

TITLE I.

CITY GOVERNMENT - GENERAL PROVISIONS

CHAPTERS:

- 1-01. The Enacting Ordinance.
- 1-02. Ordinances.
- 1-03. City Council.
- 1-04. Appointive Officers.
- 1-05. Municipal Elections.
- 1-06. Civil Defense.
- 1-07. Disposal of City Property.
- 1-08. Municipal Court.
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CHAPTER 1-01

THE ENACTING ORDINANCE.

SECTIONS:

- 1-0101. Title of Ordinances.
- 1-0102. Repeal--Exceptions.
- 1-0103. Separability Provisions.
- 1-0104. Existing Licenses and Permits.
- 1-0105. New Licenses and Permits.

1-0101. **TITLE OF ORDINANCES.** The ordinances of the City of Kindred shall be known as the Revised Ordinances of 2004 of the City of Kindred, North Dakota.

1-0102. **REPEAL--EXCEPTIONS.** All ordinances of the City of Kindred adopted prior to March 1, 2004, are hereby repealed, except the following ordinances which shall continue in full force and effect regardless of the fact that they are herein omitted.

1. All existing ordinances or any part thereof creating contract obligations on the part of the City, which obligations shall remain binding until fully performed by the parties thereto.
2. All existing ordinances establishing special improvement districts.
3. All existing ordinances levying taxes for previous years which are still unpaid or for future years under the provisions of any law relating to the issuance of municipal bonds, warrants, certificates of indebtedness, or other municipal obligations, whether general or special.
4. All salary and appropriation ordinances.
5. Any and all other ordinances adopted in said Revised Ordinances of 2004 by reference, although the same are not set forth in full therein.
6. All existing ordinances establishing, extending, or reducing the city limits of the City and all existing ordinances by which the zoning of any area has been established or modified.
7. The incorporation herein of any ordinances of the City granting franchises to individuals, associations, or

corporations shall not operate to repeal the same in their original form nor to extend the term of any franchise beyond that permitted by law or fixed in the ordinances granting the same which is re-enacted herein.

1-0103. **SEPARABILITY PROVISIONS.** 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 City Council 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.

1-0104. **EXISTING LICENSES OR PERMITS.** All licenses and permits issued prior to the date on which this ordinance becomes effective shall continue in force for the remainder of the term for which the same were issued, without additional fees, but all licensees and permittees shall be governed by the provisions of the Revised Ordinances of 2004 of the City of Kindred, North Dakota, for the remainder of the terms of said licenses and permits in the same manner and to the same extent as if said licenses and permits had been issued under the provisions of the Revised Ordinances of 2004.

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 Revised Ordinances of 2004 of the City of Kindred, North Dakota, 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 therefor shall be prorated for the remainder of the term thereof on a monthly basis, provided that the minimum fee for any such new license or permit shall be \$10.00.

CHAPTER 1-02

ORDINANCES

SECTIONS:

- 1-0201. Voting Record.
 - 1-0202. Reconsideration or Rescinding Vote.
 - 1-0203. Procedure in Passing Ordinances.
 - 1-0204. Publication.
 - 1-0205. Enactment and Revision of Ordinances.
 - 1-0206. Effective Date.
 - 1-0207. Effect of Repeal.
 - 1-0208. Interpretation - Construction.
 - 1-0209. Singular - Plural - Gender - Interpretation.
 - 1-0210. Constitutionality - Ordinances - Construction.
 - 1-0211. Penalty for Violation.
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1-0201. **VOTING RECORD.** The yeas and nays must be taken by the governing body upon the passage of all ordinances and on all propositions to create any liability against the City or for the expenditure or appropriation of money, and, in all other cases, at the request of any member, which votes must be entered on the journal of its proceedings. A majority of all the qualified and existing members of the Council must concur on the passage of any ordinance and in the creation of any liability against the City and for the expenditure or appropriation of money. For purposes of this section, and for all other votes required by the ordinances of the City of Kindred or the State of North Dakota, any member of the City Council or Board of Adjustment who, by reason of a stated conflict of interest abstains from voting, must not be considered to be a qualified or existing member of the City Council or Board of Adjustment. A Member of the City Council who does not abstain but simply remains silent when the roll call vote is taken, shall be deemed to have voted yea, and a record of yea shall be entered in the journal. For all other matters not covered in this section and not otherwise covered by ordinance or state statute, passage of a motion or resolution shall be by a majority of existing and qualified Council members present at a meeting at which a quorum is present.

1-0202. **RECONSIDERATION OR RESCINDING VOTE.** No vote of the governing body shall be reconsidered or rescinded at a special meeting unless, at such special meeting there is present as large a number of members as was present when such vote was taken.

1-0203. **PROCEDURE IN PASSING ORDINANCES.** All ordinances shall be read twice, and the second reading shall not be had in less than one (1) week after the first reading; and after such

first reading, before their final passage, such ordinances may be amended, and shall then be put upon their second reading and final passage; and, if passed by the governing body, shall be signed by the Mayor and attested by the City Auditor.

1-0204. **PUBLICATION.** The title and penalty clause of each ordinance, imposing any penalty, fine or imprisonment for its violation, after its final adoption, shall be published in one (1) issue of the official paper of the City.

1-0205. **ENACTMENT AND REVISION OF ORDINANCES.** The executive officer of a municipality may appoint, by and with the advice and consent of the governing body of the municipality, one or more competent persons to prepare and submit to the governing body for its adoption or rejection, an ordinance for the revision or amendment of existing ordinances or for the enactment of new and additional ordinances for such municipality. The attorney for the municipality, if it has an attorney, shall be appointed as one of the persons to prepare and submit such ordinance. The compensation of the revisor or revisors, including that of the attorney, shall be determined by the governing body and shall be paid out of the municipal treasury. Such revision, including any additional ordinances and amendments to existing ordinances contained therein, may be passed as a single ordinance and may be published in pamphlet or book form, by and under the authority of the governing body of the municipality, and shall be valid and effective without publication in a newspaper or posting, Section 1-0204 of this chapter notwithstanding.

1-0206. **EFFECTIVE DATE.** Ordinances adopted and requiring publication shall take effect and be in force from and after publication unless otherwise provided. Ordinances not requiring publication shall take effect and be in force from and after final approval unless otherwise provided.

1-0207. **EFFECT OF REPEAL.** When any ordinance repealing a former ordinance, clause or provision, shall be itself repealed, such repeal shall not be construed to revive such former ordinance, clause or provision, unless it shall be expressly so provided.

1-0208. **INTERPRETATION - CONSTRUCTION.** For the purpose of interpretation and construction of any ordinance, the term "person" includes, where relevant or not otherwise indicated, corporations, unincorporated associations, or other legal entities.

1-0209. **SINGULAR - PLURAL - GENDER - INTERPRETATION.** For the purpose of interpretation of any ordinance, where relevant or not otherwise indicated, words used in the singular include the plural,

and the plural, the singular and words in the masculine gender include feminine and neuter genders.

1-0210. **CONSTITUTIONALITY - ORDINANCES - CONSTRUCTION.** If any section, subsection, sentence, clause or phrase of any ordinance 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.

1-0211. **PENALTY FOR VIOLATION.** Any violation of an ordinance of the City of Kindred shall be an infraction unless another penalty is specifically provided for the violation in these ordinances, or unless state law defines an offense in language similar to the ordinance as a class B misdemeanor, in which case the violation of the ordinance shall be penalized as a class B misdemeanor. An infraction may be punished by a maximum fine of \$1,000. The Municipal Judge shall have the authority to establish the penalty for each infraction which is an offense up to a maximum of \$1,000, except for offenses for which a penalty is set by State law, in which case the court must sentence in accordance with State law. Any person convicted of an infraction who has, within one year prior to the commission of the infraction of which he was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint or citation shall specify that the offense is a misdemeanor.

A class B misdemeanor may be punished by a maximum fine of \$1,500, or 30 days imprisonment, or both.

Source: Ord. 2008-22, Sec. 1 (2008); Ord. 2014-56, Sec. 1 (2015)

CHAPTER 1-03

CITY COUNCIL

SECTIONS:

- 1-0301. Meetings: Regular Day Held.
- 1-0302. Meetings: Regular Time.
- 1-0303. Meetings: Special, How Called.
- 1-0304. Meetings: Special Notice.
- 1-0305. Meetings: Regular and Special and Place Held.
- 1-0306. Salaries of City Council Members.

1-0301. **MEETINGS: REGULAR DAY HELD.** The City Council of the City of Kindred shall meet in regular meetings on the first (1st) Wednesday of each month.

1-0302. **MEETINGS: REGULAR TIME.** The time of the regular meetings shall be as determined by the City Council by resolution.

1-0303. **MEETINGS: SPECIAL, HOW CALLED.** The City Council of the City of Kindred may have special meetings at any time. Said special meeting may be called by the Mayor or by any two (2) members of the City Council.

1-0304. **MEETINGS: SPECIAL NOTICE.** Prior notice of any special meeting shall be given to each member of the Board.

1-0305. **MEETINGS: REGULAR AND SPECIAL AND PLACE HELD.** All meetings shall be held at the City Hall in the City of Kindred, North Dakota.

1-0306. **SALARIES OF CITY COUNCIL AND MAYOR.** The salary of each member of the City Council shall be no greater than the maximum amount allowed by the laws of the State of North Dakota as may be determined from time to time by resolution of the City Council.

CHAPTER 1-04

APPOINTIVE OFFICERS

SECTIONS:

- 1-0401. Appointive Officers.
 - 1-0402. Term of Appointive Officers, Oath, Bond.
 - 1-0403. Removal.
 - 1-0404. Salaries.
 - 1-0405. Administrative Policy and Procedures.
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1-0401. **APPOINTIVE OFFICERS.** Annually, at its first meeting in January of each year, or as soon thereafter as possible, the City Council may appoint the following officers: Auditor/Treasurer, City Attorney, City Engineer, City Assessor, one or more assessors, City Health Officer, Chief of Police, one or more policemen, Superintendent of Public Works, Housing Coordinator, and such other officers and boards as the City Council may deem necessary. The City Council by majority vote may dispense with any appointive office and provide that the duties thereof shall be performed by other officers or boards, by the City Council, or by a committee.

1-0402. **TERM OF APPOINTIVE OFFICERS, OATH, BOND.** The term of all appointive officers shall begin on May 1st after the regular election of members of the City Council and shall continue for a term of two (2) years and until their successors have been appointed and qualified. Any person appointed to fill a vacancy shall hold his office for the unexpired term unless appointed as an "acting officer." An "acting officer" shall serve at the pleasure of the governing body. Before entering upon the duties of his office, each appointed officer shall take the oath of office and give the bond required by law.

1-0403. **REMOVAL.** Appointive officers may be removed and any vacancy may be filled in the manner provided by law. "Acting officers" may be removed at any time by the governing body.

1-0404. **SALARIES.** The salary of City appointive officers, except as otherwise provided by law, shall be in such sums and amounts as may be, by resolution of the governing body, fixed from time to time.

1-0405. **ADMINISTRATIVE POLICY AND PROCEDURES.** Each officer shall:

1. Perform all duties required of his office by law or ordinance and such other duties not in conflict as may be required by the governing body.
2. Be immediately responsible to the governing body for the effective administration of his department and all activities assigned thereto.
3. Keep informed as to the latest practices in his particular field and shall inaugurate with approval of the governing body such new practices as appear to be of benefit and service to the public.
4. Submit such reports of activities of his department as the governing board may request.
5. Be responsible for the proper maintenance of all City property and equipment used in his department.
6. Establish and maintain records in sufficient detail to furnish all information needed for proper control of department activities and to form a basis for reports to the governing board.
7. Cooperate with other officers, departments and employees.
8. Have power to direct and supervise all subordinates under him.

CHAPTER 1-05

MUNICIPAL ELECTIONS

SECTIONS:

- 1-0501. Qualifications of Electors.
- 1-0502. Elections - Provisions Governing.
- 1-0503. Compensation of Election Officers.

1-0501. **QUALIFICATIONS OF ELECTORS.** Every resident of the City of Kindred who is qualified to vote therein at general elections may vote in all municipal elections held therein.

1-0502. **ELECTIONS - PROVISIONS GOVERNING.** Municipal elections in the City of Kindred shall be conducted in accordance with the statutes of the State of North Dakota which relate to elections in cities with a council form of government.

1-0503. **COMPENSATION OF ELECTION OFFICERS.** Each inspector, judge or clerk of any City election, for services performed by that person at such election shall receive as compensation therefor an hourly wage equal to the federal minimum wage then in effect, or such higher amount as may be established by resolution of the City Council prior to such election.

CHAPTER 1-06

CIVIL DEFENSE

SECTIONS:

- 1-0601. Policy and Purpose.
- 1-0602. Creation of Municipal Civil Defense.
- 1-0603. Director, Powers and Duties.
- 1-0604. Emergency Operations Plan.
- 1-0605. Personnel.
- 1-0606. Expenses and Contract.
- 1-0607. Immunity.

1-0601. **POLICY AND PURPOSE.** Because it has been forcefully emphasized that government at every level has the inescapable responsibility to take practical and sensible measures to minimize loss of life in the event of nuclear attack, sabotage or other hostile action and because of the possibility of natural disasters, and in order to take all possible actions to protect the lives and health of the people, establish continuity of government and preserve property of this City, it is hereby declared necessary:

1. To establish local civil defense;
2. Provide for continuity of government during an emergency with the maximum use of services, equipment, supplies and facilities of existing department offices and agencies of this City;
3. To cause to be written an Emergency Operations Plan for the mobilization and direction of the civil populace of this City to save the maximum number of lives and minimize property damage in an enemy attack or natural disaster;
4. To provide for the exercise of necessary powers during civil defense missions;
5. To provide for the rendering of mutual aid between this City and other political subdivisions and of other States with respect to carrying out civil defense functions.

It is further declared to be the purpose of this chapter to cause all civil defense functions of this City to be coordinated to the maximum extent with the functions of the Federal Government, of this State and of other States, of Cass County and other

localities, and of private agencies of every type, to the end that the most effective preparations and use may be made of the nation's manpower, resources and facilities for dealing with any disaster that may occur.

Source: Ord. 2015-61, Sec. 1

1-0602. **CREATION OF MUNICIPAL CIVIL DEFENSE.** There is hereby created a local municipal civil defense of the City of Kindred hereinafter referred to as Civil Defense. The City Council shall retain the governing authority of the City with the Mayor serving as Chairman. The Mayor may appoint a Director of Civil Defense for the City of Kindred who may or may not be a commissioned member, who shall be responsible to the Council. The Kindred Civil Defense Director is charged with the responsibility of plans and operations and support missions as directed by higher authority. Other activities and functions are hereinafter specified. The said Director shall be appointed for an indefinite term and may be removed by the Mayor.

1-0603. **DIRECTOR, POWER AND DUTIES.** The Director, with the consent of the Mayor, shall represent the City on any National, Regional, State or County civil defense activities. He shall execute and submit all material and sign all documents in behalf of civil defense which do not obligate funds other than those budgeted for civil defense.

The Director shall develop mutual aid agreements with other political subdivisions for reciprocal civil defense aid and assistance in a civil defense emergency too great to be dealt with unassisted, and he shall present such agreements to the Council for concurrence. Such agreements shall be consistent with the County and State operational survival plan. Any mutual aid arrangement with a political subdivision of another State shall be subject to the approval of the Governor or the State Civil Defense Director.

The Director shall utilize the personnel, services, equipment, supplies and facilities of existing departments and agencies of the City to the maximum extent practicable. The officers and personnel of all such departments and agencies shall cooperate with and extend such service and facilities to local civil defense and to the Governor upon request. The head of each department and agency, in cooperation with and under the direction of the Director, shall be responsible for the planning and programming of such civil defense activities as will involve the utilization of the facilities of his department or agency.

The Director shall direct and coordinate the general operations of all local civil defense during a civil defense

emergency in conformity with controlling regulations of the City Council and instructions of Cass County and State Civil Defense authorities. The heads of departments and agencies shall be governed by his orders in respect thereto.

1-0604. **EMERGENCY OPERATIONS PLAN.** To institute an organized effort to mobilize and direct the civil populace during civil defense emergencies, an adequate civil defense Emergency Operations Plan for the City of Kindred shall be accomplished by the civil defense director.

The Emergency Operations Plan will be coordinated with the Cass County and the State of North Dakota survival plans. It shall be the mission of said plan to accomplish the following:

1. Provide for continuity of government during an emergency with the maximum use of services, equipment, supplies and facilities.
2. Protect the people and the essential facilities of the City of Kindred from effects of enemy attack and/or natural disaster.
3. Control the movements or evacuation of traffic, through, within and/or out of the City in accordance with instructions of higher authority.
4. Provide the forces, supplies and equipment to aid the people and rehabilitation of facilities of attacked or damaged areas.

Upon completion of the Emergency Operations Plan, the same shall be rendered to the City Council for approval or further recommendations.

Source: Ord. 2015-61, Sec. 2

1-0605. **PERSONNEL.** The City Council is authorized to employ such persons as may be necessary to carry out the functions of civil defense. Persons so employed shall be subject to all laws, ordinances and regulations now existing in and governing the employees of this City.

1-0606. **EXPENSES AND CONTRACT.** The civil defense Director shall have no right to expend public funds of the City, other than those allowed by budgets, without prior approval of the City Council, nor shall he have any right to bind the City by contract, agreement or otherwise without prior and written approval of the City Council.

1-0607. **IMMUNITY.** All functions hereunder and all other activities relating to civil defense are hereby declared to be governmental functions. The officers, agents or representatives of the State or any political subdivision thereof, shall not be liable for personal injury or property damage sustained by any person appointed or acting as a civilian defense worker, or member of any agency engaged in civilian defense activity. The foregoing shall not affect the right of any person to receive benefits or compensation to which he might otherwise be entitled under the Workmen's Compensation Law, or any pension law or any act of the United States.

No officer or employee nor any civilian defense worker or member of any agency engaged in any civil defense activity, complying with or attempting to comply with this chapter or the laws of the State of North Dakota or any order, rule or regulation promulgated pursuant to the provisions of this chapter or the laws of the State of North Dakota, or pursuant to any ordinance relating to any precautionary measure enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity.

CHAPTER 1-07

DISPOSAL OF CITY PROPERTY

SECTIONS:

- 1-0701. Sale of Personal Property.
- 1-0702. Sale of Real Property.
- 1-0703. Sale of Abandoned or Unclaimed Personal Property.
- 1-0704. Lease of Public Buildings.
- 1-0705. Lease of Personal Property or Real Property Other Than Buildings.

1-0701. **SALE OF PERSONAL PROPERTY.**

- 1. Whenever any personal property owned by the City of Kindred is no longer required for a public purpose and has a value of \$500 or less, it may be offered for sale by the City Auditor, who may exercise his discretion as to the method of sale, and whether such sale shall be public or private.
- 2. Whenever any personal property owned by the City of Kindred is no longer required for a public purpose and is valued in excess of \$500, it may be offered for sale by the City Council, who may exercise its discretion as to the method of sale, and whether such sale shall be public or private. Provided, however, when the value of the personal property is estimated to be in excess of \$2,500, the property must be sold at a public sale, the exact method of sale to be determined by the City Council. When property is to be traded in as part of the purchase price of a new purchase, no public sale shall be required.

1-0702. **SALE OF REAL PROPERTY.**

- 1. Real property belonging to the municipality shall be sold only as approved by a two-thirds (2/3rds) vote of all members of the City Council.
- 2. Instruments affecting such sale shall be valid only when duly executed by the Mayor and attested by the City Auditor.
- 3. When the real property to be disposed of is estimated by the Council to be of a value of less than \$2,500, such

property may be sold by the City either by private or public sale, with the exact method of sale to be determined by the City Council. For real property estimated by the City Council to be of value of \$2,500 or more, such sale must be by public sale pursuant to the provisions of 40-11-04.1 N.D. Cent. Code, unless the procedures set out in 40-11-04.2 N.D. Cent. Code is followed.

4. Bids for the purchase of real property belonging to the municipality, whether or not advertisement therefor has been made, shall be directed to the City Council and submitted to the City Auditor, who shall present any and all such bids to the City Council at its next regularly scheduled meeting, or special meeting called for such purpose.
5. When specific statutory provisions contained in the North Dakota Century Code provide for a procedure which is in conflict with this section governing the sale of real property, this section shall not apply insofar as it is in conflict with such State law.

1-0703. **SALE OF ABANDONED OR UNCLAIMED PERSONAL PROPERTY.**

1. When personal property has been abandoned or left unclaimed upon the streets, alleys or other public ways of the City for a period exceeding ten (10) days, and, after holding such property for a period of not less than sixty (60) days, the City Auditor, or Chief of Police may sell the same at a public sale after a notice is published in the official newspaper of the City at least ten (10) days before the sale. The City Auditor or Chief of Police may exercise their discretion as to the method of sale.
2. If, after a vehicle which has been impounded or removed pursuant to Section 13-1625, the vehicle is not reclaimed and redeemed by the owner or person lawfully entitled to possession thereof within sixty (60) days after the vehicle is impounded, then the vehicle may be sold in the manner provided in subsection 1. The notice of such sale shall specify a description of the property to be sold, and the time and place of such sale. Any sale may be postponed or discontinued by public announcement at the time of sale when there are no bidders, or when the amount offered is grossly inadequate, or for other reasonable cause. The City may be a purchaser of any or all property at such sale. The amount received at such

sale shall be first applied to costs and expenses of the sale, next to satisfaction of any fines, fees, costs or restitutions outstanding which formed the basis for the impoundment or removal of the vehicle, and finally to the City general fund.

1-0704. **LEASE OF PUBLIC BUILDINGS.** The City Council may permit the use or lease of any public building or part thereof for any legal purpose under the terms and conditions as determined by the City Council, which may include lease terms in excess of two (2) years. Notice of the intent to lease the building shall be published in the official newspaper of the City once each week for two consecutive weeks, with the last publication being at least ten (10) days in advance of the date set for the lease. Such lease shall be to a responsible party offering the highest return to the municipality whose use or occupation of the building shall not interfere with the use of such building for public purposes, if needed. The City Council reserves the right to reject any and all bids for the lease. Provided, that this section shall not apply to leases entered into pursuant to Chapter 40-57 N.D. Cent. Code.

1-0705. **LEASE OF PERSONAL PROPERTY OR REAL PROPERTY OTHER THAN BUILDINGS.** The City Council may lease personal property owned by the City, or real property, other than public buildings, owned by the City. The City Council may determine in each case the terms and conditions of the lease, and whether or not to publicly advertise the lease of the personal property or real property.

CHAPTER 1-08

MUNICIPAL COURT

SECTIONS:

- 1-0801. Convening of the Court.
- 1-0802. Place convened.
- 1-0803. Jurisdiction.
- 1-0804. Penalties - Fines.
- 1-0805. Sentencing Alternatives.
- 1-0806. Factors to be Considered in Sentencing.
- 1-0807. Special Sanctions for Organizations.
- 1-0808. Imposition of Fine - Response to Non-payment.
- 1-0809. Incidents of Probation.
- 1-0810. Conditions of Probation - Revocation.
- 1-0811. Restitution or Reparation - Procedures.
- 1-0812. Merger of Sentence - Sentencing for Multiple Offenses.
- 1-0813. Failure to Pay Fine or Appear in Court -- Criminal Offense.

1-0801. **CONVENING OF THE COURT.** The municipal court of the City of Kindred shall convene at such time and for such duration as necessary to conduct and to transact the business of the municipal court.

1-0802. **PLACE CONVENED.** The municipal court of the City of Kindred shall convene and sit at the City Hall in the City of Kindred, State of North Dakota, or such other place as may be designated by the Municipal Judge.

Source: Ord. 2013-47, Sec. 1 (2013)

1-0803. **JURISDICTION.** The municipal court shall have such jurisdiction and authority as is authorized by the laws of the State of North Dakota.

1-0804. **PENALTIES - FINES.** The penalty or fine for violation of the provisions of the Municipal Ordinances shall be as set forth in Section 1-0211.

1-0805. **SENTENCING ALTERNATIVES.**

1. Every person convicted of an offense who is sentenced by the court shall be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the ordinance defining the offense:

- a. Payment of the reasonable costs of his prosecution.

- b. Probation.
- c. A term of imprisonment, including intermittent imprisonment.
- d. A fine.
- e. Restitution for damages resulting from a commission of the offense.
- f. Restoration of damaged property.
- g. Work detail.
- h. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.

Sentences imposed under this subsection shall not exceed in duration the maximum sentences provided in Section 1-0804, or as provided specifically in an ordinance defining an offense.

This subsection shall not be construed as not permitting the unconditional discharge of an offender following conviction. Sentences under subdivisions (e) or (f) shall be imposed in the manner provided in Section 1-0805. This subsection shall not be construed to prohibit utilization of suspension of sentence, nor shall this subsection limit the conditions which can be imposed on a probationer under Section 1-0805.

- 2. Credit against any sentence to a term of imprisonment shall be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed, or as a result of the conduct by which such charge was based. "Time spent in custody" shall include time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal.
- 3. A court may, at any time prior to the time custody of a convicted offender is transferred to a penal institution or institution for treatments, suspend all or a portion of any sentence imposed pursuant to this section.
- 4. A court may at any time prior to imposition of sentence, refer a person convicted of driving while under the influence of an intoxicating liquor or a narcotic drug, to an approved treatment facility for diagnosis. Upon receipt of the result of this diagnosis, the court may impose a sentence as prescribed in Section 1-0805 of this chapter or it may sentence the person to treatment in a facility approved by the State's Division of Alcoholism and Drug Abuse.

5. All sentences imposed shall be accompanied by a written statement by the court setting forth the reasons for imposing a particular sentence. The statement shall become part of the record of the case.
6. If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing, unless, upon motion of defendant, the Court orders the term to commence at some other time.

1-0806. **FACTORS TO BE CONSIDERED IN SENTENCING.** The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations regarding the desirability of sentencing an offender to imprisonment:

1. The defendant's criminal conduct neither caused nor threatened serious harm to another person or his property.
2. The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property.
3. The defendant acted under strong provocation.
4. There were substantial grounds which, though insufficient to establish a legal defense, tend to execute or justify the defendant's conduct.
5. The victim of the defendant's conduct induced or facilitated its commission.
6. The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury which was sustained.
7. The defendant has no history of prior delinquency or criminal activity, or has led a law abiding life for a substantial period of time before the commission of the present offense.
8. The defendant's conduct was the result of circumstances unlikely to recur.
9. The character, history, and attitudes of the defendant indicate that he is unlikely to commit another crime.

10. The defendant is particularly likely to respond affirmatively to probationary treatment.
11. The imprisonment of the defendant would entail undue hardship to himself or his dependents.
12. The defendant is elderly or in poor health.
13. The defendant did not abuse a public position of responsibility or trust.
14. The defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise cooperated.

Nothing herein shall be deemed to require explicit reference to these factors in a presentence report or by the court at sentencing.

1-0807. **SPECIAL SANCTIONS FOR ORGANIZATIONS.** When an organization is convicted of an offense, the court may, in addition to any other sentence which may be imposed, require the organization to give notice of its conviction to the persons or class of persons ostensibly harmed by the offense, by mail or by advertising in designated areas or by designated media or otherwise.

1-0808. **IMPOSITION OF FINE - RESPONSE TO NON-PAYMENT.**

1. The court, in making a determination of the propriety of imposing a sentence to pay a fine, shall consider the following factors:
 - a. The ability of the defendant to pay without undue hardship.
 - b. Whether the defendant, other than a defendant organization, gained money or property as a result of commission.
 - c. Whether the sentence to pay a fine will interfere with the defendant's capacity to make restitution.
 - d. Whether a sentence to pay a fine will serve a valid rehabilitative purpose.
2. The court may allow the defendant to pay any fine or costs imposed in installments. When a defendant is sentenced to pay a fine or costs, the court shall not impose at the same time an alternative sentence to be served in the event that the fine or costs are not paid.

3. If the defendant does not pay any fine or costs imposed, or make any required partial payment, the court, upon motion of the prosecuting attorney or on its own motion, may issue an order to show cause why the defendant should not be imprisoned for nonpayment. Unless the defendant shows that his default is excusable, the court may, after hearing, commit him to imprisonment until the fine, or costs, or both, are fully paid or discharged by labor as provided in N.D. Cent. Code § 40-18-12.

The court may not commit a person under this section when the sole reason for his nonpayment is his indigency. An order of commitment under this subsection shall not be for a period in excess of thirty (30) days. As used in this subsection, "fine" does not include a fee established pursuant to Section 13-2209.

1-0809. INCIDENTS OF PROBATION.

1. Unless terminated as provided in subsection 2, the period during which a sentence to probation shall remain conditional and be subject to revocation is two (2) years.
2. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
3. Notwithstanding the fact that a sentence to probation can subsequently be modified or revoked, a judgment which includes such a sentence shall constitute a final judgment for all other purposes.

1-0810. CONDITIONS OF PROBATION - REVOCATION.

1. The conditions of probation shall be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation that the defendant not commit another offense during the period for which the sentence remains subject to revocation.
2. When imposing a sentence to probation, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:
 - a. Work faithfully at a suitable employment or faithfully pursue a course of study or of

- vocational training that will equip him for suitable employment;
- b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose;
 - c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;
 - d. Support his dependents and meet other family responsibilities;
 - e. Make restitution or reparation to the victim of his conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of the sentence, the court shall proceed as provided in Section 1-0811;
 - f. Pay a fine imposed after consideration of the provisions of Section 1-0808;
 - g. Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the court;
 - h. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription;
 - i. Promptly notify the court of any change in address or employment;
 - j. Remain within the jurisdiction of the court, unless granted permission to leave by the court; and
 - k. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
3. When a defendant is sentenced to probation, he shall be given a certificate explicitly setting forth the conditions on which he is being released.
 4. The court may, upon notice to the probationer, modify or enlarge the conditions of a sentence to probation at any time prior to the expiration or termination of the period for which the sentence remains conditional. If the defendant violates a condition at any time prior to the expiration or termination of the period, the court may, pursuant to the procedure specified in N.D.R. Crim. P. 32(f), continue him on the existing sentence, with or without modifying or enlarging the conditions, or, if such continuation, modification, or enlargement is not appropriate, may impose any other sentence that was available under Section 1-0805 at the time of initial sentencing.

