street Commissioner as provided by this chapter.

14.0102 Application

An applicant for a permit hereunder shall file with the Street Commissioner an application showing:

- (1) Name and address of the owner, or agent in charge, of the property abutting the proposed work area.
- (2) Name and address of the party doing the work.
- (3) Location of the work area.
- (4) Attached plans or sufficient sketches showing details of the proposed alterations.
- (5) Estimated cost of the alterations.
- (6) Other information as the Street Commissioner shall find reasonably necessary for the determination of whether a permit should issue hereunder.

14.0103 Fees

- (1) Fees to Accompany Application. The fees which shall accompany an application for a permit hereunder shall be \$1.00 for the first ten lineal feet or less of sidewalk, curb, curb cut, driveway or street to be altered, and \$0.50 for each additional ten (10) lineal feet or fraction thereof.
- (2) Simultaneous Alteration. When sidewalks, curbs, curb cuts, driveways or streets of a common owner are to be altered simultaneously, only one permit and fee shall be required.
- (3) Inspection and Engineering Fee. The Street Commissioner may charge a fee for all inspection and engineering services done on behalf of an applicant or permittee hereunder. The inspection and engineering fee shall be computed from a schedule of charges based on anticipated actual costs. The fee schedule may be posted for public

inspection in the City Hall.

14.0104 Bonds

The following bonds shall accompany an application for a permit hereunder:

- (1) Construction and Maintenance. Incases where the estimated cost of the project shall exceed five hundred dollars (\$500.00), the Street Commissioner shall require a maintenance and construction bond to be filed with the application for a permit hereunder in an amount equal to one-half of the estimated cost of the project and conditioned that the work shall be done in accordance with the city's standard specifications and guarantying the same for a period of one (1) year.
- (2) Failure of Compliance by Permittee. In any case where a permittee hereunder shall be in default or shall fail to comply with the requirements of this chapter, the Street Commissioner shall order the completion of the work by the city and shall recover the cost from the permittee as required by law.
- (3) Indemnity. The Street Commissioner shall have the authority to require an applicant hereunder to file a bond conditioned to protect and save the city harmless from all claims for damages or injury to other persons or property by reason of the alteration work.

14.0105 Standards For Issuance of Permit

The Street Commissioner shall issue a permit hereunder when it is found:

- (1) That the plans for the proposed operation have been approved by the city.
- (2) That the work will be done according to the standard specifications of the city for public work of like character.
- (3) That the operation will not unreasonable 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.
- (4) That the health, welfare and safety of the public will not be unreasonable impaired.

14.0106 Uncompleted Construction to be Flared

When any curb cut, street work or sidewalk work is to be performed, the construction shall contain sufficient barricades and flares, if needed, to protect the public. It shall be the duty of the permittee to cause the barricade or flares, or both, if required, to be placed and cause the flares to be lighted at the approach of darkness and to remain lighted until daylight casts lamination on the work sufficient to protect the traveling public.

14.0107 Order to Alter Curb Cut

Where the use, convenience and necessity of the public require, the Street Commissioner shall have the authority to order the owners, or agents in charge of property adjacent to which curb cuts are maintained, later to the curb cut in a manner as shall be found reasonably necessary under the circumstances.

The notice required by this section shall require compliance by the permittee within ten (10) days of said notice, be in writing, and be served upon the permittee.

14.0108 Digging in Street; Permit Required

A permit from the Street Commissioner shall be required by any person digging upon a paved or unpaved street or alley. When a permit is issued, the person to whom it is issued shall deposit with the city the sum of \$300.00 for digging a paved street or alley, and the sum of \$150.00 for digging in an unpaved street or alley.

CHAPTER 2 - Sidewalk Construction

14.0201 General

All sidewalks hereafter constructed within the corporate limits of the City of Ashley, McIntosh County, North Dakota, shall be constructed in accordance with the provisions of this chapter.

14.0202 Specifications For Sidewalk Construction

(1) General.

- (a) All built-in-place one course cement sidewalks, sidewalk approaches and sidewalk vehicular crossings shall be constructed with one (1) part of Portland Cement to five (5) parts, by measure, of clean, well graded gravel aggregate and shall be constructed as shown on plans approved by the Street Commissioner.
- (b) All sidewalk and sidewalk approaches shall be constructed having a thickness of four (4) inches and a width as hereinafter prescribed.
- (c) All vehicular sidewalk crossings shall be at least six (6) inches thick and of a width as hereinafter prescribed.

(2) Materials.

- (a) Cement. All cement used in any construction covered by these specifications shall be a standard Portland Cement, at the time it is incorporated in the mixture, shall conform to the standard specifications and tests for Portland Cement (Serial Designation 00-21) of the American Society for Testing Materials and subsequent revisions thereof.
- (b) Water. Water used in mixing concrete shall be clean and free from injurious amounts of oils, acids, alkalis, organic materials, or other deleterious substances. The concrete mixture shall contain no more water than is necessary to produce a workable mass which can be brought to a satisfactory finish. The amount of water used shall not exceed six and one-fourth (6¼) gallons per one (1) sack of cement when the aggregates are dry.
- (c) Aggregate. Natural mixed aggregate or so called "pit-run" may be used in the construction of sidewalks if the aggregate is well graded, clean and sharp, and approved by the Street Commissioner. In general:
 - 10% should be retained on a 1 inch sieve;
 - 25% should be retained on a ½ inch sieve;
 - 40% should be retained on a ¼ inch sieve;
 - 60% should be retained on a 1/8 inch sieve; and
 - 95% should be retained on a 100 mesh.

- (3) Mixing. Concrete shall be mixed for at least one minute after all ingredients are placed in the mixer and until each particle of aggregate is coated with cement mortar. The proportions of the mix by volume shall be one part of cement to five parts of well graded gravel or at least 1.3 barrels of cement per cubic yard of concrete. The person constructing the sidewalks shall furnish accurate containers for measuring water, cement and gravel. The old "hit or miss" method of measuring with a shovel will not be tolerated. Measuring boxes must be furnished and used.

- (4) Forms. Forms shall be of lumber two inches thick and four inches high or of steel of

- equal strength and four inches high. A standard 2 x 4 is not acceptable unless a strip is added to make the desired height. The person constructing the sidewalks may cut a larger size plank and make the forms four inches high. There will be no deviation from this requirement. All forms must be approved by the Street Commissioner before being used. All forms used shall be rigidly held to line and grade by stakes and braces. All line and grade will be furnished by the Street Commissioner.
- (5) Fill. All fill must be solidly compacted in six inch layers. Muck, quicksand, sod, soft clay, spongy or perishable matter shall not be used for fill. Fills shall extend one foot beyond the edges of the sidewalk to prevent undermining of the concrete. The side slopes on all fills should be two to one. When practical, the fill shall be allowed to settle for some time before the sidewalk is constructed. Where trees or other vegetation is encountered, the person constructing the sidewalk shall remove the same at his or her own expense.
 - (6) Sub-grade. Sub-grade shall be well drained and compacted to a firm surface with uniform bearing power. Before laying concrete, a two inch layer of pit run gravel shall be placed on the Sub-grade to provide proper drainage. This material shall be well tamped. All grass, sod, sticks, roots, and other vegetable matter must be removed. If the Sub-grade is water soaked, the person constructing the sidewalk shall install drain tile as directed, the tile to be furnished by the city.
 - (7) Openings and Drains. Where sidewalk approaches cross drainage ditches, the person constructing the sidewalk shall place drainage pipe furnished by the city. Pipes of suitable size will be available for that purpose.
 - (8) Expansion Joints. In construction abutting curbs and buildings, a joint filler shall be provided consisting of pre-molded strips of bituminous filler fiber or mineral aggregate, one-half inch thick, and as wide as the thickness of the sidewalk. In addition, expansion joints shall be placed at least every 25 to 30 feet and on property lines as in ordinary sidewalk work.
 - (9) Finishing and Placing. Concrete shall be placed immediately after mixing. It shall be tamped, struck off with a template, and then floated with a wood or aluminum float until the surface has a true contour. Care should be taken not to bring up an excess of water and fine aggregate to the surface by over-finishing.

Brooming shall be done after the water sheen has disappeared. The strokes shall be perpendicular to the centerline of the sidewalk and shall be continuous. The brooms shall be approximately 24 inches in length and shall not have less than three rows of bass, bassine, or coire fibers. Brooms shall be clean and free of dry or hardened mortar before being used. Contraction joints shall be placed at intervals equal to the width of the sidewalk. Prior to the placement of the curing material the sidewalk shall be edged along the forms with an edging tool. The small mark which is left by the troweling action of the edger on the sidewalk surface shall not be destroyed.

- (10) Curing. Any one of the following curing methods shall be used after the final finishing work has been completed:
 - (a) Burlap or Cotton Mats. As soon as the concrete for the sidewalk has hardened sufficiently so not to be injured, it shall be protected by covering with blankets or burlap or cotton mats, which shall be kept in a saturated condition for a period of 72 hours.

- (b) Waterproof Paper. As soon as the concrete for the sidewalk has hardened sufficiently so not to be injured, it shall immediately be covered with a layer of approved waterproof paper which shall be left in place for a period of not less than 72 hours. The sidewalk surface shall be moist when the paper is applied. Therefore, in some instances it may be necessary to wet down the sidewalk surface before the curing paper is placed.
- (c) Liquid Membrane Curing Compound. The curing compound shall be applied by means of spraying equipment immediately after the final finishing operations are completed. The application shall be made at a uniform rate and in a manner to provide a covering over the entire sidewalk surface that is impervious to the passage of water vapor. The total rate of application shall not be less than one half gallon per 100 square feet of surface area.
- (11) Rubbish and Cleaning Up. The person constructing the sidewalk shall remove all excavated material and rubbish to a place not interfering with city regulations and leave the sidewalk, street and surrounding area in as good condition as when he or she engaged the same.
- (12) Protection. The person constructing the sidewalk shall protect the sidewalk, sidewalk approaches, and sidewalk vehicular crossings from all hazards as long as it is necessary for the permanency of the construction.
- (13) Seeding. Any grass or grass seed which has been removed, damaged, or destroyed during the process of sidewalk construction by the person constructing the sidewalk shall be re-seeded by the person constructing the sidewalk with a quality of lawn seed approved by the City Council, or re-sodded with a quality of sod approved by the City Council.

14.0203 Width of Sidewalks; Distance From Property Line

- (1) The sidewalks upon each of the following described streets and avenues shall extend from the property line to the curb without any intervening boulevard, to-wit:
 - (a) On the north side of First Street Northeast from Center Avenue North to First Avenue Northeast.
 - (b) On both sides of Main Street from First Avenue Northeast and First Avenue Southeast to Second Avenue Northwest and Second Avenue Southwest.
 - (c) On both sides of Center Avenue North and Center Avenue South from First Street Northwest and First Street Northeast to the east-west alley in Blocks 16 and 17.
 - (d) On both sides of First Avenue Northwest and First Avenue Southwest from First Street Northwest to the east-west alley in Blocks 17 and 18.
 - (e) On both sides of Second Avenue Northwest and Second Avenue Southwest from First Street Northwest to the east-west alley in Blocks 18 and 19.
 - (f) On the east side of Block 31, Wishek & Lilly's First Addition to the City of Ashley, from the northeast corner of said Block 31 south, as far as the school building abuts on the property line.
 - (g) On the north side of Block 31, Wishek & Lilly's First Addition to the City of Ashley, from the northeast corner of said Block 31 west to a point directly north of the west side of the main school building on said Block 31.
- (2) The sidewalks upon each of the following described streets and avenues shall be six (6) feet in width and shall be placed and constructed so that the property side edge of

the sidewalk is on the property line, to-wit:

- (a) On the south side of First Street Northwest from Center Avenue North to Third Avenue Northwest.
 - (b) On both sides of Main Street from Second Avenue Northwest and Second Avenue Southwest to Fifth Avenue Northwest and Fifth Avenue Southwest.
- (3) The sidewalks upon each of the following described streets and avenues shall be four (4) feet in width and shall be placed and constructed so that the boulevard between the street side of the sidewalk and the street edge of the curb is a width of seven (7) feet, to-wit:
- (a) On the west side of Third Avenue Northeast.
 - (b) On both sides of Second Avenue Northeast.
 - (c) On both sides of Second Avenue Southeast.
 - (d) On both sides of First Avenue Northeast.
 - (e) On both sides of First Avenue Southeast.
 - (f) On both sides of Center Avenue North lying north of First Street Northeast and First Street Northwest.
 - (g) On both sides of Center Avenue South lying south of the east-west alley in Blocks 16 and 17, except that portion on the east side of Block 31, Wishek & Lilly's First Addition to the City of Ashley, from the northeast corner of said Block 31 south as far as the school building abuts on the property line.
 - (h) On both sides of First Avenue Northwest lying north of First Street Northwest.
 - (i) On both sides of First Avenue Southwest lying south of the east-west alley in Blocks 17 and 18.
 - (j) On both sides of Second Avenue Northwest lying north of First Street Northwest.
 - (k) On both sides of Second Avenue Southwest lying south of the east-west alley in Blocks 18 and 19.
 - (l) On both sides of Third Avenue Northwest.
 - (m) On both sides of Third Avenue Southwest.
 - (n) On both sides of Fourth Avenue Northwest.
 - (o) On both sides of Fourth Avenue Southwest.
 - (p) On both sides of Fifth Avenue Northwest.
 - (q) On both sides of Fifth Avenue Southwest.
 - (r) On both sides of Sixth Avenue Northwest.
 - (s) On both sides of Seventh Avenue Northwest.
 - (t) On the east side of Eighth Avenue Northwest.
 - (u) On the south side of Seventh Street Northeast.
 - (v) On the south side of Seventh Street Northwest.
 - (w) On both sides of Sixth Street Northeast.
 - (x) On both sides of Sixth Street Northwest.
 - (y) On both sides of Fifth Street Northeast.
 - (z) On both sides of Fifth Street Northwest.
 - (aa) On both sides of Fourth Street Northeast.
 - (bb) On both sides of Fourth Street Northwest.
 - (cc) On both sides of Third Street Northeast.
 - (dd) On both sides of Third Street Northwest.

- (ee) On both sides of Second Street Northeast.
 - (ff) On both sides of Second Street Northwest.
 - (gg) On both sides of First Street Northeast except that portion lying on the south side of Block 2.
 - (hh) On both sides of First Street Northwest except that portion lying on the north side of Blocks 10, 11, and 12.
 - (ii) On both sides of Main Street lying east of First Avenue Northeast and First Avenue Southeast.
 - (jj) On the north side of Frontage Road in Dobler & Rott's First Addition to the City of Ashley.
 - (kk) On both sides of First Street Southeast.
 - (ll) On both sides of First Street Southwest.
 - (mm) On both sides of Second Street Southeast.
 - (nn) On both sides of Second Street Southwest except that portion lying on the north side of Block 31, Wishek & Lilly's First Addition to the City of Ashley, from the northeast corner of said Block 31 west to a point directly north of the west side of the main school building on said Block 31.
 - (oo) On both sides of Third Street Southeast.
 - (pp) On both sides of Third Street Southwest.
 - (qq) On both sides of Fourth Street Southeast.
 - (rr) On both sides of Fourth Street Southwest.
 - (ss) On both sides of Fifth Street Southeast.
 - (tt) On both sides of Fifth Street Southwest.
 - (uu) On both sides of Sixth Street Southeast.
 - (vv) On both sides of Sixth Street Southwest.
 - (ww) On the north side of Seventh Street Southeast.
- (4) All other sidewalks in the City of Ashley, except as hereinbefore provided, shall be four (4) feet in width and shall be placed and constructed so that the boulevard between the street side of the sidewalk and the street edge of the curb is a width of seven (7) feet.