5. Jurisdiction over a probationer may be transferred from the court which imposed the sentence to another court of this state, with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection shall be authorized to exercise all powers permissible under this chapter over the defendant.

1-0811. **RESTITUTION OR REPARATION - PROCEDURES.**

1. Prior to imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount thereof. At or following the hearing, the court shall make determinations as to:
 - a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages shall be limited to fruits of the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action;
 - b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property; and
 - c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which shall not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. Any payments made pursuant to such order shall be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, if the court directs, be filed, transcribed, and enforced by the person entitled to the restitution or reparation in the same manner as civil judgments rendered by the courts of this state may be enforced.

2. The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned

work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.

1-0812. MERGER OF SENTENCES - SENTENCING FOR MULTIPLE OFFENSES.

1. Unless the court otherwise orders, when a person serving a term of commitment is committed for another offense or offenses, the shorter term or the shorter remaining term shall be merged in the other term. When a person on probation or parole for an offense committed in this state is sentenced for another offense or offenses, the period still to be served on probation or parole shall be merged in any new sentence of commitment or probation. When the court merges sentences under this subsection it shall forthwith furnish each of the other courts previously involved and the penal facility in which the defendant is confined under sentence with authenticated copies of its sentence, which shall cite the sentences being merged. If the court has imposed a sentence which is merged pursuant to this subsection, it shall modify such sentence in accordance with the effect of the merger.
2. A defendant may not be consecutively sentenced to more than one year.

1-0813. FAILURE TO PAY FINE OR APPEAR IN COURT -- CRIMINAL OFFENSE. If a defendant willfully fails to pay any part of any fines, fees, costs or restitution imposed by the Municipal Court of the City of Kindred, or if a defendant fails to appear for any scheduled court appearance before the Municipal Court of the City of Kindred, then, in addition to the procedures and penalties set forth in Section 1-0808(3), the defendant shall be guilty of an offense pursuant to this section. Any person convicted under this section is guilty of a class B misdemeanor, regardless of whether the offense for which the defendant failed to pay any fines, fees, costs or restitution, or for which the defendant failed to appear, is an infraction or a misdemeanor.

CHAPTER 1-09

SALES AND USE TAX

Source: Ord. 2014-53, Sec. 1

SECTIONS:

- 1-0901. Definitions.
- 1-0902. Sales Tax Imposed.
- 1-0903. Use Tax Imposed.
- 1-0904. Gross Receipts of Alcoholic Beverages.
- 1-0905. Gross Receipts of New Farm Machinery and New Farm Irrigation Equipment.
- 1-0906. Exemptions.
- 1-0907. Maximum Tax Imposed.
- 1-0908. Collection and Administration.
- 1-0909. Contract with State Tax Commissioner.
- 1-0910. Corporate Officer Liability.
- 1-0911. Dedication of Tax Proceeds.
- 1-0912. Saving Clause.

1-0901. DEFINITIONS. All terms defined in Chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2 of the North Dakota Century Code (N.D.C.C.), including any future amendments, are adopted by reference. All references to the N.D.C.C. include amendments adopted by the North Dakota Legislative Assembly.

1-0902. SALES TAX IMPOSED. Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided by this Ordinance, or the sales and use tax laws of the State of North Dakota, a tax of two percent (2%) is imposed upon the gross receipts of retailers from all sales at retail, including the leasing or renting of tangible personal property, within the corporate limits of the City of Kindred, North Dakota.

1-0903. USE TAX IMPOSED. Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, or the sales and use tax laws of the State of North Dakota, an excise tax is imposed upon the storage, use, or consumption within the corporate limits of the City of Kindred, North Dakota, of tangible personal property purchased at retail for storage, use, or consumption in this City, at the rate of two percent (2%) of the purchase price of the property. An excise tax is imposed on the storage, use, or consumption within the corporate limits of the City of Kindred.

1-0904. GROSS RECEIPTS OF ALCOHOLIC BEVERAGES. Subject to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise

provided in this Ordinance, a gross receipts tax of two percent (2%) is imposed upon all gross receipts from the sale of alcoholic beverages within the City. A person who receives alcoholic beverages for storage, use, or consumption in this state is subject to tax on storage, use, or consumption of those alcoholic beverages at the rate of two percent (2%).

1-0905. GROSS RECEIPTS OF NEW FARM MACHINERY AND NEW FARM IRRIGATION EQUIPMENT. Subject to the provision of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this Ordinance, a gross receipts tax of two percent (2%) is imposed upon all gross receipts from the sale of new farm machinery and new farm irrigation equipment within the City. A person who receives new farm machinery or new farm irrigation equipment for storage, use, or consumption in this state is subject to tax on storage, use, or consumption of that machinery and/or equipment at the rate of two percent (2%).

1-0906. EXEMPTIONS. All sales, storage, use, or consumption of tangible personal property which are exempt from imposition and computation of the sales or use tax of the state of North Dakota are specifically exempt from the provisions of this article.

1-0907. MAXIMUM TAX IMPOSED. No single transaction involving one or more items is subject to a tax in excess of Fifty and no/100 Dollars (\$50.00).

1-0908. COLLECTION AND ADMINISTRATION. Where not in conflict with the provisions of this Ordinance, the provisions of N.D.C.C. Chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-40.2, and all administrative rules adopted by the Tax Commissioner, pertaining to the collection and administration of the retail sales, use, and gross receipts tax, including provisions for liability, refund, penalty, interest or credit, govern the administration by the North Dakota Office of State Tax Commissioner (hereinafter "Tax Commissioner") of the taxes imposed by this Ordinance.

1-0909. CONTRACT WITH STATE TAX COMMISSIONER. The City Auditor for the City of Kindred is hereby authorized to contract with the Tax Commissioner for the administration and collection of taxes imposed by this chapter. The City Auditor has all powers granted the Commissioner and, in the absence of a valid contract with the Commissioner or failure of the Commissioner to perform the delegated duties, shall perform these duties in place of the Commissioner.

1-0910. CORPORATE OFFICER LIABILITY. Officers of any corporation required to remit taxes imposed by this article are

personally liable for the failure of the corporation to file required returns or remit required payments. The dissolution of a corporation shall not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The tax, penalty, and interest due may be assessed and collected pursuant to the provisions adopted by this article.

1-0911. DEDICATION OF TAX PROCEEDS. The fees, taxes, penalties and other charges imposed and collected under this chapter, less administrative costs, shall be dedicated and utilized as follows:

1. One Percent (1%), which is one half of the amount collected less expenses, shall be dedicated for infrastructure improvements constructed, operated, or maintained by the City of Kindred, including publicly-owned utilities and buildings.
2. One percent (1%), which is one half of the amount collected less expenses, shall be dedicated for improvements made upon infrastructure improvements constructed, operated, or maintained on dedicated park property owned by the City of Kindred.

Proceeds collected pursuant to this chapter from such sales and use tax may be used to make direct payments of costs for the above purposes, or may be pledged to amortize bonds or other debt instruments which may be sold to finance such costs.

1-0912. SAVING CLAUSE. Should any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional, or invalid for any reason, the remainder of this ordinance shall not be affected thereby.

TITLE II.

SIDEWALKS AND STREETS

CHAPTERS:

- 2-01. Sidewalks and Driveways.
- 2-02. Streets.
- 2-03. Excavation Code.

CHAPTER 2-01
SIDEWALKS AND DRIVEWAYS

SECTIONS:

- 2-0101. Scope of Chapter
- 2-0102. Duty of Property Owners to Construct and Maintain Sidewalks.
- 2-0103. License Necessary to Construct, Reconstruct and Repair Driveways.
- 2-0104. Contractor's License, Fee, Expiration Date.
- 2-0105. Bond.
- 2-0106. Name Stamp Required of Licensee.
- 2-0107. Sidewalk Construction, Permit Required, Fees.
- 2-0108. Construction Subject to Inspection, Request by Licensee.
- 2-0109. Tearing Up Sidewalk.
- 2-0110. Contract for Construction of Sidewalks, Bids, Specifications.
- 2-0111. Qualifications of Contractor.
- 2-0112. Bond to Accompany Contract.
- 2-0113. City Sidewalk Contract Controlled by City Engineer.
- 2-0114. City Sidewalk Contract, Scope of Work.
- 2-0115. Contractor to be Responsible Until Sidewalk Completed.
- 2-0116. Failure of Contractor to Fulfill Conditions.
- 2-0117. Measurement and Payment on City Contract.
- 2-0118. Width and Placement of Sidewalks.
- 2-0119. City Sidewalks, Driveways Construction Specifications.
- 2-0120. Materials in General.
- 2-0121. Snow and Ice on Sidewalk Removed by Owner and Occupant of Property.
- 2-0122. REPEALED
- 2-0123. Grandfather Clause.

2-0101. **SCOPE OF CHAPTER.** This article shall govern all construction of all sidewalk approaches, alley returns, and driveways within the City of Kindred.

2-0102. **DUTY OF PROPERTY OWNERS TO CONSTRUCT AND MAINTAIN SIDEWALKS.**

1. The owner of any lot or parcel of land adjoining any street or avenue in the City of Kindred shall reconstruct and maintain in good repair such sidewalks along the street as have been previously constructed, and must

construct such sidewalks when so ordered by resolution of the City Council.

2. Sidewalks must be constructed in accordance with all of the requirements of this Chapter. Notice of such order to construct, reconstruct or repair shall be given in accordance with Chapter 40-29 of the North Dakota Century Code.
3. It is the policy of the City of Kindred that sidewalks be constructed along both sides of all streets and avenues and within cul-de-sacs. Construction of sidewalks in areas of the City where sidewalks do not presently exist may be required by the City once eighty percent (80%) of the land frontage on the street has been developed.
4. A developer, at the time of platting a new subdivision or replatting a subdivision, must submit a sidewalk plan for approval by the Planning Commission and City Council. Such plan must conform with the requirements of Section 2-0102.3 unless the City Council, for good cause shown, waives the requirement for sidewalks on both sides of all streets and within cul-de-sacs.
5. Landowners may petition for sidewalk waivers to the City Council using the following procedure:
 - a. A written petition, signed by a majority of the property owners within the area for which the waiver is requested may be submitted to the Auditor's office.
 - b. The City Council will consider the petition and may request Planning and Zoning Commission recommendations in making its final decision on the petition.
 - c. A waiver of the requirement for sidewalks will not constitute a waiver of the requirement to provide sufficient right-of-way to accommodate sidewalks in the future, in the event the waiver is rescinded pursuant to paragraph 6 of this section.
6. A waiver of the requirement for sidewalks which is granted pursuant to paragraphs 4 and 5 of this section may be rescinded as follows:

- a. Upon submission of a petition signed by a majority of the owners of the property located within the area which is the subject of the waiver.
 - b. If the City determines that sidewalks in the area are necessary and that the rescission of the previously granted waiver is in the public interest.
 - c. Provided, however, that no such waiver shall be rescinded by the City without first having a public hearing on such decision after providing ten (10) days' written notice of the hearing to all landowners abutting the portion of the right-of-way where the rescission of the waiver is being considered.
7. All new sidewalk construction must conform to the Americans with Disabilities Act (ADA) standards adopted by the City of Kindred, which standards will be available at the office of the City Engineer.

2-0103. **LICENSE NECESSARY TO CONSTRUCT, RECONSTRUCT AND REPAIR DRIVEWAYS.** No person may construct, reconstruct, or repair sidewalks or driveways within the City without first procuring a license from the City Auditor to engage in such work.

2-0104. **CONTRACTOR'S LICENSE, FEE, EXPIRATION DATE.** If a license to construct, reconstruct, and repair sidewalks and driveways is granted by the City Auditor, the person applying must pay to the City Auditor a license fee as set by resolution of the City Council. Such license will expire on December 31 of each year.

2-0105. **BOND.** No license will be granted by the City Auditor unless such person has posted a bond in a sum set by resolution of the City Council with good and sufficient sureties therefor approved by the City Auditor conditioned, among other things, that the party will indemnify and save harmless the City of Kindred from damages caused by reason of any negligence upon the part of the person, or any agent or employee of the person, that the materials used in the construction of the sidewalks and the methods of construction will be strictly in accordance with the requirements of this Chapter.

2-0106. **NAME STAMP REQUIRED OF LICENSEE.** Sidewalk construction licensees are required to have a stamp which must be used to imprint the contractor's name and year of construction into the constructed sidewalk. The stamp shall consist of letters one

and one-quarter (1¼) inches high and of sufficient depth to imprint to the depth of one-eighth (1/8) inch into the fresh concrete.

2-0107. **SIDEWALK CONSTRUCTION, PERMIT REQUIRED, FEES.** All public sidewalks constructed within the City must be built on the line and grade set by the City Engineer or his designee; and every person, firm or corporation must, before undertaking any sidewalk construction, reconstruction, or repair, request line and grade and obtain from the City Engineer, or his designee, a written permit for each separately-owned piece of property. The fee for a permit to construct, reconstruct or repair a public sidewalk will be an amount set by resolution of the City Council. Before the permit will be issued, the applicant must also pay to the City a survey and staking fee. The staking and permit fee will be set by resolution of the City Council. Upon the payment of the permit fee and the survey and staking fee, it will then be the duty of the City Engineer or his designee to survey and stake the lot or lots to correspond with the grade and line established by the City of Kindred. The City Engineer, or his designee, will have 48 hours in which to stake the sidewalk after receiving a request for such work. For purposes of computing the 48 hours, Sunday will be excluded. No permit will be required for sidewalks constructed or reconstructed under a City contract.

2-0108. **CONSTRUCTION SUBJECT TO INSPECTION, REQUEST BY LICENSEE.** Licensee must request an inspection by the City Engineer, or his designee, after having constructed the forms, placed and compacted the sub-base and before the placing of any concrete. The City Engineer, or his designee, will have 24 hours in which to make the inspection after receiving notice, except that Sunday will not count towards the 24 hours. No concrete will be allowed to be poured until the inspection has occurred and approval given. If any sidewalk is poured prior to the inspection or without approval of the City Engineer or his designee, the City may require testing to be done to ensure that the sidewalk was built in compliance with City standards and on proper grades, which cost will be the responsibility of the licensee. If the sidewalk does not conform to the grade or any other City standards, the City may require the sidewalk to be removed at the expense of the licensee.

2-0109. **TEARING UP SIDEWALK.** No person will injure or tear up any public sidewalk, or pedestrian/bikeway or drive any vehicle upon or across any public sidewalk or pedestrian/bikeway, without first obtaining the permission of the City Engineer or his designee. Anyone tearing up a public sidewalk or pedestrian/bikeway or excavating under, near or through a public sidewalk or pedestrian/bikeway without the permission of the City Engineer or his designee, must upon completion of such work place

the sidewalk or pedestrian/bikeway in its original condition to the satisfaction of the City Engineer or his designee.

2-0110. **CONTRACT FOR CONSTRUCTION OF SIDEWALKS, BIDS, SPECIFICATIONS.** Each year, before the beginning of the construction season, the City Auditor will receive bids for the construction or reconstruction of such City sidewalks as the City may find necessary to construct. Such bids must be made upon proposals furnished by the City Engineer and conform to the specifications filed with the City Auditor by the City Engineer and approved by the City Council.

2-0111. **QUALIFICATIONS OF CONTRACTOR.** Any contractor bidding on the City contract for the construction of sidewalks must (1) have a sidewalk builder's license and (2) hold a North Dakota General Contractor's license.

2-0112. **BOND TO ACCOMPANY CONTRACT.** When any contract for the construction of sidewalks is about to be entered into by the City in accordance with the provisions of the laws of this state, the contractor to whom any such contract may be awarded will be required, before such contract is entered into, to give, in addition to the contract bond required by Section 48-01-01 of the North Dakota Century Code, a bond in an amount to be determined by the City Council, running to the City of Kindred. Such bond must be conditioned upon the contractor maintaining and keeping in good repair for a period of two (2) years all sidewalks so constructed by such contractor under the terms of such contract. In case of default on the part of such contractor to so maintain and keep such sidewalks in good repair for the period of two (2) years, or in case such sidewalks within such time begin to crumble or disintegrate or become cracked and broken to such an extent that, in the opinion of the City Engineer, the same is not in satisfactory compliance with the specifications for the construction thereof, then the City Engineer may direct that such sidewalk be immediately repaired or re-laid, in whole or in part, as the Engineer deems best. The contractor immediately will cause the same to be repaired or re-laid; and in the case of the contractor's neglect, refusal, or failure so to repair or relay the same, the City, at any time within the two-year period or thereafter, may cause the same to be repaired or re-laid and the cost thereof, whether done by the City directly or through a contract, may be recovered against the contractor and the surety upon such bond.

2-0113. **CITY SIDEWALK CONTRACT CONTROLLED BY CITY ENGINEER.** The contractor must report to the City Engineer for the purpose of receiving orders with reference to any work under the City sidewalk contract and for accurate information on the location of sidewalks;

and the contractor must not begin work until so informed and until the contractor has in its possession a written order of work.

The contractor must begin work within ten (10) days of such written order of work, unless the contractor receives written permission from the City Engineer to start at a later date. The contractor should complete the work in a continuous operation insofar as possible. The contractor must notify the City Engineer before beginning work upon each sidewalk ordered.

2-0114. **CITY SIDEWALK CONTRACT, SCOPE OF WORK.** The City sidewalk contract may include the construction, reconstruction, and repair of all sidewalks, sidewalk approaches, alley returns, and crossings deemed necessary by the City Council.

The contractor must report all obstructions to the sidewalk, water stop boxes, poles, hydrants, etc., The Contractor must use, throughout the work, materials and workmanship approved by the City Engineer. The decision of the City Engineer as to the manner in which the work must be executed and the quality of the work and material will be final and conclusive.

When the work is completed, the contractor must immediately remove all surplus material, whether old or new, and leave the sidewalk, gutter, and roadway free and unobstructed.

2-0115. **CONTRACTOR TO BE RESPONSIBLE UNTIL SIDEWALK COMPLETED.** The contractor will have charge of and be responsible for the entire work until its completion and acceptance.

Properly skilled workmen will only be employed on the work; and the contractor will dismiss any employee who may, in the opinion of the City Engineer, be negligent or who performs the work in an improper manner.

The contractor will, at all times, either be on the work site or have a competent foreman on the work site who must have all the authority of the contractor and to whom orders, instructions and directions may be given by the City Engineer.

The contractor must not subcontract or assign any of the work under any contract made pursuant to this chapter without the written permission of the City Engineer.

The Contractor will be responsible for bringing to grade and checking for usability all stop boxes within sidewalk lines. Information on locations of stop boxes may be obtained from the City Water Department.

2-0116. **FAILURE OF CONTRACTOR TO FULFILL CONDITIONS.** The finished sidewalk may not be used until, in the opinion of the City Engineer, it has set sufficiently to receive travel.

The City Engineer has the power to reject any material or work not in accordance with this chapter and the Engineer's instructions and orders, and any material work rejected, must be removed immediately by the contractor and properly replaced at contractor's own expense.

In case the contractor neglects or refuses to remove any rejected material or work or to replace the same with proper material or work, such material or work may be removed and replaced by the City Engineer at the contractor's expense, and the cost of any such removal and replacement shall be deducted from any money that may be due, or may become due, the contractor from the City.

2-0117. **MEASUREMENT AND PAYMENT ON CITY CONTRACT.** At the completion of each sidewalk constructed under a City contract, the contractor must measure the material and work involved, must complete the estimate form provided, and must forward a duplicate of the form to the City Engineer for verification and payment.

2-0118. **WIDTH AND PLACEMENT OF SIDEWALKS.** All sidewalks constructed or reconstructed in the City must be no less than four (4) feet in width, unless a lesser width is approved by the City Council, and so laid that the inner edge shall be two (2) feet outside the property line, except as otherwise designated by the City Council, provided that:

1. No sidewalk may be reconstructed of a width less than that existing prior to construction, unless a lesser width is approved by the City Council.
2. Sidewalks may be substituted by combination sidewalk/bikeway facilities in accordance to the Metropolitan Bikeway Standards and approved by the City Council.
3. In commercial areas, sidewalks must be a minimum of six (6) feet in width, unless a lesser width is approved by the City Council.

Source: Ord. 2018-73, Sec. 1

2-0119. **CITY SIDEWALKS, DRIVEWAYS CONSTRUCTION SPECIFICATIONS.** All City sidewalks must be a minimum of four (4) inches thick, except within driveways where the sidewalk must be of the same thickness as the driveway. Sidewalks over vaults or other openings must be constructed to carry a load of not less than two hundred

fifty (250) pounds per square foot. No concrete tile may be used in the construction or reconstruction of any City sidewalks.

All residential driveways must be six (6) inches thick, must be no less than nine (9) feet nor more than thirty (30) feet wide at the sidewalk line in all zoning districts, except that in zoning districts beginning with "SFRA" the driveway may not be more than thirty-six (36) feet wide, and must be located so as to provide access to a parking space within the property to be served. All commercial or industrial driveways must be seven (7) inches thick and must be no more than thirty-six (36) feet in width at the sidewalk line. Provided, however, that such commercial or industrial driveway may, upon approval of the City Engineer, be constructed to a maximum width equal to one-half of the width of the lot.

Driveways should be designed in accordance to the following schedule and approved by the Building Inspector or City Engineer prior to construction:

<u>Designation of Street</u>	<u>Minimum Distance to Property Line Nearest the Intersection</u>
Local Street Approaching Local Street	20 feet
Local Street Approaching Collector Street	30-50 feet
Local Street Approaching Arterial Street	100-120 feet
Collector Streets	Limited Access
Arterial Streets	Limited Access

Access onto designated Collector or Arterial streets should be via a local street system. In instances where this, or the minimum distance to the intersection as set out above, cannot be achieved, approval must first be obtained by the City Council following review by the Planning and Zoning Commission. The required distance to intersections on Collector streets is a minimum of one hundred (100) feet. The required distance to intersections on Arterial streets is a minimum of one hundred fifty (150) feet. In instances where this cannot be achieved, approval must first be obtained by the City Council following review by the Planning and Zoning Commission.

Distances between driveways and intersections are measured from the edge of the driveway closest to the intersection and the right-of-way line of the intersecting street. In no case will the aggregate width of the driveway into a property exceed one-half (1/2) the width of that property.

Source: Ord. 2020-85, Sec. 1

2-0120. **MATERIALS IN GENERAL.** Design specifications and material requirements for sidewalks and driveways in the City will be available at the office of the City Engineer. All sidewalks and driveways constructed in the City must conform to those requirements.

2-0121. **SNOW AND ICE ON SIDEWALK REMOVED BY OWNER AND OCCUPANT OF PROPERTY.** No snow or ice may be allowed to stand or remain upon any public sidewalk within the City of Kindred. If any person or corporation either neglects or refuses to remove the snow or ice on a public sidewalk abutting the person's or corporation's property, after forty-eight (48) hours notice by a City Agent, the person or corporation will be subject to the penalties set out in Section 2-0122. In addition, the City Agent may cause the snow or ice to be removed. The expense incurred in the removal will be charged and assessed against the abutting property by special assessment in a manner prescribed by law.

2-0122. **REPEALED.** Source: Ord. 2014-56, Sec. 13 (2015)

2-0123. **GRANDFATHER CLAUSE.** Nothing in this Ordinance shall require, without further Council action, the construction of sidewalks in areas developed prior to the passage of the Revised Ordinance of 2004 of the City of Kindred.

CHAPTER 2-02

STREETS

SECTIONS:

- 2-0201. Supervision of Construction.
- 2-0202. Pipes and Conduits in Streets: Prevention of Leaks.
- 2-0203. Pipes and Conduits in Streets: Repair of Breaks.
- 2-0204. Superintendent of Streets to Notify Owner of Leak.
- 2-0205. Failure of Owner to Repair.
- 2-0206. Construction of Sewer, Vault, Cellar, Cistern or Well in Street - Permit.
- 2-0207. Excavation in Streets: Permit.

2-0201. **SUPERVISION OF CONSTRUCTION.** Whenever any public streets are constructed in the City of Kindred, such construction shall be under the supervision of the City Engineer.

2-0202. **PIPES AND CONDUITS IN STREETS: PREVENTION OF LEAKS.** It shall be the duty of every person, firm or corporation forcing, transmitting or conveying water or gas through pipes or other conduits which have heretofore been, or shall be hereafter, laid in any street, alley or public ground in the City of Kindred, to prevent the public use of such street, alley or public ground from being or becoming in any way impaired, obstructed, injured or rendered dangerous or offensive by the escape of water or gas into or upon said street, alley or public ground, out of said pipes or conduits.

2-0203. **PIPES AND CONDUITS IN STREETS: REPAIR OF BREAKS.** In case any such pipe or conduit shall break out or burst so that water or gas shall escape from the same into or upon any such street, alley or public ground in said City, it shall be the duty of any person, firm or corporation forcing, transmitting or conveying water or gas through the same, within twenty-four (24) hours after having received notice or knowledge of the escaping water or gas therefrom as aforesaid, to commence and diligently prosecute the repair of said pipe or other conduit, in case such pipe or other conduit is owned by such person, firm or corporation, and if such, pipe or other conduit is not owned by such person, firm or corporation, such person, firm or corporation shall immediately shut off the water or gas therefrom until same is repaired.

2-0204. **CITY AGENT TO NOTIFY OWNER OF LEAK.** It shall be the duty of the City Agent, upon discovery of the fact that water or gas is escaping from any pipe or other conduit, used as aforesaid, into or upon any street, alley or public ground, to immediately notify the person, firm or corporation forcing, transmitting or conveying water or gas through the same, of such escape.

2-0205. **FAILURE OF OWNER TO REPAIR.** In case any person, firm or corporation forcing, transmitting or conveying water or gas through any pipe or other conduit laid in any street, alley or public ground of the City of Kindred shall neglect or refuse to repair the same, in case it is owned by such person, firm or corporation, or to shut the water or gas off therefrom in case it is not owned by such person, firm or corporation, then the City Agent, under the direction of the City Engineer of the said City, shall forthwith proceed to repair said pipe or other conduit, and the cost shall be recovered by the City in an action for that purpose from such person, firm or corporation. Completion of the repair shall be subject to the approval of the City Engineer and/or Street Superintendent.

Provided, that the foregoing provision shall not apply to any water mains or service pipes which are owned or under the control of the City of Kindred and under the supervision of the City Agent.

2-0206. **CONSTRUCTION OF SEWER, VAULT, CELLAR, CISTERN OR WELL IN STREET - PERMIT.** No person shall construct, or cause to be constructed or made, any sewer, vault, cellar, cistern or well in any of the streets or public places of the City without the express authority from the City Engineer.

2-0207. **EXCAVATION IN STREETS: PERMIT.** It shall be unlawful for any person, persons, firm or corporation to open up or make any excavation in or upon any street or alley in the City of Kindred, for any purpose, without first having obtained a permit so to do as provided in Chapter 2-03 of the ordinances of the City of Kindred.

CHAPTER 2-03

EXCAVATION CODE

SECTIONS:

- 2-0301. Definitions.
- 2-0302. Excavator's Registration.
- 2-0303. Permit to Excavate.
- 2-0304. Exemptions.
- 2-0305. Performance Deposits.
- 2-0306. Pre-excavation Requirements.
- 2-0307. Warranty.
- 2-0308. Joint Application.
- 2-0309. Supplementary Applications.
- 2-0310. Denial of Permit.
- 2-0311. Inspection.
- 2-0312. Revocation of Permits.
- 2-0313. Mapping Data.
- 2-0314. Location of Facilities.
- 2-0315. Relocation of Facilities.
- 2-0316. Damage to Other Facilities.
- 2-0317. Right-of-Way Vacation.
- 2-0318. Excavation Moratorium.
- 2-0319. Emergency Excavation.
- 2-0320. Preservation of Monuments.
- 2-0321. Inspections.
- 2-0322. Regulations.
- 2-0323. Severability.
- 2-0324. Penalty.
- 2-0325. Appeal.

2-0301. **DEFINITIONS.**

- 1. "Alley" shall mean the length as dedicated for use by the public and the width as defined by the property lines on each side thereof.
- 2. "Berm" shall mean that portion of the street lying outside the traveled way.
- 3. "City" shall mean the City of Kindred, North Dakota.
- 4. "City Agent" shall mean a designated official of the City of Kindred.

5. "Controlled density fill" (CDF) shall mean a sand, cement and/or fly ash slurry resulting in a 50 to 100 PSI material used for backfill.
6. "Emergency" shall mean a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.
7. "Excavation" means any removal or disturbance of material to a depth of more than three inches within the traveled way of any street or alley or the removal or disturbance of material to a depth of more than ten inches in sod or soil areas of any publicly-owned property. Excavation is further defined to include all tunneling, pushing, or jacking under any publicly-owned property within the corporate limits of the City of Kindred.
8. "Excavator" shall mean any person, firm or corporation who performs the act of excavation through the use of mechanically powered equipment or otherwise.
9. "Facility" or "Facilities" means any tangible asset in the right-of-way required to provide utility service.
10. "Lateral Support" of a public place shall be considered impaired whenever an excavation extends below a plane sloping downward at an angle of 45 degrees from the boundary of the public place, or whenever a proposal excavation would expose any adverse geological formation of soil condition.
11. "Right-of-Way" means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.
12. "Street" shall mean the length as dedicated for use by the public and the width as defined by the property lines on each side thereof.

13. "Traveled Way" means the width from curb to curb on curbed streets, from edge to edge on asphalt non-curbed streets, and from shoulder to shoulder on gravel streets.
14. "Utilities" for the purpose of this ordinance, shall include all underground cables, conduit and pipe used for the transportation or distribution of fuel, electricity, communication services, water or sewage.