14.0204 Supervision of Sidewalk Construction

The building and construction of all sidewalks along the streets and avenues of the City of Ashley shall be done under the direct supervision of the Street Commissioner. The said Street Commissioner may approve the construction of sidewalks which substantially conform to the foregoing provisions of this chapter, even though not exactly conforming with the sidewalk width and boulevard width provisions hereinbefore set forth, in order to insure uniformity with adjacent sidewalks and boulevards.

14.0205 Permit Required

Before any sidewalk is constructed along the streets and avenues in the City of Ashley by any contractor or person, for the owner or owners of real property within said City of Ashley, said contractor or person must first secure a permit therefore from the Street Commissioner of said City of Ashley. The construction of said sidewalk shall be according to the liens and grades furnished by the Street Commissioner. The charge for said permit shall be \$1.00.

14.0206 Bond

Before any Contractor shall receive a permit for the construction of a sidewalk within the

limits or the streets and avenues of the City of Ashley, the Contractor must first execute a Guaranty Bond in an amount equal to the total amount of sidewalk construction to be performed under the Contract therefore, with a good and sufficient surety to be approved by the City Council. All bonds shall require that the Contractor receiving the permit shall replace all sidewalks and curbing constructed at any time within a period of three (3) years from the time of completion of the sidewalks which, in the opinion of the /city Street Commissioner, were not laid in accordance with the required specifications. "Contractor" as used in this section shall mean a person engaged by the city to construct sidewalks in the event the property owner r or owners neglect or refuse to construct the sidewalks.

14.0207 Duty to Keep Sidewalks in Repair

It shall be the duty of the owner or occupant of any property along which any sidewalk is constructed to maintain and keep the same in good repair, and in case the owner or occupant fails to make any repairs thereto within five (5) days after receiving notice thereof from the city, the owner or occupant shall be subject to a penalty as provided in this Code, and to a like penalty for each additional day of the continuance thereof.

CHAPTER 3 - Use and Care of Streets and Sidewalks

14.0301 License Required For Speaking on Streets

No person shall conduct any meeting or make any speech or do any other act on the streets and alleys of the City of Ashley which is likely to cause a crowd to congregate unless that person procures a license as provided in this chapter.

14.0302 Application, Granting and Expiration of License

Any person desiring to procure a license for the holding of any meeting or making of speeches or doing any other act likely to cause a crowd to congregate on the streets and alleys of the City of Ashley shall make application in writing to the City Council for a license for the doing of the above acts, and the City Council may in its discretion grant the license, providing, however, that the City Council may, when it deems best for the city and the inhabitants thereof, deny the license. The license, if granted, shall expire on the last day of the month of issuance.

14.0303 Revocation of License

The City Council may revoke the license at any time, and in case the license is revoked the fact that the applicant has secured a license shall be no defense to a prosecution for a violation for this chapter.

14.0304 Reinstatement of License

In case a license is revoked the applicant may make application under oath to the City Council for reinstatement of the license, which application shall state that the applicant has not violated any of the laws of the State of North Dakota nor any of the ordinances of the City of Ashley, or has not blocked, hindered, or impeded traffic while acting under the license prior to the revocation, and the City Council may in its discretion reinstate the license.

14.0305 Distribution of Handbills and Posters May be Prohibited

It shall be unlawful to distribute handbills, posters, or other papers in the City of Ashley except as provided in this chapter, and any person who shall throw or cause to be thrown or deposited upon the streets, sidewalks, alleys, or any public place in the City of Ashley any handbill, posters, or other papers, shall upon conviction thereof be subject to penalty as provided by this Code.

14.0306 Exception to Prohibition of Section 14.0305

Nothing contained in this chapter shall be construed to prevent any person from delivering into any place of business or residence or vehicle in the City of Ashley, any poster, handbill, or other paper in a manner that the same will not fall or be blown by the wind upon the streets, sidewalks, or public places in the City of Ashley.

14.0307 Posting Handbills, Placards Prohibited; Exception

Whoever shall paste, stick, nail, or post handbills, placards, or posters, or make, print, or mark any word, letter, or advertisement of any kind upon any private house, store, or other building, or upon any fence, wall, railing, telephone or electric light pole, or other private property, or who shall past, stick, nail, or post any handbills, placards, or posters of any kind, or make, paint, or mark any word, character, or letter or advertisement upon any public building, bridge, fence, railing, or sidewalk or any other property within the City of Ashley, except in compliance with the requirements of law in posting of legal notices, and except on his or her own property, shall be subject to the penalty as provided in this Code.

14.0308 Permit Required to Hang Signs

No person shall erect, suspend, or maintain any sign which is hung or suspended over or across any street, sidewalk, or alley of the City of Ashley without first securing a permit from the City Council and approval of the Street Commissioner.

14.0309 Application and Granting of Permit to Hang Signs

The City Council of the City of Ashley upon application duly made, accompanied by plans and specifications of the sign to be erected may grant a permit for the erection of electric signs in the streets and alleys of said city.

14.0310 Height of Signs Over Sidewalk

Signs shall not be hung or suspended less than eight (8) feet above the sidewalk in the City of Ashley and in a manner approved by the Street Commissioner.

14.0311 Depositing Rubbish on Streets Prohibited

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

14.0312 Failure to Remove Rubbish; Duty of Police and Street Commissioner

In case any wood, timber, lumber, or rubbish or any material whatever mentioned in section 14.0311 shall be found remaining or lying upon any street, alley, sidewalk, or public ground within the City of Ashley, in violation of section 14.0311, it shall be the duty of the Chief of Police, the Street Commissioner, or any public officer of the City of Ashley forthwith to notify and require, either by written or verbal notice, any person who may have placed that substance or thing thereon, or who may be the owner of or have control of the timber, wood, lumber, or other substance, or who may suffer the same to lie or remain upon the street, alley, sidewalk, or public ground, to immediately remove that thing or substance or cause the same to be removed there

from. In case that person shall neglect or fail to remove the substance or thing within one (1) hour after being notified, it shall be the duty of the Street Commissioner or any police officer to remove the same or cause it to be removed from the street, alley, sidewalk, or public ground to some convenient or safe place within the city at the expense of the person, to be recovered in an action against that person to be prosecuted in the name of the city; and the person so offending against the provisions of this section shall also be liable to fine and imprisonment as provided in this Code.

14.0313 Permit Required to Place Building Materials in Streets

It shall be lawful notwithstanding any provision of this chapter to the contrary, for any person engaged in constructing or repairing any building or structure to occupy a portion of the street with a building immediately adjacent to the lot upon which the building operations are being conducted. The portion of the street so occupied shall not exceed one-third (1/3) or the width of the driveway or street at that place; provided that a permit to occupy a portion of any street for building purposes shall in all cases be first obtained from the City Council. The fee for the permit shall be \$1.00.

14.0314 Movement of Tractors and Trucks Over Streets

No person shall move any traction engine, tractor, truck or other heavy vehicle when operated by steam, internal combustion, electricity, through the streets, alleys, or on any bridge or culvert or viaduct within the City of Ashley unless the wheels thereof are equipped with pneumatic or cushion rubber tires, without a special permit issued by the City Auditor, or unless a special carrier is used to protect the traveled roadway from damage. Any person moving any traction engine, tractor, truck, or other heavy vehicle (except those equipped with rubber tires as aforesaid) over any crosswalk, bridge, culvert or viaduct, shall first plank the same with planks at least three (3) inches thick.

14.0315 Hauling of Garbage Over Streets Prohibited; Exception

No garbage shall be hauled over or across any paved streets in the City of Ashley except where it is absolutely necessary to cross the same to convey that garbage from the point of loading to the nearest unpaved street or alley.

14.0316 Paper, Cloth, Waste Material Not allowed on Streets

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

14.0317 Construction of Sewers and Wells Prohibited on Streets

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

14.0318 Amusements Prohibited on Streets

No person shall in any street or alley in the City of Ashley fly a kite, play ball, or engage in any other game, sport, or amusement having a tendency or likely to annoy persons passing on the streets or sidewalks, or to impede the passage of vehicles.

14.0319 Coasting, Tobogganing Prohibited on Streets

No person shall use any portion of any street, alley or sidewalk for coasting, tobogganing, or similar sports unless special permission has been granted by the City Council.

14.0320 Vehicles, Animals Not to Cross Sidewalk: Exception

No person shall place, push, draw, or back any wagon, cart, or other vehicle on any sidewalk, or use, drive, or ride any horse or other animal, wagon, or other vehicle thereon, unless it be in crossing the same to go into a yard or lot when no other suitable crossing or means of access is provided.

14.0321 Removal of Snow and Ice From Sidewalks

The occupant of every building, tenement, or premises fronting upon any street within the City of Ashley, and the owner of any unoccupied building or premises fronting on any street, shall keep the sidewalk and gutter in front of his or her premises reasonably free of snow and ice, and shall after and during snowfall clear the snow off the sidewalks before two o'clock P.M. (2:00) each day, and on corner lots where the premises run to the alley, the owner of the property shall keep one-half (1/2) of the alley crossing adjoining said premises free from snow, ice, and rubbish.

14.0322 Placing of Merchandise on Streets and Sidewalks Prohibited; Exception

No person shall place or suffer to be placed upon any street or sidewalk in the City of Ashley any goods, wares, or merchandise for sale or show, beyond the front line of lot where these goods may be so exposed.

14.0323 Empty Packing cases Prohibited in Streets and Sidewalks

No person shall place or suffer to be placed upon any street or sidewalk in the City of Ashley any empty packing case for a longer period on one (1) hour.

14.0324 Regulations Governing Receiving and Delivering Merchandise on Sidewalks

No person receiving or delivering goods, wares, or merchandise in the City of Ashley shall place or keep upon or suffer to be placed or kept upon any sidewalk, any goods, wares, or merchandise which he or she may be receiving or delivering, without leaving a passageway clear upon the sidewalk, where the goods may be, of four (4) feet wide for the use of foot passengers, and no person receiving or delivering goods shall suffer the same to remain on the sidewalk for a longer period than one (1) hour.

14.0325 Regulations Governing Placement and Leaving of Goods on Sidewalks

It shall, however, be lawful for any person to place and leave for a period of not exceeding one (1) hour on three (3) feet of the outer edge of the sidewalk in front on his or her store or in the alley in the rear on his or her premises or building, any goods, wares, or merchandise which he shall be in the act of receiving or delivering those goods shall not be packed or unpacked on the sidewalk or street; provided, however, that anything in this section shall not be construed to allow the displaying of goods contained in boxes, crates, barrels, or any article or thing unsightly or dangerous to pedestrians or a nuisance.

14.0326 Destroying and Removing of Sidewalks Prohibited

No person shall willfully remove, injure, or destroy, without lawful authority, any sidewalk, crosswalk, drain, gutter or other walk within the City of Ashley.

14.0327 Openings in Streets, Sidewalks Not to be Kept Open or Unguarded

It shall be unlawful for any person in the City of Ashley to leave or keep open, uncovered, or unguarded any cellar door, pit, grating, vault, cistern, cesspool or subterranean passage opening from, into, or upon any street, alley, sidewalk or public ground within the City of Ashley; nor shall it be lawful for any person to suffer any cellar door, pit, grating, vault, cistern, cesspool, or other opening or place of like nature connected with the premises owned or occupied by him or her to remain in an insecure or other unsafe condition so that a person may fall into or be otherwise injured by the same.

14.0328 Breaking, Removing of White Way Posts, Telegraph and Telephone or Power Wires Prohibited; Exception

No person shall cut, remove, or break any white way posts or light fixtures, or any light pole or fixture, or any telephone or telegraph, or electric poles or wires properly strung upon poles running through or across any streets in the City of Ashley, for the purpose of moving buildings or for any other purposes, except in case of fire or to prevent the destruction of property, except under the express permission of the City Council.

14.0329 Coal Chutes, Unloading Chutes Prohibited

No person shall construct or install any manhole, cal chute or unloading chute in the sidewalk area in front or on the side of any building within the City of Ashley, and the City Council shall not approve any plans for issuance of a building permit, or issue any permit on any building which does not have a proper means of loading and unloading in an alley or on private property.

14.0330 Washing Vehicles of Streets Prohibited

It shall be unlawful for any person to wash or cause to be washed any motor vehicle upon the streets, alleys or public grounds within the City of Ashley.

14.0331 Removal of Snow and Ice From Sidewalks

Section 14.0331 was amended and re-enacted to read as follows on April 6, 1987

The owner of any lot or other real estate within the City of Ashley shall keep the sidewalks adjacent to said lot or real estate free of snow and ice; and it shall be the duty of the Street Commissioner to remove all snow and ice from the sidewalks, if the owner has not done so within 24 hours after the snow ends. The owner of the property will be billed for equipment use and labor.

The expense of snow and ice removal by the City of Ashley shall be assessed against, and shall be a lien upon the property from which said snow and ice was removed by the City of Ashley.

14.0332 Assessment For Removal of Snow and Ice From Sidewalks When Work Done by the City

Whenever the Street Commissioner shall, pursuant to section 14-03-31, remove or cause to be removed any snow or ice from any sidewalks or sidewalk along or in front of any building, grounds, or premises, the Street Commissioner shall assess the cost of the same against the property, and on or before the first day of May in each year, make and file in the office of the City Auditor a list of the property chargeable with that expense, the actual cost and expense of the removal and a description of the lot, lots, or parcels of land along or in front of which is the sidewalk or sidewalks from which snow or ice has been removed.

14.0333 Assessments For Removal of Snow and Ice From Sidewalks Published by City Auditor and Heard by City Council

The City Auditor shall give notice by publication in to official newspaper of the hearing and confirmation of the report and assessment at the regular June meeting of the City Council, notifying all persons objection thereto to appear and present their objections, the notice to be published twice, once in each week's issue for two (2) consecutive weeks, the last publication to be not less than eight (8) days before the time fixed for the hearing. At the June meeting of the City Council or at a later meeting as the hearing and confirmation of the assessment may be adjourned to, the City council shall take up and consider the assessment and shall hear any objections thereto, or to any part thereof, and after revising and correcting the same, if necessary

to do so, shall approve and confirm the same; the City Auditor shall there upon attach to such list a certificate that the same is correct as confirmed by the City Council and shall thereupon file the assessment list in his or her office as provided by law, and the assessment shall be certified to the County Auditor by the City Auditor at the same time and in the same manner that sidewalk assessments are certified.

14.0334 Blowing Snow

Once the street has been cleaned of snow in residential areas, no property owner may blow snow from his or her property back out onto the street. The Street commissioner or Chief of Police shall give a written warning to any person violating this section the first time. Any person violating this provision a subsequent time shall be fined the sum of Ten Dollars (10.00).

14.0335 Removal of Snow From Alleys

Removal of snow in alleys will only be done in case of emergency, if the alley is considered a residential alley.

CHAPTER 4 - Naming and Numbering Streets and Avenues

14.0401 Definitions

All street in the City of Ashley shall be designated and known as follows;

- (1) All Street running north and south shall be designated "Avenues".
- (2) All streets running east and west shall be designated "Streets".

14.0402 Names of Streets

- (1) The street platted and heretofore known as Main Street, shall be designated Main Street.
- (2) The first street north of Main street, heretofore known as Minnesota Street, shall be designated First Street North.
- (3) The second street north of Main Street, heretofore known as Dakota Street, shall be designated Second Street North.
- (4) The third street north of Main Street, heretofore known as Montana Street, shall be designated Third Street North.
- (5) The fourth street north of Main Street, heretofore known as Oregon Street, shall be designated Fourth Street North.
- (6) The fifth street north of Main Street, heretofore known as Lilly Street, shall be designated Fifth Street North.
- (7) The sixth street north of Main Street, heretofore known as Johnson Street, shall be designated Sixth street North.
- (8) The seventh street north of Main Street, heretofore known as Farley Street, shall be designated Seventh Street North.
- (9) The first street south of Main street, heretofore known as Iowa Street, shall be designated First Street South.
- (10) The second street south of Main Street, heretofore known as Nebraska Street, shall be designated Second Street South.
- (11) The third street south of Main Street, heretofore known as Wisconsin Street, shall be designated Third Street South.
- (12) The fourth street south of Main Street, heretofore known as Illinois Street, shall be designated Fourth Street South.
- (13) The fifth street south of Main Street, heretofore known as Michigan Street, shall be

designated Fifth Street South.

(14) The sixth street south of Main Street, heretofore known as Idaho Street, shall be designated Sixth Street South.

(15) The seventh street south of Main Street shall be designated Seventh Street South.

14.0403 Names of Avenues

(1) The street platted and heretofore known as Sixth Street, shall be designated Center Avenue.

(2) The first street east of Center Avenue, heretofore known as Seventh Street, shall be designated First Avenue East.

(3) The second street east of Center Avenue, heretofore known as Eighth Street, shall be designated Second Avenue East.

(4) The third street east of Center Avenue shall be designated Third Avenue East.

(5) The fourth street east of Center Avenue shall be designated Fourth Avenue East.

(6) The first street west of Center Avenue, heretofore known as Fifth Street, shall be designated First Avenue West.

(7) The second street west of Center Avenue, heretofore known as Fourth Street, shall be designated Second Avenue West.

(8) The third street west of Center Avenue, heretofore known as Third Street, shall be designated Third Avenue West.

(9) The fourth street west of Center Avenue, heretofore known as Second Street, shall be designated Fourth Avenue West.

(10) The fifth street west of Center Avenue shall be designated Fifth Avenue West.

(11) The sixth street west of Center Avenue shall be designated Sixth Avenue West.

(12) The seventh street west of Center Avenue shall be designated Seventh Avenue West.

(13) The eighth street west of Center Avenue shall be designated Eighth Avenue West.

14.0404 Postfix on Streets and Avenues

(1) All streets east of Center Avenue shall have added the Postfix, "East".

(2) All streets west of Center Avenue shall have added the Postfix, "West".

(3) All avenues north of Main Street shall have added the Postfix, "North".

(4) All avenues south of Main Street shall have added the Postfix, "South".

14.0405 System of Numbering

(1) The building, on each lot or tract of land of twenty-five (25) feet or more, abutting any street or avenue in the City of Ashley, shall take a number, which shall be an official designation of that structure.

(2) The east side of avenues running north and south shall bear the odd number, and the west side of avenues shall bear the even numbers.

(3) The south side of the streets running east and west shall bear the odd numbers, and the north side of streets shall bear the even numbers.

(4) If two buildings occupy a lot or tract of land of twenty-five (25) feet, then a half number shall be given to the extra structure thereon.

14.0406 Beginning of Numbering

The numbering of streets running east and west for either direction shall begin at Center Avenue, and the numbering on the avenues running north and south shall begin for either direction at Main Street. Numbering shall progress from block to block, commencing with the number one hundred (100) at each of said dividing lines, and shall rise to the next multiple of one

hundred at the crossing of every street or avenue in either direction from said dividing lines.

14.0407 Designation of Numbers

The City Auditor shall designate the number of all structures and shall make a plat of the city showing the system of numbering the buildings in accordance with this chapter and shall furnish the owner, occupant, or agent of the structure, now or hereafter built, with the proper number of that building.

14.0408 Figures Used

The figures forming the numbers of all buildings shall be not less than three (3) inches in height and shall be conspicuously attached or painted on glass, preferably over the front entrance of the structure.

14.0409 When Numbering Done by the City

If the owner or other person in control or custody of a building within the City of Ashley fails, refuses, or neglects to comply with this chapter, the City Auditor shall cause proper numbers to be placed upon the building and the cost of so doing shall be collected from the owner or custodian in a suit therefore by the city, and the owner or custodian shall also be liable for the penalties provided in Title 21 of this Code.

CHAPTER 5 - Street Grades

14.0501 Street Grades

All street grades heretofore established and adopted and those which may hereafter be established shall be on file in the office of the City Auditor.

14.0502 Official Base or Plane of Street Elevation

The official city base or plane of reference in the City of Ashley is hereby fixed at a point approximately 2,014 feet above mean sea level as established by the United States Geological Survey, at an iron monument located at the front steps of the McIntosh County Courthouse in the said City of Ashley.

14.0503 Location of Primal Base

The top surface of the iron monument located as described in section 14-05-02 is hereby required to be the primal bench line of the City of Ashley.

14.0504 How Official Elevations Described

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

TITLE 15

PARKS AND BOULEVARDS

CHAPTER 1 - Public Parks

15.0101 Creation of Park District of the City of Ashley

CHAPTER 2 - Planting and Preservation of Trees

15.0201 City Council to Control Planting of Trees and Shrubs
15.0202 Definition of Trees
15.0203 Definition of Streets
15.0204 Street Commissioner to be City Forester
15.0205 Permit Required For Planting Trees and Shrubs
15.0206 When Permit Granted
15.0207 When Permit Not Granted
15.0208 Term of Permit
15.0209 Regulation Governing Types and Manner of Planting
15.0210 Fastening Rope or Chain to Trees Prohibited
15.0211 City Forester May Remove Wire, Chains or Cable From Trees
15.0212 Signs, Posters Not to be Attached to Trees
15.0213 Piling Materials Against Trees Prohibited
15.0214 Trimming Trees
15.0215 Height of Hedges and Shrubs

CHAPTER 3 - Prohibition of Fireworks

15.0301 Fireworks in Park Prohibited
15.0302 Fireworks Defined

TITLE 15

PARKS AND BOULEVARDS

CHAPTER 1 - Public Parks

15.0101 Creation of Park District of the City of Ashley

The City Council of the City of Ashley has heretofore created a Park District of the City of Ashley in accordance with and under the provisions of the appropriate statutes of the State of North Dakota then in existence, the said statutes now being embodied in Chapter 40-49 of the North Dakota Century Code.

CHAPTER 2 - Planting and Preservation of Trees

15.0201 City Council to Control Planting of Trees and Shrubs

The City Council shall have the power and control over all trees, shrubs, and plants planted in the streets of the City of Ashley, and shall have the power to determine the kind and location of those trees, shrubs, and plants.

15.0202 Definition of Trees

The word, "tree," as used in this chapter shall not be construed to include shrubs that do not grow higher than twelve (12) feet.

15.0203 Definition of Streets

The word, "streets," shall include, in addition to the traffic roadway, all boulevards or berms adjoining the streets.

15.0204 Street Commissioner to be City Forester

The Street Commissioner is hereby designated City Forester acting under the City Council.

15.0205 Permit Required For Planting Trees and Shrubs

Any person desiring to plant any trees or shrubs within the streets of the City of Ashley shall, before planting, apply to the City Forester for a permit, stating the variety and precise location proposed for each tree or shrub.

15.0206 When Permit Granted

The City Forester shall grant the permit only if, in his or her judgment, the location is in accord with the general tree planting scheme for the street upon which tree or shrub is to be planted and, if the location will permit the normal growth and development of the tree or shrub.

15.0207 When Permit Not Granted

No permit shall be given where the clear space between curb and sidewalk locations is less than three (3) feet. No permit shall be given where the soil is too poor to insure the growth of the tree unless the owner agrees to excavate and fill in with black dirt, a suitable hole of the size to be approved by the City Forester.

15.0208 Term of Permit

The permit shall be good only for the season stated in the year issued and not for any other time and no charge shall be made for the permit.

15.0209 Regulations Governing Types and Manner of Planting

The White or American Elm (Ulmus Americans) shall be used for tree planting except when in any location, in the opinion of the City Forester, that tree cannot be grown successfully, the following trees may be used: Northwest Poplar (Populus So.) or the Silver Poplar (Populus Albanivea), or any other tree approved by the City Council.

No tree shall be planted nearer another tree than thirty (30) feet except, when in the judgment of the City Forester, a somewhat closer planting is necessary. No tree shall be planted in any street that after pruning is less than eight (8) feet high or one and one-half (1½) inches in diameter, six (6) inches above ground. The exact location and grade of each tree to be planted shall be staked by the City Forester. Trees shall be placed at the middle distance between the sidewalk and curb unless otherwise determined by the City Forester.

When at any time in the opinion of the City Council a street is, or may become, a much used thoroughfare so that a later widening may be necessary, the City Council may direct the City Forester to plant trees as near the sidewalk as is feasible. The blocks where no street trees now exist, shall not be planted with more than one (1) kind of street tree, unless otherwise provided by the City Council. Trees shall be pruned as the tree grows in height so that ultimately the trunk of each tree shall be without branches eight (8) feet from the ground.

15.0210 Fastening Rope or Chain to Trees Prohibited

No person shall attach or in any manner fasten any wire, rope, chain or cable to any tree in the streets of the City of Ashley.

15.0211 City Forester May Remove Wire, Chains or Cable From Trees

The City Forester shall have the power to remove any wire or other object that burns, chaffs, or cuts any part of trees, shrubs, or other plants in case the owner, after three (3) days written notice, fails to take adequate steps to prevent further injury.

15.0212 Signs, Posters not to be Attached to Trees

No person shall attach any sign, card, poster, advertising sign, or any article to any trees.

15.0213 Piling Materials Against Trees Prohibited

No person shall pile building material or other material against any trees unless the trees are sufficiently protected from injury by a proper guard and all instructions issued thereon to the owner by the City Forester must be promptly obeyed.

15.0214 Trimming Trees

The occupant of any private premises, or the owner of the same if not occupied abutting on any public street, road or alley within the City of Ashley, shall keep all trees standing upon those premises, or between the same and the center of the adjoining street, road or alley so

trimmed that no bough or branch thereof shall be lower than twelve (12) feet above the surface of the street, road or alley and eight (8) feet above the surface of the sidewalks thereon, and shall keep all trees so trimmed that no trunk, limb or branch thereof shall in any way, or at any time, come in contact with any street lighting power or other electrically charged wire when those wires are lawfully strung on posts located on any public street, road or alley, or between the lot line and the curb of any street; provided, that upon the failure of any occupant or owner to trim those trees as in this section provided, the City of Ashley shall have authority to remove or cause to be removed under its supervision any trunk, limb or branch of any tree, that is, in the judgment of the City Forester, may at any time come in contact with electrically charged wire, or which shall extend or hang lower than twelve (12) feet above the surface of any street, road or alley and eight (8) feet above the surface of any sidewalk whether the trees be growing on privately owned property or on public property, and may cause the same to be trimmed and charge the expense thereof to the occupant or owner of the property.

15.0215 Height of Hedges and Shrubs

No person shall keep or maintain any hedge, shrub, bush or picket or solid fence over three (3) feet in height at or in that area formed by the intersection of streets or within fifty (50) feet of an intersection, and the maintenance of any hedge, bush, shrub, or fence over three feet in height is declared to be a traffic hazard and a public nuisance and may be abated in the manner provide for the abatement of nuisances.

CHAPTER 3 - Prohibition of Fireworks

15.0301 Fireworks Prohibited in City Parks

No person shall shoot or discharge any fireworks in the city parks that are within the corporate limits of the City of Ashley at any time.

15.0302 Fireworks Defined

“Fireworks” as used in this chapter shall mean all items defined, listed and set forth in Section 23-15-01 of the North Dakota Century Code, as amended from time to time, which statute is hereby incorporated into this section by reference thereto.

TITLE 16

FRANCHISES AND CONTRACTS

CHAPTER 1 – Dickey Rural Networks Franchise

- 16.0101 Franchise Granted
- 16.0102 Franchise Subject to Police Power
- 16.0103 Franchise to be a Binding Contract

CHAPTER 2 - Montana-Dakota Utilities Company Franchise

- 16.0201 Definitions
- 16.0202 Franchise Granted
- 16.0203 Duties of Grantee
- 16.0204 Franchise Not Exclusive
- 16.0205 Police Power Reserved
- 16.0206 Grantee to Indemnify City
- 16.0207 Franchise May be Assigned
- 16.0208 Written Acceptance to be Filed With City
- 16.0209 Term of Franchise

CHAPTER 3 - Ashley Cable TV, INC

- 16.0301 Short Title
- 16.0302 Definitions
- 16.0303 Grant of Non-Exclusive Authority
- 16.0304 Compliance with Applicable Laws and Ordinances
- 16.0305 Territorial Area involved
- 16.0306 Liability and Indemnification
- 16.0307 Color TV
- 16.0308 Signal Quality Requirements
- 16.0309 Operation and Maintenance of System
- 16.0310 Carriage of Signals
- 16.0311 Emergency Use of Facilities
- 16.0312 Authorized Operation
- 16.0313 Safety Requirements
- 16.0314 New Development
- 16.0315 Conditions of Street Occupancy
- 16.0316 Preferential of Discriminatory Practices
- 16.0317 Removal of Facilities Upon Request
- 16.0318 Filings and Communications with Regulatory
- 16.0319 City Rights in Franchise
- 16.0320 Maps, Plats, and Reports

16.0321	Payment to the City
16.0322	Forfeiture of Franchise
16.0323	Certification of Authorization and Jurisdiction
16.0324	City's Right of Intervention
16.0325	Further Agreement and Waiver by Grantee
16.0326	Duration and Acceptance of Franchise
16.0327	Number of Channels
16.0328	Rates
16.0329	Publication Costs
16.0330	Separability
16.0331	Effective Date of Franchise
16.0332	Ordinances Repealed

TITLE 16

FRANCHISES AND CONTRACTS

CHAPTER 1 – Dickey Rural Services, Inc. Franchise

16.0101 Franchise Granted

An Ordinance granting a franchise to Dickey Rural Services, Inc., a North Dakota corporation, its successors and assigns, are hereby granted the right to use and occupy the streets, alleys and other public places of the City of Ashley, North Dakota, for a term of twenty (20) years from the 2nd day of September, 2008, for the purpose of constructing, maintaining and operating a general telephone and telegraph system within the City of Ashley.