2-0302. **EXCAVATOR'S REGISTRATION.** No person, firm or corporation shall engage in the practice of Excavation within public right-of-way unless registered as an Excavator in the City of Kindred, or under contract with the City. An Excavator's registration will be issued by the City Auditor upon submission of a written application on forms obtained from the Auditor and upon fulfilling the fee, bonding and insurance requirements as specified herein. The registration period shall be from January 1 to December 31 of each year.

1. Fee. The registration fee for an Excavator's registration for a calendar year or any part thereof shall be set by resolution of the City Council.
2. Insurance. Any person, firm or corporation licensed as an excavator must file proof of liability insurance in the amount of Two Million dollars (\$2,000,000) with the City Auditor. The insurance must name the City as an additional insured as to whom the coverages required are in full force and applicable and for whom defense will be provided as to all such coverages. The insurance shall also require that the City Auditor be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term.

2-0303. **PERMIT TO EXCAVATE.**

1. No excavation within public right-of-way shall be initiated without a permit being issued by the City of Kindred, except as otherwise provided in Section 2-0304 of this chapter. Application for an excavation permit shall be made at least 24 hours in advance, in writing, to the City Agent on forms provided by the City. In the case of a bona fide emergency, the written application may be filed after the excavation has been initiated providing that the intent to excavate has been reported to the City Agent, either in person or by telephone.

2. A permit to excavate shall be issued only to a registered Excavator, to a governmental unit of the City, to a contractor performing work under a written contract with any governmental unit or to the owner of a utility franchised to operate within the corporate limits of the City of Kindred; however, the issuance of a permit under the provisions of this ordinance shall not relieve any permittee from compliance with all requirements of this ordinance nor relieve the permittee of any liability for damage to any existing utility. The City of Kindred assumes no liability whatsoever by virtue to the issuance of said permit. The permit shall be maintained on the site while the excavation is in progress. The permit holder will provide the City Agent with an emergency phone number of a responsible employee who can be contacted during non-working hours. The fee for each permit issued under the provisions of this ordinance shall be set by resolution of the City Council. Every permit issued under the provisions of this ordinance shall expire by limitation and become null and void if the work authorized by such permit is not commenced within twenty days from the date of such permit.
3. Where the permittee will not be the owner of the facilities installed, the owner (or the entity who will become the owner after completion of the project) will also be required to execute the application for permit, be listed on the permit, and be subject to the indemnification and warranty provisions of Section 2-0303(4) and 2-0307.
4. The permittee in the permit must agree to hold the City harmless from any and all damages claimed by reason of negligence, incompetence or omission on the part of such person, firm or corporation in the performance of their work, the same to include, but not be limited to, careless guarding of excavations made by them or failure to restore all public properties to as good a condition as they were before such work was done, or for any damages growing out of the negligence or carelessness of any such licensed person, firm or corporation.
5. An application for a permit will be considered complete only upon compliance with the requirements of the following provisions:
 - a. Registration pursuant to this chapter.

- b. Submission of a completed permit application form, including all required attachments and scaled drawings showing the location and area of the proposed project, and the location of all known and existing proposed facilities.
- c. Payment of money due the City for:
 - (1) Permit fees and franchise or user fees, if applicable;
 - (2) Any overdue permit or fee payment;
 - (3) Any disputed loss, damage or expense suffered by the City as a result of applicant's prior excavating or any emergency actions taken by the City;
- 6. The City Agent may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.
- 7. No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person (a) makes a supplement to the application for another right-of-way permit before the expiration of the initial permit, and (b) a new permit or permit extension is granted.
- 8. Notwithstanding subdivision 6 of this section, the City shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching or restoration. The delay penalty shall be established from time to time by the City Council by resolution.

2-0304. **EXEMPTIONS.**

- 1. The following shall be exempt from the registration and permit requirements:
 - a. Employees of the department of street of the City of Kindred, while engaged in work directed by the City, shall be exempt from the requirements of Sections 2-0302 and 2-0303 of this chapter.

- b. Kindred Park District employees when performing work within the property lines of the areas designated as the park system.
2. The following shall be exempt from the registration requirements:
- a. All governmental units of the City.
 - b. All contractors performing work under a written contract with any governmental unit of the City.
 - c. Utilities which have a franchise agreement with the City. However, all contractors hired by such utility must be registered.

2-0305. **PERFORMANCE DEPOSITS.** Deposits as required under this section shall be cash, a certificate of deposit, or a surety bond approved by the City Attorney.

1. Certificates of deposit. If a certificate of deposit is used, the certificate must be held by a financial institution located within the city limits of the City of Kindred, North Dakota, and there must be an escrow agreement in a form satisfactory to the City Attorney executed by the City, financial institution, and permittee.
2. Annual Deposits. Any person intending to make openings, cuts or excavations in public places may make and maintain, with the City Auditor, an annual deposit in an amount set by resolution by the City Council, and the person so depositing shall not be required to make the special deposits provided in this section but shall, however, be required to comply with all other applicable provisions of this ordinance.
3. Purpose of Deposits. Any special or annual deposit made hereunder shall serve as security for the repair and performance of work necessary to put the public place in as good a condition as it was prior to the excavation, for a period extending through the warranty period, and to cover any penalties imposed for delay.
4. Special Deposits. Special deposits shall be required for all permits not covered by an annual deposit. The amount of each special deposit shall be determined by the City Agent on a case-by-case basis in accord with paragraph 3.

5. Refund or Reduction of Deposits. Upon the permittee's completion of the work, covered by a permit in apparent conformity with this chapter as determined by the City Agent, two-thirds of such deposit shall be refunded or released by the City, with the remaining balance being released at the completion of the warranty period.
6. Refund or reduction of annual deposits. Two-thirds of any annual deposit shall be refunded by the City at the end of the one-year period for which the deposit is made or the apparent satisfactory completion of all excavation work undertaken during such period, whichever is later, and the balance of the annual deposit shall be released at the expiration of the warranty period.
7. Use of Deposits. Part, or all, of any such deposit may be used to pay the cost of any work the City performs or has contracted to another entity to restore or maintain the public place as provided in this chapter in the event the permittee fails to perform such work, and to cover any penalty for delay which is not paid directly by the permittee.

2-0306. **PRE-EXCAVATION REQUIREMENTS.** It shall be the responsibility of each permittee to notify all utility companies of the intended excavation. Except in the case of a bona fide emergency, a minimum 24-hour advance notice is required. The permit form shall serve as a guide to assist the permittee in scheduling and documenting utility clearance.

2-0307. **WARRANTY.** The permittee warrants that restoration work will meet the requirements of this chapter for a period of twenty-four (24) months following the completion of the work. During this twenty-four (24) month period, it shall, upon notification from the City Agent, correct all restoration work to the extent necessary, using the method required by the City Agent. Such work shall be completed within five (5) calendar days of the receipt of the notice from the City Agent, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable. If permittee fails to restore the right-of-way in the manner and condition required by the City Agent, or fails to satisfactorily and timely complete all restoration required by the City Agent, the City Agent, at its option, may do such work or contract for such work to be done. In that event, the permittee shall pay to the City within thirty (30) days of the billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the City may exercise its right under the deposits required by this chapter, and if such sums are

not sufficient, the City may otherwise seek payment from the permittee and/or owner of the facilities installed.

2-0308. JOINT APPLICATION.

1. Registrants may jointly apply for permits to excavate or construct a right-of-way at the same place and time.
2. Registrants who apply for permits for the same obstruction or excavation may share in the payment of the permit fees. Registrants must agree among themselves as to the portion each will pay and indicate the same on their application.
3. Registrants who apply for permits for the same obstruction or excavation may share in the required deposit. Registrants must agree among themselves as to the portion each will be responsible for and indicate the same on their application.

2-0309. SUPPLEMENTARY APPLICATIONS.

1. A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do work outside the area specified in the permit, except as provided herein. Any permittee who determines that an area is greater than that specified in the permit granted must, before working in the greater area (a) make application for a permit extension and pay any additional fees required thereby, and (b) be granted a new permit or permit extension.
2. A right-of-way permit is valid only for the dates specified in the permit. No permittee may be its work before the permit start date or, except as provided herein, continue working after the end date. If permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be done before the permit end date.

2-0310. DENIAL OF PERMIT. The City Agent may deny a permit for failure to meet the requirements and conditions of this chapter, or if the City Agent determines that denial is necessary to protect the health, safety, and welfare of the public, or when necessary to protect the right-of-way and its current use.

2-0311. **INSPECTION.**

1. When the work under any permit hereunder is completed, the permittee shall provide written notice of completion to the City Agent.
2. Permittee shall make the work-site available to the City Agent and to all others as authorized by law for inspections at all reasonable times during the execution of and completion of the work.
3. The City Agent shall have the authority to do the following:
 - a. At the time of inspection, the City Agent may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
 - b. The City Agent may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions or codes. The order shall state that failure to correct the violation will be a cause for revocation of the permit. Within ten (10) days after the issuance of the order, the permittee shall present proof to the City Agent that the violation has been corrected. If such proof has not been presented within the required time, the City Agent may revoke the permit pursuant to Section 2-0316.
4. Completion of an excavation is determined by the City Engineer and Street Superintendent. "Completion" requires pack-in of approved backfill within 30 days of the time excavation has ceased.

2-0312. **REVOCAION OF PERMITS.**

1. The City reserves its rights, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:
 - a. The violation of any material provision of the right-of-way permit;

- b. An evasion or attempt to evade any material provision of the right-of-way permit or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
 - c. Any material misrepresentation of fact in the application for a right-of-way permit;
 - d. The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete the work is due to reasons beyond the permittee's control; or
 - e. The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to Section 2-0315.
- 2. If the City Agent determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the City Agent shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the City Agent, at his or her discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.
 - 3. Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the City Agent with a plan, acceptable to the City Agent, that will cure the breach. Permittee's failure to so contact the City Agent, or the permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of permit.
 - 4. If a permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including restoration costs and the costs of collection and reasonable attorney's fees incurred in connection with such revocation.

2-0313. **MAPPING DATA.** Each owner of utilities in the right of way in must provide mapping information required by the City Agent. Mapping data shall generally consist of drawing exhibits showing all existing aboveground and underground facilities and proposed location of new facilities. Drawings shall be submitted

in AutoCAD DWG or DXF digital format and in hard copy. All drawings shall be registered to the City's coordinate system, or if the City does not have a separate coordinate system, the North Dakota State Plan, and certified by a registered land surveyor or professional engineer. In regard to existing facilities, the required mapping information must be provided within one year of the written request for such information by the City Agent. Failure to provide such information in the time required, shall subject the violator to administrative fines in the amount of \$500 a day until the violator is in compliance. In addition, no permit will be granted to the violator, or to a contractor doing work for the violator until the violator is in compliance with this section.

2-0314. **LOCATION OF FACILITIES.**

1. Unless otherwise permitted by an existing franchise or North Dakota law, or unless existing aboveground facilities are repaired or replaced, new construction and the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable code.
2. The City Agent may assign specific corridors within the right-of-way or any particular segment thereof as may be necessary, for each type of facilities that is, or pursuant to current technology, the City Agent expects will someday be located within the right-of-way. All permits issued by the City Agent involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue. A five foot clear zone shall be maintained on each side of the City sanitary sewer, storm sewer and water main utilities.
3. Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the City Agent shall, not later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived in writing by the City Agent for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.
4. To protect the health, safety and welfare or, when necessary, to protect the right-of-way and its current

use, the City Agent shall have the power to prohibit or limit the placement of new or additional facilities within a right-of-way. In making such decisions, the City Agent shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans for public improvements and development projects which have been determined to be in the public interest.

2-0315. **RELOCATION OF FACILITIES.** A registrant must promptly, and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way whenever the City Agent for good cause requests such removal and relocation, and shall restore the right-of-way to the same condition it was in prior to said removal or relocation. The City Agent may make such requests to prevent interference by the company's equipment or facilities with (a) a present or future City use of the right-of-way, (b) a public improvement undertaken by the City, (c) an economical development project in which the City has an interest or investment, (d) when the public health, safety and welfare of the public require it, or (e) when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way. Notwithstanding the foregoing, a person shall not be required to move or relocate its facilities from any right-of-way which has been vacated in favor of a non-governmental entity unless and until reasonable costs thereof are first paid by the non-governmental entity requesting the vacation.

2-0316. **DAMAGE TO OTHER FACILITIES.** When the City Agent does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the City Agent shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to the registrant and must be paid within thirty (30) days from the date of the billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each registrant shall be responsible for the cost of repairing any damage to the facilities of any other registrant caused during the City's response to an emergency occasioned by that registrant's facilities.

2-0317. **RIGHT-OF-WAY VACATION.**

1. If the City vacates a right-of-way which contains the facilities of a registrant, and if the vacation does not require the relocation of registrant's or permittee's facilities, the City shall reserve, to and for itself and all registrants having facilities in the vacated right-of-way, the right to install, maintain and operate any facilities in the vacated right-of-way and to enter upon such right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.
2. If the vacation requires the relocation of registrant's or permittee's facilities and (a) if the vacation proceedings are initiated by the registrant or permittee, the registrant or permittee must pay the relocation costs; or (b) if the vacation proceedings are initiated by the City, the registrant or permittee must pay the relocation costs unless otherwise agreed to by the City and the registrant or permittee; or (c) if the vacation proceedings are initiated by a person or persons other than the registrant or permittee, such other person or persons must pay the relocation costs.

2-0318. **EXCAVATION MORATORIUM.** No excavation requiring a permit will be allowed within 36 months of the completion of construction of a roadway. Additionally, no excavation will be allowed on any roadway within 24 months following any of the following activities: overlay, mill and overlay, chip seal, or slurry seal without written authorization from the City Agent.

2-0319. **EMERGENCY EXCAVATION.** Nothing in this ordinance shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property or for the location of trouble in conduit or pipe, or for making repairs, provided that the person making such excavation shall apply to the City Agent for such a permit on the first working day after such work is commenced.

2-0320. **PRESERVATION OF MONUMENTS.** Any monument set for the purpose of locating or preserving the lines of any street or property subdivision, or a survey reference point, or a permanent survey bench mark, shall not be removed or disturbed without first obtaining permission in writing from the City Agent. Permission to remove or disturb such monuments, reference points or bench marks shall only be granted upon condition that the person applying for such permission shall pay all expenses incident to the proper placement of this monument by the City Agent or registered land

surveyor. Any person or entity removing or disturbing such monuments without permission shall be responsible for any costs associated with replacing the monuments, as well as a \$500 administrative penalty.

2-0321. **INSPECTIONS.** The provisions of this chapter do not relieve or change any other inspection requirements contained in the City ordinances or in any rules and regulations as approved by the City Council.

2-0322. **REGULATIONS.** The City Agent is hereby authorized and directed to promulgate rules and regulations setting forth the requirements for excavation protection, backfilling and restoration, and related matters, to prepare the necessary related forms, and to issue such permits in compliance with this chapter.

2-0323. **SEVERABILITY.** If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

2-0324. **PENALTY.**

1. Every person, firm or corporation violating this ordinance shall, upon conviction thereof, be punished by a fine not to exceed \$500, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof.
2. The City shall further have the right and authority to deny, suspend or revoke the registration or permit of every person violating this chapter.

2-0325. **APPEAL.**

1. A right-of-way user that (a) has been denied registration; (b) has been denied a permit; (c) has had a permit revoked; or (d) believes that the fees imposed are invalid, may have that denial, revocation, or fee imposition reviewed, upon written request by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

2. Upon confirmation by the City Council of the denial, revocation, or fee imposition, the right-of-way user shall have the right to have the matter resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the City Council and the right-of-way user. If the parties cannot agree on an arbitrator, the matter must be resolved by a three-person arbitration panel made up of one arbitrator selected by the City, one arbitrator selected by the right-of-way users, and one selected by the other two arbitrators. The costs and fees of a single arbitrator shall be borne equally by the City and right-of-way user. In the event there is a third arbitrator, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other part of the expense of the third arbitrator and the arbitration.

TITLE III.

PARKS AND BOULEVARDS

CHAPTERS:

- 3-01. Parks.
- 3-02. Boulevards.
- 3-03. Trees. (Source: Ord. 2015-58, Sec. 1)

CHAPTER 3-01

PARKS

SECTIONS:

- 3-0101. Acceptance by City of Kindred Provisions of State Law.
- 3-0102. Compensation of Park Board Members.

3-0101. **ACCEPTANCE BY CITY OF KINDRED PROVISIONS OF STATE LAW.** The provisions of Chapter 40-49 of the North Dakota Century Code, and any amendments thereto, are accepted by the City Council of the City of Kindred, it being the intent of the City to have a Park District of the City of Kindred with all the powers and responsibilities as set out in Chapter 40-49 of the North Dakota Century Code, and all amendments thereto.

3-0102. **COMPENSATION OF PARK BOARD MEMBERS.** Each duly elected and qualified member of the Board of Park Commissioners shall receive compensation for their services as set by resolution of the City Council.

CHAPTER 3-02

BOULEVARDS

SECTIONS:

- 3-0201. Definitions.
- 3-0202. Prohibited Acts or Encroachments.
- 3-0203. Permits.
- 3-0204. Driving on Sidewalk or Boulevard.
- 3-0205. Care of Boulevard.
- 3-0206. Failure of Landowner to Care for Boulevard.
- 3-0207. Penalty.

3-0201. **DEFINITIONS.**

- 1. "Boulevard" or "Berm" shall mean that area of ground between the roadway and the sidewalk or, if there be no sidewalk, it is the area of the ground between the roadway and the dedicated limits of the street or avenue.
- 2. "Roadway" shall mean that portion of the street or avenue improved, designed, or ordinarily used for vehicular travel.

3-0202. **PROHIBITED ACTS OR ENCROACHMENTS.**

- 1. Parking. No person shall stop, stand, or park a motor vehicle, whether attended or unattended, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device, upon a sidewalk or boulevard.
- 2. Signs. Any sign or signs or billboard, except official or quasi-official signs, standing or erected upon a boulevard is a public nuisance and may be abated by removing the sign.
- 3. Buildings. No person shall erect or cause to be erected or permit any building or structure to stand upon the boulevard, other than a mailbox.
- 4. Storage. It is prohibited to store any equipment, building materials, inventory, or any other material upon the boulevard.

3-0203. **PERMITS.** Nothing herein shall prohibit the parking of motor vehicles upon the sidewalk or boulevard, the erection of signs or billboards upon the boulevard, the maintaining of a building or structure upon the boulevard, or the storage of equipment, material or inventory upon the boulevard if written application is made to the City Council requesting the privilege of parking motor vehicles upon the sidewalk or boulevard, the erection of signs or billboards upon the boulevard, the maintaining of a building or structure upon the boulevard, or the storage of equipment or inventory upon the boulevard, and the City Council grants such permission by resolution.

3-0204. **DRIVING ON SIDEWALK OR BOULEVARD.** No person shall drive any vehicle over, across, or upon any sidewalk, curb, or boulevard except where there are driveway crossings. Provided, however, the owner or occupant or his agents or employees may drive over the same temporarily when necessary to obtain access to the premises if permission to do so is first obtained from the City Auditor. The City Auditor, in granting such permission, may require protective measures to protect the curb, sidewalk, and boulevard, which protective measures must be removed immediately after such temporary use.

3-0205. **CARE OF BOULEVARD.** It shall be the responsibility of the abutting property owner to seed or sod the boulevard. No gravel, pavement, or other hard surface may be placed on the boulevard except for a driveway or sidewalk. No tree, shrub, or other plant or vegetation growth may be planted within the boulevard without permission granted by resolution by the City Council. Any person or entity desiring to place gravel, pavement, or other hard surface, or tree, shrub or other plant or vegetable growth in the boulevard may make written application to the City Council, and the City Council, by resolution, may approve such request when the City determines that it is in the best interests of the City to do so or where there is some other extenuating circumstance which would make the planting or maintaining of grass difficult or inappropriate. In addition, the City Council may place any reasonable conditions (such as relating to the maintenance and/or height) of any material or vegetation placed or planted on the boulevard. Such conditions shall be binding upon the abutting property owner and any of his or her successors in interest.

3-0206. **FAULURE OF LANDOWNER TO CARE FOR BOULEVARD.** If the abutting property owner fails to care for the boulevard in such a manner that the City Council feels has the potential to pose a health or safety hazard, then the City Council may by resolution order the abutting landowner to take such steps as are necessary to rectify the condition. If the abutting landowner fails to comply

with the directive of the City Council within 30 days, then the City Council may cause such steps to be done and may assess the costs of the same against the taxes on the abutting landowner's property.

3-0207. **PENALTY.** A violation of this chapter may be punishable as an infraction as set forth in Section 1-0211 of these ordinances.

CHAPTER 3-03

TREES

(Source: Ord. 2015-58, Sec. 1)

SECTIONS:

- 3-0301. Definitions.
- 3-0302. Separability.
- 3-0303. Creation and Establishment of a City Tree Board.
- 3-0304. Term of Office.
- 3-0305. Compensation.
- 3-0306. Duties and Responsibilities.
- 3-0307. Operation.
- 3-0308. Street Tree Species to be Planted.
- 3-0309. Planting Distances.
- 3-0310. Public Tree Care.
- 3-0311. Trimming; Corner Clearance.
- 3-0312. Dead or Diseased Tree Removal on Private Property.
- 3-0313. Interference with City Tree Board.
- 3-0314. Review by City Council.
- 3-0315. Penalty.

3-0301. **DEFINITIONS.** For the purposes of this ordinance, the following terms, phrases, words, and their deviations will have the meaning given herein:

- A. "Boulevard" means the space between the sidewalk or the normal location of the sidewalk and the curb line or curb.
- B. "City" is the City of Kindred, State of North Dakota, and shall mean all land in the municipal boundary.
- C. "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.
- D. "Person" means any person, firm, partnership, association, corporation, company, or organization of any kind.
- E. "Property Lines" means the outer boundaries of any lot or parcel of land.

- F. "Property Owner" shall mean the person owning such property as is shown by the Cass County, North Dakota Recorder.
- G. "Street Trees" are herein defined as trees, shrub bushes, and all other woody vegetation on land lying between the property lines on either side of all streets, avenues, or ways within the City.
- H. "Streets" means the entire width of every public way or right-of-way when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular and pedestrian traffic.
- I. "Width of Boulevard" means the distance between the sidewalk or the normal location of the sidewalk and the curb line or curb.

3-0302. **SEPARABILITY.** Should any part or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same will not affect the validity of the ordinance as a whole, or any part thereof; other than the part declared to be invalid.

3-0303. **CREATION AND ESTABLISHMENT OF A CITY TREE BOARD.** There is hereby created and established a City Tree Board for the City of Kindred, North Dakota, which will consist of five members, four of whom must be citizens and residents of the City, one of whom may be a non-resident, all of whom will be appointed by the Mayor with approval from the City Council.

3-0304. **TERM OF OFFICE.** The term of the five persons to be appointed by the Mayor will be three years, except that the term of two of the members appointed to the first Board will be for only one year, and the term of two of the members of the first Board will be for two years. In the event that a vacancy occurs during the term of any member, his/her successor will be appointed for the unexpired portion of the term.

3-0305. **COMPENSATION.** Members of the Board will serve without compensation.

3-0306. **DUTIES AND RESPONSIBILITIES.** It will be the responsibility of the Board to study, investigate, council and develop and/or update annually a written plan for the care, preservation, trimming, planing, replanting, removal or disposition of trees and shrubs in public ways, streets and alleys. Such plan will be presented annually to the City Council and, upon their

acceptance and approval, will constitute the official comprehensive city tree plan for the City of Kindred, North Dakota.

The City Tree Board or its Agent will be responsible for the planting, pruning, and removal of all trees located within the street rights-of-ways, 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 will be required only when the owner of the property intends to deviate from the rules and regulations contained in this ordinance.

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

3-0307. **OPERATION.** The Board will choose its own officers, make its own rules and regulations, and keep a journal of its proceedings. A majority of the members will be a quorum for the transaction of business.

3-0308. **STREET TREE SPECIES TO BE PLANTED.** No species of trees other than trees or shrubs implemented by the Tree Board may be planted as Street Trees without written permission of the City Tree Board.

3-0309. **PLANTING DISTANCES.** The spacing of Street Trees will be in accordance with the three species size classes, and no trees may be planted closer together than the following: Small Trees - 20 feet; Medium Trees - 30 feet; and Large Trees - 40 feet.

1. FROM CURB AND SIDEWALK. The distance trees may be planted from curbs or curb lines and sidewalks will be in accordance with the three tree species size classes, 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 - 40 feet.
2. FROM STREET CORNERS AND FIRE HYDRANTS. No Street/Park Tree may be planted closer than 20 feet of an street corner, measure from the point of nearest intersecting curbs or curb lines. No Street/Park Tree may be planted closer than 10 feet of any fire hydrant.
3. FROM UTILITIES. No Street Trees, other than those species listed as Small Trees, 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.

3-0310. **PUBLIC TREE CARE.** The City will have the right to plant, prune, trim, spray, preserve or 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 servicing City utilities or to preserve the symmetry and beauty of such public grounds. The City Tree Board may remove or cause or 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 pests.

3-0311. **TRIMMING; CORNER CLEARANCE.** Every owner of any tree overhanging any street or right-of-way within the City must trim the branches so that such branches do not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there will be a clear space of eight (8) feet above the surface of the street or right-of-way. Said owners must remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The City will have the right to trim any tree or shrub on private property when it interferes with the proper spread of light, or interferes with visibility of any traffic control device or sign, such trimming to be confined to the area immediately above the right-of-way.

3-0312. **DEAD OR DISEASED TREE REMOVAL ON PRIVATE PROPERTY.** The City will 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 City Tree Board will notify in writing the owners of such trees. Removal will be done by said owners at their own expense within 60 days after the date of service of notice. In the event of failure of owners to comply with such provisions, the City will have the authority to remove such trees and charge the cost of removal on the owner's property tax notice.

3-0313. **INTERFERENCE WITH CITY TREE BOARD.** It will be unlawful for any person to prevent, delay or interfere with the City Tree Board, or any of his agents, or servants, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any Street Trees, park trees, or trees on private grounds, as authorized in this ordinance.

3-0314. **REVIEW BY CITY COUNCIL.** The City Council will have the right to review the conduct, acts and decisions of the City

Tree Board. Any person may appeal from any ruling or order of the City Tree Board to the City Council, who will hear the matter and make a final decision.

13-0315. **PENALTY.** Any person violating any provision of this ordinance will be, upon conviction or a plea of guilty, subject to a fine not to exceed \$500.

TITLE IV

PLANNING AND ZONING

CHAPTERS:

- 4-01. Introduction.
- 4-02. Rules and Definitions.
- 4-03. General Provisions.
- 4-04. Zoning District Boundaries and Map.
- 4-05. Zoning District Regulations.
- 4-06. Special Provisions.
- 4-07. Land Subdivision.
- 4-08. Design Standards.
- 4-09. Required Improvements.
- 4-10. Administration and Enforcement.
- 4-11. Procedures for Amendments, Conditional Uses, Variances
and Plats of Subdivision.
- 4-12. Citizens Protest.
- 4-13. Violations and Penalties.

CHAPTER 4-01

INTRODUCTION

SECTIONS:

- 4-0101. Title.
- 4-0102. Authority.
- 4-0103. Purpose.
- 4-0104. Intent.
- 4-0105. Jurisdiction.
- 4-0106. Interpretation.
- 4-0107. Severability.
- 4-0108. Exceptions.
- 4-0109. Repeal.
- 4-0110. Effective Date.

4-0101. **TITLE.** This chapter shall be known as, referred to and cited as the "Land Development Code", City of Kindred, North Dakota and herein after is referred to as the "Code".

4-0102. **AUTHORITY.** These regulations are adopted pursuant to the authority granted by Chapters 40-47, 40-48 and 40-50 of the North Dakota Century Code.

4-0103. **PURPOSE.** These regulations are adopted to promote the health, safety, morals, and general welfare of the people of the City of Kindred in accordance with the provisions of the North Dakota Century Code.

4-0104. **INTENT.** These regulations are adopted to implement the plans and policies of the City of Kindred, regulate the use of land resources and minimize the cost of public services.

1. To promote orderly development of Kindred and to prevent conflict among land uses and structures.
2. To secure safety from fire, panic, noxious fumes, and other dangers.
3. To facilitate development of water, sewerage, transportation and other customary municipal services cost effectively.
4. To regulate the use and division of land within the city limits and within the extra territorial jurisdiction, as authorized by North Dakota laws.

5. To regulate the proper arrangement of streets, alleys and roads for convenient and efficient access to the adjoining properties.
6. To protect the value of land and buildings and maintain harmony and consistency among land uses.
7. To protect the existing properties against nuisances that interfere with the use and enjoyment of property, endanger personal health or safety or is offensive to the senses, as provided under the City of Kindred Codes.

4-0105. **JURISDICTION.** These regulations shall apply to all lands and structures above or below the ground within the corporate limits of the City of Kindred, North Dakota and its extra territorial planning area authorized by the North Dakota Laws applying to each quarter-quarter section of unincorporated area, the majority of which is located within one-half mile of its limits in any direction.

Source: Ord. 2013-47, Sec. 2 (2013)

4-0106. **INTERPRETATION.** These regulations shall be held to be the minimum requirements. Whenever these requirements are at variance with other requirements, rules, regulations, deed restrictions or covenants, adopted by the City of Kindred, the most restrictive shall govern, unless otherwise specifically stated. The City Council, the governing body of the City of Kindred, may, from time to time, amend, supplement or repeal any part of this Code after a public hearing.

Source: Ord. 2013-47, Sec. 3 (2013)

4-0107. **SEVERABILITY.** If any part of these regulations is found invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected.

4-0108. **EXCEPTIONS.** These regulations shall not apply to the land and buildings for general agricultural uses, as defined in Section 4-0501.1(a).

4-0109. **REPEAL.** The existing City Zoning Code together with any amendment thereto are hereby repealed.

4-0110. **EFFECTIVE DATE.** This Code shall be effective upon adoption by the City Council of the City of Kindred, as provided by the North Dakota Century Code.