16.1002 Franchise Subject to Police Power

The rights granted pursuant to this chapter are expressly made subject to the exercise of the police power as the same now is or may hereafter be conferred upon the City of Ashley.

16.0103 Franchise to be a Binding Contract

That this chapter shall constitute a binding contract between the City of Ashley and Dickey Rural Networks when it shall have been enacted according to law, and when the provisions hereof shall have been accepted in writing by Dickey Rural Networks and the acceptance file with the City Auditor.

CHAPTER 2 - Montana-Dakota Utilities Company Franchise

16.0201 Definitions

In this chapter the City of Ashley, North Dakota shall be referred to as the "City", and Montana-Dakota Utilities Co., a corporation, shall be referred to as the "Grantee", and any reference to either shall include their respective successors and assigns.

16.0202 Franchise Granted

There is hereby granted to the Grantee by the City, subject to the limitations herein stated, the right and franchise to occupy and use the streets, alleys, and public grounds of the City as now, or hereafter constituted, for the purpose of constructing, maintaining, and operating, within, upon, in and under the same, an electric distribution system for transmitting and distributing electric energy for all public and private uses.

16.0203 Duties of Grantee

The Grantee shall maintain an efficient distribution system for furnishing electric energy for public and private use during twenty-four (24) hours of each day at reasonable rates, and under regulations as may be approved by the Public Service Commission of the State of North Dakota.

16.0204 Franchise Not Exclusive

This franchise shall not be exclusive and shall not be construed to prevent the City from granting to any other party the right to use the streets, alleys, and public grounds of the City for like purposes.

16.0205 Police Power Reserved

The City reserves any right it may have, under its police power, or otherwise, to control or regulate the use of streets, alleys, and public grounds by the Grantee.

16.0206 Grantee to Indemnify City

The Grantee shall indemnify and save and hold the City harmless from any loss or damage due to construction, installation, and maintenance of its distribution system, and its use of the streets, alleys, and public grounds of the City.

16.0207 Franchise May be Assigned

The Grantee shall have the right to assign this franchise to any party, or corporation, but all obligations of the Grantee hereunder shall be binding upon its successors and assigns.

16.0208 Written Acceptance to be Filed With City

Within thirty (30) days after final approval of this franchise, the Grantee shall file with the City Auditor its written acceptance of this franchise.

16.0209 Term of Franchise

This franchise shall continue and remain in full force and effect for a period of twenty (20) years from June 2, 2008.

CHAPTER 3 – Cable TV Franchise Ordinance

16.0301 Short Title

This ordinance shall be known and may be cited as the “Cable TV Franchise Ordinance”.

16.0302 Definitions

16.0303 Grant of Non-Exclusive Authority

- (a) There is hereby granted by the City to the Grantee the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the City of a CATV System for the interception, sale and distribution of television and radio signals.
- (b) The right to use and occupy the streets, alleys public ways and places for the purposes herein, set forth shall not be exclusive, and the City reserves the right to grant a similar use of the streets, alleys, public ways and places, to any person at any time during the period of this franchise.

16.0304 Compliance with Applicable Laws and Ordinances

The Grantee shall, at all times during the life of this Franchise, be subject to all lawful exercise of the police power by the City and to reasonable regulation as the City shall hereafter provide.

16.0305 Territorial Area Involved

This Franchise is related to the present territorial limits of the City and to any area henceforth added thereto during the term of this franchise.

16.0306 Liability and Indemnification

- (a) The Grantee shall pay and by its acceptance of this Franchise the grantee specifically agrees that it will pay all damages and penalties which the City may legally be required to pay as a result of granting this Franchise. There damages and/or penalties shall include, but shall not be limited to damages arising out of copyright installation, operation, or maintenance of the CATV System authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.
- (b) The Grantee shall pay and by its acceptance of this franchise specifically agrees that it will pay all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in subsection (a) above. These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by the City Attorney, assistant attorneys or any employees of the City.
- (c) The Grantee shall maintain, and by its acceptance of this Franchise specifically agrees

that it will maintain throughout the term of this Franchise liability insurance insuring the City and the grantee with regard to all damages mentioned in subparagraph (a) above in the minimum amounts of;

- (1) \$100,000 for bodily injury or death to any one person, within the limit, however of \$300,000 for bodily injury or death resulting from any one accident.
- (2) \$100,000 for property damage resulting from any one accident.
- (3) \$100,000 for all other types of liability.
- (4) The Grantee shall maintain Workman's Compensation Coverage for the protection of its employees.

(d) The insurance policy obtained by the Grantee in compliance with this section shall be filed and maintained with the City Auditor during the term of this franchise.

(e) The requirements set out in Paragraph (c) and (d) above shall be met not later than thirty (30) days prior to the commencement of construction of this system.

16.0307 Color TV

The facilities used by the Grantee shall be capable of distributing color TV signals, and when the signals the Grantee distributed are received in color, they shall be distributed in color where technically feasible.

16.0308 Signal Quality Requirements

The Grantee shall:

- (a) Produce a picture whether in black and white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production TV sets in good repair, and as good as the state of the art allows.
- (b) Transmit signal of adequate strength to produce good pictures with good sound at all outlets without causing cross-modulation in the cables or interfering with other electrical or electronic systems.
- (c) Limit failures to a minimum by locating and correcting malfunctions promptly.
- (d) Demonstrate by instruments and otherwise to subscribers that a signal of adequate strength and quality is being delivered.

16.0309 Operation and Maintenance of System

- (a) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible, those interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.

16.0310 Carriage of Signals

The Grantee shall receive and distribute television and radio signals which are disseminated to the general public by broadcasting stations, and/or signals received via satellite from distributors, licensed by the Federal Communication Commission. All FCC regulations shall be complied with by the Grantee.

16.0311 Emergency Use of Facilities

In the case of any emergency or disaster, the grantee shall make its facilities available to the City for emergency use.

16.0312 Authorized Operation

This Franchise authorizes only the operation of a CATV System as provided for herein, and does not take the place of any other franchise, license, or permit which might be required by

law of the Grantee.

16.0313 Safety Requirements

- (a) The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- (b) The Grantee shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Electrical Safety Code Promulgated by the National Bureau of Standards and the National Electrical Code of the National Board of Fire Underwriters, and in a manner that they will not interfere with any installation of the City of a public utility serving the City.
- (c) All structures and all lines, equipment, and connections in, over, under and upon the streets, sidewalks, alleys, and public ways or places of the City, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good repair.

16.0314 New Development

It shall be the policy of the City liberally to amend this Franchise, upon application of the Grantee when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity to more effectively, efficiently, or economically serve its customers. Provided, however, that this section shall not be construed to require the City to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

16.0315 Conditions on Street Occupancy

- (a) All transmissions and distribution structures, lines, and equipment erected by the Grantee within the City shall be located to cause minimum interference with the proper use of streets, alleys, and other public places and ways, and to cause minimum interference with the rights and reasonable convenience of property owners who may use any of the streets, alleys, or other public ways and places.
- (b) In case of disturbance of any street, sidewalk, alley, public way or paved area, the Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore the street, sidewalk, alley, public way, or paved area in as good a condition as before the work involving the disturbance was done.
- (c) If at any time during the period of this Franchise the City shall lawfully elect to alter or change the race of any street, sidewalk, alley, or other public way, the Grantee, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.
- (d) Any poles or other fixtures placed in any public way by the Grantee shall be placed in a manner not to interfere with the usual travel on a public way.
- (e) The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for temporary wire changes.
- (f) The Grantee shall have the authority to trim trees upon and overhanging streets,

alleys, sidewalks, and public ways and places of the City to prevent the branches of trees from coming in contact with the wires and cable of the Grantee.

- (g) In all sections of the City where the cables, wires, or other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires or other like facilities underground to the maximum extent that existing technology reasonably permits the Grantee to do so.

16.0316 Preferential or Discriminatory Practices Prohibited

The Grantee shall not, as to rates, charges, service, service facilities, rules regulations or in other respects, make or grant any undue preference or advantage to any person, nor subject any person to any prejudice or disadvantage.

16.0317 Removal of Facilities Upon Request

Upon termination of service to any subscriber, the Grantee shall promptly remove all its facilities and equipment from the premises of that subscriber upon request.

16.0318 Filings and Communications with Regulatory Agencies

Copies of all petitions, applications and communications submitted by Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction with respect to any matters affecting CATV operations authorized pursuant to this Franchise, shall also be submitted simultaneously to the City Council, if requested by the City.

16.0319 City Rights in Franchise

- (a) The right is hereby reserved to the City or the City Council to adopt, in addition to the provisions contained herein and in existing applicable ordinances, additional regulations as it shall find necessary in the exercise of the police power; provided that those regulations, by ordinance or otherwise, shall be reasonable and not conflict with the rights herein granted.
- (b) The City shall have the right, during the life of this Franchise, to install and maintain free of charge upon the poles of the Grantee any wire and pole fixtures necessary for any municipal use on condition that those wire and pole fixtures do not interfere with the CATV operations of the grantee.
- (c) The City shall have the right to supervise all construction or installation work performed subject to the provisions of the franchise and make inspections as it shall find necessary to insure compliance with terms of this Franchise and other pertinent provisions of law.
- (d) At the expiration of the term for which this Franchise is granted, or upon its termination and cancellation, as provided for herein, the City shall have the right to require the grantee to remove at its own expense all portions of the CATV System from all public ways within the City.

16.0320 Maps, Plats, and Reports

- (a) The Grantee shall file with the City Auditor true and accurate maps or plats of all existing and proposed installations.
- (b) The Grantee shall keep on file with the City Auditor a current list of its shareholders and bondholders.

16.0321 Payment to the City

The Grantee shall pay the City a monthly franchise fee of \$500.00.

This monthly payment shall be made to the City within 60 days subsequent to the System's

annual accounting period. This payment shall be in addition to any other tax or payment owed the City by the Grantee, including any payment for ad valorem taxes, if any.

16.0322 Forfeiture of Franchise

- (a) In addition to all other rights and power pertaining to the City by virtue of this franchise or otherwise, the City reserves the right to terminate and cancel this franchise and all rights and privileges of the grantee hereunder in the event the Grantee;
 - (1) Violates any provision of this franchise or any rule, order, or determination of the City or City Council made pursuant to this franchise, except where the violation, other than of Section 23 or subsection (2) below, is without fault or through excusable neglect.
 - (2) Becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt.
 - (3) Attempts to evade any of the provisions of this Franchise or practices any fraud or deceit upon the City, or
 - (4) Fails to complete construction and commence operation under this Franchise according to provisions in Section 23.
- (b) Termination and cancellation shall be by ordinance duly adopted after thirty (30) days notice to the Grantee and shall in no way affect any of the City's rights under this franchise or any provisions of law. In the event that termination and cancellation depends upon a finding of fact, the finding of fact as made by the City Council or its representative shall be conclusive. Provided, however, that before this Franchise may be terminated and canceled under this Section, the Grantee must be provided with an opportunity to eliminate or rectify any violations or deficiencies as determined by the City Council.

16.0323 Certification of Authorization and Jurisdiction

The Grantee shall accomplish significant construction within one year after receiving certification of authorization from the FCC and such other regulatory bodies as may have authority and jurisdiction over Cable TV operations, and shall thereafter equitably and reasonably extend energized trunk cable to a substantial percentage of its franchise area each year, to be completed within one year after certification.

16.0324 City's Right of Intervention

The Grantee agrees not to oppose intervention by the City in any suit or proceeding to which the Grantee is a party.

16.0325 Further Agreement and Waiver by Grantee

The Grantee agrees to abide by all provisions of this Franchise, and further agrees that it will not at any future time set up as against the City or the City Council the claim that the provisions of the franchise are unreasonable, arbitrary, or void.

16.0326 Duration and Acceptance of Franchise

- (a) This franchise and the rights, privileges, and authority hereby granted shall take effect and be in force from and after final passage hereof, as provided by law, and shall continue in force and effect for a term of 15 years, provided that within 30 days subsequent to the date of the passage of this ordinance the Grantee shall file with the City Auditor its unconditional acceptance of this Franchise and promise to comply with and abide by all its provisions, terms, and conditions. That acceptance and promise shall be in writing duly executed and sworn to, by or on behalf of the Grantee

- before a Notary Public or other officer authorized by law to administer oaths.
- (b) Should the Grantee fail to comply with subsection (a) above, it shall acquire no rights, privileges, or authority under this Franchise whatever.
 - (c) The Grantee shall have a right of renewal of this franchise upon terms as the City and Grantee may agree upon, subject to State or Federal regulations as may be in effect as of the time of renewal.

16.0327 Number of Channels

The Grantee's cable distribution system shall be capable of carrying at least twenty (20) television channels. Further, the Grantee shall make available upon the request of the City Council one channel for education TV, one for the benefit of the inhabitants or the City, and one Public Access Channel. Grantee further agrees that it will carry and furnish to the users in the City all channels permitted by FCC regulations.

16.0328 Rates

The following rates and charges are hereby authorized for service under this Franchise and shall not be change by the Grantee without prior approval by the City Council:

- (a) Initial tap-in and connection charges: \$19.95.
- (b) Monthly rates: \$6.95, plus \$1.00 for each additional hookup.
- (c) Commercial rates: to be negotiated between Grantee and User.

16.0329 Publication Costs

The Grantee shall assume the entire cost of publication of this franchise if publication is required by law. The amount is payable upon the Grantee's filing of acceptance of this franchise.

16.0330 Separability

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision and the holding shall not affect the validity of the remaining portions hereof.

16.0331 Defective Date of Franchise

This Ordinance and the Franchise granted herein shall become effective upon approval by the City Council.

16.0332 Ordinances Repealed

All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

TITLE 17

PLANNING AND ZONING

CHAPTER 1 - Zoning

- 17.0101 Establishment of Districts; Official Zoning Map
- 17.0102 Rules for Interpretation of District Boundaries
- 17.0103 Application of District Regulations
- 17.0104 Non-Conforming Lots, Non-Conforming Uses of Land, Non-Conforming Structures, Non-Conforming Uses of Structures and Premises, and Non-Conforming Characteristics of Use
 - 17.0104.1 Intent
 - 17.0104.2 Non-Conforming Lots of Record
 - 17.0104.3 Non-Conforming Uses of Land (or Land with minor structures only)
 - 17.0104.4 Non-Conforming Structures
 - 17.0104.5 Non-Conforming Uses of Structures or of Structures and Premises in Combination
 - 17.0104.6 Repairs and Maintenance
 - 17.0104.7 Uses under Special Provisions non-Conforming Uses
- 17.0105 Schedule of District Regulations
- 17.0106 Supplementary District Regulation
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 - 17.0106.6 Structures to have Access
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- 17.0109.3 Variances; Conditions Governing Applications: Procedures
- 17.0109.4 Board has Powers of Administrative Official on Appeals; Reversing Decision of Administrative Official
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- 17.0112 Schedule of Fees, Charges and Expenses
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- 17.0114 Provisions of Ordinance Declared to be Minimum Requirements
- 17.0115 Complaints regarding Violations
- 17.0116 Penalties for Violation
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CHAPTER 2 - Planning Commission

- 17.0201 Creation of Planning Commission
- 17.0202 Terms of Office and Compensation
- 17.0203 Powers
- 17.0204 Zoning Authority and Territorial Jurisdiction

TITLE 17

PLANNING AND ZONING

CHAPTER 1 - Zoning

17.0101 Establishment of Districts; Official Zoning Map

The city is hereby divided into zones, or districts, as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this ordinance.