CHAPTER 4-02

RULES AND DEFINITIONS

SECTIONS:

- 4-0201. Compliance.
- 4-0202. Word Use.
- 4-0203. Definitions.

4-0201. **COMPLIANCE.** No structure, land and building shall be hereafter used and no structure or part thereof shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered without a zoning permit and shall be in compliance with this Code.

4-0202. **WORD USE.** In the construction of this Code, the following words, rules, definitions shall be observed and applied except when the context clearly indicates otherwise.

1. Words used in present tense shall include the future.
2. Words used in singular number shall include the plural number and the plural number shall include the singular number.
3. Shall is a mandatory word and not discretionary.
4. May is a permissive word.
5. The word "lot" shall also mean "parcel", "piece" and "plat".
6. The word "building" includes all structures and structure includes buildings.

4-0203. **DEFINITIONS.**

1. **"Accessory Building and Uses"** means a subordinate building, the use of which is clearly incidental to and serves exclusively the principal building or principal use and shall be located on the same zoning lot. For example, a residential structure may have a detached garage or storage shed as an accessory building. Other examples include, but are not limited to, gazebos, picnic pavilions, tool and storage sheds, small work shops, playhouses, and similar buildings.

Source: Ord. 2022-100, Sec. 1

2. **"Advertising Sign"** See sign.
3. **"Agriculture"** means the process of producing food and fiber customary to the family farming operation with a

minimum of 40 acres in area, excluding feed lots, processing and manufacturing of the farm-based products.

4. **"Aircraft Hangar"** means any building in which storage or housing of aircraft is a primary use.

Source: Ord. 2005-5, Sec. 1 (2005)

5. **"Airpark"** means a residential community that consists of single-family detached housing units, two-family detached housing units, and housing units having direct access to the Kindred Davenport Regional Airport.

Source: Ord. 2005-5, Sec. 1 (2005); Ord. 2013-47, Sec. 4 (2013)

6. **"Alley"** means a minor street providing access to the back or side of two or more parcels or lots.

7. **"Alteration"** means any change, enlargement or rearrangement in structural parts of a building or structure.

8. **"Amendment"** means any change, revision or modification to the text of this code and/or the Zoning District Map.

9. **"Animal Unit"** means a unit of measure determined by species as follows:

Livestock Type	Animal Unit	300 a.u.	1,000 a.u.
1 horse	2.0	150	500
1 dairy cow (milking or dry)	1.33	225	750
1 mature beef	1.0	300	1,000
1 beef feeder-finishing	0.75	400	1,343
1 Cow-calf pair	1.0	300	1,000
1 mature bison	1.0	300	1,000
1 swine	0.1	3,000	10,000
1 goose or duck	0.033	9,090	30,303
1 sheep	0.1	3,000	10,000
1 turkey	0.0182	16,483	54,945
1 chicken	0.008	37,500	125,000
Any other livestock not listed above	1.0	300	1,000

SOURCE: Ord. 2009-25, Sec. 1 (2009).

10. **"Animal Hospital or Kennel"** means a building or premises set up for treatment and boarding of domestic animals including veterinary facilities.
11. **"Basement"** means a story, partly underground with more than one-half of its height below grade.
12. **"Board of Adjustment"** means a body of citizens appointed by the Kindred City Council to hear appeals on the enforcement of this code see Section 4-1004.
13. **"Building"** means any structure above or below ground designed or intended for shelter, housing, business, office, and accommodation of persons, animals, chattels or property.
14. **"Building Area"** means that portion of the zoning lot that can be occupied by the principal and accessory uses, excluding the front, rear and side yards.
15. **"Building Height"** means vertical distance from the grade to the highest point of the roof.
16. **"Building Line"** means a line establishing the minimum distance that structures may be placed from the lot lines or street right-of-way within which no part of the principal or accessory building shall be placed. For the purposes of this Code the building line is the same as setback line.
17. **"Building, Principal"** means a building, the main use of which is single family and multi-family dwellings, offices, shops, stores and other uses permitted in the appropriate zoning district in this code.
18. **"Channel"** means a natural or man-made water course for conducting the flow of water including drainage ditches and intermittent water courses.
19. **"City", "City Council"** means the governing body of the City of Kindred, North Dakota.
20. **"Club or Lodge"** means a private club or lodge which is a nonprofit association of persons for the purpose of gatherings and entertaining members including consumption of food and beverages.

21. **"Comprehensive Plan"** or **"Kindred Plan 2020"** means a guide for management of the resources and development of the City of Kindred.
22. **"Conditional Use"** means a use not automatically permitted in a zoning district and which requires review and approval of the City Council after a public hearing before the Planning Commission. It is a use which would not be appropriate in a particular zoning district, but which if controlled as to the number, location, or relation to the surrounding uses and the area, may be consistent with the purpose and intent of these regulations. A conditional use is permitted in a district specifically allowing it, subject to the approval of the City Council and only when the Council finds that such use meets all of the requirements applicable to it as specified in the City Codes including these regulations.
23. **"Conforming Building or Structure"** means a building or structure which complies with all requirements of this Code and other regulations adopted by the City of Kindred.
24. **"Developer"** means a land owner, or its agent engaged in subdividing land for development for a specific use.
25. **"Development"** means any human made change to improved or unimproved real estate, including but not limited to the construction of buildings, structures or accessory structures, the construction of additions or alternations to buildings or structures, ditching, lagooning, dredging, filling, grading, paving, excavation and drilling operations.
26. **"Development Plan"** means a document including maps and data for physical development of an area as required by this Code or may be required by the City of Kindred.
27. **"District, Zoning"** means a section or sections of Kindred for which regulations governing the use of building and premises, the building heights, size of yards, lot area, lot width and the use are uniform, as required by this code.
28. **"Drive-through Service"** means the ability for a business, by the design and layout of its property and building, to serve customers who remain in their vehicle.

Source: Ord. 2020-78, Sec. 1

29. **"Dwelling"** means any building or portion thereof, used exclusively for human habitation including single family and multiple family units but not including hotels or motels, or vehicles designed for camping and other temporary occupancy such as recreational purposes.
30. **"Dwelling Unit"** means a part or all of a building that provides complete living facilities for one family including, kitchen, bathroom, living and sleeping areas.
31. **"Dwelling, Two-Family Dwelling"** means a detached residential building containing two dwelling units, designed for occupancy by not more than two families.

Source: Ord. 2005-5, Sec. 1 (2005)

32. **"Dwelling, Multiple Family"** means a single building or portion thereof, containing two (2) or more dwelling units which share common entry and hallway(s).
33. **"Dwelling, Single Family Detached"** means a building containing one dwelling unit only.
34. **"Easement"** means a right to the use of land for a specific purpose, such as utilities or access, such right being held by someone other than the owner who holds the title to the land.
35. **"Encroachment"** means any fill, building, structure or use including accessory uses projecting into the required yard areas or easement areas.
36. **"Establishment"** means a place of business for processing, production, assembly, sales, service of goods and materials.
37. **"Extra-territorial Area"** means areas surrounding the City of Kindred within one-half (1/2) mile of the city corporate limits in all directions, where the city has zoning and platting jurisdiction under the provisions of the North Dakota Century Code.

Source: Ord. 2010-29, Sec. 1 (2010)

38. **"Family"** means a collective body of persons living together in a domestic relationship based on birth, marriage, guardianship or other domestic bond as distinguished from a group in a boarding house, lodging house, club or a hotel.

39. **"Feed Lot"** means a parcel of land which contains a commercial operation for feeding or raising of fifty (50) or more animals which is operated as a separate activity and not incidental to farming.
40. **"Final Plat"** means the map, plan, or record of a subdivision and any accompanying material prepared in conformance with this Code.
41. **"Frontage"** means the front part of a lot abutting a public right-of-way, or road or highway.
42. **"Garage, Private"** is a building or part thereof accessory to a main building which provides for the storage of automobiles and in which no business for profit is carried on.
43. **"Grade, Building"** means the land elevation at the horizontal intersection of the ground and the building.
44. **"Home Occupation"** means any occupation which: (a) is carried on in a dwelling unit by members of the family; (b) is clearly secondary to the use of residential dwelling units; and (c) does not create excessive noise, traffic or conflict with adjoining uses, provided that no articles are sold other than those made on the premises.
45. **"Hotel or Motel"** means a building in which lodging accommodations, with or without meals are provided for compensation.
46. **"Improvements"** means street grading, surfacing, installations of sidewalks, curb, gutter, water, sanitary and storm sewer systems, culverts, bridges, trees, street lights as may be required by the City of Kindred.
47. **"Junk or Salvage Yard"** means an open area where waste or scrap material, including parts of used motor vehicles, appliances and farm implements are bought, sold, exchanged, stored, baled, parked, disassembled or handled.
48. **"Kennel, Animal"** means any premises where dogs, cats and other domesticated pets, but not including wild animals, are boarded, bred and maintained for compensation.

49. **"Lot"** means a piece, parcel, or area of land established by survey, plat or deed, that meets the yard requirements of this Code and fronts on a public street.
50. **"Lot, Corner"** means a lot abutting two (2) or more public streets at their intersection.
51. **"Lot Coverage"** means building area, the total surface area of a lot which is covered by any type of structure, excluding the yard areas.
52. **"Lot Depth"** means the average horizontal distance between the front lot line and rear lot line.
53. **"Lot Lines"** means the property lines bounding the lot.
54. **"Lot of Record"** means a lot, which is a part of a subdivision or a parcel of land which has been recorded in the office of the Cass County Register of Deeds, prior to adoption of this Code.
55. **"Lot Width"** means the horizontal distance between the side lot lines of a lot, measured at the front building setback line.
56. **"Lot, Zoning"** means a single lot, parcel, or tract of land within a zoning district.
57. **"Manufactured and Modular Homes"** means factory built dwelling units, transportable in one or more sections, with at least 900 square feet of living space, which are designed as year-round dwelling units and shall be placed on a permanent foundation system, listed anchorage system, or basement. The manufactured dwelling units shall bear a label certifying that such units were built in compliance with the latest Manufactured Home Safety Construction and Safety Standards adopted by the U.S. Dept. of Housing and Urban Development for manufactured homes. The Uniform Building Code shall apply to modular homes. This includes any non-self-propelled vehicular structure built on a chassis, having a length of twenty-seven feet or more, ordinarily designed for human living quarters, either on a temporary or permanent basis, and used as a residence or place of business of the owner or occupant. Modular housing structures greater than twenty-four feet in width permanently attached to conventional structural foundations are not manufactured mobile homes. Manufactured or mobile homes are prohibited from being moved into the City if the

manufacture date of the structure is more than twenty years prior to the moving permit application date.

Source: Ord. 2022-100, Sec. 1

58. **"Mobile Home Park"** means a parcel of land accommodating four or more mobile homes, for which a detailed plan indicating the location of lots, blocks, streets, facilities and utilities, is prepared subject to the requirements of this Code.

Source: Ord. 2022-100, Sec. 1

59. **"Modular Home"** means a pre-built home dwelling which is not a mobile manufactured home dwelling in accordance with these regulations and which meets the following criteria:

- a. Constructed on a permanent foundation which provides a basement or a crawl space which complies with the International Building Code and the City's Building Code.
- b. Has a minimum front width of twenty-four feet and a minimum depth of twenty feet.
- c. Has a predominantly double-pitched roof with a minimum vertical rise of four inches for every twelve inches of horizontal run and a minimum eave projection and roof overhang of ten inches on at least two sides. Gutters will be counted in calculating roof overhang.
- d. Uses conventional framing, electrical, plumbing, mechanical, siding and roofing materials customarily used on site-built homes within the City of Kindred.
- e. Has a minimum gross floor area of 960 square feet.
- f. Has a minimum ceiling height of seven feet.
- g. Does not have a permanent hitch, steel frame, axles, or wheels, and does not display a HUD label.
- h. The exterior material is of a color, material, and scale comparable with those existing in residential site-built single-family construction.

- i. The home has non-reflective roof material which is or simulates asphalt or wood shingles, tile, or rock.
- j. The home is located and installed according to the same standards for permanent utility connections and setbacks which would apply to a site-built single-family dwelling on the same lot.
- k. The design, location and appearance of the home is in harmony with existing adjacent properties within the subdivision, structures, and locations.

Source: Ord. 2022-100, Sec. 1

- 60. **"Nonconforming Building"** means any building or structure which does not conform with any or all of this Code but existed at the time of adoption of the Code.
- 61. **"Nonconforming Use"** means any principal use of land or building which does not conform with any or all parts of this Code but existed at the time of adoption of the Code.
- 62. **"Non-residential Plat"** means a plat whose intended use is other than residential such as commercial or industrial uses.
- 63. **"Nursing, Elderly Care Facility"** means a residential facility for the aged or infirm in which unrelated persons are accommodated for compensation.
- 64. **"Parking Lot"** means an off-street area designated for parking of automobiles accessible from a public street or alley where each parking space shall be no less than nine (9) feet by twenty (20) feet.
- 65. **"Permanent Foundation"** means an extension of the outer walls of a building or structure made of solid materials such as concrete or treated wood and extended below the ground surface through the frost zone, or other depths as required by the city. Pilings shall not be accepted as permanent foundation.
- 66. **"Permitted Uses"** means those uses, buildings or structures which comply with the provisions of specific zoning districts because of the similarities in nature and relationship to each other. Permitted uses are

distinct from conditional uses that are authorized only if certain requirements of this Code are met.

67. **"Person"** means any individual, firm, corporation, partnership or legal entity.
68. **"Planned Development"** means a plan for grouping of buildings and structures on a site of two (2) or more acres in single ownership which is based on a detailed layout plan and recorded in the Office of Cass County Recorder upon approval by the City of Kindred.
69. **"Planning Commission"** means a citizen body appointed by the City Council under the authority of North Dakota Laws, as an advisory group to the City Council on zoning, development and planning matters.
70. **"Plat"** means a map of a subdivision of land prepared according to the provisions of this Code.
71. **"Preliminary Plat"** means the preliminary plan of a subdivision and any accompanying material prepared in accordance with the requirements of this Code.
72. **"Public Way"** means any dedicated and recorded right-of-way including alleys, bikeways, sidewalks, streets, roads or highways.
73. **"Regional Flood"** means a flood determined by the State and Federal Emergency Management Agency and is representative of large floods known to have occurred in Cass County, North Dakota.
74. **"Replat"** means a change in an approved or recorded plat requiring changes in street layout, lot lines, or blocks.
75. **"Right-of-Way"** means a strip of land designated or dedicated for streets, sidewalks, railroads, electric transmission line, telephone and telegraph lines, oil or gas pipelines, sanitary, storm or water systems. The right-of-way width for street purposes shall be as follows: sixty (60) feet for local streets; eighty (80) feet for connector streets; and one hundred (100) feet for arterial streets.
76. **"Self-storage"** means a building that contains varying sizes of individual, compartmentalized, and controlled access stalls or lockers that are leased to or owned by customers for the storage of goods or wares.

Source: Ord. 2020-78, Sec. 1

77. **"Service Station"** means any building or premises where automotive fuels, automotive related services, lubricants, parts, and supplies are made available to the motorist.
78. **"Setback Line"** means the minimum horizontal distance between lot line and the building lines.
79. **"Sign"** means any emblem, name, identification, description or illustration which is used for outdoor advertising having permanent location on the ground or attached to or painted on a building including bulletin boards, billboards and poster boards, but excluding real estate for sale signs, political campaign signs, public information and traffic signs.
80. **"Site Plan"** means a detailed plan for making improvements to parcel(s) of land for the purpose of building and development as provided in this Code.
81. **"Storage Container"** means an all-metal structure, or structure made of other materials, fully enclosed, used for storage purposes, and is accessory and detached from the principal building. Storage containers are individual units that are periodically removed from a property by truck and are considered a structure without any attached foundation or footings. A storage container may be a self-contained unit that includes wheels and is licensed as a vehicle or a unit that must be trucked to a site and removed from the trailer used for transport. This definition does not include any warming shed that may be used at city parks or schools, or sheds and dumpsters or rolloff containers that are used for the collection of solid waste. Storage containers are also referred to as shipping containers, cargo containers, temporary storage containers, portable storage containers, containerized storage devices, semi-trailers or truck-trailers.

Source: Ord. 2018-70, Sec. 1

82. **"Street"** means a dedicated public way which affords traffic circulation and is a principal means of access to abutting properties.
83. **"Street, Line"** means the outer boundary of a public way.
84. **"Street, Local"** means a public way intended for a low volume of traffic which provides access to individual properties with a minimum of sixty (60) feet of right-of-way.

85. **"Street, Major"** means a public way, arterial or collector streets, used for carrying a large volume of traffic, with a minimum of eighty (80) - one hundred (100) feet, depending on its functional classification.
86. **"Structural Alterations"** means any change in the supporting elements of a building or structure including bearing elements, partitions, columns, beams, girders, roofs, exterior walls and embankment.
87. **"Structure"** means anything, built, constructed above or below ground, the use of which requires permanent location on or below the ground, including advertising signs, billboards, power lines and transmission lines, tunnels and pipelines.
88. **"Subdivider"** means any person, group, corporation, entity or agency dividing or proposing to divide land so as to create a subdivision.
89. **"Subdivision"** means the division of a tract or parcel of land into lots for the purpose of sale or of building development.
90. **"Truck Terminal"** means any enclosed structure used primarily for the storing, loading and unloading of three or more delivery trucks, tractor-trailer trucks, or large trucks exceeding 26,000 pounds gross vehicle weight.

Source: Ord. 2007-20, Sec. 1 (2008).

91. **"Use"** means the purpose for which land or a building is arranged, designed, occupied or maintained.
92. **"Variance"** means the relaxation of the terms of this Code in relationship to building height, size of the front, rear and side yards, where the literal enforcement of this Code would create an undue hardship, but it is not contrary to the purposes of the Kindred Plan 2020 and this Code. The variance shall not be contrary to the public interest.
93. **"Yard"** means an open space on a lot which is unoccupied or unobstructed by any portion of a structure from the ground upward.
94. **"Yard, Front"** means a yard that extends across the full width of the lot as the least distance between the front lot line and the front building line.

95. **"Yard, Rear"** means a yard that extends across the full width of the lot, as the least distance between the rear lot line and the rear building line.
96. **"Yard, Side"** means a yard between the front and rear yards, as the least distance between each side of the principal building and each side lot line.

CHAPTER 4-03

GENERAL PROVISIONS

SECTIONS:

- 4-0301. Comprehensive Plan, Kindred Plan 2020.
- 4-0302. Non-Conforming Uses.
- 4-0303. Land Suitability.
- 4-0304. Conditionally Permitted Uses.
- 4-0305. Dedication of Land for Streets.
- 4-0306. Public Water and Sewer System.

4-0301. **COMPREHENSIVE PLAN, KINDRED PLAN 2020.** This Code is administered and enforced to implement the Kindred Plan 2020 of the City of Kindred, a document adopted by the City Council as a policy guide to protect the city's resources and accommodate the type of development deemed appropriate including but not limited to the following:

1. To preserve and enhance the taxable value of land and buildings, and to avoid land uses which pose negative impacts on one another.
2. To encourage the most appropriate use of land in the city and its extra-territorial area of one-half mile around the city.

Source: Ord. 2013-47, Sec. 5 (2013)

3. To regulate and restrict the location and intensity of use of buildings and lands.
4. To separate and control unavoidable nuisance producing uses to minimize the adverse impacts on the surrounding areas or uses.
5. To facilitate traffic movement and promote development of compatible uses.

4-0302. **NON-CONFORMING USES.** The lawful use of a building or premises existing at the date of adoption of this Code may be continued. Where a non-conforming use is discontinued for a period of more than twelve consecutive calendar months, any subsequent use or occupancy of such premises shall conform to this Code. Whenever, a building is destroyed or damaged by fire or other casualty to the extent of more than fifty percent (50%) of its market value it shall not be restored unless said building shall conform to the provisions of the district in which it is located. Non-conforming

uses shall not be expanded to occupy a larger area of land than existed at the date of adoption of this Code unless there is an undue hardship and is approved by the City Council.

4-0303. **LAND SUITABILITY.** No land shall be used for a purpose which is held unsuitable for the reason of flooding, soil limitations, inadequate drainage, incompatibility with adjoining uses or any condition likely to be harmful to the health, safety or the welfare of the people in the area. The City Council may require information and data to determine the land suitability. The city may consult with county and state agencies to assist in its determination.

4-0304. **CONDITIONALLY PERMITTED USES.** Where a use is classified as a conditional use under this Code and exists at the date of adoption of this Code, it shall be considered a permitted use. Where a use is not allowed as a conditional use or permitted use, under this Code, and exists at the date of adoption of this Code, it shall be considered non-conforming and shall be subject to the non-conforming buildings and use provisions under Section 4-1102.

4-0305. **DEDICATION OF LAND FOR STREETS.** Whenever a parcel of land to be subdivided as a subdivision contains a street or public way, such a street or alley shall be dedicated to the city at the location and details shown on the final plat.

4-0306. **PUBLIC WATER AND SEWER SYSTEM.** To protect the public health, to control water pollution and to reduce nuisance and odor, all new development within the City of Kindred shall be connected to the city water and sewer system. Construction and use of septic tanks shall not be permitted within the city corporate limits of the City of Kindred and its extra-territorial jurisdiction unless the proposed use is related to an existing farming operation.

CHAPTER 4-04

ZONING DISTRICT BOUNDARIES AND MAP

SECTIONS:

- 4-0401. Zoning Districts.
- 4-0402. Zoning District Map.

4-0401. **ZONING DISTRICTS.** The following zoning districts are hereby established to carry out the purposes of this Code:

- 1. A Agricultural District
- 2. SFR-1 Single Family Residential District
- 3. SFRA-1 Single Family Residential Airpark District
- 4. SFR-2 Single Family Residential District
- 5. SFRA-2 Single Family Residential Airpark District
- 6. SFR-3 Single Family Residential District
- 7. SFRA-3 Single Family Residential Airpark District
- 8. MFR-4 Multi-family Residential District
- 9. GC-1 General Commercial District
- 10. HC-2 Highway Commercial District
- 11. I Industrial District
- 12. PD Planned Development District
- 13. FP Floodplain Management District
- 14. D Downtown District

Source: Ord. 2005-5, Sec. 2; Ord. 2020-78, Sec. 2

4-0402. **ZONING DISTRICT MAP.**

- 1. **Zoning District Map.** The location and boundaries of the zoning districts are hereby established as shown on the "Zoning District Map" on file in the Office of the City of Kindred City Auditor. The zoning district maps, together with all information shown thereon and all

amendments thereto, shall be an integral part of this Code.

2. **Public Streets as Boundary.** Where zoning district boundary lines are indicated as following streets and public ways or extensions thereof, such boundary lines shall be construed to be the center line of said streets or public ways or extension thereof unless clearly shown to the contrary.
3. **Lot Line as Boundary.** Where a zoning district boundary line coincides approximately but not exactly with the lot line, the zoning boundary shall be construed to be the lot line at that location. All section lines, quarter section lines and quarter-quarter section lines may be construed as the property lines.
4. **District Description for Unsubdivided Lands.** For unsubdivided property, zoning district boundaries may be determined by metes and bounds description or by a legal description.
5. **Vacated Areas.** Where a street or public way is vacated by the official action of the City Council, the Zoning district boundaries shall be extended to the center of the vacated street or public way.
6. **Zoning District Boundary Interpretation.** Where any uncertainty exists as to the exact location of the zoning district boundary lines, the City Council shall determine the location of such boundary lines.
7. **Certification.** The official zoning map shall bear a certificate with the signatures of the Mayor, the Planning Commission Chairperson, the City Auditor and the date of adoption of the zoning map as an integral part of this Code.

CHAPTER 4-05

ZONING DISTRICT REGULATIONS

SECTIONS:

- 4-0501. A - Agricultural District.
 - 4-0502. SFR-1 - Single Family Residential District.
 - 4-0502-1. SFRA-1 - Single Family Residential Airpark District.
 - 4-0502-2. SFRA-2 - Single Family Residential Airpark District.
 - 4-0502-3. SFRA-3 - Single Family Residential Airpark District.
 - 4-0503. SFR-2 - Single Family Residential District.
 - 4-0504. SFR-3 - Single Family Residential District.
 - 4-0505. MFR-4 - Multiple Family Residential District.
 - 4-0506. GC-1 - General Commercial District.
 - 4-0507. HC-2 - Highway Commercial District.
 - 4-0508. I - Industrial District.
 - 4-0509. PD - Planned Development District.
 - 4-0510. F - Flood Plain District.
 - 4-0511. D - Downtown District.
-

4-0501. **A - AGRICULTURAL DISTRICT.**

1. **Purpose.** The purpose of this district is to provide for preservation and protection of agricultural uses while in existence, in the city and its extra territorial planning area.
2. **Permitted Uses.**
 - a. All types of farming and ranching operations including dairying, but excluding feed lots, poultry, fish and fur farming.
 - b. Accessory buildings and structures.
 - c. Churches and cemeteries.
 - d. Golf courses, parks and play fields.
 - e. Home occupations.
 - f. Public and private schools, public buildings and facilities.
 - g. Single Family Residential Units including manufactured homes and modular homes.
 - h. Construction and maintenance of drainage systems to manage the water run-off and water reservoirs.

- i. General utility lines and pipe lines including substations for transformers, pumping stations and lift stations.
3. **Conditionally Permitted Uses.** The following uses shall be subject to the provisions of Section 4-1102 and also Chapter 4-06 where appropriate.
- a. Airports
 - b. Feed lots, poultry, fish and fur farming subject to provisions of Section 4-0604.
 - c. Grain Elevators .
 - d. High voltage transmission lines and accessory structures.
 - e. Manufacturing and processing of agricultural products produced in the area.
 - f. Radio, TV stations and towers and microwave and cellular phone towers and related communication facilities.
 - g. Sale and services of agricultural equipment and machinery.
 - h. Salvage and junk yards, subject to provisions of Section 4-0603.
 - i. Sewage lagoons and waste water treatment facilities.
 - j. Skeet, trap and rifle ranges, if not nearer than 1,000 feet from any residence.
 - k. Storage of farm related chemicals.
 - l. Veterinary clinics, animal hospitals and domestic animal kennels, not nearer than 500 feet from any residence, except the residence of the owner or operator.
 - m. Sanitary land fills, subject to the provisions of Section 4-0606.
 - n. Mining of sand and gravel, subject to the provisions of Section 4-0605.

4. **Lot Area and Lot Width.**
 - a. For agricultural uses, the area shall not be less than forty (40) acres.
 - b. For non-farm residential uses, the lot area shall not be less than five (5) acres.
 - c. For non-residential uses, the lot area shall not be less than five (5) acres.
 - d. The lot width for any use in agricultural district shall not be less than two hundred (200) feet.
5. **Yard Requirements.**
 - a. The minimum front yard, measured from the front property line shall not be less than fifty (50) feet.
 - b. The minimum rear yard, measured from the rear lot line shall not be less than fifty (50) feet.
 - c. The minimum side yard, measured from the side lot line shall not be less than twenty-five (25) feet.
6. **Building Height.**
 - a. The building height for residential buildings shall not exceed two and one-half stories (2½) or thirty-five (35) feet.
 - b. The building heights for manufacturing of agricultural products, radio, TV, microwave and cellular phone towers, shall be determined by the City Council, based on accepted standards used in the area.
 - c. The building height, excepting the radio and TV, microwave and cellular phone towers and church steeples, for all other uses shall not exceed sixty (60) feet.
7. **Parking Requirements.** Parking requirements shall be subject to the provisions of Section 4-0601.
8. **Sign Requirements.** Sign requirements shall be subject to the provisions of Section 4-0602.

9. **Animal Units on Single-Family Non-Farm Agricultural Property.** Animal units allowed not exceeding one(1) unit per acre density provided that:
- a. The parcel in question comprises an area of at least 5 acres, there shall be a minimum of 1 acre for one animal unit, and an additional acre for every additional animal unit kept on the property. More animal units on acreage will require a conditional use permit.
 - b. The residential use area shall be separated from the area to be used as an animal enclosure by a fence, and that the entire animal enclosure area shall be fenced to prevent escape and subsequent damage to adjacent property.
 - c. Any structure or appliance intended for housing, feeding or watering animals, or any manure pile must not be closer than 300 feet from any residential dwelling other than that of the owner.
 - d. All manure and other animal wastes be removed and disposed of properly on at least an annual basis.
 - e. The number of animal units permitted shall be based on the size of the portion of the parcel to be used as an animal enclosure, and that animal enclosure area shall not be less than 3 acres.

4-0502. **SFR-1 - SINGLE FAMILY RESIDENTIAL DISTRICT.**

- 1. **Purpose.** The SFR-1 single family residential district is primarily established to promote a suitable residential environment and to accommodate low density detached single family residential units uninterrupted by conflicting uses and incompatible activities.
- 2. **Permitted Uses.**
 - a. Single family detached residential uses with the following minimum square feet of living space:
 - i. Rambler-style homes with a minimum of 1,400 square feet on the main floor.
 - ii. Two-story homes with a minimum of 1,800 square feet of living space. Two-story homes must have a minimum of 1,000 square feet of living space on the first floor.
 - iii. Multi-level homes with a minimum of 1,800 square feet of living space. Multi-level homes

must have a minimum of 1,000 square feet of living space on the lower level.

Source: Ord. 2006-9, Sec. 1 (2006)

- b. Churches, schools and public facilities including libraries, parks, schools and golf courses.
- c. Accessory buildings and structures as set out in Section 4-0610 of these ordinances.

Source: Ord. 2008-21, Sec. 1 (2008).

- d. Home occupation.
3. **Conditionally Permitted Uses.** The following uses shall be subject to the provision of Section 4-1102.
- a. Day care facilities.
 - b. Manufactured homes subject to provisions of Section 4-0504(2) (a) (c).
 - c. Municipal offices including city, county and state offices.
 - d. Two-family dwellings.
4. **Lot Area, Lot Width and Coverage.**
- a. The minimum lot area for single family dwellings shall be twelve thousand (12,000) square feet.
 - b. The minimum lot width shall be no less than eighty-five (85) feet. Maximum lot coverage shall be fifty percent (50%).
 - c. The minimum lot area for a two-family dwelling shall be fourteen thousand (14,000) square feet.
 - d. The minimum lot width for a two-family dwelling shall be no less than one hundred (100) feet. Maximum lot coverage shall be fifty percent (50%).
5. **Yard Requirements.**
- a. The minimum front yard, measured from the front lot line, shall be no less than twenty-five (25) feet.
 - b. The minimum rear yard, measured from the rear lot line, shall not be less than twenty-five (25) feet.
 - c. The minimum side yard, measured from the side lot line, shall not be less than ten (10) feet on each side of a lot.

- d. On corner lots, the minimum side setback on the street side of the property may not be less than twenty (20) feet and the minimum front setback may not be less than twenty-five (25) feet.

SOURCE: Ord. 2005-2, Sec. 1 (2005); Ord. 2017-67, Sec. 1

6. **Building Height.** No building shall be more than two and one-half (2½) stories or thirty-five (35) feet high, excepting church steeples.

7. **Parking Requirements.**

- a. There shall be a minimum of two (2) surfaced off-street parking spaces for each residential dwelling unit.
- b. Parking for the conditionally permitted uses and non-residential uses shall be subject to the provisions of Section 4-0601.

8. **Sign Requirements.**

- a. There shall be no more than one identification sign per residential dwelling structure not exceeding six (6) square feet in area. The sign may be wall, pedestal, ground or projecting type but it shall not project into the public right-of-way or public property.
- b. Temporary signs including political campaign signs, greeting signs and realty signs are permitted for a period of 30 days. Signs for rent and signs for sale may be permitted without a time limitation.
- c. Signs for non-residential uses shall be subject to the provisions of Section 4-0602.

4-0502-1. **SFRA-1 - SINGLE FAMILY RESIDENTIAL AIRPARK DISTRICT.**

1. **Purpose.** The SFRA-1 single family residential airpark district is primarily established to promote a residential airpark community, adjacent to the Kindred Davenport Regional Airport, that has a mix of residential housing units, including detached single-family housing units, detached two-family housing units, and to provide residential housing units with direct access to the public taxiway and a hangar to accommodate private planes.

Source: Ord. 2013-47, Sec. 6 (2013)

2. **Permitted Uses.**

- a. Single-family detached residential uses with a minimum of 1,500 square feet of living space on the main floor.
- b. Two-family detached residential uses with a minimum of 1,500 square feet of living space on the main floor for each family.
- c. Single-family residential uses with a minimum of 1,500 square feet of living space on the main floor attached to hangars having a minimum of 2,000 square feet by an adjoining wall to form a single building.
- d. Single-family residential uses with a minimum of 1,500 square feet of living space on the main floor attached to a hangar having a minimum of 2,000 square feet that is attached to an adjoining hangar and residential use on an adjoining lot to form a single building consisting of two residential uses and two hangers.
- e. Single-family residential uses with a minimum of 1,500 square feet of living space on the main floor attached to storage garages having a minimum of 1,000 square feet by an adjoining wall to form a single building.
- f. Single-family residential uses with a minimum of 1,500 square feet of living space on the main floor attached to a storage garage having a minimum of 1,000 square feet that is attached to an adjoining storage garage and residential use on an adjoining lot to form a single building consisting of two residential uses and two storage garages.
- g. Home occupation.

3. **Conditionally Permitted Uses.** The following uses shall be subject to the provision of Section 4-1102.

- a. Large hangars exceeding 3,500 square feet.
- b. Large storage garages exceeding 3,500 square feet.
- c. Manufactured homes subject to provisions of 4-0504(2) (a) (c).

4. **Required Conditions.**

- a. Where the residential use and the hangar use are combined as one building, the exterior shall resemble a conventional housing unit in that the exterior finishing materials, roof pitches, and

architectural detailing found on all structures are complimentary.

- b. Residential uses with attached hangers shall be permitted only on lots having direct access to private taxiways.
- c. Where the residential use and the storage garage use are combined as one building, the exterior shall resemble a conventional housing unit in that the exterior finishing materials, roof pitches, and architectural detailing found on all structures are complimentary.
- d. The residence shall be placed in the front of the lot, with the attached hangar use to the rear of the lot.
- e. The residence shall be placed in the front of the lot, with the attached storage garage use to the rear of the lot.
- f. No bulk fuel storage or chemical storage shall be allowed in the hangars in this zoning district. For purposes of this zoning district, bulk fuel storage and chemical storage is defined as any storage container exceeding the capacity of ten (10) gallons.
- g. No commercial uses shall be permitted in this zoning district.

5. Lot Area, Lot Width and Coverage.

- a. The minimum lot area for a single family dwelling shall be 12,000 square feet.
- b. The minimum lot width for single-family dwellings shall be no less than 85 feet. Maximum lot coverage shall be fifty percent (50%).
- c. The minimum lot area for a two-family dwelling shall be 12,000 square feet. For purposes of this zoning district, a lot utilized for a two-family dwelling unit may consist of two adjoining lots each having a minimum of 6,000 square feet.
- d. The minimum lot width for a two-family dwelling shall be no less than 100 feet measured at the front setback line. Maximum lot coverage shall be fifty percent (50%). For the purposes of this zoning district, a lot utilized for a two-family dwelling unit may consist of two adjoining lots

each having a minimum of 6,000 square feet and a minimum of lot width of 50 feet.

- e. The minimum lot area for a single family dwelling attached to a hanger shall be 14,000 square feet.
- f. The minimum lot area for a single family dwelling attached to a storage garage shall be 14,000 square feet.
- g. The minimum lot width for a single family dwelling attached to a hanger shall be no less than 100 feet measured at the front setback line. Maximum lot coverage shall be fifty percent (50%).
- h. The minimum lot width for a single family dwelling attached to a large garage shall be no less than 100 feet measured at the front setback line. Maximum lot coverage shall be fifty percent (50%).

6. **Yard Requirements.**

- a. The minimum front yard, measured from the front lot line, shall be no less than 25 feet.
- b. The minimum rear yard, measured from the rear lot line, shall not be less than 25 feet.
- c. The minimum side yard, measured from the side lot line, shall not be less than 10 feet on each side of a lot.
- d. On corner lots, the minimum side setback on the street side of the property may not be less than twenty (20) feet and the minimum front setback may not be less than twenty-five (25) feet.

Source: Ord. 2017-67, Sec. 2

7. **Building Height.** No building shall be more than two and one-half (2½) stories or 35 feet high.

8. **Parking Requirements.**

- a. There shall be a minimum of two (2) surfaced off-street parking spaces for each residential dwelling unit.
- b. Parking for the conditionally permitted uses and non-residential uses shall be subject to the provisions of Section 4-0601.

9. **Sign Requirements.**

- a. There shall be no more than one identification sign per residential dwelling structure not exceeding

six (6) square feet in area. The sign may be wall, pedestal, ground or projecting type, but it shall not project into the public right-of-way or public property.

- b. Temporary signs including political campaign signs, greeting signs and realty signs are permitted for a period of 30 days. Signs for rent and signs for sale may be permitted without a time limitation.
- c. Signs for non-residential uses shall be subject to the provisions of Section 4-0602.

Source: Ord. 2005-5, Sec. 3 (2005)

4-0502-2. **SFRA-2 - SINGLE FAMILY RESIDENTIAL AIRPARK DISTRICT.** (Source: Ord. 2014-52, Sec. 1 (2014))

- 1. **Purpose.** The SFRA-2 single family residential airpark district is primarily established to promote a residential airpark community, adjacent to the Kindred Davenport Regional Airport, that has a mix of residential housing units, including detached single-family housing units, detached two-family housing units.
- 2. **Permitted Uses.**
 - a. Single-family detached residential uses with a minimum of 1,200 square feet of living space on the main floor.
 - b. Two-family detached residential uses with a minimum of 1,200 square feet of living space on the main floor for each family.
 - c. Single-family residential uses with a minimum of 1,200 square feet of living space on the main floor attached to storage garages having a minimum of 720 square feet by an adjoining wall to form a single building.
 - d. Single-family residential uses with a minimum of 1,200 square feet of living space on the main floor attached to a storage garage having a minimum of 720 square feet that is attached to an adjoining storage garage and residential use on an adjoining lot to form a single building consisting of two residential uses and two storage garages.
 - e. Home occupation.
- 3. **Conditionally Permitted Uses.** The following uses shall be subject to the provision of Section 4-1102.
 - a. Large storage garages exceeding 3,500 square feet.

- b. Manufactured homes subject to provisions of 4-0504.2(a) and (c).

4. Required Conditions.

- a. Where the residential use and the storage garage use are combined as one building, the exterior shall resemble a conventional housing unit in that the exterior finishing materials, roof pitches, and architectural detailing found on all structures are complimentary.
- b. The residence shall be placed in the front of the lot, with the attached storage garage use to the rear of the lot.
- c. No commercial uses shall be permitted in this zoning district.

5. Lot Area, Lot Width and Coverage.

- a. The minimum lot area for a single family dwelling shall be 10,000 square feet.
- b. The minimum lot width for single-family dwellings shall be no less than 75 feet. Maximum lot coverage shall be fifty percent (50%).
- c. The minimum lot area for a two-family dwelling shall be 12,000 square feet. For purposes of this zoning district, a lot utilized for a two-family dwelling unit may consist of two adjoining lots each having a minimum of 6,000 square feet.
- d. The minimum lot width for a two-family dwelling shall be no less than 100 feet measured at the front setback line. Maximum lot coverage shall be fifty percent (50%). For the purposes of this zoning district, a lot utilized for a two-family dwelling unit may consist of two adjoining lots each having a minimum of 6,000 square feet and a minimum of lot width of 50 feet.
- e. The minimum lot area for a single family dwelling attached to a storage garage shall be 10,000 square feet.
- f. The minimum lot width for a single family dwelling attached to a large garage shall be no less than 75 feet measured at the front setback line. Maximum lot coverage shall be fifty percent (50%).

6. **Yard Requirements.**

- a. The minimum front yard, measured from the front lot line, shall be no less than 25 feet.
- b. The minimum rear yard, measured from the rear lot line, shall not be less than 25 feet.
- c. The minimum side yard, measured from the side lot line, shall not be less than 10 feet on each side of a lot.
- d. On corner lots, the minimum side setback on the street side of the property may not be less than twenty (20) feet and the minimum front setback may not be less than twenty-five (25) feet.

Source: Ord. 2017-67, Sec. 3

7. **Building Height.** No building shall be more than two and one-half (2½) stories or 35 feet high.

8. **Parking Requirements.**

- a. There shall be a minimum of two (2) surfaced off-street parking spaces for each residential dwelling unit.
- b. Parking for the conditionally permitted uses and non-residential uses shall be subject to the provisions of Section 4-0601.

9. **Sign Requirements.**

- a. There shall be no more than one identification sign per residential dwelling structure not exceeding six (6) square feet in area. The sign may be wall, pedestal, ground or projecting type, but it shall not project into the public right-of-way or public property.
- b. Temporary signs including political campaign signs, greeting signs and realty signs are permitted for a period of 30 days. Signs for rent and signs for sale may be permitted without a time limitation.
- c. Signs for non-residential uses shall be subject to the provisions of Section 4-0602.

4-0502-3. **SFRA-3 - SINGLE FAMILY RESIDENTIAL AIRPARK**
DISTRICT. Source: Ord. 2020-77, Sec. 1

1. **Purpose.** The SFRA-3 single family residential airpark district is primarily established to promote a residential airpark community, adjacent to the Kindred Davenport Regional Airport, that has a mix of residential housing units.

2. **Permitted Uses.**
 - a. Single-family detached residential uses with a minimum of 1,200 square feet of living space on the main floor.

 - b. Two-family detached residential uses with a minimum of 1,200 square feet of living space on the main floor for each family.

 - c. Single-family residential uses with a minimum of 1,200 square feet of living space on the main floor attached to storage garages having a minimum of 720 square feet by an adjoining wall to form a single building; or a minimum of 580 square feet by adjoining wall and a detached storage garage with a minimum of 580 square feet in rear yard.

 - d. Single-family residential uses with a minimum of 1,200 square feet of living space on the main floor attached to a storage garage having a minimum of 720 square feet that is attached to an adjoining storage garage and residential use on an adjoining lot to form a single building consisting of two residential uses and two storage garages.

 - e. Home occupation.

 - f. Accessory Structures meeting the following requirements:
 1. With the exception of a garage or driveway, no accessory building, structure, use or equipment may be placed within a front yard.

 2. **Rear Yards.** No accessory building, structure, and/or detached garage for a single-family dwelling shall occupy more than twenty-five percent (25%) of the area of the rear yard.

 3. **Ground Coverage.**
 - a. For lots 10,000 square feet or under in area, the total floor area of accessory

building(s) may not exceed 1,000 square feet;

- b. For lots over 10,000 square feet to 15,000 square feet, the total floor area of any accessory building(s) may not exceed 1,200 square feet;
 - c. For lots over 15,000 square feet to 20,000 square feet, the total floor area of any accessory building(s) may not exceed 1,400 square feet;
 - d. For lots over 20,000 square feet to 25,000 square feet, the total floor area of any accessory building(s) may not exceed 1,600 square feet;
 - e. For lots over 25,000 square feet to 30,000 square feet, the total floor area of any accessory building(s) may not exceed 1,800 square feet;
 - f. For lots over 30,000 square feet to 35,000 square feet, the total floor area of any accessory building(s) may not exceed 2,000 square feet;
 - g. For lots exceeding 35,000 square feet, the total floor area of any accessory building(s) may not exceed 2,200 square feet;
 - h. In all cases, the total floor area may not exceed the ground coverage of the dwelling, less any attached garage.
4. **Height.** No accessory building shall be higher than the principle residence, or exceed eighteen (18) feet in height to the peak.
5. **Set-back requirements.** No detached accessory building or use shall be erected in any required yard, except a rear yard, nor shall it be located closer than five (5) feet to any side or rear lot line, subject to the following exceptions:
- a. On corner lots, an accessory building or use, including driveways on the street side, shall maintain the same side yard setback required for the main building, except for garages accessing a public street, which shall maintain a setback of

18 feet for lots of 50 feet or less and 20 feet for lots greater in width than 50 feet.

- b. In no instance shall an accessory building or use be located within a dedicated easement right-of-way.
6. **Time of Construction.** No accessory building shall be constructed upon a lot until the construction of the main building has commenced.
7. **Limitation of Structures.** No permit shall be issued for the construction of more than one accessory building and/or structure on any single lot except for an accessory building for storage not exceeding one hundred fifty (150) square feet in addition to a detached garage.
8. **Encroachment.** All buildings, including those of less than 120 square feet, may not encroach into any easements.
9. **Storage Containers.** The placement or use of any storage container as an accessory building, storage building, or living unit is prohibited.
10. **Access.** Driveway access to any accessory building must be turf, concrete, asphalt or similar material; driveway access may not be dirt, gravel, crushed concrete or other similar material.

Source: Ord. 2022-100, Sec. 2

3. **Required Conditions.**

- a. Where the residential use and the storage garage use are combined as one building, the exterior must resemble a conventional housing unit in that the exterior finishing materials, roof pitches, and architectural detailing found on all structures are complimentary.
- b. The residence must be placed in the front of the lot, with the attached storage garage use to the rear of the lot.
- c. No commercial uses are permitted in this zoning district.

4. **Lot Area, Lot Width and Coverage.**

- a. The minimum lot area for a single family dwelling shall be 10,000 square feet.
- b. The minimum lot width for single-family dwellings shall be no less than 75 feet. Maximum lot coverage shall be fifty percent (50%).
- c. The minimum lot area for a single family dwelling attached to a storage garage shall be 10,000 square feet.
- d. The minimum lot width for a single family dwelling attached to a storage garage shall be no less than 75 feet measured at the front setback line. Maximum lot coverage shall be fifty percent (50%).

5. **Yard Requirements.**

- a. The minimum front yard, measured from the front lot line, shall be no less than twenty-five (25) feet.
- b. The minimum rear yard, measured from the rear lot line, shall not be less than twenty-five (25) feet.
- c. The minimum side yard, measured from the side lot line, shall not be less than ten (10) feet on each side of a lot.
- d. On corner lots, the minimum side setback on the street side of the property may not be less than twenty (20) feet and the minimum front setback may not be less than twenty-five (25) feet.

6. **Building Height.** No building shall be more than two and one-half (2½) stories or thirty-five (35) feet high.

7. **Parking Requirements.**

- d. There shall be a minimum of two (2) surfaced off-street parking spaces for each residential dwelling unit.

8. **Sign Requirements.**

- a. There shall be no more than one identification sign per residential dwelling structure not exceeding six (6) square feet in area. The sign may be wall, pedestal, ground or projecting type but it shall not project into the public right-of-way or public property.

- b. Temporary signs including political campaign signs, greeting signs and realty signs are permitted for a period of 30 days. Signs for rent and signs for sale may be permitted without a time limitation.

4-0503. **SFR-2 - SINGLE FAMILY RESIDENTIAL DISTRICT.**

- 1. **Purpose.** The SFR-2 low density residential district is primarily established to promote a suitable residential environment and to accommodate low density detached single family residential units uninterrupted by conflicting uses and incompatible activities.

- 2. **Permitted Uses.**

- a. Single family detached residential uses.
- b. Churches, schools and public facilities including libraries, parks, schools and golf courses.
- c. Accessory buildings and structures, as set out in Section 4-0610 of these ordinances.

SOURCE: Ord. 2008-21, Sec. 2 (2008).

- d. Home occupation.

- 3. **Conditionally Permitted Uses.** The following uses shall be subject to the provision of Section 4-1102.

- a. Day care facilities.
- b. Manufactured homes.
- c. Municipal offices including city, county and state offices.

- 4. **Lot Area, Lot Width and Coverage.**

- a. The minimum lot area for single family units shall be ten thousand (10,000) square feet.
- b. The minimum lot width shall be no less than seventy five (75) feet. Maximum lot coverage shall be fifty percent (50%).

- 5. **Yard Requirements.**

- a. The minimum front yard, measured from the front lot line, shall be no less than twenty-five (25) feet.
- b. The minimum rear yard, measured from the rear lot line, shall not be less than twenty-five (25) feet.

- c. The minimum side yard, measured from the side lot line, shall not be less than ten (10) feet on each side of a lot.
- d. On corner lots, the minimum side setback on the street side of the property may not be less than twenty (20) feet and the minimum front setback may not be less than twenty-five (25) feet.

Source: Ord. 2017-67, Sec, 4

6. **Building Height.** No building shall be more than two and one-half (2½) stories or thirty-five (35) feet high, excepting church steeples.

7. **Parking Requirements.**

- a. There shall be a minimum of two (2) surfaced off-street parking spaces for each residential dwelling unit.
- b. Parking for the conditionally permitted uses and non-residential uses shall be subject to the provisions of Section 4-0601.

8. **Sign Requirements.**

- a. There shall be no more than one identification sign per residential dwelling structure not exceeding six (6) square feet in area. The sign may be wall, pedestal, ground or projecting type but it shall not project into the public right-of-way or public property.
- b. Temporary signs including political campaign signs, greeting signs and realty signs are permitted for a period of 30 days. Signs for rent and signs for sale may be permitted without a time limitation.
- c. Signs for non-residential uses shall be subject to the provisions of Section 4-0602.

4-0504. **SFR-3 - SINGLE FAMILY RESIDENTIAL DISTRICT.**

Source: Ord. 2018-69, Sec. 1

1. **Purpose.** The SFR-3 single family residential district is primarily established to promote a suitable residential environment to accommodate the present single family uses and the future single family and duplex residential dwelling units on smaller lots.

2. **Permitted Uses.**

- a. Single family detached dwelling units including manufactured homes and modular homes placed on a permanent foundation or basement. In addition, all housing units shall meet the following requirements: (a) the main entrance shall face the street; (b) the roof pitch shall not be less than (four/twelve) 4/12 ratio; (c) each unit shall have space for at least a single stall attached garage; (d) modular homes and site built homes shall meet the requirements of Uniform Building Code; (e) manufactured homes shall meet the latest HUD standards; (f) each unit shall have at least nine hundred (900) square feet of living space; and (g) each unit shall have appearance comparable to conventional site built homes in the vicinity.
- b. Two family dwelling units.
- c. Churches, schools and day care facilities.
- d. Home Occupation.
- e. Accessory buildings and structures, as set out in Section 4-0610 of these ordinances.
- f. Parks, playgrounds and recreational open spaces.

3. **Conditionally Permitted Uses.** The following uses shall be subject to the provisions of Section 4-1102.

- a. Bed and breakfast establishments.
- b. Manufactured or modular homes, provided that they:
 - (a) are placed on a permanent foundation or basement;
 - (b) have no less than nine hundred (900) square feet of living space on each floor;
 - (c) have roof pitch of no less than (four/twelve) 4/12 ratio;
 - (d) have main entrance facing the public street;
 - (e) have siding similar to the surrounding dwelling units.
- c. Manufactured home parks with the following requirements:
 - (i) A site plan showing location of streets, utilities, off-street parking, driveways walkways blocks, lots, playground and park area.
 - (ii) The manufactured housing park shall contain a minimum of three (3) acres of land.

- (iii) Each manufactured home shall be placed on a lot at least sixty (60) feet wide with a minimum lot area of seven thousand (7,000) square feet.
 - (iv) Each unit shall be placed on a permanent foundation or basement.
 - (v) Each unit shall have a minimum front yard setback of twenty-five (25) feet from the public streets.
 - (vi) Each unit shall have a minimum side yard of eight (8) feet and a rear yard of twenty-five (25) feet.
 - (vii) The design and construction of the private streets within the park shall conform to the design standards of Cass County and the City of Kindred.
 - (viii) All units shall be served by underground utilities unless waived by the City Council.
 - (ix) There shall be two (2) off-street parking spaces per manufactured home.
- d. Hospitals, medical clinics, short or long term care homes.
 - e. Multi family dwelling units of three to four per structure.
 - f. Public and private utilities and structures.

4. Lot Area, Lot Width and Coverage.

- a. The minimum lot area for single family units shall be seven thousand (7,000) square feet.
- b. For duplexes, the minimum lot area shall be five thousand (5,000) square feet per unit.
- c. For three-four unit structures, the minimum lot area shall be four thousand (4,000) square feet per unit.
- d. The minimum lot width shall be no less than sixty (60) feet. Maximum lot coverage shall be sixty five percent (65%), excluding the yard areas.

5. **Yard Requirements.**

- a. The minimum front yard, measured from the front lot line, shall be no less than twenty-five (25) feet.
- b. The minimum rear yard, measured from the rear lot line, shall not be less than twenty-five (25) feet.
- c. The minimum side yard, measured from the side lot line, shall not be less than 8 eight (8) feet on each side of a lot.
- d. On corner lots, the minimum side setback on the street side of the property may not be less than twenty (20) feet and the minimum front setback may not be less than twenty-five (25) feet.

6. **Building Height.** No building shall be more than two and one-half (2½) stories or thirty-five (35) feet high, excepting church steeples.

7. **Parking Requirements.**

- a. There shall be a minimum of two (2) surfaced off-street parking spaces for each residential dwelling unit.
- b. Parking for the conditionally permitted uses and non-residential uses shall be subject to the provisions of Section 4-0601.

8. **Sign Requirements.**

- a. There shall be no more than one identification sign per residential dwelling structure not exceeding twelve (12) square feet in area. The sign may be wall, pedestal, ground or projecting type but it shall not project into the public right-of-way or public property.
- b. Temporary signs including political campaign signs, greeting signs and realty signs are permitted for a period of 30 days. Signs for rent and signs for sale may be permitted without a time limitation.
- c. Non-residential uses shall be subject to the provisions of Section 4-0602.

4-0505. **MFR-4 - MULTIPLE FAMILY RESIDENTIAL DISTRICT.**

- 1. **Purpose.** The MFR-4 multiple family residential district is primarily established to promote a suitable residential environment and to accommodate higher density

residential development to meet the needs of various income and age groups in the City of Kindred.

Source: Ord. 2013-47, Sec. 8 (2013)

2. **Permitted Uses.**

- a. Two family dwelling units.
- b. Multiple family dwelling units.
- c. Home occupation.
- d. Accessory buildings and structures, as set out in Section 4-0610 of these ordinances.

SOURCE: Ord. 2008-21, Sec. 4 (2008).

- e. Parks and play grounds, golf courses and outdoor sport facilities.
- f. Parking lots for residential uses.
- g. Municipal facilities such as city hall, fire station, police station, library, and museum.
- h. Churches and related buildings.
- i. Day care facilities.
- j. Public and private schools.

3. **Conditionally Permitted Uses.** The following uses are subject to the provisions of Section 4-1102.

- a. Bed and breakfast establishments.
- b. Cemeteries, crematoriums and the related facilities.
- c. Nursing homes.
- d. Group homes, group quarters, lodging houses and rooming houses.
- e. Professional offices.
- f. Private clubs and fraternal organizations.

4. **Lot Area, Lot Width and Lot Coverage.**

- a. The minimum lot area for each dwelling unit in a multiple family structure of more than two (2) units in the city shall be three thousand (3,000) square feet.

- b. The minimum lot area for multiple family structures shall be twelve thousand (12,000) square feet.
- c. The minimum lot width in the MFR-4 multiple family residential district shall be seventy-five (75) feet.
- d. The maximum lot coverage, excluding the yard requirements, shall be 70%.

5. **Yard Requirements.**

- a. The minimum front yard, measured from the front lot line, shall be twenty-five (25) feet.
- b. The minimum rear yard, measured from the rear lot line, shall be twenty-five (25) feet.
- c. The minimum side yard, measured from the side lot line, shall be ten (10) feet.
- d. On corner lots, the minimum side setback on the street side of the property may not be less than twenty (20) feet and the minimum front setback may not be less than twenty-five (25) feet.

Source: Ord. 2017-67, Sec. 6

6. **Building Height.**

- a. No residential building shall be more than three (3) stories or forty-five (45) feet high.
- b. Non-residential buildings shall be no more than two and one-half (2½) stories or thirty-five (35) feet high excepting church steeples and similar structural elements.

7. **Parking Requirements.**

- a. There shall be two (2) surfaced off-street parking spaces for each residential dwelling unit. For efficiency apartments there shall be at least one space per dwelling unit.
- b. There shall be no less than one off-street parking space for each ten (10) beds in the nursing homes and group homes.
- c. Non-residential uses shall be subject to the provisions of Section 4-0601.

8. **Sign Requirements.**

- a. There shall be no more than one identification sign per residential dwelling structure not exceeding twelve (12) square feet in area. The sign may be wall, pedestal, ground or projecting type but it shall not project into the public right-of-way or public property.
- b. Temporary signs including political campaign signs, greeting signs and realty signs are permitted for a period of 30 days. Signs for rent and signs for sale may be permitted without a time limitation.
- c. Signs for Non-residential uses shall be subject to the provisions of Section 4-0602.

4-0506. **GC-1 - GENERAL COMMERCIAL DISTRICT.**

1. **Purpose.** The GC-1 general commercial district is primarily established to accommodate the concentration of commercial and related uses. Commercial uses must be compatible with adjoining uses and shall not negatively affect the adjoining properties.

2. **Permitted Uses.**

- a. Accessory buildings and uses, as set out in Section 4-0610 of these ordinances.

SOURCE: Ord. 2008-21, Sec. 5 (2008).

- b. Advertising signs and billboards.
- c. Amusement places including bowling alleys, athletic clubs, pool halls and similar indoor facilities.
- d. Banks and financial institutions.
- e. Bed and breakfast establishments.
- f. Boarding and rooming houses.
- g. Churches and places of assembly.
- h. Dry cleaning and laundromats.
- i. Fraternal and philanthropic organizations.
- j. Furnishing and furniture stores.
- k. General services and repairs.
- l. Hotels and motels.

- m. Multiple family dwelling units and residential units above commercial businesses.
- n. Nursing homes.
- o. Professional offices for businesses and services without limitation.
- p. Public buildings and facilities.
- q. Restaurants including all types of eating and drinking establishments.
- r. Retail stores of all types including but not limited to food, drug, clothing, parts, materials and the like.
- s. Day care facilities.

Source: Ord. 2008-23, Sec. 1 (2008)

3. **Conditionally Permitted Uses.** The following uses are subject to the provisions of Section 4-1102.

- a. Contractor's yards and operations provided that the storage area is fenced and not visible from the street.
- b. Grain elevators.
- c. Processing and packaging of materials.
- d. Storage spaces for rent.
- e. Warehouses and wholesale distributorships.
- f. Storage of vehicles, equipment, machinery, supplies, and other similar items not incidental to the on-site operation of a business that is registered with the North Dakota Secretary of State.
- g. Storage of vehicles, equipment, machinery, supplies, and other similar items owned by a person, except if the person resides on the property.

Source: Ord. 2020-81. Sec. 1

4. **Lot Area and Lot Width.**

- a. The minimum lot area for commercial use shall be ten thousand (10,000) square feet.

- b. The minimum lot width for commercial district shall be seventy-five (75) feet, excluding the lots of record.
 - c. The maximum lot coverage, excluding the yard requirement shall be 70%.
5. **Yard Requirements.**
- a. The minimum front building line, measured from the front lot line, shall be twenty-five (25) feet.
 - b. The minimum rear building line, measured from the rear lot line, shall be twenty (20) feet.
 - c. The minimum side building line, measured from the interior side of the lot shall be ten (10) feet.
6. **Building Height.** The building height requirements in the general commercial district shall not be more than sixty (60) feet excepting farm related buildings and communication towers.
7. **Parking Requirements.**
- a. For commercial uses, the rear yard spaces may be used for parking.
 - b. For commercial uses, parking shall be subject to the provisions of Section 4-0601.
 - c. For residential uses, there shall be two (2) off-street parking spaces for each dwelling unit.
8. **Sign Requirements.** For uses in commercial district, signs shall be subject to the provisions of Section 4-0602.