The Official Zoning Map shall be identified by the signature of the Mayor attested by the City Auditor, and bearing the seal of the city under the following words: "This is to certify that this is the Official Zoning Map of the City of Ashley referred to in Ordinance Number title 17.01", together with the date of the adoption of this ordinance.

If, in accordance with the provisions of this ordinance and North Dakota Century Code 40-47, Changes are made in district boundaries or other matter portrayed by the Official Zoning Map, those changes shall be entered in the Official Zoning Map promptly after the amendment has been approved by the City Council, with an entry on the Official Zoning Map as follows: "On (date), by official action of the City council, the following changes were made in the Official Zoning Map: (brief description of changes)," which shall be signed by the Mayor and attested by the City Auditor. No amendment to this ordinance which involves matter portrayed on the Official Zoning Map shall become effective until after the change and entry has been made on the map.

17.0102 Rules for Interpretation of District Boundaries

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

1. Boundaries indicated as approximately following the centerline of streets, highways, or alleys shall be construed to follow the centerline;
2. Boundaries indicated as approximately to follow platted lot lines shall be construed to follow those lot lines;

3. Boundaries indicated as approximately following city limits shall be construed to follow the city limits;
4. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
5. Boundaries indicated as parallel to or extensions of features indicated in subsections 1 through 4 above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map;
6. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by subsections 1 through 5 above, the City Council shall interpret the district boundaries.

17.0103 Application of District Regulations

The regulations set by this ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, and particularly, except as hereinafter provided;

1. No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered except in conformity with all the regulations herein specified for the district in which it is located.
2. No building or other structure shall hereafter be erected or altered:
 - a) to exceed the height or bulk;
 - b) to accommodate or house a greater number or families;
 - c) to occupy a greater percentage of lot area;
 - d) to have narrower or smaller rear yards, front yards, side yards, or other open spaces than herein required; or in any other manner contrary to the provisions of this ordinance.
3. No part of a yard or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this ordinance, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building.
4. No yard or lot existing at the time of passing of this ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this ordinance shall meet at least the minimum requirements as established by this ordinance.
5. All territory which may hereafter be annexed to the city or within one-half mile of the city limits as specified in Chapter 40-47-01.1 of the N.D. Century Code shall be considered to be in the single family residence district until otherwise classified.

17.0104 Non-Conforming Lots, Non-Conforming Uses of Land, Non-Conforming Structures, Non-Conforming Uses of Structures and Premises, and Non-Conforming Characteristics of Use

17.0104.1 Intent

Within the districts established by this ordinance or amendments that may later be adopted there exist

- a) lots,
- b) structures,
- c) uses of land and structures,

d) characteristics of use

which were lawful before this ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendment. It is the intent of this ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the is intent of this ordinance that non-conformities shall not be enlarged upon, expanded or extended, not to be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Non-conforming uses are declared by this ordinance to be incompatible with permitted uses within the districts involved. A non-conforming use of a structure, a non-conforming use of land, or a non-conforming use of a structure and land in combination shall not be extended or enlarged after passage of this ordinance by attachment of a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses, or of a nature which would be prohibited generally in the district involved.

To avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance and upon which actual building construction has been carried on diligently. Actual construction is defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, that excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

17.0104.2 Non-Conforming Lots of Record

In any district in which single family dwellings are permitted, a single family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this ordinance, notwithstanding limitations imposed by other provisions of this ordinance, not withstanding limitations imposed by other provisions of this ordinance. Lots must be of separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though the lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width of the lot shall conform to the regulations for the district in which that lot is located. Variance of yard requirements shall be obtained only through action of the Board of Adjustment. If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this ordinance, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an individual parcel for the purposes of this ordinance, and no portion of the parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this ordinance, nor shall any division of any parcel be made which creates a lot width or area below the requirements stated in this ordinance.

17.0104.3 Non-Conforming Uses of Land (or Land With Minor Structures Only)

Where at the time of passage of this ordinance lawful use of land exists which would not be permitted by the regulations imposed by this ordinance, and where that use involves no individual structure with a replacement cost exceeding \$1,000.00 the use may be continued as long as it remains otherwise lawful, provided:

- (a) No non-conforming use shall be enlarged or increased, not extended to occupy a

greater area of land than was occupied at the effective date of adoption or amendment of this ordinance;

- (b) No non-conforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by the use at the effective date of adoption or amendment of this ordinance;
- (c) If any non-conforming use of land ceases for any reason for a period of more than 30 days, any subsequent use of that land shall conform to the regulations specified by this ordinance for the district in which the land is located;
- (d) No additional structure not conforming to the requirements of this ordinance shall be erected in connection with a non-conforming use of land.

17.0104.4 Non-Conforming Structures

Where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not be built under the terms of this ordinance by reasons of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure that structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- a) No non-conforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity;
- b) Should non-conforming structure or non-conforming portion of structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance.
- c) Should structure be moved for any reason for any distance whatever, it shall therefore conform to the regulations for the district in which it is located after it is moved.

17.0104.5 Non-Conforming Uses of Structures or of Structures and Premises in Combination

If lawful use involving individual structures with a replacement cost of \$1,000 or more, or of structure and premises in combination, exists at the effective date or the adoption or amendment of this ordinance, that would not be allowed in the district under terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- a) No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use or the structure to a use permitted in the district in which it is located;
- b) Any non-conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for use at the time of adoption or amendment of this ordinance, but no use shall be extended to occupy any land outside the building;
- c) If no structural alterations are made, any non-conforming use of a structure, or structure and premises, may as a special exception be changed to another non-conforming use provided that the Board of Adjustment, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate in the district than the existing non-conforming use. In permitting the change the City Council may require appropriate conditions and

- safeguards in accord with the provisions of this ordinance;
- d) Any structure or structure and land in combination, in or on which a non-conforming use is superseded by a permitted use, shall therefore conform to the regulation of the district, and the non-conforming use may not thereafter be resumed;
 - e) When a non-conforming use of a structure or structure and premises in combination, is discontinued or abandoned for six (6) consecutive months or for eighteen (18) months during any three (3) year period (except where government action impedes access to the premises), the structure or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located;
 - f) When non-conforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land. Destruction, for the purpose of this subsection is defined as damage to the extent of more than fifty percent of the replacement cost at the time of destruction.

17.0104.6 Repairs and Maintenance

On any non-conforming structure or portion of a structure containing a non-conforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not exceeding 10 percent of the current replacement cost of the non-conforming structure or the non-conforming portion of the structure as the case may be, provided that the cubic content existing when it became non-conforming shall not be increased.

If a non-conforming structure or portion of a structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located. Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of that official.

17.0104.7 Uses Under Special Provisions not Non-Conforming Uses

Any use which is permitted as a special exception in a district under the terms of this ordinance (other than a change through City Council action from a non-conforming use to another use not generally permitted in the district) shall not be deemed a non-conforming use in that district, but shall without further action be considered a conforming use.

17.0105 Schedule of District Regulations

This section contains the definitions of use districts or zones in the City of Ashley and the one-half mile area of jurisdiction around the city limits and the regulations within those districts or zones.

PUBLIC, RECREATION & OPEN SPACE (PRO) DISTRICTS

This district is intended to protect and preserve public lands, lands with recreational uses and lands that are deemed to require the maintenance of conservation structures or practices for the public good. It is intended that residential uses shall be discouraged.

RESIDENTIAL, SINGLE FAMILY (R-1) DISTRICTS

This district is intended to protect the preserve land for single family dwellings and to discourage commercial and industrial uses within the district.

RESIDENTIAL, MULTI-FAMILY (R-1) DISTRICTS

This district is intended to provide for the safe and orderly maintenance and development of high density dwellings. It is the intent to discourage commercial and industrial growth within this district.

RESIDENTIAL - MOBILE HOME (R-M) DISTRICTS

It is the intent of this district to provide for the safe and orderly development of mobile home parks and to discourage commercial and industrial development within the district.

COMMERCIAL (C) DISTRICTS

It is the intent of this district to provide for the grouping together of retail merchandising, light industry and service activities, all of which have been issued a North Dakota Sales Tax Permit. It is the intent to discourage expansion of residential growth in this district.

INDUSTRIAL (I) DISTRICTS

It is the intent of this district to provide for the grouping of industrial uses for safe and orderly development of the city. Development of residential uses within this district is discouraged.

AGRICULTURAL DISTRICTS (AG)

It is the intent of this district to allow for the continued practice of agriculture in selected areas and to discourage development on those lands. List below are the specific regulations pertaining to each district and any "Special Exceptions" to the regulations.

17.0106 Supplementary District Regulation

17.0106.1 Visibility at Intersections in Residential Districts

On a corner lot in any residential district, nothing shall be erected, placed, planted, or allowed to grow in a manner as materially to impede vision between a height of two and a half and ten feet above the centerline grades of intersection streets in the area bounded by the street lines of corner lots and a line joining points along the street line 50 feet from the point of intersection.

17.0106.2 Fences, Walls and Hedges

Notwithstanding any provisions of this ordinance, fences, walls and hedges may be permitted in required yard, or along the edge of any yard, provided that no fence, wall or hedge along the sides or front edge of any front yard shall be over six (6) feet in height.

17.0106.3 Accessory Buildings

a.) Shipping containers are considered accessory buildings and are not allowed in R-1 and R-M districts.

b.) No accessory building shall be erected in any required yard, and no separate accessory building shall be erected within five (5) feet of any other building or lot line.

c.) Shipping containers shall have ventilation, be locked when unattended, have gaps between the ground and container covered within thirty (30) days of placement, and be painted to a neutral color of tan or gray within thirty (30) days of placement.

17.0106.4 Erection of more than one Principal Structure on a Lot

In any district, more than one structure housing a permitted or permissible principal use may be erected on a single lot, provided that yard and other requirements of this ordinance shall be met for each structure as though it were on an individual lot.

17.0106.5 Exceptions to Height Regulations

The height limitations contained in the Schedule of District regulations do not apply to

spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

17.0106.6 Structures to have Access

Every building hereafter erected or moved shall be on a lot adjacent to a public street or with access to an approved private street, and all structures shall be located on lots to provide safe and convenient access to servicing, fire protection and required off-street parking.

17.0106.7 Parking, Storage or Use of Major Recreational Equipment

For purposes of these regulations, major recreational equipment is defined as including boats and boat trailers, travel trailers, pick-up campers or coaches (designed to be mounted on automotive vehicles), motorized dwellings, tent trailers, and the like, and cases or boxes used for transporting recreational equipment, whether occupied by the equipment or not. No major recreational equipment shall be parked or stored on any lot in a residential district except in a car port or enclosed building or behind the nearest portion of a building to a street, provided however that equipment may be parked anywhere on residential premises for not to exceed 24 hours during loading or unloading. No equipment shall be used for living, sleeping, or housekeeping purposes when parked or stored on a residential lot, or in any location not approved for that use.

17.0106.8 Parking and Storage of Certain Vehicles

Automotive vehicles or trailers of any kind or type without current license plates shall not be parked or stored on any residentially zoned property other than in completely enclosed buildings.

17.0106.9 Underground Electrical Hookups

All mobile home courts are required to have underground electrical hookups. It is recommended that all new residential developments have underground electrical lines.

17.0107 Administration and Enforcement

An administrative official designated by the City Council shall administer and enforce this ordinance. That official may be provided with the assistance of other persons as the City Council may direct. If the administrative official shall find that any of the provisions of the ordinance are being violated, he or she shall notify in writing the person responsible for the violations, indicating the nature of the violation and ordering the action necessary to correct it. He or she shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this ordinance to ensure compliance with or to prevent violations of its provisions.

17.0107.1 Building Permits Required

No building or other structure shall be erected, moved, added to, or structurally altered without a permit therefore, issued by the administrative official. No building permit shall be issued by the administrative official except in conformity with the provisions of this ordinance, unless he or she receives a written order from the Board of Adjustment in the form of an administrative review, special exemption, or variance as provided by this ordinance.

17.0107.2 Application for Building Permit

All applications for building permits shall be accompanied by plans in duplicate drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The application shall include other information as lawfully may

be required by the administrative official, including existing or proposed uses of the building and land, the number of families, housekeeping units or rental units the building is designed to accommodate; conditions existing on the lot; and other matters as may be necessary to determine conformance with, and provide for the enforcement of, this ordinance. One copy of the plans shall be returned to the applicant by the administrative official, after he or she shall have marked the copy either as approved or disapproved and attested to same by his or her signature on the copy. The original plans, similarly marked, shall be retained by the administrative official.

17.0107.3 Expiration of Building Permit

If the work described in any building permit has not begun within 90 days from the date of issuance thereof, the permit shall expire, it shall be canceled by the administrative official; and written notice thereof shall be given to the persons affected. If the work described in any building permit has not been substantially completed within two years of the date of issuance thereof, the permit shall expire and be canceled by the administrative official, and written notice shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new building permit has been obtained.

17.0107.4 Construction and Use to be in Applications, Plans and Permits

Building permits issued on the basis of plans and applications approved by the administrative official authorize only the use, arrangement, and construction set forth in the approved plans and applications, and no other use, arrangement or construction. Use, arrangement or construction at variance with that authorized shall be deemed violation of this ordinance, and punishable as provided in Chapter 16 hereof.

17.0108 Board of Adjustment: Establishment and Procedure

A Board of Adjustment is hereby established, which shall consist of five members to be appointed by the City Council.

17.0108.1 Proceedings of the Board of Adjustment

The Board of Adjustment shall adopt rules necessary to conduct its affairs and in keeping with the provisions of this ordinance. Meetings shall be held at the call of the Mayor and at other times as the Board may determine. The Mayor, or in his or her absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. The Board shall keep minutes of its meetings, showing the vote of each member upon each question, or if absent or failing to vote indicating that fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the City Auditor.

17.0108.2 Hearings; Appeals; Notice

Appeals to the Board of Adjustment concerning the interpretation or administration of this ordinance may be taken by any person aggrieved or by any other officer or bureau or the governing body of the city affected by any decision of the administrative official. Appeals shall be taken within a reasonable time, not to exceed 60 days or a lesser period as may be provided by the rules of the Board, by filing with the administrative official and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The administrative official shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken.

The Board of Adjustment shall fix a reasonable time for the hearing of appeal, give public notice thereof as well as due notice to the parties of interest, and decide the same within a reasonable time. At the hearing any party may appear in person or by agent or attorney.

17.0108.3 Stay of Proceedings

An appeal stays all proceedings in furtherance of the action appealed from, unless the administrative official from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal is filed, that by reason of facts stated, a stay would, in his or her opinion, cause imminent peril to life and property. In that case proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.