4-0507. **HC-2 - HIGHWAY COMMERCIAL DISTRICT.**

1. **Purpose.** The HC-2 highway commercial district is primarily established to accommodate those highway oriented commercial uses which by nature and operational characteristics such as direct access, large number of parking spaces, require separation from other uses because of the intensity and frequency of consumer travel.
2. **Permitted Uses.**
- a. Accessory uses, as set out in Section 4-0610 of these ordinances.

SOURCE: Ord. 2008-21, Sec. 6 (2008).

- b. Advertising signs and billboards, subject to Section 4-0602.
- c. Amusement places such as bowling alleys, athletic clubs, pool halls, theaters, miniature golf courses and similar outdoor or indoor facilities.
- d. Animal hospitals and kennels including outdoor dog runs or exercise pens when located not less than two hundred (200) feet from any residential district.
- e. Bakeries and confectioneries.
- f. Banks and financial institutions.
- g. Battery and tire service establishments.
- h. Building material and supply establishments.
- i. Carpet and rug stores.
- j. Churches and places of assembly.
- k. Department stores.
- l. Dry cleaning establishments and laundromats.
- m. Feed and seed stores.
- n. Frozen food lockers, but not slaughtering on the premises.
- o. Fuel sales establishments.
- p. Funeral homes.
- q. Furniture and refinishing and upholstering.
- r. Garages for repair and service of motor vehicles including towing and wrecker service but not salvage operations.
- s. Green houses.
- t. Highway maintenance shops.
- u. Machinery and equipment sales and service including farm machinery and accessories.
- v. Marine vehicle sales and service.
- w. Meat product sales and locker rentals.

- x. Monument sales.
- y. Motels and hotels.
- z. Motor vehicle sales and rental.
- aa. Office and supply stores and business machine sales and services.
- ab. Packing and crating operations.
- ac. Plumbing shops and yards.
- ad. Radio, television, and electronic equipment sales and service.
- ae. Recreational vehicles sales and service.
- af. Restaurants including all types of eating and drinking establishments.
- ag. Shopping malls including the retail services customarily accommodated therein.
- ah. Sporting goods stores and bait shops.
- ai. Taverns and liquor stores.
- aj. Single and multiple residential dwelling units above commercial businesses.

Source: Ord. 2022-96, Sec. 1

- 3. **Conditionally Permitted Uses.** Conditional uses shall not be located less than two hundred (200) feet from a residential district and shall be subject to the provisions of Section 4-1102.
 - a. Contractors yard, provided that the storage area is fenced and not visible from the street.
 - b. Machine shops and fabrication of metal products.
 - c. Processing and packing of non-toxic and non-odorous material.
- 4. **Lot Area, Lot Width and Lot Coverage.**
 - a. The minimum lot area for HC-2 highway commercial district shall be twenty thousand (20,000) square feet.

- b. The minimum lot width for HC-2 highway commercial district shall be one hundred (100) feet.
- c. The maximum lot coverage, excluding the yard requirement shall be 70%, exclusive of the yard requirements.

5. **Yard Requirements.**

- a. The minimum front building line, measured from the front lot line, shall be fifty (50) feet for all properties, Cass County Highway 15. For properties fronting on other streets the minimum building line shall be twenty (20) feet.
- b. The minimum rear building line for properties Cass County Highway 15 shall be fifty (50) feet and for other streets the minimum shall be twenty (20) feet.
- c. The minimum side building line, measured from Cass County Highways 15 rights-of-way shall be twenty-five (25) feet. The minimum side yard for interior side of the lot shall be ten (10) feet. The minimum side building line measured from other rights-of-way shall be ten (10) feet.

6. **Building Height.** The building height requirement in HC-2 highway commercial district shall be subject to the provisions of the city airport height regulations.

7. **Parking Requirements.**

- a. The front yard may be used for parking.
- b. Parking in HC-2 highway commercial district, shall be subject to the provisions of Section 4-0601.

8. **Sign Requirements.** Signs in HC-2 highway commercial district shall be subject to the provisions of Section 4-0602.

4-0508. **I - INDUSTRIAL DISTRICT.**

1. **Purpose.** The I industrial district is primarily established to accommodate industrial uses and facilities appropriate to the City of Kindred. It is planned to encourage grouping of related industrial uses for preventing intrusion on other uses specifically residential areas and to maintain an orderly, functional and efficient industrial land use system.

2. **Permitted Uses.**

- a. Accessory uses.
- b. Agricultural chemical production and storage.
- c. Any industrial or manufacturing operation provided that: (a) dust, fumes, odors, smoke, vapor, noise, lights and vibration producing operations shall be enclosed within the premises, and: (b) outdoor storage, equipment and materials areas shall be concealed from abutting street or highway rights-of-way.
- d. Any production, processing and treatment of products such as battery and tire service, dairy processing, bottling works, ice and cold storage plants, machine and sheet metal shops provided that all operations be conducted entirely in enclosed buildings.

Source: Ord. 2007-20, Sec. 2 (2008).

- e. Building material and supply establishments.
- f. Contractors yards and construction shops.
- g. Electric power production and substations.
- h. Fuel sales establishment including bottle gas.
- i. Grain elevators.
- j. Public utility buildings including water and waste water facilities and accessories.
- k. Radio, television, microwave, cellular phone towers and related facilities.
- l. Aggregate stockpiling and sales, asphalt processing and concrete redi-mix plants, as well as accessory trucking operations.

Source: Ord. 2007-20, Sec. 2 (2008).

- m. Truck terminals.

Source: Ord. 2007-20, Sec. 2 (2008).

3. **Conditionally Permitted Uses.** The following uses shall be subject to the provisions of Section 4-1102.

- (a) Local and regional sanitary landfills, compost sites and incinerators.
- (b) Salvage or junk yards.
- (c) Storage and sale of chemicals, explosives and the like.
- (d) Conditional uses shall not be located nearer than five hundred (500) feet from any residential area.

4. **Lot Area and Lot Width.**

- a. The minimum lot area for industrial district shall be one acre.
- b. The minimum lot width for industrial district shall be one hundred (100) feet.

5. **Yard Requirements.**

- a. The minimum setback from Cass County Highway 15 shall be fifty (50) feet and for any streets shall be twenty-five (25) feet.
- b. The minimum rear building line, measured from the rear lot line, Cass County Highway 15 shall be fifty (50) feet and for other streets shall be twenty (20) feet.
- c. The minimum side building line, measured from the side lot line, shall be twenty (20) feet.

6. **Building Height.** The building height requirement in industrial district shall not be more than sixty (60) feet.

7. **Parking Requirements.** Parking in the industrial district, shall be subject to the provisions of Section 4-0601.

8. **Sign Requirements.** Signs in the industrial district shall be subject to the provisions of Section 4-0602.

4-0509. **PD - PLANNED DEVELOPMENT DISTRICT.**

1. **Purpose.** The PD planned development district is primarily established to encourage and promote environmental quality of the City of Kindred by allowing for greater freedom, imagination and flexibility in the development of land while complying with the intent and

purpose of this Code, other municipal Codes and the Kindred Plan 2020. It is further the purpose of PD District to encourage more rational, efficient and cost-effective development with relationship to public services while enhancing and improving the environmental quality of the area.

2. Permitted Uses.

- a. Any group of permitted uses in any zoning district in these regulations, provided that there is distinct compatibility and harmony among the uses, with no adverse effects on the adjoining uses.
- b. No use shall be permitted in the PD District except in conformity with Kindred Plan 2020 and the detailed development plan prepared to meet the requirement of this district.
- c. In a PD District the uses and their intensity, appearance and arrangement shall be of such visual and operational character which: (1) are compatible with the physical nature of the site or area; (2) would not adversely affect the provisions for public services; (3) would not create a traffic or parking demand incompatible with the existing or proposed facilities.
- d. The PD District shall not adversely affect the economic prosperity of the City of Kindred or its extra territorial planning area.
- e. The PD District shall include assurances that the proposed plan would be completed in a manner that would not adversely affect the city or the area as a result of its termination. The terms of the assurances shall address financial and development considerations in sufficient detail as may be required by the city.

3. Site Requirements.

- a. There shall be no predetermined requirements for lot area, lot width, building height and yards, but such requirements are made a part of an approved, recorded, and detailed development plan.
- b. The minimum land parcel for PD District shall be two (2) acres.
- c. In PD District the location, number and configuration of parking spaces shall be a part of the detailed development plan.

- d. In PD District the location, type and size of signs shall be a part of the detailed development plan.
4. **Development Plan.** A Development Plan shall be include the following maps and data.
- a. Location of existing property lines, buildings, drives, streams, wooded areas and other significant natural features.
 - b. Detailed layout of proposed streets and location of blocks for designated uses.
 - c. Location of open spaces and facilities for public uses.
 - d. Existing drainage pattern based on the current topographic information and the location of land to be dedicated for park and playground.
 - e. The development plan shall be drawn at a scale of one inch equaling two hundred (200) feet or less.
 - f. Other engineering or financial information required by the city.
 - g. Proof of financial capability.
 - h. Analysis of economic impacts.
 - i. Agreements, by-laws, provisions and covenants which insures the timely and satisfactory completion of the project without posing a burden on the city or adjoining properties.
5. **Review and Approval Procedure.**
- a. The Planning Commission shall review the proposed plan and it may require additional information and may require modification of the plan before it makes its recommendations to the City Council after a public hearing.
 - b. The City Council upon holding a public hearing may approve, deny or further modify the development plan. A developer's agreement spelling out all financial responsibilities of the developer and the city is required.
 - c. Upon approval by the City Council, the detailed development plan shall be recorded with the Cass County Register of Deeds and the original plan be

kept on file in the office of the Code Administrator.

4-0510. **F - FLOOD PLAIN DISTRICT.** The F Flood Plain District consists of the lands which have been or may be covered by flood water as delineated on the maps for the City of Kindred and Cass County, prepared by the Federal Emergency Management Agency for administration of the National Flood Insurance Program or other maps and information provided by the State of North Dakota. This district is an overlay district and its provisions apply to all flood prone lands in the City of Kindred.

1. **Purpose.** The F Flood Plain District is primarily established to designate those areas which need to accommodate the run-off water and to protect the public and private property from the adverse effects of flooding by prohibiting development on the lands prone to flooding.
2. **Permitted Uses.**
 - a. Agricultural uses including general farming, pasture/grazing and related uses excluding the buildings and structures for human occupancy.
 - b. Non-structural uses including ponding of run-off water and treated waste water.
 - c. Public utilities including railroads, streets, bridges, channels, and pipelines.
 - d. Outdoor recreational uses including, golf courses, bicycle trails, picnic areas and boat launching ramps.
3. **Conditionally Permitted Uses.** Temporary buildings and structures not related to flood control and farming such as stands, fences, shelters, temporary signs and temporary parking. These uses shall be subject to the provisions of Section 4-1102.
4. **Building Height.** No building shall be more than two and one-half (2½) stories or thirty-five (35) feet high excepting farm silos.
5. **Sign Requirements.** Temporary signs shall be no larger than thirty (30) square feet in area.

4-0511. **D - DOWNTOWN DISTRICT** Source: Ord. 2020-78, Sec. 3

1. **Purpose.** The purpose of the D Downtown Zoning District is to create a pedestrian-orientated district that contains

a compatible mix of residential and commercial uses. This district is meant to encourage infill development and the revitalization of Kindred's core. Uses within this district will consist primarily those that can generate day-to-day activity and patronage.

2. **Permitted Uses.**

- a. Accessory buildings and uses as set out in Section 4-0610 of these ordinances.
- b. Amusement places including bowling alleys, athletic clubs, pool halls, and similar indoor facilities.
- c. Bakeries and confectionaries.
- d. Banks and financial institutions.
- e. Bed and breakfast establishments.
- f. Building material and supply establishments.
- g. Day care facilities.
- h. Dry cleaning and laundromats.
- i. Fraternal and philanthropic organizations.
- j. Furnishing and furniture stores.
- k. Hotels and motels.
- l. Medical or dental clinic.
- m. Personal service shop or agency including but not limited to tailor, dressmaking, beauty, barber, laundromat, shoe repair shop, or mailing and packaging service.
- n. Professional offices for businesses and services without limitation.
- o. Restaurants including all types of eating and drinking establishments, excluding those offering in-car services.
- p. Retail stores of all types including but not limited to food, drug, clothing, parts, materials and the like. Exceptions to this category include gas stations, convenience stores, and any retail with a drive-through component.

- q. Single and multiple residential dwelling units above commercial businesses.
 - r. Theaters, except those offering in-car services.
3. **Conditionally Permitted Uses.** The following uses shall be subject to the provisions of Section 4-1102.
- a. Public buildings and facilities, including parks, playgrounds, and outdoor sports facilities.
 - b. Light manufacturing or production with the following requirements:
 - (i) The property also contains an on-site retail or service component.
 - (ii) The use shall not generate smoke, gases, odors, emissions, trash, refuse, or heat that will constitute a nuisance to surrounding property owners or the public.
 - (iii) No bulk storage of flammable or hazardous materials for resale.
 - (iv) Storage of materials and production activities must be in an enclosed structure.
 - c. Automobile body shops, battery and tire service establishments, and other automobile service establishments.
4. **Prohibited Uses.**
- a. Storage of vehicles, equipment, machinery, supplies, and other similar items not incidental to the on-site operation of a business that is registered with the North Dakota Secretary of State.
 - b. Storage of vehicles, equipment, machinery, supplies, and other similar items owned by a person, except if the person resides on the property.
 - c. Self-storage facilities.
 - d. Boarding and rooming houses.
 - e. Nursing homes.
 - f. Feed and seed stores.

- g. Fuel sales.
 - h. Funeral homes.
 - i. Assembly, packaging, freight, or warehousing.
 - j. Telecommunications towers.
 - k. Any use which is noxious or offensive by reason of odor, dust, noise, smoke, gas, fumes, radiation, or similar environmental impacts.
5. **Lot Area, Lot Width, and Lot Coverage.**
- a. The minimum lot area for D downtown district shall be 1,300 square feet.
 - b. The minimum lot width for D downtown district shall be 25 feet.
 - c. The maximum lot coverage shall be 100%, exclusive of the yard setback requirements.
6. **Yard Requirements.**
- a. The minimum front building line, measured from the front lot line, shall be zero (0) feet.
 - b. The maximum front building line, measured from the front lot line, shall be ten (10) feet. Vehicle parking is not allowed within the front yard setback.
 - c. The building can be setback from the front lot line up to twenty-five (25) feet if the front yard is used for pedestrian-orientated purposes including but not limited to dining, retail, handicap accessible entrance, or a landscaped patio, plaza, or greenspace. Vehicle parking is not allowed within the front yard setback.
 - d. The minimum rear yard, measured from the rear lot line, shall be forty (40) feet.
 - e. The minimum side building line, measured from the interior side lot line, shall be zero (0) feet.
7. **Height.** No building or structure in the downtown district shall be more than 60 feet.

8. **Parking Requirements.**

- a. Off-street parking is permitted only behind the building in the rear yard.
- b. No off-street parking spots or access to said spots shall be located in the front of the building facing Elm Street.
- c. There shall be no parking spots, in whole or in part, within four and one half (4.5) feet of sidewalks.
- d. An off-street automobile parking space shall be at least nine (9) feet wide and twenty (20) feet long, exclusive of access drives.
- e. All open off-street parking areas and all loading berths shall be: (A) improved with all-weather surface to provide a durable and dust free surface such as asphalt or concrete; and graded to dispose of all surface water run-off but not be diverted to adjoining properties.
- f. No structure shall be erected or enlarged without meeting the following parking requirements:
 - (i) All uses with the principal building smaller than one thousand eight hundred (1,800) square feet are exempt from being required to provide off-street parking spaces.
 - (ii) Retail businesses and services, offices, studios, banks, medical or dental clinics, private clubs or lodges, and other similar commercial uses with the principal building 1,800 square feet and greater must provide one (1) parking space for each three hundred (300) square feet above the one thousand eight hundred (1,800) square feet threshold.
 - (iii) Restaurants or eating and drinking establishments with the principal building 1,800 square feet and greater must provide one (1) parking space for each two hundred (200) square feet above the one thousand eight hundred (1,800) square feet threshold.
 - (iv) Notwithstanding the aforementioned provision (i), hotels, motels, bed and breakfast, or

other lodging uses shall have one (1) parking space per rentable room.

- (v) Notwithstanding the aforementioned provision (i), Residential uses shall have one (1) parking space per bedroom with no more than two (2) total spaces per residential unit.
 - g. Those parcels containing a mixture of commercial and residential uses shall calculate its parking requirements based upon the relative amount of square feet devoted towards each type of use.
 - h. Uses with different operating hours or peak business periods may share off-street parking spaces as part of an Alternative Access and Parking Plan that has been approved by the Planning and Zoning Commission.
 - (i) Shared parking spaces must be located within 500 feet of the primary entrance.
 - (ii) Shared parking areas serving uses the downtown zoning district must be located in the downtown district or any commercial zoning district.
 - (iii) Those wishing to use shared parking as a means of satisfying off-street parking requirements must submit, in writing, an analysis to the Planning and Zoning Commission that clearly demonstrates the feasibility of shared parking. The analysis must address the size and type of structures, the composition of tenants, the anticipated rate of parking turnover, and the anticipated peak parking and traffic loads for all uses that will be sharing off-street parking spaces.
9. **Sign Requirements.** Signs in D downtown district shall be subject to the provisions of Section 4-0602 and to the following provisions:
- a. Projecting signs may encroach over the sidewalk no greater than four (4) feet from the curb cut. The minimum vertical clearance is ten (10) feet in height as measured from the established grade of the sidewalk.
 - b. Sidewalk signs are permitted as long as the placement of the sign does not present a safety hazard or reduces the traversable space to less

than the requirements of the Americans with Disabilities Act.

10. **District Design and Compatibility Standards.** In order to fulfill the purpose of this district, the following standards are enacted to preserve and enhance the aesthetic character and pedestrian-orientated nature of the district.
- a. Vehicle access to the property will be limited to accessing off-street parking and for the loading and unloading of deliveries incidental to the commercial or residential use.
 - b. Vehicle access to enclosed storage, such as garages, or access to shop or storage space is prohibited along sides of the lot facing Elm Street.
 - c. Drive-through service is prohibited in the downtown district.
 - d. Buildings abutting Elm Street shall have its principal entrance located along Elm Street. Exceptions to this provision are:
 - (i) The building is subdivided into lots in such a manner that precludes direct access from Elm Street.
 - (ii) The physical layout of the building precludes direct access from Elm Street.
 - (iii) An entrance accessible to those with physical handicaps is not physically or financially feasible.
 - e. Building facades orientated towards sidewalks must have a minimum of 15% glazing for all upper floor facades.
 - f. Façade elements above the ground floor may project into yards.
 - g. The ground floor building façade along Elm Street must be configured as follows:
 - (i) 50% clear non-reflective and non-tinted glass is required along ground floor façade between two (2) feet above grade and ten (10) feet above grade.

- (ii) Building entries may be recessed from the façade up to 8 feet in depth.
 - (iii) Awnings may project into the right-of-way to within two (2) feet of the curb.
- h. The screening of ground-level building mechanical or electrical equipment and trash receptacles or dumpsters shall follow the provisions of Section 4-0609.
- i. Rooftop building and mechanical equipment shall be screened from public view between the ground level and six feet off the ground level. The screening shall be at least 60% opaque, it shall be at least as tall as the equipment it is intended to screen, and it must harmonize with the design of the building in terms of material, color, shape, and size. Off-premise signs and billboards shall not be considered required screening.
- j. All walls that front a public street shall be finished with architectural materials such as brick, glass, stone, ceramic, stucco, precast panels, exterior insulation finish systems (e.g. dryvit), or curtain walls.
- k. The following materials shall not be used on walls visible from a public street: metal panels, vinyl or aluminum siding, wood-based materials, concrete blocks or cinder blocks, and fiberglass or plastics. Concrete block may be used only if it is burnished, standing flute, or sculpted.

CHAPTER 4-06

SPECIAL PROVISIONS

SECTIONS:

- 4-0601. Off-Street Parking.
- 4-0602. Sign Requirements.
- 4-0603. Junk or Salvage Yards.
- 4-0604. Feed Lots.
- 4-0605. Sand and Gravel Operations.
- 4-0606. Sanitary Landfills and Solid Waste Sites.
- 4-0607. Public Nuisances.
- 4-0608. Adult Entertainment Centers - Location Restricted.
- 4-0609. General Fencing and Screening Requirements.
- 4-0610. Accessory Structures in Residential and Commercial Districts.

4-0601. **OFF-STREET PARKING.**

1. **Purpose.** The purpose of this section is to provide for the off-street parking regulations to increase the safety and capacity of public roads by requiring off-street parking or loading facilities.
2. **General Requirements.**
 - a. An off-street automobile parking space shall be at least nine (9) feet wide and twenty (20) feet long, exclusive of access drives.
 - b. All open off-street parking areas with four (4) or more spaces and all loading berths shall be: (a) improved with all weather surface to provide a durable and dust free surface such as asphalt or concrete; and graded to dispose of all surface water run-off but not be diverted to adjoining properties.
 - c. Parking of recreational vehicles as living spaces in residential districts shall be limited to two (2) weeks. All recreational vehicles shall be parked on surfaced parking spaces.
3. **Special Requirements.**
 - a. No structure shall be erected or enlarged without meeting the following parking requirements:
 - (i) For retail businesses and services, offices, studio, bank, medical or dental clinics, one (1) parking space for each one hundred (100) square feet of floor area.

- (ii) For private club or lodge; two parking spaces for each one hundred (100) square feet of service area.
- (iii) For restaurant, eating and drinking establishment; one parking space for each one hundred (100) square feet of floor area.
- (iv) For industrial uses there shall be one off street parking space for every two (2) employees.

4-0602. **SIGN REQUIREMENTS.**

1. **Purpose.** The purposes of regulating signs in the City of Kindred is to provide for a visually pleasant environment and minimize potentially unsafe conditions for all age groups, but yet offer many opportunities for public and private information and advertising.
2. **General Requirements.**
 - a. Directory signs shall not be larger than twenty (20) square feet in area for permitted uses.
 - b. Directory signs for conditional uses shall not be larger than forty (40) square feet.
 - c. General advertising signs shall not be larger than ninety-six (96) square feet.
 - d. All signs larger than twenty (20) square feet shall require a conditional use permit as provided in Section 4-1102.
3. **Special Requirements.**
 - a. Signs in the residential districts shall be limited to: (i) One sign per dwelling structure which may be wall, pedestal, ground or projecting type; (ii) One temporary sign such as "For Sale", "For Rent", not exceeding twenty (20) square feet in area.
 - b. Signs in the commercial and industrial districts shall be limited to: (i) One general identification sign per business not exceeding fifty (50) square feet in area which may be wall, pedestal, ground or projecting type. (ii) Temporary signs including "For Sale", "For Rent"; political campaign signs, greeting signs and rally signs not exceeding fifty (50) square feet in area; (iii) Directory and advertising signs in agricultural, commercial and

industrial districts shall not be larger than ninety-six (96) square feet and not placed nearer than six hundred (600) feet apart.

4-0603. **Junk or Salvage Yards.**

1. **Purpose.** The purpose of these requirements is to preserve and protect the visual and other environmental amenities of the rural areas while allowing the salvage or junk yards as business places.
2. **Site Approval Requirements.** All sites for salvage and junk yards require approval by the City Council.
3. **Locational Standards.**
 - a. No salvage or junk yard shall be located within five hundred (500) feet of a residential district and two hundred (200) feet of commercial buildings and structures.
 - b. No salvage or junk yard shall be located in areas which due to high water table, flooding and soil conditions may affect the quality of surface and ground water.
 - c. No salvage or junk yard shall be located nearer than one hundred (100) feet of all streets and highway rights-of-way.
 - d. All salvage yards and operations shall be screened from the public view unless the salvage material is placed five hundred (500) feet away from any highway right-of-way and screened by natural vegetation, buildings and land form.

4-0604. **FEED LOTS.**

1. **Purpose.** These regulations are designed to allow feed lots for feeding of livestock, fur bearers and poultry at the same time protect the adjoining uses against odor, run off and other incompatible characteristics associated with feed lots.
2. **Site Approval Requirement.** All sites for feed lots require approval by the City Council after a public hearing before the Planning Commission.
3. **General Requirements.**
 - a. All feed lots as defined by this Code are only permitted as conditional uses subject to the

provisions of this Code and the requirements of the North Dakota State Health Department.

- b. All feed lots shall be designed and constructed with all reasonable preventive measures to avoid surface run-off including construction of sealed collection and retention ponds.
 - c. Where appropriate, there shall be sufficient drainage to avoid pollution of the ground water from the standing effluents.
 - d. Feed lots shall not be placed in the floodplains.
 - e. The applicant, as a part of site approval application, shall submit a plan for removal and disposal of the liquid and solid waste generated by the feed lot.
 - f. No feed lot shall be located nearer than five hundred (500) feet from a residential development in the extra territorial area or corporate limits of the City of Kindred.
4. **Permit Requirements.** The City Auditor may issue a permit for feed lot operation after a public hearing before the Planning Commission and approval by the City Council.

4-0605. **SAND AND GRAVEL OPERATIONS.**

1. **Purpose.** The purpose of these provisions is to provide for mining, stock piling and extraction of sand and gravel for commercial uses, and to protect and preserve agricultural land by guiding such operations, and to minimize the traffic, noise, dust, fume and vibration impact on the adjoining uses and the City of Kindred.
2. **Site Approval Requirements.** All sand and gravel mining and stock piling excavation sites require approval by the City Council and public hearing before the Planning Commission.
3. **Data Submission Requirement.**
 - a. A site plan for operation and reclamation of the mined land including maps showing location of the land to be mined, location of roads and points of access to the site, maps showing the existing and proposed contours after the land is mined and a time table for operation of the site.

- b. A guarantee that the reclamation of the site be completed within one year of the closure of the operation of the site.
 - c. Proof of compatibility with the existing land form including the vegetation, surface and ground water resources.
- 4. **Proximity to Existing Uses.** The operation of sand and gravel sites shall not be nearer than five hundred (500) feet from any residential uses or three hundred (300) feet from non-residential uses.
 - 5. **Permit Requirements.** Any person who operates a sand and gravel operation shall obtain a permit from the City Auditor before starting any mining or excavation of the sand and gravel sites, and upon approval by the City Council, after a public hearing before the Planning Commission.

4-0606. **SANITARY LANDFILLS AND SOLID WASTE SITES.**

- 1. **Compliance with State Laws and Rules.** Any person who operates sanitary landfills, inert landfills or similar solid waste sites shall comply with all North Dakota state laws and administrative rules set forth by the State agencies and the provisions of this code.
- 2. **City Code and Procedures.** The City of Kindred hereby adopts solid waste provisions, subject to the Provisions of N.D.C.C. 11-33-20, to assure meeting the purposes of this Code and the Kindred Plan 2020.
- 3. **Purpose.** The purpose of these provisions is to protect public health, ground and surface water, conflict with present land uses and preservation and protection of natural resources in the City of Kindred and its extra territorial planning area.
- 4. **Site Approval Requirements.** All solid waste sites require approval by the City Council after a public hearing before the Planning Commission.
- 5. **Locational Standards.**
 - a. No landfill or incinerator shall be located within one thousand (1,000) feet of residential uses, and five hundred (500) feet of non-compatible commercial buildings and structures.

- b. No landfill shall be located in areas which due to high water table, flooding, or soil conditions may affect the quality of surface and ground water.
- c. No landfill operation shall be located nearer than one hundred (100) feet of all road and highway rights-of-way.

6. **Data Submission Requirements.**

- a. Maps of the area showing existing features such as roads, highways, vegetation cover, water courses, drainage way, soils, topography, depth of water table, wet lands, sloughs, existing uses, buildings and structures including the existing utility lines.
- b. A plan for operation of the site including a descriptive text explaining consistency or inconsistency with the natural or man made environment.
- c. Records of data and information submitted to the state of North Dakota appropriate agencies and the county as a part of the application for state and county permits.
- d. The City Council may require additional information if it deems it necessary.

7. **Statement of Findings.** Upon the public notification and a public hearing, the City Council shall determine whether the proposed site meets the requirements of this Code and public health, safety and welfare.

4-0607. **PUBLIC NUISANCES.** Public nuisances including but not limited to noxious weeds, grass over the height of 6-inches, smoke, gases, radio interference, noise, accumulation of junk, trash, rubbish, appliances, inoperational automobiles and parts, dead or diseased trees shall not be permitted and shall be subject to violation and penalties of Chapter 4-13 of this Code.

4-0608. **Adult Entertainment Centers - Location Restricted.**

- 1. **Purpose.** The purpose of this section is to limit location of an adult entertainment facility and its visible exposure to other residents of the township.
- 2. **Definitions.**
 - a. **Adult Bookstore:** An enclosed building having as a substantial or significant portion of its stock in

trade, books, magazines, or other periodicals which are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.

- b. Adult Cinema: An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons therein in return for the payment of a consideration, irrespective of the number of patrons who may be able to view the presentation at one time.
- c. Adult Live Performance Theater: An enclosed building used on a regular basis for presenting live performances by singers, musicians, dancers, comedians, models, or any similar type of entertainers, which live performances are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons.
- d. Adult Entertainment Center: An adult bookstore or adult cinema, or adult live performance theater.
- e. Specified Anatomical Areas:
 - (1) Less than completely and opaquely covered:
 - a) Human genitals, pubic region;
 - b) Buttock;
 - c) Female breast below a point immediately above the top of the areola; and
 - (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- f. Specified Sexual Activities:
 - (1) Human genitals in a state of sexual stimulations or arousal;
 - (2) Acts of human masturbation, sexual intercourse, or sodomy;

(3) Fondling of human genitals, pubic region, buttock or female breast.

3. **Location:** Notwithstanding anything in this zoning ordinance to the contrary, an adult entertainment center shall be permitted only as a conditional use in the I, GC-1 and HC-2 districts, and then only if the center meets the following conditions:

a. The center is located no closer than 1250 feet from any religious institution, cemetery, school, park or recreational facility (bike paths excluded).