17.0109 Board of Adjustment: Powers and Duties

The Board of Adjustment shall have the following powers and duties.

17.0109.1 Administrative Review

To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the administrative official in the enforcement of this ordinance.

17.0109.2 Special Exceptions: Conditions Governing Applications & Procedures

To hear and decide only special exceptions as the Board of Adjustment is specifically authorized to pass on by the terms of this ordinance; to decide questions as are involved in determining whether special exceptions should be granted; and to grant special exceptions with conditions and safeguards as are appropriate under this ordinance, or to deny special exceptions when not in harmony with the purpose and intent of this ordinance. A special exception shall not be granted by the Board of Adjustment unless and until:

- a) A written application for a special exception is submitted indicating the section of this ordinance under which the special exception is sought and stating the grounds on which it is requested;
- b) Notice shall be given at least 15 days in advance of public hearing. The owner of the property for which special exception is sought or his or her agent shall be notified by mail. Notice of hearings shall be posted on the property for which special exception is sought, at the City Hall, and in the official newspaper of the city.
- c) The public hearing shall be held. Any party may appear in person or by agent or attorney.
- d) The Board of Adjustment shall make a finding that is empowered under the section of this ordinance described in the application to grant the special exception, and that the granting of the special exception will not adversely affect the public interest;
- e) The Board any special exception shall issue, the Board shall make written findings certifying compliance with the specific rules governing individual special exceptions and that satisfactory provision and arrangement has been made concerning the following where applicable;
 1. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
 2. Off-Street parking and loading areas where required, with particular attentions to the items in (1) above, the economic, noise, glare, or odor effects of the special exception on adjoining properties generally in district;
 3. Refuse and service areas, with particular reference to the items in (1) and (2) above;
 4. Utilities, with reference to location, availability, and compatibility;

5. Screening and Buffering with reference to type, dimensions, and character;
6. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;
7. Required yards and open space;
8. General compatibility with adjacent properties and other property in the district.

17.0109.3 Variances; Conditions Governing Application; Procedures

To authorize upon appeal in specific cases a variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship. A variance from the terms of this ordinance shall not be granted unless and until;

- a) A written application for a variance is submitted demonstrating;
 1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district;
 2. That literal interpretations of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;
 3. That the special conditions and circumstances do not result from the actions of the applicant;
 4. That the granting of the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district. No non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted or non-conforming use of lands, buildings, or structures in other districts shall be considered grounds for the issuance of a variance.
- b) Notice of above hearing shall be given as in Chapter 9 (2) (b) above;
- c) The public hearing shall be held. Any party may appear in person, or by agent or attorney.
- d) The Board of Adjustment shall make findings that the requirements of Chapter 9 (3) (a) have been met by the applicant for a variance;
- e) The Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure;
- f) The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

17.0109.4 Board has Powers of Administrative Official on Appeals, Reversing Decision of Administrative Official

In exercising the above mentioned powers, the Board of Adjustment may, so long as the action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as ought to be made, and to that end shall have the powers of the administrative official from whom the appeal is taken.

The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect

any variation in the application of this ordinance.

17.0110 Appeals from the Board of Adjustment

Any person or persons, or any board, taxpayer, department, board or bureau of the city aggrieved by any decision of the Board of Adjustment may seek review by a court of record of the decision, in the manner provided by the laws of the State of North Dakota.

17.0111 Duties of Administrative Official, Board of Adjustment and Courts on Matters of Appeal

It is the intent of this ordinance that all questions of interpretation and enforcement shall be first presented to the administrative official, and that questions shall be presented to the Board of Adjustment only on appeal from the decision of the administrative official, and that recourse from the decisions of the Board of Adjustment shall be to the courts as provided by the laws of the State of North Dakota.

17.0112 Schedule of Fees, Charges and Expenses

The City Council shall establish a schedule of fees, charges and expenses and a collection procedure for building permits, appeals, and other matters pertaining to this ordinance. The schedule of fees shall be posted on the office of the administrative official, and may be altered or amended only by the City Council. Until all application fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

17.0113 Amendments

The regulations, restrictions and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or repealed, provided however that no action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days notice of the time and place of the hearing shall be published in the official newspaper of the city. When a proposed amendment affects the zoning classification of property, and in case a protest against the change is signed by the owners of 20% or more either of the area of the lots included in the proposed change, or of those immediately adjacent in the rear thereof extending 150 feet there from, or of those directly opposite thereto extending 150 feet from the street frontage of the opposite lots, then amendments shall not become effective except by the favorable vote of three-fourths of the City Council.

17.0114 Provisions of Ordinance Declared to be Minimum Requirements

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of public health, safety, morals, or general welfare, wherever requirements of this ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions, or covenants, the most restrictive or that imposing the higher standards shall govern.

17.0115 Complaints Regarding Violations

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. The complaint stating fully the causes and basis thereof shall be filed with the administrative official. He or she shall record properly the complaint, immediately investigate, and take action thereon as provided by this ordinance.

17.0116 Penalties for Violation

Violations of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established with grants of variances or special exceptions) shall constitute a misdemeanor. Any person who violates this

ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$100 or imprisoned not more than 30 days, or both, and in addition shall pay all costs and expenses involved in the case. Each day the violation continues shall be considered a separate offense.

The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent or person who commits, participates in, assists in, or maintains a violation may each be found guilty of a separate offense and suffer the penalties herein provided.

Nothing herein contained shall prevent the city from taking other lawful action as is necessary to prevent or remedy any violation.

17.0117 Separability Clause

Should any section or provision of this ordinance be declared by the courts to be unconstitutional or valid, that decision shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared to be unconstitutional or valid.

17.0118 Repeal of Conflicting Ordinances

All ordinances parts of ordinances in conflict with this zoning ordinance, or inconsistent with the provisions of this ordinance, are hereby repealed to the extent necessary to give this ordinance full force and effect. This ordinance shall become effective on February 1, 1977.

17.0119 Moving Permits/Fees

- 1) A deposit of One Thousand Five Hundred Dollars (\$1,500.00) shall be made by any person wishing to remove a building or structure from any property within the City of Ashley to another location.
- 2) The deposit shall be made with the City Auditor or the City of Ashley, North Dakota. If the person(s) making the deposit and moving or removing the building or structure is a current resident of the City of Ashley and will remain a resident of the City of Ashley, the deposit will be held for 60 days. If after 60 days the building or structure has not been removed and the basement filled to the satisfaction of the City of Ashley, the deposit will be cashed. If the person(s) making the deposit and moving or removing the building or structure is not a current resident and will not be a resident after the removal of the building or structure, the deposit will be cashed immediately.
- 3) When the basement excavation under said moved building has been filled in and tamped to the satisfaction of the City of Ashley, the said deposit shall be returned to the person who made the deposit, resident or non-resident alike.
- 4) In filling a basement excavation any concrete or block walls shall be removed and not allowed to remain in the said excavation that is to be filled.

17.0120 Definitions

For the purposes of this ordinance, certain terms or words used herein shall be interpreted as follows:

The word "person" includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual.

The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.

The word "shall" is mandatory, the word "may" is permissive.

The words "used" or "occupied" include the words "intended", "designed", or "arranged

to be used or occupied".

The word "lot" includes the words "plot" or "parcel".

"Shipping container"- A large, strong container, usually of metal used to store goods during shipment.

"Accessory Use or Structure" - A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

"Build able Area" - The portion of a lot remaining after required yards have been provided.

"Dwelling, Single-Family" - A detached residential dwelling unit other than a mobile home, designed for and occupied by one family only.

"Dwelling, Mobile Home" - A detached residential dwelling unit designed for transportation after fabrication on streets or highways on its own wheels or on flatbed or other trailers, and arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks or other temporary or permanent foundations, connections to utilities, and the like. A travel trailer is not considered as a mobile home.

"Dwelling, Two-Family" - A detached residential building containing two dwelling units, designed for occupancy by not more than two families.

"Dwelling, Multi-Family" - A residential building designed and or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided.

"Dwelling Unit" - One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities.

"Family" - One or more persons occupying a single dwelling unit, provided that unless all members are related by blood or marriage, no family shall contain over five persons, but further provided that domestic servants employed on the premises may be housed on the premises without being counted as a family or families.

"Home Occupation" - An occupation conducted in a dwelling unit, provided that:

- a) No person other than members of the family residing on the premises shall be engaged in the occupation;
- b) The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 25% of the floor area of the dwelling unit shall be used in the conduct of the home occupation;
- c) There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of a home occupation other than one sign, not exceeding 2 sq. ft. in area, non illuminated, and mounted against the wall of the principal building;
- d) No home occupation shall be conducted in any accessory building;
- e) No traffic shall be generated by a home occupation in greater volumes than normally to be expected in a residential neighborhood, and any need for parking generated by the conduct of a home occupation shall be met off the street and other than a required front yard;

- f) No equipment or process shall be used in a home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot, if the occupation is conducted in a single-family residence, or outside the dwelling unit if conducted in other than a single-family residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or caused fluctuations in line voltage off the premises.

"Loading Space, Off-Street" - Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street parking space in computation of required off-street space.

"Lot" - For purposes of this ordinance, a lot is a parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage, and area, and to provide yards and other open spaces as are herein required. A lot shall have frontage on an improved public street, or on an approved private street, and may consist of:

- a) a single lot of record;
- b) a portion of a lot of record;
- c) a combination of complete lots of record, of complete lots of record and portions of lots of record, or of portions of lots of record;
- d) a parcel of land described by metes and bounds; provided that in no case of division or combination shall any residual lot or parcel be created which does not meet the requirements of this ordinance.

"Lot Frontage" - The front of a lot shall be construed to be the portion nearest the street. For the purposes of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated under "yards" in this section.

"Lot Measurements"

- a) Depth of a lot shall be considered to be the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and rearmost points of the side lot lines in the rear.
- b) Width of a lot shall be considered to be the distance between straight lines connecting front and rear lot lines at each side of the lot, measured across the rear of the required front yard, provided however that width between side lot lines at their foremost points (where they intersect with the street line) shall not be less than 80% of the required lot width except in the case of lots on the turning circle of culdesac, where the 80% requirement may not apply.

"Lot of Record" - A lot which is part of a subdivision recorded in the office of the County Register of Deeds, or a lot or parcel described by metes and bounds, the description of which has been so recorded.

"Lot Types" - (See Figure 1 which illustrates "corner lots", "interior lots", "reversed frontage lots" and "through lots".)

"Parking Space, Off-Street" - For the purposes of this ordinance, an off-street parking space shall consist of a space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room. Required off-street parking areas for three or more automobiles shall have individual

spaces marked, and shall be so designed, maintained, and regulated that no parking or maneuvering incidental to parking shall be on any public street, walk, or alley, and so that any automobile may be parked without moving another.

For purposes of rough computation, an off-street parking space and necessary access and maneuvering room may be estimated at 300 square feet, but off-street parking requirements will be considered to be met only when actual spaces meeting the requirements above are provided and maintained, improved in a manner appropriate to the circumstances of the case, and in accordance with all ordinances and regulations of the city.

"Special Exception" - A special exception is a use that would not be appropriate generally or without restriction throughout the zoning division or district by which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Those uses may be permitted in a zoning division or district as special exceptions, if specific provision for special exceptions is made in this zoning ordinance.

"Street Line" - The right-of-way of a street.

"Structure" - Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include buildings mobile homes, walls, fences, billboards and poster panels.

"Travel Trailer" - A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel and recreational purposes, having a body width not exceeding nine feet.

"Variance" - A variance is a relaxation of the terms of the zoning ordinance where the variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for height, area, size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presences of non-conformities in the zoning district or uses in an adjoining zoning district.

"Yard" - A required open space other than a court unoccupied and unobstructed by any structure or portion of a structure from thirty inches above the general ground level of the grade lot upward, provided however that fences, wall, poles, posts, and other customary yard accessories, ornaments, and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility.

"Yard, Front" - A yard extending between side lot lines across the front of a lot adjoining a public street. In the case of through lots, unless the prevailing front yard pattern on adjoining lots indicates otherwise, front yards shall be provided on all frontages. Where one of the front yards that would normally be required on a through lot is not in keeping with the prevailing yard pattern, the administrative official may waive the requirement for the normal front yard and substitute therefore a special yard requirement which shall not exceed the average of the yards provided in adjacent lots.

In the case of corner lots which do not have reversed frontage, a front yard of the required depth shall be provided in accordance with the prevailing yard pattern and a second front yard of half the depth required generally for front yards in the district shall be provided on the other frontage.

In the case of reversed frontage corner lots, a front yard of the required depth shall be provided on either frontage and a second front yard of half the depth required generally in front yards in the district shall be provided on the other frontage.

In the case of corner lots with more than two frontages, the administrative official shall determine the front yard requirements, subject to the following limitations: (1) At least one front yard shall be provided having the full depth required generally in the district, and (2) no other front yard on the lot shall have half the full depth required generally.

"Depth of Required Front Yards Shall be Measures" - At right angles to a straight line joining the foremost points of the side lot lines. The foremost point of the side lot line, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without that rounding. Front and rear yards shall be parallel.

"Yard, Side" - A yard extending from the rear line of the required front yard to the rear lot line, or in the absence of any clearly defined rear lot line to the point on the lot farthest from the intersection of the lot line involved with the public street. In the case of through lots, side yards shall extend from the rear lines of front yards required. In the case of corner lots, yards remaining after full and half-depth front yards have been established shall be considered side yards.

"Yard, Rear" - A yard extending across the rear of the lot between inner side yard lines. In the case of through lots and corner lots, there will be no rear yards, but only front and side yards. Depth of a required rear yard shall be measured in a manner that the yard established is a strip of the minimum width required by district regulation with its inner edge parallel with the rear lot line.

"Yard, Special" - A yard behind any required yard adjacent to a public street, required to perform the same functions as a side or rear yard, but adjacent to a lot line so placed or oriented that neither the term "side yard" nor the term "rear yard" clearly applies. In that case, the administrative official shall require a front yard with minimum dimensions as generally required for a side yard or a rear yard in the district, determining which shall apply by the relation of the portion of the lot on which the yard is to be located to the adjoining lot or lots, with due regard to the orientation and location of the structures and build able areas thereon.

CHAPTER 2 Planning Commission

17.0201 Creation of Planning Commission

There is hereby created and Planning Commission for the City of Ashley, McIntosh County, North Dakota, which shall consist of seven regular members to include the following:

- 1) Six members who shall be residents of the City of Ashley, North Dakota, and who shall be appointed by the Mayor with approval of the City Council.
- 2) One member who shall reside outside of the corporate limits of the City of Ashley, North Dakota whose place of residence is located in unincorporated territory within one-half (1/2) mile of the corporate limits of the City of Ashley which member shall be appointed by the Board of County Commissioners of McIntosh County, North Dakota.
- 3) The Mayor, the City Engineer and the City Attorney who shall be ex-officio members of the planning commission.

17.0202 Terms of Office and Compensation

- 1) The present members of the Planning Commission shall hold office for the balance of their appointed terms. Thereafter appointed members shall serve five year terms.
- 2) The new members of the Planning Commission appointed by the Mayor pursuant to section 10-02-01 (1) shall hold office for a term of five year.
- 3) The member appointed by the Board of County Commissioners of McIntosh County, North Dakota shall hold office for a term of five years.
- 4) Ex-officio members shall serve for the term of their elective or appointive office.
- 5) If a vacancy on the Planning Commission occurs other than by expiration of a term, it shall be filled by appointment for the unexpired portion of the term.
- 6) All members of the Planning Commission shall serve without compensation.

17.0203 Powers

The Planning Commission of the City of Ashley, McIntosh County, North Dakota shall have the powers and shall perform the duties as may now hereafter be provided by state statute and City ordinances; and pursuant to Section 40-47-06 of the North Dakota Century Code it is hereby appointed as the Zoning Commission of the City of Ashley, McIntosh county, North Dakota, and authorized and empowered to assume all powers all duties appropriate to that appointment.

17.0204 Zoning Authority and Territorial Jurisdiction

The Territorial Jurisdiction of the Planning Commission of the City of Ashley for land use zoning and subdivision of land is declared to include not only all land located within the corporate limits of the City of Ashley, McIntosh County, North Dakota, but shall also extend to all unincorporated territory located within one-half (1/2) mile in every direction from its corporate limits as authorized by Section 40-47-01.1 of the North Dakota Century Code.

TITLE 18

AVIATION

CHAPTER 1 - Regulating Aircraft Over City

- 18.0101 Definitions
- 18.0102 Aircraft Owned by the United States of America or Licensed by Foreign Governments
- 18.0103 Minimum Height Limits For Aircraft
- 18.0104 Operators of Aircraft to be Licensed
- 18.0105 Acrobatic Flying Prohibited
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- 18.0107 Operation Subject to Traffic Rules of Civil Aeronautics Authority
- 18.0108 Lights For Night Operation of Aircraft
- 18.0109 Noise by Aircraft Operation
- 18.0110 Dropping Objects From Aircraft Prohibited

CHAPTER 2 - Municipal Airport

- 18.0201 Airport Established
- 18.0202 Rules and Regulation Governing Municipal Airport
- 18.0203 Supervision of Municipal Airport

TITLE 18

AVIATION

CHAPTER 1 - Regulating Aircraft Over City

18.0101 Definitions

- (1) Aircraft. The term "aircraft" as used in this chapter means any airplane, gas bag, flying machine, balloon, or any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air, except a parachute or other contrivance used primarily as safety equipment.
- (2) Acrobatic Flying. The term "acrobatic flying" as used herein means any intentional airplane maneuver or stunt not necessary to air navigation, or operation of aircraft in a manner to endanger human life or safety by the performance of unusual or dangerous maneuvers.

18.0102 Aircraft Owned by the United States of America or Licensed by Foreign Governments

The provisions of this chapter shall not apply to public aircraft of the United States of America, or of a state, or territory, or of a political subdivision of a state or territory, or to aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering operation of aircraft.

18.0103 Minimum Height Limits For Aircraft

Except while taking off or landing at an established landing field or airport, no person shall fly or permit any aircraft to be flown within the corporate limits of the City of Ashley, except at a height sufficient to permit a reasonably safe emergency landing, which in no case shall be less than one thousand (1,000) feet; provided that the provisions of this section may be deviated from when special circumstances render a departure necessary to avoid immediate danger or when a departure is required because of stress of weather conditions or other unavoidable cause.

18.0104 Operators of Aircraft to be Licensed

No person shall operate any aircraft within or over the corporate limits of the City of Ashley unless that person has first been issued an airman certificate, or comparable license, by the Civil Aeronautics Authority or other comparable federal or state agency, and unless the aircraft shall have first received a certificate of airworthiness from the Civil Aeronautics Authority or other comparable federal or state agency.

18.0105 Acrobatic Flying Prohibited

Acrobatic flying by any person flying over any portion of the City of Ashley is hereby prohibited.

18.0106 Landing at Other Than Established Airport Prohibited

Except in case of emergency, no person shall land any aircraft within the corporate limits of the City of Ashley, except upon a regularly established airport field or landing place.

18.0107 Operation Subject to Traffic Rules of Civil Aeronautics Authority

No person shall operate any aircraft over or within the City of Ashley in violation of any valid air traffic or other rule or regulation established by the Civil Aeronautics Authority or other comparable federal or state agency.

18.0108 Lights For Night Operation of Aircraft

All aircraft when flying within or over the corporate limits of the City of Ashley at night, shall have lights and other equipment required for flying by the rules, regulations and orders of the Civil Aeronautics Authority or other comparable federal or state agency.

18.0109 Noise by Aircraft Operation

Unnecessary noise, including loudspeakers, amplifiers or speakers, but not limited thereto by operators of aircraft within or over the City of Ashley is hereby prohibited.

18.0110 Dropping Objects From Aircraft Prohibited

No person in any aircraft shall cause or permit to be thrown out, discharged or dropped within the corporate limits of the City of Ashley, any object or thin, except loose water or loose sand ballast when absolutely essential to the safety of the occupants of the aircraft.

CHAPTER 2 - Municipal Airport

18.0201 Airport Established

All property now or hereafter owned or controlled by the City of Ashley as a Municipal Airport shall be under the direct management, control, and supervision of the City Council.

18.0202 Rules and Regulations Governing Municipal Airport

The laws of the United States, the rules and regulations of the Civil Aeronautics Authority or other comparable federal or state agency, the laws of the State of North Dakota, and all ordinances of the City of Ashley pertaining to aviation shall at all times be in force and obeyed at the Municipal Airport, and the violation of any laws, rules, regulations, or ordinances shall constitute a violation of this chapter.

18.0203 Supervision Of Municipal Airport

The City Council is hereby authorized and may, as it deems necessary, prepare rules and regulation governing the use of the airport by the public, which rules may, from time to time, be altered and amended, and when issued by the City Council, filed with the City Auditor, and posted at the airport, shall have full force and effect of an ordinance of the City of Ashley.

TITLE 19

CORPORATE LIMITS AND WARDS

CHAPTER 1 - Corporate Limits

19.0101 Corporate Limits

CHAPTER 2 - Wards

19.0201 Division of City into Wards
19.0202 First Ward
19.0203 Second Ward
19.0204 Third Ward

TITLE 19

CORPORATE LIMITS AND WARDS

CHAPTER 1 - Corporate Limits

19.0101 Corporate Limits

The City of Ashley, North Dakota, comprises the following described real estate, all of which is within the corporate limits of said city, to-wit:

- (1) All of the West Half of Section 31, Township 130 North, Range 69 West of the 5th P.M. in McIntosh County, North Dakota.
- (2) That portion of the Southeast Quarter of Section 31, Township 130 North, Range 69 West of the 5th P.M. in McIntosh County, North Dakota, and more particularly described as follows, to-wit: Beginning at a point on the quarter line common to the Southeast Quarter and the Southwest Quarter of said Section 31-130-69, 33 feet South of the center point of said Section 31-130-69; thence a distance of 417.45 feet East along a line parallel with the North boundary line of said SE $\frac{1}{4}$ 31-130-69; thence a distance of 208.725 feet South along a line parallel with the West boundary line of said SE $\frac{1}{4}$ 31-130-69; thence a distance of 208.725 feet West along a line parallel with the North boundary line of said SE $\frac{1}{4}$ 31-130-69; thence a distance of 417.45 feet South along a line parallel with the West boundary line of said SE $\frac{1}{4}$ -31-130-69; thence a distance of 58.725 feet West along a line parallel with the North Boundary line of said SE $\frac{1}{4}$ 31-130-69; thence a distance of 380.1 feet South along a line parallel with the West boundary line of said SE $\frac{1}{4}$ 31-130-69; thence a distance of approximately 150.0 feet West along a line parallel with the North Boundary line of said SE $\frac{1}{4}$ 31-130-69 to the West boundary line of said SE $\frac{1}{4}$ 31-130-69; thence North along the West boundary line of said SE $\frac{1}{4}$ 31-130-69 to the point of beginning.
- (3) That portion of the Northeast Quarter of Section 31, Township 130 North, Range 69 West of the 5th P.M. in McIntosh County, North Dakota, and more particularly described as follows, to-wit: Beginning at a point being the Northwest corner of the said NE $\frac{1}{4}$ 31-130-69; thence 621.4 feet East along the North boundary line of said NE $\frac{1}{4}$ 31-130-69; thence a distance of 1,868.9 feet South along a line parallel with the West boundary line of said NE $\frac{1}{4}$ -31-130-69; thence a distance of 33 feet East along a line parallel with the North boundary line of said NE $\frac{1}{4}$ 31-130-69; thence a distance of 366 feet South along a line parallel with the West boundary line of said NE $\frac{1}{4}$ 31-130-69; thence a distance of 228 feet East along a line parallel with the North boundary line of said NE $\frac{1}{4}$ 31-130-69; thence a distance of 316 feet South along a line parallel with the West boundary line of said NE $\frac{1}{4}$ 31-130-69; thence a distance of 493 feet West along a line parallel with the South boundary line of said NE $\frac{1}{4}$ 31-130-69; thence a distance of 50 feet South along a line parallel with the West boundary line of said NE $\frac{1}{4}$ 31-130-69; thence a distance of approximately 370 feet West along a line parallel with the South boundary line of said NE $\frac{1}{4}$ 31-130-69; thence North along the West boundary line of said NE $\frac{1}{4}$ 31-130-69 to the point of

- beginning.
- (4) That portion of the Northeast Quarter of Section 36, Township 130 North, Range 70 West of the 5th P.M. in McIntosh County, North Dakota, and more particularly described as follows, to-wit: Beginning at a point on the East boundary line of said NE $\frac{1}{4}$ 36-130-70 a distance of 73 feet North of the Southeast corner of said NE $\frac{1}{4}$ 36-130-70; thence a distance of 709.0 feet North along the East line of said NE $\frac{1}{4}$ 36-130-70; thence a distance of 1,133.28 feet West along a line parallel with the South boundary line of said NE $\frac{1}{4}$ 36-130-70; thence a distance of 709.0 feet South along a line parallel with the East boundary line of said NE $\frac{1}{4}$ -36-130-70; thence a distance of approximately 1,131.21 feet East along a line parallel with the South boundary line of said NE $\frac{1}{4}$ 36-130-70 to the point of beginning.
 - (5) That portion of the Southeast Quarter of Section 36, Township 130 North, Range 70 West of the 5th P.M. in McIntosh County, North Dakota, and more particularly described as follows, to-wit: Beginning at a point on the East boundary line of said SE $\frac{1}{4}$ 36-130-70 a distance of 73 feet South of the Northeast corner of said SE $\frac{1}{4}$ 36-130-70; thence a distance of 1,075.0 feet West along a line parallel with the North boundary line of said SE $\frac{1}{4}$ 36-130-70; thence a distance of 912.0 feet South along a line parallel with the East boundary line of said SE $\frac{1}{4}$ 36-130-70 to the North boundary line of the Soo Line Railroad Company's right-of-way; thence in a Northeasterly direction along the North boundary line of said Soo Line Railroad Company's right-of-way to the East boundary line of said SE $\frac{1}{4}$ 36-130-70; thence North along the East boundary line of said SE $\frac{1}{4}$ 36-130-70 a distance of 344.8 feet to the point of beginning.
 - (6) That portion of the Southeast Quarter of Section 31, Township 130 North, Range 69 West of the 5th P.M. in McIntosh County, North Dakota, and more particularly described as follows, to-wit: Beginning at a point on the West boundary line of the said SE $\frac{1}{4}$ 31-130-69 240 feet South of the Southwest corner of Auditor's Lot 11 of said SE $\frac{1}{4}$ 31-130-69; thence running South along the West boundary line of said SE $\frac{1}{4}$ 31-130-69 a distance of 150 feet; thence running East a distance of 150 feet along a line parallel with the South boundary line of said SE $\frac{1}{4}$ 31-130-69; thence running North a distance of 150 feet along a line parallel with the West boundary line of said SE $\frac{1}{4}$ 31-130-69; thence running West a distance 150 feet along a line parallel with the South boundary line of said SE $\frac{1}{4}$ 31-130-69 back to the point of beginning.

CHAPTER 2 - Wards

19.0201 Division of City Into Wards

There shall be three (3) wards within the City of Ashley, North Dakota, to be known and designated as the First to Third Wards, both inclusive, respectively, and each of said wards shall consist of all that part of the City of Ashley which lies within the boundaries hereinafter set forth for each of said wards.

19.0202 First Ward

The First Ward shall consist of all of the following described territory, to-wit:

- (1) All portion of the City of Ashley situate in the Northeast Quarter of Section 31, Township 130 North, Range 69 West of the 5th P.M. in McIntosh County, North

Dakota.

- (2) That portion of the Northwest Quarter of Section 31, Township 130 North, Range 69 West of the 5th P.M. in McIntosh County, North Dakota, and more particularly described as follows, to-wit: Beginning at the Southeast corner of said NW¼ 31-130-69; thence running West along the South boundary line of said NW¼ 31-130-69 to a point being the center of First Avenue Northwest of the said City of Ashley; thence running North along a line being the center line of said NW¼ 31-130-69 to a point being the center of First Avenue Northwest of the said City of Ashley; thence running North along a line being the center line of said First Avenue Northwest and an extension thereof to the North boundary line of said NW¼ 31-130-69; thence running East along the North boundary line of said NW¼ 31-130-69 to Northeast corner of said NW¼ 31-130-69; thence running South along the East boundary line of said NW¼ 31-130-69 to the point of beginning.
- (3) That portion of the Southwest Quarter of Section 31, Township 130 North, Range 69 West of the 5th P.M. in McIntosh County, North Dakota, and more particularly described as follows, to-wit: Beginning at a point on the North boundary line of said SW ¼ 31-130-69 being the center of First Avenue Southwest of the said City of Ashley; thence South along the center line of said First Avenue Southwest to a point being on the center line of First Street Southwest of the said City of Ashley; thence East along the center line of First Street Southwest and Southeast of the said City of Ashley to a point being the center line of Second Avenue Southeast of the said City of Ashley; thence North along the center line of said Second Avenue Southeast to the North Boundary line of said SW¼ 31-130-69; thence West along the North boundary line of said SW¼ 31-130-69 to the point of beginning.

19.0203 Second Ward

The Second Ward shall consist of all of the following described territory, to-wit:

- (1) All portions of the City of Ashley situate in the East Half of Section 36, Township 130 North, Range 70 West of the 5th P.M. in McIntosh County, North Dakota.
- (2) All of the Northwest Quarter of Section 31, Township 130 North, Range 69 West of the 5th P.M. in McIntosh County, North Dakota, except that portion described in section 19-02-02 (2) of this chapter as being a part of the First Ward.
- (3) That portion of the Southwest Quarter of Section 31, Township 130 North, Range 69 West of the 5th P.M. in McIntosh County, North Dakota, and More particularly described as follows, to-wit: Beginning at a point on the North boundary line of said SW¼ 31-130-69 being the center line of First Avenue Southwest of the said City of Ashley; thence South along the center line of said First Avenue Southwest to a point being on the center line of First Street Southwest of the said City of Ashley; thence West along the center line of said First Street Southwest to the West boundary line of said SW¼ 31-130-69; thence North along the West boundary line of said SW¼ 31-130-69 to the Northwest corner of said SW¼ 31-130-69; thence East along the North boundary line of said SW 1/4-31-130-69 to the point of beginning.