Source: Ord. 2013-47, Sec. 9 (2013)

b. The center shall not be located within 1,250 feet of any establishment that dispenses alcohol on-premises.

c. The center shall not be located within 1,250 feet of any other adult entertainment center.

d. The center excludes from its premises those persons less than 18 years of age.

e. The center displays no signs visible from the exterior of the center, except for signs identifying the center as an adult bookstore, adult cinema or adult live performance theater, or combination thereof.

f. No materials depicting specified sexual activities or specified anatomical areas shall be visible from the exterior of the center.

g. The business premises of the center which are generally open to its patrons are open equally at the same time without charge to members of any law enforcement agency who may wish to enter thereon, provided the entry is in the course of the discharge of the law enforcement officer's duties.

4-0609. **GENERAL FENCING AND SCREENING REQUIREMENTS.**

Source: Ord. 2006-11, Sec. 1 (2007), Ord. 2012-41, Sec. 1 (2013)

1. **Definition of Fence.** An artificially constructed structure of any material or combination of material erected to enclose or screen areas of land.

2. **General Fencing and Screening Requirements for Residential Areas.** In any residential district, fences, hedges, and plantings may be permitted in the buildable area and in any required yard, or along the edge of any yard, provided that no fence or hedge along the sides or

front edge of any required front yard shall be over three (3) feet in height, except on through lots or double frontage lots where one of the front yards is intended to serve as the rear yard and is consistent with the other lots on the block a fence or hedge may be up to eight (8) feet in height. All fencing and screening shall meet visibility requirements for intersections by not impeding vision between a height of two and one-half (2½) feet and ten (10) feet within thirty (30) feet from the intersecting curb lines, or within twenty (20) feet from the intersecting property lines if there is no curb. Coordinated fencing schemes for the block are strongly encouraged, and if possible developed during the subdivision process. No fence or hedge within any buildable area or along any side or rear lot line shall be over eight (8) feet in height and shall not extend past the front plane of the house.

No chain link fence is permitted past the front plane of a house.

Where there is an alley, the setback will be a minimum of ten (10) feet from the property line.

3. **Required Fencing and Screening.** Where any business, industrial users, or multiple-family buildings of four (4) or more units (i.e., structure, parking or storage) abuts property zoned for residential use, that business, industry, or multiple-family building shall provide screening along the boundary of the residential property. Screening shall also be provided where a business, industry, or multiple-family building of four (4) or more units is across the street from a residential zone, but not on that side of a business, industry, or multiple-family building considered to be the front yard. Provided, however, that the provisions of this section will not apply where a multiple-family building abuts a property also zoned for multiple-family use. All fencing and screening specifically required by this section shall meet visibility requirements for intersections and other requirements as stated herein, and shall consist of either a fence or green belt planting strip. A required screening fence shall be constructed of masonry, brick, wood or metal. Such fence shall provide a solid screening effect six (6) feet in height for multiple-family uses and at least six (6) feet in height for business and industrial uses. A green belt planting strip shall consist of evergreen trees and/or deciduous trees and plants and shall be of sufficient width and density to provide an effective visual screen. This planting strip shall be designed to provide substantial visual screening to a minimum height of six (6) feet.

Earth mounding and berms may be used but shall not be used to achieve more than three (3) feet of the required screen, unless otherwise provided for by the City (i.e., PUD requirements).

4. **Construction Standards.** No fence, hedge, or plantings shall be constructed or maintained with electrified barbed wire, or other spiked materials which may pose injurious to public health and safety. Posts and other supporting structures used in the construction of fences shall be faced inward toward the property being fenced.
5. **Private Recreational Fences.** Private recreational fences shall conform to the provisions attached to residential fences. Swimming pool fences shall be six (6) feet in height.
6. **Public Fences.** Fences used in connection with public facilities and public recreational uses shall have a maximum height of ten (10) feet in any yard and be of the open fence variety. Residential construction standards shall apply to all public fences.
7. **Non-Residential Fences.** Fences in light commercial areas shall conform to the provisions of residential fences. Fences in industrial or agricultural districts shall conform to the provisions attached to residential fences except where the Building Administrator determines it would be in the public welfare to add to fence height or to add security materials onto the fence. In such cases, fences shall not exceed ten (10) feet in height.
8. **Temporary Fences.** Temporary fences needed to enclose sites, such as construction sites, do not require fencing permits.
9. **Fencing Permit.** With the exception of temporary fences, a permit is required for all fencing. The cost of said permit shall be Twenty-five Dollars (\$25) or one percent (1%) of the total cost of the fencing project, whichever is greater. All fence projects are to be completed within 60 days of the issuance of the Fencing Permit.

4-0610. **ACCESSORY STRUCTURES IN RESIDENTIAL AND COMMERCIAL DISTRICTS.**

Source: Ord. 2008-21, Sec. 7 (2008); Ord. 2018-70, Sec. 2, Ord. 2022-100, Sec. 3

1. **Front Yards.** No accessory use, building, structure or equipment shall be allowed within a required front yard. With the exception of a garage or driveway, no accessory building, structure, use or equipment may be placed within a front yard.

2. **Rear Yards.** No accessory building, structure, and/or detached garage for a single-family dwelling shall occupy more than twenty-five percent (25%) of the area of the rear yard.
3. **Ground Coverage.**
 - a. For lots 10,000 square feet or under in area, the total floor area of accessory building(s) may not exceed 1,000 square feet;
 - b. For lots over 10,000 square feet to 15,000 square feet, the total floor area of any accessory building(s) may not exceed 1,200 square feet;
 - c. For lots over 15,000 square feet to 20,000 square feet, the total floor area of any accessory building(s) may not exceed 1,400 square feet;
 - d. For lots over 20,000 square feet to 25,000 square feet, the total floor area of any accessory building(s) may not exceed 1,600 square feet;
 - e. For lots over 25,000 square feet to 30,000 square feet, the total floor area of any accessory building(s) may not exceed 1,800 square feet;
 - f. For lots over 30,000 square feet to 35,000 square feet, the total floor area of any accessory building(s) may not exceed 2,000 square feet;
 - g. For lots exceeding 35,000 square feet, the total floor area of any accessory building(s) may not exceed 2,200 square feet;
 - h. In all cases, the total floor area may not exceed the ground coverage of the dwelling, less any attached garage.
4. **Height.** No accessory building shall be higher than the principle residence, or exceed sixteen (16) feet in height to the peak.
5. **Set-back requirements.** No detached accessory building or use shall be erected in any required yard, except a rear yard, nor shall it be located closer than five (5) feet to any side or rear lot line, subject to the following exceptions:
 - a. Where the rear lot line is coterminous with any alley right-of-way, the accessory building or use

shall not be closer than ten (10) feet to such a rear lot line.

- b. On corner lots, an accessory building or use, including driveways on the street side, shall maintain the same side yard setback required for the main building, except for garages accessing a public street, which shall maintain a setback of 18 feet for lots of 50 feet or less and 20 feet for lots greater in width than 50 feet.
 - c. In no instance shall an accessory building or use be located within a dedicated easement right-of-way.
 - d. On through lots or double frontage lots where one of the front yards is intended to serve as the rear yard and is consistent with the other lots on the block, detached accessory buildings may be erected within twelve (12) feet of the intended rear lot line and five (5) feet of the side lot line.
 - e. Accessory buildings for townhouses may be constructed up to the interior lot line following the principal building scheme.
6. **Time of Construction.** No accessory building shall be constructed upon a lot until the construction of the main building has been actually commenced.
 7. **Limitation of Structures.** No permit shall be issued for the construction of more than one accessory building and/or structure on any single lot except for an accessory building for storage not exceeding one hundred fifty (150) square feet in addition to a detached garage.
 8. **Encroachment.** All buildings, including those of less than 120 square feet, may not encroach into required easements.
 9. **Outside Wood boilers.** Outside wood boilers and outside solid fuel burning furnaces are prohibited in all residential and common zones. This subsection specifically includes any outdoor wood boilers located or installed in an accessory building.
 10. **Storage Containers.** The placement or use of any storage container as an accessory building, storage building, or living unit on residentially zoned property is prohibited.

CHAPTER 4-07

LAND SUBDIVISION

SECTIONS:

- 4-0701. Purpose.
- 4-0702. Pre-Application Conference.
- 4-0703. Preliminary Plat.
- 4-0704. Final Plat.
- 4-0705. Amendment of Kindred Plan 2020.
- 4-0706. Filing of Subdivision Plat.
- 4-0707. Lot Splits. (Source: Ord. 2016-65, Sec. 1)

This section of the code addresses the procedures, requirements and administration for dividing and subdividing land for development of residential, commercial, industrial and other urban uses. It requires a pre-application conference, preliminary plat and final plat submission for review and approval by the City of Kindred after public hearing before the Planning Commission.

4-0701. **Purpose.**

1. To insure the orderly development of the City of Kindred.
2. To provide for proper arrangement of streets in relation to other existing and planned streets.
3. To provide for adequate and convenient open spaces for traffic, utilities, fire fighting, recreation, light and air.
4. To facilitate adequate provisions for access, placement of water and sewer systems, schools, and public open spaces.
5. To avoid development of unsuitable areas because of soil, drainage and other physical limitations.
6. To facilitate subdivision of larger parcels into smaller parcels and lots.
7. To implement the Kindred Plan 2020.

4-0702. **Pre-Application Conference.** Prior to the filing of an application for review of a preliminary plat, the subdivider/developer shall consult the Code Administrator for advice and assistance for the purpose of reviewing the procedures and requirements of this code and related city policies and plans which may affect the proposed development.

4-0703. **Preliminary Plat.** The preliminary plat shall be prepared by a registered land surveyor and shall be submitted to the Planning Commission for review and recommendation to the City Council. The preliminary plat shall cover the entire contiguous area owned or controlled by the subdivider if it is under twenty (20) acres even though only a small portion of it is proposed for the development at the time. The subdivider may be required to submit a development plan if the owner/agent controls more than twenty (20) contiguous acres of land.

1. **Preliminary Plat Content.** The preliminary plat shall include the following requirements, data and information.
 - a. The preliminary plat drawn at a scale of not smaller than 1" = 100'.
 - b. Name and location of the subdivision.
 - c. Date, graphic scale and north point.
 - d. Boundary line of the proposed subdivision indicated by a solid heavy line, accurately drawn to scale and showing distances and bearings.
 - e. Total acreage within the subdivision.
 - f. Location, right-of-way width and names of any existing or proposed streets including width of public ways, easement, railroad, utility rights-of-way, parks and other public open spaces, permanent buildings or structures, corporate boundaries and section lines within or adjacent to the subdivision.
 - g. Location of existing property lines, buildings, drives, streams, water courses, wooded areas and drainage ways.
 - h. Existing zoning of the proposed subdivision and the zoning of the adjacent tracts of land.
 - i. Boundary line of adjacent tracts of land or lots showing owners' name.
 - j. Contour at vertical intervals of not more than two (2) feet.
 - k. Location and dimension of any site to be reserved or dedicated for public uses including drainage ways, parks and open spaces.

- l. Layout of the proposed streets, alleys, cross walks and easements, showing widths and street names.
 - m. Layout, number and dimensions of all lots and blocks.
 - n. Parcels of land intended to be dedicated or reserved for public use or set aside for the use of property owners within the subdivision.
 - o. Building setback lines, showing dimensions.
2. **Preliminary Plat Submission Requirements.**
- a. The subdivider shall apply on appropriate forms provided by the City Auditor to the Planning Commission at least one week prior to its regularly scheduled meeting.
 - b. The subdivider shall submit two (2) prints of the preliminary plat to the City Auditor at the time the application is made. The plat shall comply with the provisions of this Code.
 - c. The subdivider may submit any instrument and covenant whereby he/she proposes to restrict land use in the subdivision for protecting the proposed development.
 - d. The Planning Commission may require the subdivider to provide other data related to drainage, soil suitability, financing of improvement and other related information.
3. **Development Plan.** Where a development plan is required for a tract of land, the following shall be included in the plan.
- a. Location of existing property lines, buildings, drives, streams, wooded areas and other significant natural features.
 - b. General layout of proposed streets and location of blocks and intended uses.
 - c. Location of open spaces and facilities for public uses.
 - d. Existing drainage pattern.

- e. The development plan shall be drawn at a scale of not smaller than one inch representing four hundred (400) feet.
- f. Soil and flood plain data.
- g. The Planning Commission may require other information as a part of the development plan.

4. **Preliminary Plat Review Process.**

- a. The Planning Commission, after a public hearing (Section 4-1003), shall review the preliminary plat and recommend to the City Council for approval, approval with conditions or denial of the preliminary plat. The Planning Commission may require additional information before it takes action.
- b. The conditional approval of a preliminary plat shall clearly state the nature and extent of the conditions which shall be met before a final plat is submitted for review and approval. Tentative approval of a preliminary plat by the City Council is not an acceptance of a subdivision plat, but is an expression of approval of a general plat as a guide to preparation of a subdivision for final plat review and approval.
- c. The City Council may require the subdivider to submit a revised preliminary plat before the subdivider proceeds with the preparation of the final plat. The subdivision of land outside the city but within the extra-territorial area, the city shall require annexation of land to the city. The developer shall be required to pay for the cost of extension of public utilities, if the proposed subdivision is not contiguous to the present development and is separated by undeveloped parcel(s) of land.
- d. Approval of the preliminary plat shall be effective for a period of two (2) years within which a final plat shall be prepared. If the final plat is not submitted within this time period, the City Council may require the subdivider to resubmit the preliminary plat for review and approval.

4-0704. **FINAL PLAT.** The final plat shall cover the area which is realistically designated for transfer or sale of lots.

1. **Final Plat Content.** The final plat shall conform to all provisions of this Code and conditions set forth by the City Council.
 - a. Name of subdivision.
 - b. Location by section, township and range, or other legal description.
 - c. Names of owners and surveyor or other professional person preparing the plat.
 - d. Plat map with scale of one inch representing one hundred (100) feet or less.
 - e. Date, graphic scale and north point.
 - f. Boundary line of subdivision based on an accurate traverse, showing distances and bearings.
 - g. Exact location, width and name of all streets within and adjoining the subdivision, and the exact location of all alleys and crosswalks.
 - h. True bearing and distances to the nearest established street lines or official monuments which shall be accurately described on the plat.
 - i. City, township, county or section lines accurately tied to the boundary lines of the subdivision by bearing and distance.
 - j. Radii, internal angles, points of curvature, tangent bearings and lengths of all arcs.
 - k. All easements for rights-of-way provided for public services and public utilities.
 - l. All lot numbers and lot lines, with accurate dimensions in feet and hundredths.
 - m. Accurate location of all monuments, which shall be of material and size in accordance with the standards of the city and the state.
 - n. Accurate outlines and legal descriptions of any areas to be dedicated or reserved for public use, with the purposes indicated thereon, and of any area to be reserved by deed covenant for common use of all property owners.

- o. Where required, detailed engineering drawings, cross-sections or profiles of streets, utility lines, catch basins or other installations of improvements as installed.
 - p. Certification by registered surveyor to the effect that the plat represents a survey made by him, and that the monuments shown thereon exist as located and that all dimensional and geodetic details are correct.
 - q. Notarized certification by the owners of the land of the adoption of the plat and the dedication of sewers, water distribution lines and other improvements and of streets and other public areas.
2. **Final Plat Submission Requirements.** The subdivider shall apply on appropriate forms to the Planning Commission for approval of the final plat, if he/she holds a valid approval of the preliminary plat.
- a. The subdivider shall submit the final plat to the Planing Commission at least one week before the regularly scheduled meeting of the Planning Commission.
 - b. The final plat shall comply with all provisions of this Code and conditions and requirements set forth by the City Council as a part of review and approval of the preliminary plat. All filing fees shall be paid to the city at the time of filing the final plat for approval.
 - c. The Planning Commission may require the subdivider to submit detailed drawings for grading of the lots, blocks, streets, detailed drawings for pavement, curb, gutter and sidewalk, drawings for installation of water, sanitary and storm sewer facilities.
3. **Final Plat Review Process.**
- a. If the Planning Commission, after a public hearing, finds the final plat in conformance with the requirements stipulated for approval of the preliminary plat, it shall recommend for approval to the City Council.
 - b. For subdivisions outside of the city corporate limits, a print of the final plat shall be submitted to the Cass County Commission. The

approval of the County Commission is necessary for all plats outside of the city.

- c. The subdivider shall prepare an estimate of the cost of providing the required improvements based on the city design standards for street, curb, gutter, sidewalk, sanitary sewer, storm sewer and water lines.
- d. If all conditions and requirements have been met, the Planning Commission shall recommend approval of the final plat to the City Council.
- e. The City Council, after a public hearing, may approve, deny or modify the final plat.

4-0705. **AMENDMENT OF KINDRED PLAN 2020.** Upon final approval of a subdivision involving the creation of new streets, the widening, decreasing or vacation of existing streets or alleys, or the creation, enlargement or decrease of other lands devoted to public use, the City Council shall, at the same time, and without further public hearing, approve such change in streets, alleys or public lands as an amendment to the Kindred Plan 2020, if it finds appropriate. In the case of streets, alleys and public lands outside of the city corporate limits, notice of action of the City Council and appropriate recommendations shall be forwarded to the Cass County Commission.

4-0706. **FILING OF SUBDIVISION PLAT.** The subdivider, upon approval of the final plat, shall file the plat with the Register of Deeds of Cass County. Sale of any lot prior to filing of the final plat is in violation of this Code.

4-0707. **LOT SPLITS.** (Source: Ord. 2016-65, Sec. 1)

1. **Conditions.** A lot split may be exempt from the platting requirements of this ordinance if the following conditions are met:
 - a. The lot split does not contain more than two lots.
 - b. The two lots conform to the requirement of the respective zoning district for width and area coverage of each lot.
 - c. Any lot may be split only once under these provisions.
 - d. The lot split is not part of a continuing practice of lot splitting for a particular area to circumvent platting or replatting requirements of this ordinance.
 - e. The lot split does not violate any provisions of city ordinances, plans, or any other state and local ordinances.

2. **Procedure.** An application for lot split shall be submitted to the Code Administrator. If the Code Administrator determines that conditions are met, he/she shall schedule a review of the application before the Planning Commission. Written notice of application shall be sent to all property owners within 150 feet of the proposed lot, excluding street rights-of-way and publicly owned properties before the meeting. The board may approve, modify or deny the application for lot split.
3. **Application.** A fee similar to application for rezoning requests shall be required for each application. If the request for lot split is denied, the fee shall be refunded.
4. **Transfer of Lots.** No owner, or agent of owner, shall transfer, sell or agree to sell any land before the lot split, replat, or plat is approved as provided under the requirements of this ordinance.

CHAPTER 4-08

DESIGN STANDARDS

SECTIONS:

- 4-0801. Conformance.
- 4-0802. Street Design.
- 4-0803. Block Design.
- 4-0804. Lot Design.
- 4-0805. Street Names.
- 4-0806. Utility Easements.
- 4-0807. Grading and Drainage.
- 4-0808. Drainage Way Easement.
- 4-0809. Landscaping.
- 4-0810. Street Lights.
- 4-0811. Dedication of Land for Parks and Playgrounds.

4-0801. **CONFORMANCE.** The subdivider shall prepare the preliminary and final plat in conformance with the standard set forth in this Code and the current city standards.

4-0802. **STREET DESIGN.**

1. The arrangement, character, classification, extent, width, grade, and location of all streets shall be designed in relation to existing and planned streets, topographic conditions, existing natural features, flood plain, public convenience and safety and the proposed uses of land served by such streets and to the most advantageous development of adjoining uses.
2. Where it is not shown on the Kindred Plan 2020, the arrangement of streets in a subdivision shall either provide for the continuation or appropriate projection of existing streets in surrounding areas or conform to a plan approved by the Planning Commission to meet a particular situation.
3. Where a subdivision abuts or contains an existing or proposed major street or highway, the Planning Commission may require: (a) service streets, reverse frontage street with screen planting in a reservation strip along the rear property line; (b) deep lots with rear service alleys abutting the major street; and (c) highway, or such other treatment as may be necessary for adequate protection of residential properties and for separation of through and local traffic.

4. Where a subdivision borders on or contains a railroad right-of-way, the Planning Commission may require a street approximately parallel to and on each side of the right-of-way, at a distance suitable for the appropriate use of the intervening land. Such distances shall be determined with due regard for the requirements of approach grades and future grade separations. The Planning Commission shall discourage direct access to Cass County Highway 15.
5. Reserve strips in private ownership controlling access to streets are prohibited.
6. Street jogs with centerline offsets of less than one hundred fifty (150) feet shall be avoided.
7. A tangent at least one hundred (100) feet long shall be introduced between reverse curves on major streets.
8. Streets shall be laid out so as to intersect as nearly as possible at right angles, and no street shall intersect any other street at less than eighty (80) degrees.
9. Curb radii on all block corners shall be at least ten (10) feet and a five (5) foot radius shall be used at intersections of streets and alleys.
10. Street rights-of-way shall be not less than the following:
 - a. Major arterial streets, one hundred (100) feet;
 - b. Minor arterials and collector streets, eighty (80) feet;
 - c. Local streets, sixty (60) feet;
 - d. Cul-de-sac, one hundred (100) feet in diameter for a suitable turnaround;
 - e. Alleys, residential district, twenty (20) feet;
 - f. Sidewalks, four (4) feet;
11. Half streets are prohibited except where essential to the reasonable development of the subdivision and in conformity with the other requirements of this Code and where the City Council finds it practicable to require the dedication of the other half when the adjoining property is subdivided. Wherever an existing half street is adjacent to a tract to be subdivided, the other half of the street shall be platted within such tract.

12. Cul-de-sacs shall not be longer than five hundred (500) feet.
13. Intersections of more than two (2) streets at a point shall not be permitted.
14. Dead-end streets without a suitable turnaround are prohibited.

4-0803. **BLOCK DESIGN.** The length, width, and shape of blocks shall be suited to the planned use of land, zoning requirements, needs for convenient access, control of safety of street traffic, and the topographic conditions.

1. Residential block length shall not exceed nine hundred (900) feet. The length of blocks is considered to be the distance from one street centerline to opposite street centerline and is measured through adjacent back lot lines or through the center of the block.
2. Pedestrian crosswalks not less than ten (10) feet wide may be required in blocks longer than six hundred (600) feet where the crosswalks are deemed by the City Council to be essential to provide circulation, or access to schools, playgrounds or other community facilities.
3. The width of blocks shall generally be sufficient to allow two (2) tiers of lots and shall be at least two hundred and fifty (250) feet wide.
4. Blocks intended for commercial and industrial use shall be specifically designated for such purposes with adequate space set aside for off-street parking and delivery facilities. The City Council may require service drives or frontage roads along major streets for business and industry.

4-0804. **LOT DESIGN.**

1. The shape, size, and orientation of the lots shall be appropriate for the location of the subdivision. For residential low density a north-south lot orientation is encouraged. Residential lot dimensions within the city corporate limits shall be subject to the provisions of the appropriate zoning districts under Sections 4-0501 through 4-0504.
2. Non-residential lots shall be subject to the provisions of commercial and industrial zoning districts stipulated in Sections 4-0505 through 4-0507.

3. Residential lot dimensions within the extra territorial planning area in Agricultural District shall be subject to the provisions of Section 4-0501.
4. Residential lots abutting major streets, including Cass County Highway 15, shall have extra depth of at least twenty (20) feet to allow for proper setbacks.
5. All lots shall front a public street.
6. Residential corner lots shall have an extra width of ten (10) feet to permit adequate building setbacks from the side streets.
7. Lot lines shall follow the city corporate limits.
8. Double frontage lots shall be avoided except where essential to provide separation of development from arterial and limited access streets such as Cass County Highway 15.
9. Depth and width of lots reserved or laid out for commercial or industrial uses shall be adequate to provide for off-street parking and service facilities required by the type of use and development and the provisions of the appropriate zoning district.

4-0805. **STREET NAMES.**

1. The Planning Commission may disapprove the name of any street shown on the plat which has already been used elsewhere in the area, or because of similarity that may cause confusion.
2. Where a street maintains the same general direction, except for curvilinear changes for a short distance, the same name shall continue for the entire length of the street.
3. A name assigned to a street, which is not presently a through street, shall be continued for the separate part of a through street.

4-0806. **UTILITY EASEMENTS.**

1. Easements across lots or along rear or side lot lines shall be provided for utilities where necessary and shall be at least five (5) feet wide on each side of the lot line and shall be designated as "utility easement".

2. All lots shall be served by underground electric, cable television and telephone lines unless waived by the City Council due to topographic conditions or excessive costs.
3. All utility lines for electric power, cable television and telephone service carried overhead shall be placed in utility easement.
4. Utility lines installed in the utility easement shall not be closer than one foot to the property line or three (3) feet to any monument.

4-0807. **GRADING AND DRAINAGE.**

1. When required, the subdivider shall provide a detailed grading and drainage plan showing the grades of streets and drainage improvements.
2. The drainage shall not discharge into any sanitary sewer facility.
3. The drainage facilities shall be located in street right-of-way or in drainage easements.
4. The grading and drainage system shall be approved by the City Council.
5. Grading established in any subdivision shall not be changed without approval of the City Council.

4-0808. **DRAINAGE WAY EASEMENT.** Where a subdivision is traversed by a water course or drainage way, an adequate drainage way easement shall be provided. The location, width, alignment and grading of such easement shall be set by the City Council to accommodate the anticipated discharge from the property being subdivided and also the anticipated run-off from the adjoining properties.

4-0809. **LANDSCAPING.**

1. The planting of trees and shrubs of an appropriate species and at appropriate locations are required in all new plats of subdivisions.
2. For residential subdivisions abutting major streets including Cass County Highway 15, there shall be a buffer area for planting of trees and shrubs to provide a sense of esthetic as well as protection against noise and vibration caused by the moving traffic.
3. For non-residential uses abutting the major streets and County 15, the City Council requires submission of a

landscaping plan for each lot as a prerequisite for issuing a building permit.

Source: Ord. 2013-47, Sec. 10 (2013)

4-0810. **STREET LIGHTS.** Street lights and their location shall be in accordance with the minimum standards established by the City Council.

4-0811. **DEDICATION OF LAND FOR PARKS AND PLAYGROUNDS.** All preliminary and final plats shall designate area(s) for parks and playgrounds for no less than 10% of the area being platted. The parcel(s) to be dedicated shall be usable and accessible to the adjoining properties. Unusable land located in the drainage ways and land difficult to use for park and playground purposes shall not be accepted. The City of Kindred may waive the requirements for dedication of land for parks and playgrounds if it finds that the proposed site would be too small or unsuitable for meeting the needs of the new development. In lieu of dedication, the City may require cash payment for the value of the land to be dedicated. Such funds shall only be used for park and playground land acquisitions or improvements.

Source: Ord. 2006-10, Sec. 1 (2006)

CHAPTER 4-09

REQUIRED IMPROVEMENTS

SECTIONS:

- 4-0901. Completion Assurance.
- 4-0902. Survey Monuments.
- 4-0903. Public Water.
- 4-0904. Sanitary Sewer.
- 4-0905. Storm Sewer.
- 4-0906. Grading and Surfacing.
- 4-0907. Curbs, Gutters and Sidewalks.
- 4-0908. Installation of Improvements.

Before installation of improvements in any subdivision, the City Council shall make a determination for improvements required, based on a schedule of improvements including the standards, and class of construction.

4-0901. **COMPLETION ASSURANCE.** To cover the cost of improvements, as determined by the City Council, the subdivider may post a bond or submit a letter of credit from an acceptable financial institution in an amount sufficient to construct such improvements.

4-0902. **SURVEY MONUMENTS.** The subdivider shall install survey monuments in all lots and block corners in the subdivision in accordance with the requirements of the State of North Dakota.

4-0903. **PUBLIC WATER.**

1. Where appropriate, water mains shall be installed so as to provide individual service to each lot within the subdivision.
2. Water mains shall extend to the boundary of the subdivision, except where in the opinion of the City Council, it is deemed impractical.
3. A rural water supply shall comply with the requirements of Cass County and State of North Dakota.

4-0904. **SANITARY SEWER.**

1. All subdivisions shall be provided with sanitary sewers to each lot.

2. Sanitary sewer shall be extended to the boundary of the subdivision, except where in the opinion of the City Council it is deemed impractical.

4-0905. **STORM SEWER.** The storm sewer drainage facilities shall be installed in accordance with the plans and specifications approved by the City Council.

4-0906. **GRADING AND SURFACING.** The full width of all rights-of-way shall be graded in accordance with the City of Kindred street standards.

4-0907. **CURBS, GUTTERS AND SIDEWALKS.** Concrete curbs and gutters, where appropriate, may be installed in all subdivisions in accordance with the City of Kindred standards. Where the city requires construction of a sidewalk, it shall be in accordance with the design standards established by the City Council.

4-0908. **INSTALLATION OF IMPROVEMENTS.** Construction of all improvements is contingent on approval by the City Council. The subdivider shall be responsible for furnishing the necessary data required for such approval.

CHAPTER 4-10

ADMINISTRATION AND ENFORCEMENT

SECTIONS:

- 4-1001. Organization.
- 4-1002. Code Administrator.
- 4-1003. Planning Commission.
- 4-1004. Board of Adjustment.
- 4-1005. City Council.

4-1001. **ORGANIZATION** To administer this Code the following bodies are hereby vested with authority to act in behalf of City of Kindred.

The Code Administrator

The Planning Commission

The Zoning Board of Adjustment

The City Council

4-1002. **CODE ADMINISTRATOR.** The Code Administrator is a duly appointed city official authorized by the City Council and is responsible to administer this Code, to assist the Planning Commission, and the City Council on any matter related to this Code. The Code Administrator shall consult with the City Engineer on all design and construction matters under this Code.

1. **Duties:**

- a. Issue all zoning certificates, permits and maintain records thereof.
- b. Issue all building and repair permits.
- c. Maintain zoning related records and zoning district map including records of all amendments, conditional uses and variances.
- d. Receive, file and forward in behalf of the City Council to the Planning Commission all applications for zoning amendments, site approvals and conditional uses.
- e. Prepare and publish notices and notify adjoining property owners.