19.0204 Third Ward

The Third Ward shall consist of all to the following described territory, to-wit:

- (1) All portions of the City of Ashley situate in the Southeast Quarter of Section 31, Township 130 North, Range 69 West of the 5th P.M. in McIntosh County, North

- Dakota.
- (2) All of the Southwest Quarter of Section 31, township 130 North, Range 69 West of the 5th P.M. in McIntosh County, North Dakota, except those portions described sections 19.0202(3) and 19.0203(3) of this chapter as being parts of the First and Second Wards, respectively.

TITLE 20

MISCELLANEOUS

CHAPTER 1-City Property

20.0101 Control of City Buildings

CHAPTER 2-Coin Operated Mechanical Amusement Devices

20.0201 Mechanical Amusement Devices Defined
20.0202 License Required For Mechanical Amusement Devices
20.0203 License Fee Required
20.0204 Identification Required For Mechanical Amusement Devices
20.0205 Children Under Ten Not to Operate Mechanical Amusement Devices
20.0206 Prizes Prohibited
20.0207 Certain Mechanical amusement Devices
20.0208 Seizure of Unlicensed Machines
20.0209 Storage or sale Lawful

CHAPTER 3-Enactment of City Sales and Use Tax

20.0301 City Sales Tax and Use Tax

CHAPTER 4-Tree Ordinance

20.0401 Tree Ordinance

TITLE 20

MISCELLANEOUS

CHAPTER 1 - City Property

20.0101 Control of the City Buildings

The City Hall and any other city buildings which may from time to time be made available for the use of the public or of private organizations shall be under the direct supervision and control of the City Council, or an officer or employee as the City Council may from time to time designate the purpose or subject, however, to general rules and regulations, schedules of fees, policies as priorities, lease and other arrangements adopted by the City Council.

CHAPTER 2 - Coin Operated Mechanical Amusement Devices

20.0201 Mechanical Amusement Devices Defined

A mechanical amusement device is hereby defined as a machine, which, upon the insertion of a coin or slug, operates or may be operated for use as a game, contest or amusement of any description, or which may be used for any game, contest, or amusement and which contains no automatic pay-off device for the return of money, coins, checks, tokens or merchandise, or which provides for no pay-off by any other means or manner, except that this provision shall not prohibit the licensing of a machine which returns slugs which may be used only in the machine licensed, and which in itself does not constitute a gambling device. A juke box record player is a mechanical amusement device for the purposes of this chapter.

20.0202 License Required For Mechanical Amusement Devices

No person shall maintain, keep or sell within the City of Ashley, a mechanical amusement device, as defined in this chapter, without first obtaining a license therefor from the City Council, but no license shall be issued for any machine or device which is a gambling device.

20.0203 License Fee Required

The fee for any mechanical amusement device required to be licensed under this chapter shall be \$10.00 per year, Payable on January 1st of each year for that year. No license shall be issued for any mechanical amusement device until the fee for the current year, and any delinquent fees, shall have been paid.

20.0204 Identification Required For Mechanical Amusement Devices

Every amusement device so licensed shall contain suitable identification marks and numbers, which identification marks and numbers shall be written upon the license issued for the amusement device by the City Auditor, and the license shall be affixed to the machine. A license may be transferred from one machine to another with the approval of the City Council.

20.0205 Children Under Ten Not to Operate Mechanical Amusement Devices

No person shall permit any mechanical amusement device to be operated by any child under the age of ten years, except when the child shall then and there be accompanied by a parent

or guardian.

20.0206 Prizes Prohibited

No person shall give any prize, award merchandise, gift or anything of value to any player or to any operator of a mechanical amusement device.

20.0207 Certain Mechanical Amusement Devices Prohibited

No person shall keep, maintain, sell or permit to be operated any mechanical amusement device which has been converted into an automatic pay-off device which shall discharge coins, checks or other tokens to the operator or player of the machine, except as provided in section 20.0201, and no license for any machine shall be issued, and no person shall covert any mechanical amusement device into an automatic pay-off device.

20.0208 Seizure of Unlicensed Machines

Any machine, apparatus, contrivance or device which shall have been made use of in violation of the terms of this chapter may be seized and destroyed in compliance with the terms and provisions of the statutes of the State of North Dakota relating to gambling devices.

20.0209 Storage or Sale Lawful

Nothing in this chapter shall be held to apply to mechanical amusement devices held or kept in storage or for sale, and which are not actually in use or displayed for use.

CHAPTER 3 - Enactment of City Sales and Use Tax

20.0301 City Sales Tax and Use Tax

Section 1: Definitions

All terms and words defined in Chapter 57-39.2 and Chapter 57-40.2 of the North Dakota Century Code, including all future amendments, are adopted by reference and incorporated into this ordinance.

Section 2: Sales Tax Imposed

Except as otherwise provided in this ordinance, a tax of one percent (1.00%) is imposed upon the gross receipts of retailers from all sales at retail, including the leasing or renting of tangible personal property, which are subject to the North Dakota state sales tax as provided in Chapter 57-39.2 of the North Dakota Century Code, including all future amendments thereto, which sales are made within the corporate limits of the City of Ashley, North Dakota.

Section 3: Use Tax Imposed

Except as otherwise provided in this ordinance, a excise tax of one percent (1.00%) is imposed on the storage, use, or consumption in the City of Ashley, North Dakota, on the purchase price of all tangible personal property that is subject to the North Dakota state sales tax as imposed by Chapter 57-40.2 of the North Dakota Century Code, including all future amendments thereto.

Further, that this excise tax of the City of Ashley, North Dakota in imposed at the rate of one percent (1.00%) of the fair market value of all tangible personal property brought into the City of Ashley which property is subject to the North Dakota use tax imposed by Chapter 57-40.2 of the North Dakota Century code, including all future amendments thereto, when brought into the State of North Dakota.

Section 4: Maximum Tax Imposed

No single transaction by any one person involving one or more items is subject to a tax in excess of Twenty-Five (\$25.00) Dollars under either Section 2 or Section 3 of this ordinance.

Section 5: Tax Returns and Information Reports

The City Auditor is authorized to create, publish and to require the use of, tax return forms and information reports as are necessary to administer the tax provided for by this ordinance. To the extent feasible, these forms shall incorporate and be integrated with the returns and reports required by the North Dakota State Tax Commissioner pursuant to Chapters 57-39.2 and 57-40.2 of the North Dakota Century Code.

Section 6: Tax Payments; Collections; Penalties

The tax imposed by this ordinance shall be paid and collected as nearly as practicable in accordance with the payment, collection and penalty provisions of Chapters 57-39.2 and 57-40.2 of the North Dakota Century Code.

Section 7: Duties of the City Auditor

The City Auditor shall administer the provisions of this ordinance. The City Auditor is authorized to contract with the North Dakota State Tax Commissioner to administer this ordinance, subject to the confirmation of the contract by the City Council. If a contract is made and confirmed, the North Dakota State Tax Commissioner shall administer the provisions of this ordinance.

Section 8: Corporate Office Liability

Officers of any corporation required to remit taxes imposed by this ordinance are personally liable for the failure of the corporation to file required returns or remit required payments. The dissolution of a corporation shall not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The tax, penalty, and interest due may be assessed and collected pursuant to this ordinance.

Section 9: Deduction to Reimburse Retailer for Administrative Expenses

A retailer who pays the tax due hereunder within the time limitations prescribed may deduct and retain three percent (3.00%) of the tax due.

The aggregate of deductions allowed pursuant to this section shall not exceed One Hundred and No/100 (\$100.00) Dollars per quarterly period for each retailer required to remit sales tax pursuant to this ordinance.

Section 10: Dedication of Tax Proceeds

All revenues raised and collected pursuant to this ordinance less administrative expenses, shall be placed in a separate sales and use tax fund which shall be dedicated exclusively as follows:

Capital Improvements and Equipment.....	25%
Economic and Job Development.....	50%
Park Improvements.....	25%

Section 11: Penalties

Any person failing to comply with any of the provisions of this ordinance or failing to remit timely reports as required by this ordinance or failing to pay the tax due in a timely manner shall be subject to the penalties prescribed in Section 57-39.2-18(1) of the North Dakota Century Code, and will be subject to a fine of not to exceed Five Hundred and No/100 (\$500.00) Dollars per violation, upon conviction thereof in the Ashley Municipal Court or the District Court.

Section 12: Commencement of Application of the Tax.

The taxes imposed by this ordinance shall apply to sales and uses from and after this 19th day of February, 1998.

Section 13:

This ordinance shall be in full force and effect from and after its final passage.

Passed first reading on February 9, 1998.

Passed second reading on February 19, 1998.

CHAPTER 4 - Tree Ordinance

20.0401 Tree Ordinance

Section 1: Definitions

STREET TREES: "Street Trees" are herein described as trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of the streets, avenues, or ways within the city.

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

Section 2: Creation and Establishment of a Tree Committee

There is hereby created and established a Tree Committee for the City of Ashley, North Dakota, which shall consist of six (6) members. These members shall be appointed by the Mayor with the approval of the City Council.

Section 3: Term of Office

The term of office for the members of the Tree Committee shall be for a term of three years, except that the term of the first committee for two (2) of the members shall be for one (1) year, the term for two (2) of the members shall be for two (2) years, and the term for the remaining members shall be for three (3) years. In the event that a vacancy shall occur during the term of any member, a successor shall be appointed for the unexpired portion of the term.

Section 4: Compensation

Members of the Committee shall serve without compensation

Section 5: Duties and Responsibilities

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

The Tree Committee will be responsible for the planting, pruning and removal of all trees located within the street right-of-way, easements, alleys and parks of the City. The owner of land abutting on any street may, when acting within the provisions of this ordinance, prune, spray, plant or remove trees in that part of the street abutting his land not used for public travel. A street tree

permit shall be required only when the owner of the property intends to deviate from the rules and regulations contained in this ordinance.

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

Section 6: Operation

The Committee shall choose its own officers, make its own rules and regulations, establish its own meeting times and keep a journal of its proceedings. A majority of the members shall be considered a quorum for the transaction of business.

Section 7: Street Tree Species to be Planted

The Tree Committee will formulate an official Street Tree species list for Ashley, North Dakota. The list of allowable species shall be broken down into categories of small, medium and large trees. No species other than those included in this list may be planted as Street Trees without the permission of the Tree Committee.

Section 8: Spacing

The spacing of Street Trees will be in accordance with the three species size classes listed in Section 7 of this ordinance, and no trees may be planted closer together than the following:

Small Trees: 20 feet

Medium Trees: 30 feet

Large Trees: 40 feet

Section 9: Distance from Curb and Sidewalk

The distance trees may be planted from curbs or curb lines and sidewalks will be in accordance with the three species listed in Section 7 of this ordinance, and no trees may be planted closer to any curb or sidewalk than the following:

Small Trees: 2 feet

Medium Trees: 3 feet

Large Trees: 4 feet

Section 10: Distance from Street Corners and Fire Plugs

No Street Tree shall be planted closer than 20 feet of any corner, measured from the point of nearest curbs or curb lines. No Street Trees shall be planted closer than 10 feet of any fire plug.

Section 11: Utilities

No Street Trees other than those listed as small trees in Section 7 of this ordinance may be planted under or within 10 lateral feet of any overhead utility wire, or over or within 5 lateral feet of any underground water line, sewer line, transmission line or other utility.

Section 12: Public Tree Care

The City shall have the right to plant, prune, spray, preserve and remove trees, plants, and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to ensure safety when serving the City utilities or to preserve the symmetry and beauty of such public grounds. The Tree Committee may remove or cause order to be removed, any tree or part thereof which is in an unsafe condition or which, by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines or other public improvements, or is affected with any injurious fungus, insect or other pest.

Section 13: Trimming-Corner Clearance

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

Section 14: Dead or Diseased Tree Removal on Private Property

The City shall have the right to cause the removal of any dead or diseased trees on private

property within the City, when such trees constitute a hazard to life and property, or harbor insects or disease which constitute a potential threat to other trees within the City. The Tree Committee will notify, in writing, the owners of such trees. Removal shall be done by said owners at their

expense within sixty (60) days after the date of service of notice. In the event of failure of owners to comply with such provisions, the City shall have the authority to remove such trees and charge the cost of removal on the owner's property tax notice.

Section 15: Interference with City Tree Committee

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

Section 16: Review by City Council

The City Council shall have the right to review the conduct, acts and decisions of the Tree Committee. Any person may appeal any ruling or order of the Tree Committee to the City Council who may hear the matter and make a final decision.

Section 17: Penalty

Cost of abatement of any nuisance shall be borne by the private owner.

Section 18: Severability

Should any part or provision be declared by court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part declared to be invalid.

This ordinance was adopted and passed on May 3, 1999. First reading was April 5, 1999 and the second reading was May 3, 1999.

TITLE 21

PENALTIES

CHAPTER 1 - Penalties

- 21.0101 Penalty for Violation of Ordinances
- 21.0102 Penalty Not Exclusive
- 21.0103 Imprisonment Upon Failure to Pay Penalty Imposed

TITLE 21

PENALTIES

21.0101 Penalty for Violation of Ordinances

The provisions of Section 40.0506 of the North Dakota Century Code and all subsequent amendments thereto shall be and are hereby incorporated by reference in this Title, 21,

Except where a penalty is otherwise specifically provided in this Code, the penalty for any violation of this Code shall be as follows: Any person, firm, association, or corporation violating any of the terms or provisions of the Ashley Municipal Code of the City of Ashley, McIntosh County, North Dakota, shall upon conviction be punished by a fine not to exceed One Thousand and No/100 (\$1,000.00) Dollars, or by imprisonment not to exceed thirty (30) days, or by both a fine and imprisonment at the discretion of the Court: the Court to have power to suspend the sentence and to revoke the suspension thereof. Each day any person, firm association, or corporation shall violate any of the provisions of this Code shall constitute a separate offense.

Provided further, that for any violation of this Code prohibiting shoplifting, vandalism, criminal mischief, or malicious mischief, the penalty upon conviction thereof shall be a fine not to exceed One Thousand and No/100 (1000.00) dollars, or by imprisonment not to exceed thirty (30) days, or by both the fine and imprisonment.

21.0102 Penalty Not Exclusive

The imposition of a penalty or penalties as hereinbefore provided shall not prevent the City Council from revoking the licenses, franchises or permits, or suspending the same, wherever by this Code the power of revocation has been reserved to the City Council; nor shall such imposition in any manner operate to divest any employee of the City of Ashley who may have been delegated the power to revoke or suspend any license, franchise or permit from so suspending or revoking the same.

21.0103 Imprisonment Upon Failure to Pay Penalty Imposed

When a fine shall be imposed for the violation of any ordinance of the City of Ashley or any section thereof, or any provision of this Code, the Court may also sentence the defendant to jail until costs are paid, in no case, however, for more than thirty (30) days.