- f. Notify, in writing, the property owner or user upon finding violation of this Code and cite the nature of violation clearly, require compliance and a report of the findings to the City Council.
 - g. Receive, file and forward to the Planning Commission and the City Engineer all applications for preliminary and final plats and the supporting documents.
 - h. Receive, file and forward all requests for variances to the Board of Adjustment.
 - i. Report all zoning and land subdivision violations to the City Council.
2. **Interpretation of Regulations.** All questions of interpretation of this Code shall be presented to the Board of Adjustment.
3. **Building Permit Applications.** Any person or persons intending to construct or reconstruct or relocate a building or make alteration, shall, before proceeding with the work, or commencing any excavation in connection with it, obtain a permit from the Code Administrator. These provisions shall also apply to manufactured homes.
- a. Each application for a building permit shall be accompanied by a legal description and a map showing the actual dimension of the lot to be built upon, the size, shape and location of the building for observing the yard requirements of this Code.
 - b. The application shall specify the type of the building, structure, material of which it is composed, the part or portion of the lot to be occupied by the principal building and accessory buildings and the building cost.
4. **Building Permits.** The Code Administrator shall issue a building permit if the proposed building or structure conforms to zoning and building provision of this Code. If the Code Administrator denies a permit because of nonconformance with this Code, he/she shall inform the applicant of his/her right to appeal to the Board of Adjustment.
5. **Fees.** The Code Administrator shall charge and collect a fee for zoning applications, conditional use permits, variances, and preliminary and final plats in accordance with the fee schedule established by the City Council.

6. **Certificate of Occupancy or Use.** The Code Administrator shall inspect the completed building, including placement of manufactured homes and assurance that all provisions and conditions set forth under this Code are met. In the event the Code Administrator finds violations and deviations from the terms and conditions of this Code, he/she shall make a report and recommendation for action to the City Council.
7. **Conditional Use and Site Approval Permits.** The Code Administrator shall issue a conditional use or site approval permit upon approval of the application by the City Council subject to the provisions of Chapter 4-11.
8. **Variances.** The Code Administrator shall issue a permit if the Board of Adjustment approves the variance. The terms of the variance shall be stipulated in the permit, subject to the provisions of Chapter 4-11. The applicant may appeal to the City Council, if he/she is in disagreement with the action of the Board of Adjustment.
9. **The Final Plat.** The City Mayor shall sign the final plat, if the City Council has approved the final plat subject to the provisions of Chapters 4-07, 4-08 and 4-09 of this Code.

4-1003. **PLANNING COMMISSION.** The Planning Commission shall consist of at least five members appointed by the City Council.

1. **Duties:**

- a. To hear and act on all applications for amendments to zoning districts, plats of subdivisions and take action for recommending approval, denial or approval with modification to the City Council.
 - b. To hear and act on all applications for conditionally permitted uses and site approvals in the manner prescribed in this Code and make recommendations to the City Council.
 - c. The action of the Planning Commission is advisory to the City Council and all final decisions rest with the City Council.
2. **Notice of Hearings.** The Planning Commission shall fix a reasonable date for hearing of applications for zoning district amendments, conditional use permits, site approval and preliminary and final plats applications and other matters before it, give public notice thereof in the official newspaper of the city at least once a week for two consecutive weeks prior to the hearing. The

notices shall give time and place of hearing and shall state the purpose of the hearing and that the applications and supporting documents for zoning district amendments and conditional use permits shall be available for public inspection by the Code Administrator.

3. Meetings of the Planning Commission shall be held at the call of the Chairperson and at such other times as the Planning Commission may determine. All meetings shall be open to the public and any person may testify for or against a petition.

4-1004. **BOARD OF ADJUSTMENT.** The Zoning Board of Adjustment shall consist of five members appointed by the City Council. The City Council may act as the Zoning Board of Adjustment.

1. **Duties.** Hear and decide petition(s) for variance from the terms of this Code that shall not be contrary to the public interest, plans and policies of the City of Kindred.
2. **Notice of Hearing.** The Zoning Board of Adjustment shall fix a reasonable date for hearing the application for variance(s), give public notice in the official newspaper of the city at least once a week for two consecutive weeks prior to the hearing. The notices shall give time and place of hearing and shall state the purpose of hearing and that the application and supporting documents for variance shall be available for public inspection by the Code Administrator.

4-1005. **CITY COUNCIL.** The City Council maintains the authority for review, approval, modification and denial of recommendations of the Code Administrator, City Engineer and the Planning Commission.

1. **Duties:**
 - a. The City Council is responsible for approval, modification or denial of amendments to the text of this Code.
 - b. The City Council is responsible for approval, modification or denial of amendments to change the zoning district(s) boundaries.
 - c. The City Council is responsible for granting conditional use permits, preliminary and final plat approval and establishing a fee schedule for all permits issued by the Code Administrator.

- d. The City Council may hear the appeals from the action of the Board of Adjustment.
2. **Notice of Hearing.** The City Council may hold hearing(s) as required by this Code and the laws of the State of North Dakota.

CHAPTER 4-11

PROCEDURES FOR AMENDMENTS, CONDITIONAL USES,
VARIANCES AND PLATS OF SUBDIVISION

SECTIONS:

- 4-1101. Zoning District Amendments.
- 4-1102. Conditional Use Permits.
- 4-1103. Variances.
- 4-1104. Plat Approval.

4-1101. **ZONING DISTRICT AMENDMENTS.**

1. **Public Hearing Notice.** The Planning Commission shall hold a public hearing, a notice of which shall be published at least once a week for two weeks prior to the hearing in the official newspaper of the city. The notice of hearing shall include: (a) the time and place of hearing for the Planning Commission and the City Council; (b) description of the property by street address for platted lands and clearly identifiable location for the unplatted lands; (c) the proposed use, requested zoning district change; (d) time and place for public inspection of the documents submitted by the applicant before the hearing; and (e) notification to all property owners within 150 feet of the property in question.
2. **Public Hearings.** The Planning Commission at the hearing shall listen to all persons who may speak in support of or in opposition to the proposal. Upon the completion of its review, the Planning Commission shall make recommendation to the City Council. The Planning Commission may require additional information before it completes its findings and making its recommendations.
3. **Data Submission Requirements.** Petitions for zoning district change, conditional uses and site approval shall be submitted to the Code Administrator with the following information:
 - a. Legal description of the area proposed to be rezoned.
 - b. A site plan showing buildings and uses in the zoning district proposed to be changed and the requested zoning district classification.
 - c. A fee shall be paid in accordance with the schedule established by the City Council.

4. **Deliberation and Decision.** Following the hearing, the Planning Commission, upon due deliberation, shall make a report of its findings and recommendations to the City Council.

4-1102. **CONDITIONAL USE PERMITS.**

1. **Purpose.** The development of this Code is based upon division of the city into districts, within which district the use of land and building bulk and locations of building and structures are mutually compatible and substantially harmonious. However, there are certain uses which, because of their unique characteristics, cannot be properly classified as permitted uses in any particular district, without consideration, in each case, of impact of those uses upon neighboring premises. Such uses, nevertheless, may be necessary or desirable to be allowed in a particular district provided that due consideration is given to location, development and operation of such uses.
2. **Public Hearing Notice.** Shall be the same as the provisions set forth for public hearing notice for zoning district amendment in Section 4-1101(1).
3. **Public Hearings.** Shall be the same as the provisions set forth for public hearing for zoning district amendment in Section 4-1101(2).
4. **Data Submission Requirements.** Shall be the same as the provisions set forth for data submission requirements for zoning district amendment in Section 4-1101(3).
5. **Deliberation and Decision.** Shall be the same as the provisions set forth for deliberation and decision for zoning district amendment in Section 4-1101(4).
6. **Standards.** No application for conditional use shall be approved unless the City Council finds that all of the following conditions are present.
 - a. That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
 - b. That the uses, values and enjoyment of other property in the area for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the conditional use.

- c. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding properties for uses permitted in the district.
- d. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being provided.
- e. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic impact on the area.
- f. That the conditional use shall conform to all applicable regulations of the district in which it is located.

7. **Conditions and Guarantees.**

- a. Prior to the decision on any conditional use, the Planning Commission may stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the conditional use as deemed necessary to promote the public health, safety and general welfare of the city and to secure compliance with the standards and requirements specified in Section 4-1102(6).
- b. No alteration of conditionally permitted uses shall be permitted unless approved by the City Council.

4-1103. **VARIANCES.** Variance from the dimensional standards of this Code may be granted provided that the applicant establishes proof of practical difficulty or undue hardship. Use variances shall be prohibited.

- 1. **Public Hearing Notice.** The Board of Adjustment shall hold a public hearing, which shall be published at least once a week for two weeks prior to the hearing in the official newspaper of the city. The notice of hearing shall include: (a) the time and place of hearing; (b) description of the property by street address for platted lands and clearly identifiable location for the unplatted lands; (c) the proposed use and zoning district in which the property is located; (d) time and place for public inspection of the documents before the hearing.
- 2. **Public Hearings.** Shall be the same as the provisions set forth for public hearing notice for zoning district amendment in Section 4-1101(1).

3. **Data Submission Requirements.** Petitions for variances shall be submitted with the following information.
 - a. Legal description of the property.
 - b. A map showing the existing land uses and zoning district classification of the area.
 - c. The reason for the variance request.
 - d. A proof of whether the hardship is unique to the applicant's property.
 - e. Any other information that the Board of Adjustment deems necessary.
4. **Deliberation and Decision.** In making its finding, the Board of Adjustment shall ascertain that the requests for variance is consistent with the Kindred Plan 2020 and meets all requirements of this Code and other regulations of the City of Kindred.
5. **Standards.** No application for variance shall be approved unless the Board of Adjustment finds that all of the following are present.
 - a. That special conditions and circumstances exist which are peculiar to the premises and which are not applicable to other premises in the same zoning district.
 - b. That literal interpretation of this Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district.
 - c. That the special conditions and circumstances have not resulted from actions of the applicant.
 - d. That granting the variance requested will not confer upon the applicant any special privileges that are denied by this Code to other premises.
6. **Justification.**
 - a. That the reasons set forth in the application justify the granting of the variance.
 - b. The variance is the minimum which would make possible a reasonable use of the premises.
 - c. That the granting of variance will be in harmony with the general purpose of this Code and will not

be injurious to the surrounding premises, neighborhood or the city and will not be contrary to the Kindred Plan 2020 and the purposes of this Code.

d. That there is practical difficulty or unnecessary hardship in use of the premises if the strict application of the regulations are to be carried out.

7. **Appeal.** The decision of the Board of Adjustment may be appealed to the City Council. The City Council after a public hearing subject to the provision of Section 4-1101 shall determine to confirm or reject the decision of the Board of Adjustment. The decision of the City Council may be appealed to Cass County District Court under the laws of North Dakota.

4-1104. **PLAT APPROVAL.** The procedure for approval of the preliminary and final plats shall be the same as the zoning amendment procedure under Chapter 4-11 requiring a public hearing before the Planning Commission and the City Council.

CHAPTER 4-12

CITIZENS PROTEST

SECTIONS:

4-1201. Citizens Protest.

4-1201. **CITIZENS PROTEST.** If a protest to code amendments (rezoning), conditional use permits, and subdivision plats is signed by owners of 20% or more of the area of the lots included in such proposed change, or of the area adjacent, extending one hundred and fifty (150) feet from the property to be changed, the amendment shall not become effective except by a favorable vote of at least three-fourths (3/4) of the members of the City Council.

CHAPTER 4-13

VIOLATIONS AND PENALTIES

SECTIONS:

4-1301. Violations and Penalties.

4-1301. **VIOLATIONS AND PENALTIES.** Anyone who violates the provisions of this Code or fails to comply with any of its requirements, upon conviction, shall be punished by a fine of no more than \$200 per day. Each day that a violation continues shall constitute a separate offense.

TITLE V.

BUILDINGS

CHAPTERS:

- 5-01. International Building Code.
- 5-02. Dangerous Buildings.
- 5-03. Moving Buildings.
- 5-04. Floodplain Management. (Source: Ord. 2022-99, Sec. 1)
- 5-05. Minimum Housing Standards.
- 5-06. International Property Maintenance Code.
- 5-07. International Residential Code.
- 5-08. International Existing Building Code.
- 5-09. International Energy Conservation Code.

CHAPTER 5-01

INTERNATIONAL BUILDING CODE
(Source: Ord. 2011-33, Sec. 1 [2011])

SECTIONS:

- 5-0101. Adoption of International Building Code.
 - 5-0102. Modifications of International Building Code.
 - 5-0103. Penalty.
 - 5-0104. Appeals
-

5-0101. Adoption of International Building Code. The erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area, and maintenance of buildings or structures in the City of Kindred, North Dakota, shall meet with the provisions of the rules and regulations of the 2009 edition of the International Building Code, of the International Code Council as the same are now established in said code, a copy of which is on file in the office of the Building Administrator for the City of Kindred, with the exception of the sections hereinafter set forth affecting local conditions in the City of Kindred, which sections shall be substituted for and in lieu of like sections or paragraphs in said International Building Code; and the City Council of said City of Kindred, by this section hereby approves and adopts such rules and regulations, as so modified, for use and application in the City of Kindred, North Dakota, as well as for any area within the extraterritorial zoning jurisdiction of the City. Provided, that any amendments of the 2009 edition of the International Building Code may be adopted by the City by resolution.

5-0102. Modification of International Building Code. The International Building Code as adopted in Section 5-0101 is hereby changed and amended as follows:

SECTION 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the Building Code of ~~(NAME OF JURISDICTION)~~ the City of Kindred hereinafter referred to as "this code."

SECTION 101.4.3 is hereby amended to read as follows:

101.4.4 Plumbing. ~~The provisions of the "International Plumbing Code" shall apply to the installation, alterations, repair and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewage system and~~

~~all aspects of a medical gas system. The provisions of the "International Private Sewage Disposal Code" shall apply to private sewage disposal systems. Wherever the term "International Plumbing Code" and/or the "International Private Sewage Disposal Code" is used in the International Building Code, it shall mean the North Dakota State Plumbing Code.~~

SECTION 104.8 is hereby amended to include a new final paragraph as follows:

104.8 Liability. The building official, member of the board of appeals or employee charged with the enforcement of this code. While acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act or omission performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be afforded all the protection provided by the city's insurance pool and immunities and defenses provided by other applicable state and federal laws and shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The building official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

SECTION 105.2 is hereby amended to read as follows:

105.2 Work exempt from permit. ...

Building:

2. Fences not over 6 8.5 feet high.

~~6. Sidewalks and driveways not more than 30 inches (762 mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route.~~

11. Swings and other playground equipment accessory to detached one- and two-family dwellings.

~~12. Window awnings supported by an exterior wall that do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support of group R-3 and U occupancies.~~

14. Reroofing.

SECTION 107.2.5.1 is hereby deleted in its entirety.

SECTION 107.3.1 is hereby amended to read as follows:

106.3.1. Approval of construction documents. When the building official... ..One set of construction documents so reviewed shall be retained by the Building Official. ~~The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the building official or a duly authorized representative.~~

SECTION 109.2 is hereby amended to read as follows:

108.2 Schedule of permit fees. On buildings, structures, electrical, gas, mechanical, and plumbing systems or alterations requiring a permit, a fee for each permit and plan review shall be paid as required, in accordance with the schedule as established by the ~~applicable governing authority~~ Kindred City Council. The plan review fees specified in this subsection are separate from, and in addition to, permit fees. When submittal documents are incomplete or changed so as to require additional plan review or when the project involves deferred submittal items as defined in Section 106.3.4.2, an additional plan review fee

shall be charged in an amount not to exceed 50% of the building permit fee established in Section 109.2.

SECTION 110.3.3 is hereby deleted in its entirety and subsequent sections renumbered accordingly.

SECTION 113 is hereby deleted in its entirety.

SECTION 305.2 is hereby amended to read as follows:

305.2. Day care. The use of a building or structure, or portion thereof, for educational, supervision or personal care services for more than ~~five~~ eighteen children older than 2½ years of age, shall be classified as a Group E occupancy.

SECTION 308.3.1 is hereby amended to read as follows:

308.3.1. Child care facility. A child care facility that provides care on a 24-hour basis to more than ~~five~~ eighteen children 2½ years of age or less shall be classified as Group I-2.

SECTION 308.5 is hereby amended to read as follows:

308.5. Group I-4, day care facilities. ...A facility such as the above with ~~five~~ eighteen or fewer persons shall be classified as a Group R-3 or shall comply with the International Residential Code...

SECTION 308.5.2 is hereby amended to read as follows:

308.5.2. Child care facility. A facility that provides supervision and personal care on less than a 24-hour basis for more than ~~five~~ eighteen children 2½ years of age or less shall be classified as Group I-4.

Exception: A child day care facility that provides care for more than ~~five~~ eighteen but no more than 100 children 2½ years or less of age, when the rooms where such children are cared for are located on the level of exit discharge and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E.

SECTION 310.1 is hereby amended to read as follows:

310.1 Residential Group R ...

R-3 Residential occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4 or I, including:

Buildings that do not contain more than two dwelling units.

Adult facilities that provide accommodations for five or fewer persons of any age for less than 24 hours.

Child care facilities that provide accommodations for ~~five~~ eighteen or fewer persons of any age for less than 24 hours.

Congregate living facilities with 16 or fewer persons.

Adult and child care facilities that are within a single-family home are permitted to comply with the International Residential Code as adopted by the City of Kindred.

SECTION 406.1.4 PARAGRAPH 1 is hereby amended to read as follows:

406.1.4 Separation. Separations shall comply with the following:

1. ...Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. ~~Doors shall be self-closing and self-latching.~~ ...

SECTION 706.6 is hereby amended to add Exception 6 to read as follows:

706.6 Vertical continuity. ...

Exceptions: ...

6. Fire walls installed within detached structures of Group U occupancy may terminate at the underside of the roof sheathing provided such walls are not required to be fire resistive construction due to proximity to property lines.

SECTION 801.5 is hereby amended to read as follows:

801.5. Applicability. For buildings in flood hazard areas ~~as established in Section 1612.3,~~ interior finishes, trim and decorative materials below the design flood elevation shall be flood-damage-resistant materials in accordance with the requirements of the Ordinances of the City of Kindred.

SECTION 903.2.7 Item #4 is hereby deleted in its entirety.

SECTION 903.3.1.1 is hereby amended to add second paragraph to read as follows:

[F] 903.3.1.1 NFPA 13 sprinkler systems. Where the provisions of this code require . . .

Sprinkler heads in unoccupied mall tenant spaces may be installed at ceiling height if allowed by the code official. Permission will be granted on an individual basis and requires written documentation from the code official. Combustible storage shall not be allowed in these unoccupied tenant spaces if sprinkler heads are installed at ceiling height. Signage shall be provide outlining the storage restrictions.

SECTION 907.2.11.1 is hereby amended to add item #4 to read as follows:

[F] 907.2.11.1 Group R-1. ...

4. In dwelling units where the ceiling height of a room open to the hallway serving the sleeping rooms exceeds that of the hallway by 24 inches (610 mm) or more, smoke detectors shall be installed in the hallway and in the adjacent room.

SECTION 907.2.11.2 is hereby amended to add item #4 to read as follows:

[F] 907.2.11.2 Groups R-2, R-3, R-4 and I-1. ...

4. In dwelling units where the ceiling height of a room open to the hallway serving the sleeping rooms exceeds that of the hallway by 24 inches (610 mm) or more, smoke detectors shall be installed in the hallway and in the adjacent room.

Section 1009.1 is hereby amended to add an Exception 5 to read as follows:

1009.1 Stairway width. ...

5. Stairways used only to attend equipment or private stairways serving an occupant load of 10 or fewer persons and which are not accessible to the public.

Section 1009.4, Exception 5 is hereby amended to read as follows and Exception 8 is hereby added:

1009.4 Stair treads and risers. ...

Exceptions: ...

5. In occupancies in Group R-3, as applicable in Section 101.2, within dwelling units in occupancies in Group R-2, as applicable in Section 101.2, and in occupancies in Group U, which are accessory to an occupancy in Group R-3, as applicable in Section 101.2, the maximum riser height shall be ~~7.75 inches (197 mm)~~ 8 inches and the minimum tread depth shall be ~~10 inches (254 mm)~~ 9 inches, the minimum winder tread depth at the walk line shall be 10 inches (254 mm), and the minimum winder tread depth shall be 6 inches (152 mm). A nosing not less than 0.75 inch (19.1 mm) but not more than 1.25 inches (32 mm) shall be provided on stairways with solid risers where the tread depth is less than 11 inches (279 mm). ...
6. ***
7. ***
8. Stairways used to attend equipment or private stairways serving an occupant load of 10 or fewer persons and which are not accessible to the public are permitted to have a handrail on one side only.

Section 1009.10 Exceptions 6 and 7 are hereby added to read as follows:

1009.10 Handrails. Stairways shall have handrails on each side and shall comply with Section 1012. Where glass is used to provide the handrail, the handrail shall also comply with Section 2407.

Exceptions:

6. Vehicle service pit stairways are exempt from the rules for stairway railing and guards, if they would prevent a vehicle from moving into a position over the pit.

7. Stairways used only to attend equipment or private stairways serving an occupant load of 10 or fewer persons and which are not accessible to the public are permitted to have a handrail on one side only.

Section 1104.4 Exception 1 is hereby amended to read as follows:

1104.4 Multilevel buildings and facilities. At least one accessible route shall connect each accessible level, including mezzanines, in multilevel buildings and facilities.

Exceptions:

1. An accessible route ~~is~~ shall not be required to stories, basements and mezzanines that have an aggregate area of not more than 3,000 square feet (278.7 m²), are located above and or below accessible levels and are below the third story. This exception shall not apply to:

1.1. Multiple tenant facilities...

Section 1107.7.5 is hereby deleted in its entirety.

Section 1203.3.2 is hereby amended to read as follows:

1203.3.2 Exceptions. The following are exceptions to Sections 1203.3 and 1203.3.1:

1. Where warranted by climatic conditions, ventilation ...
- ~~5. For buildings in flood hazard areas as established in Section 1612.3, the openings for under floor ventilation shall be deemed as meeting the flood opening requirements of ASCE 24 provided that the ventilation openings are designed and installed in accordance with ASCE 24.~~

Section 1207 is hereby deleted in its entirety.

Section 1403.5 is hereby deleted in its entirety.

Section 1403.6 is hereby deleted in its entirety.

Section 1406.3 is hereby amended to add a new Exception 5 to read as follows:

1406.3 Balconies and similar projections. ...

Exceptions:

1. On buildings of Type I and II construction, three stories or less
. . .
5. Private balconies and similar appendages serving individual dwelling units on buildings of Type V construction.

Section 1507.2.6 is hereby amended to read as follows:

1507.2.6 Fasteners. Fasteners for asphalt shingles shall be galvanized, stainless steel, aluminum, or copper roofing nails, minimum 12 gage 0.105 inch (2.67 mm) shank with a minimum 0.375 inch-diameter (9.5 mm) head, of a length to penetrate through the roofing materials and a minimum of 0.75 (19.1 mm) into the roof sheathing or other fasteners as approved by the building official and shingle manufacturer. Where the roof sheathing is less than 0.75 inch (19.1 mm) thick, the nails shall penetrate through the sheathing. Fasteners shall comply with ASTM F 1667.

Section 1510 is hereby deleted and relocated as Appendix L.

Section 1601.1 is hereby amended to add a second paragraph to read as follows:

1601.1 Scope. The provisions of this chapter shall govern the structural design of buildings, structures and portions thereof regulated by this code.

It shall not be the responsibility of the building official to determine engineering requirements of this code. Exclusive of the conventional light-frame wood construction provisions referenced in Section 2308, the method to resist loads as referenced in this chapter is the responsibility of a structural engineer or other qualified design professional.

Section 1603.1 Exception 5 is hereby deleted in its entirety.

Section 1603.1.7 is hereby deleted in its entirety.

Section 1610 exception is hereby amended to read as follows:

1610.1 General. ...

Exception: Basement walls extending not more than \pm 9 feet (~~2438 mm~~) below grade and laterally supported by at the top by flexible diaphragms shall be permitted to be designed for active pressure.

Section 1612 is hereby deleted in its entirety.

Section 1704.1 is hereby amended to add paragraph 4 to read as follows:

1704.1 General.

Exceptions: ...

4. The frequency and amount of special inspections shall be as determined by the design professional of record. The continuous and periodic inspections referenced in Tables 1704.3, 1704.4, 1704.5.1, and 1704.5.3 shall be considered as guidelines for that determination.

Section 1804.3 is hereby deleted and the following section enacted to read as follows:

Section 1804.3 Surface drainage. Surface drainage shall be diverted to a storm sewer conveyance or

other approved point of collection. Lots shall be graded to drain surface water away from foundation walls.

Section 1804.4 is hereby deleted in its entirety and subsequent sections renumbered accordingly.

Section 1805.1.2.1 is hereby deleted in its entirety.

SECTION 1809.5 is hereby amended to add a new exception #4 as follows:

1809.5 Frost protection. ...

- 4. Free-standing buildings used as Group U occupancies for the storage of private or pleasure-type motor vehicles constructed in accordance with Section 406.1.1 and 406.1.2.**

Section 2901 is hereby amended to read as follows:

[P] 2901.1 Scope. The provisions of this chapter and the ~~International Plumbing Code~~ North Dakota State Plumbing Code shall govern the erection, installation, alteration, repairs, relocation, replacement, addition to, use or maintenance of plumbing equipment and systems. Plumbing systems and equipment shall be constructed, installed and maintained in accordance with the ~~International Plumbing Code~~ North Dakota State Plumbing Code. Private sewage disposal systems shall conform to the ~~International Private Sewage Disposal Code~~ North Dakota State Plumbing Code.

Section 3102.7 is hereby amended to read as follows:

3102.7 Engineering Design. The structure shall be designed and constructed to sustain dead loads; loads due to tension or inflation; live loads including wind, snow ~~or flood~~ and seismic loads and in accordance with Chapter 16.

Section 3109 is hereby deleted and moved to Appendix M.

Section 3403.2 is hereby deleted in its entirety.

Section 3404.2 is hereby deleted in its entirety.

Section 3405.5 is hereby deleted in its entirety.

Section 3409.2 is hereby deleted in its entirety.

Section 3410.1 is hereby amended to read as follows:

3410.1 Conformance. Structures moved into ~~or~~ within the jurisdiction shall comply with the provisions of this code for new structures.

Section 3412.2 is hereby amended to read as follows:

3412.2 Applicability. Structures existing prior to 1952, in which there is work involving additions, alterations or changes of occupancy shall be made to comply with the requirements of this section or the provisions of Section 3403 through 3409. The provisions in Section 3412.2.1 through 3412.2.5 shall apply to existing occupancies that will continue to be, or are proposed to be, in Group A, B, E, F, M, R, S and U. These provisions shall not apply to buildings with occupancies in Group H or I.

Section 3412.2.4.1 is hereby deleted in its entirety.

5-0103. Penalty. Any person violating any provision of the International Building Code adopted by this title or any section of this title shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

5-0104. Appeals. A person shall have the right to appeal a decision of the Code Official to the Board of Appeals. The Kindred Council shall be the Board of Appeals. An appeal in writing to the Code Official must be made within 20 days of the decision of the Code Official. The Kindred City Council shall hear the appeal within 30 days of the Code Official receiving written notice of the appeal. The Council may only reverse or modify a decision of the Code Official by a vote of at least three members of the Council. If not all members of the Council are present at the hearing, the person appealing the decision may request a postponement, which may extend the 30-day period to hold such a hearing. An application for an appeal shall be based on a claim that the true intent of the Code has been incorrectly interpreted, the provisions of the Code do not fully apply, or an equally good or better form of construction is proposed. The Council shall have no authority to waive requirements of the Code.

CHAPTER 5-02

DANGEROUS BUILDINGS

SECTIONS:

- 5-0201. Definitions
- 5-0202. Standards for Repair, Vacation, or Demolition.
- 5-0203. Dangerous Buildings - Nuisances.
- 5-0204. Duties of Building Administrator.
- 5-0205. Duties of City Council.
- 5-0206. Owner Absent from the City.
- 5-0207. Appeal.
- 5-0208. Penalty.

5-0201. **DEFINITIONS.** All buildings or structures which have any or all of the following defects shall be deemed "dangerous buildings":

- (a) Those whose interior walls or other vertical structural members lean, list or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.
- (b) Those which, exclusive of the foundation, show thirty-three percent or more of damage or deterioration of the supporting member or members, or fifty percent of damage or deterioration of the nonsupporting enclosing or outside walls or covering.
- (c) 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.
- (d) Those which have been damaged by fire, wind, or other causes so as to have become dangerous to life, safety, morals, or the general health and welfare of the occupants or the people of the city.
- (e) Those which have become, or are, so dilapidated, decayed, unsafe or unsanitary or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation or are likely to cause or aggravate sickness or disease, so as to work injury to the health, morals, safety, or general welfare of those living therein.

- (f) 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.
- (g) 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.
- (h) Those which have parts thereof which are so attached that they may fall and injure members of the public or property.
- (i) Those which because of their condition are unsafe, unsanitary or dangerous to the health, morals, safety or general welfare of the people of this city.
- (j) Those buildings existing in violation of any provision of the Building Code, zoning ordinances, any provision of the Fire Prevention Code or other ordinances of this city.

5-0202. **STANDARDS FOR REPAIR, VACATION, OR DEMOLITION.** The following standards shall be followed in substance by the Board of City Council in ordering repair, vacation, or demolition:

- (a) 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.
- (b) If the "dangerous building" is in such condition as to make it dangerous to the health, morals, safety, or general welfare of its occupants it shall be ordered to be vacated.
- (c) In any case where a "dangerous building" is fifty percent damaged, decayed, or deteriorated from its original value or structure, it shall be demolished, and in all cases where a building cannot be repaired so that it will no longer be in violation of the terms of this chapter, it shall be demolished. In all cases where a "dangerous building" is a fire hazard existing or erected in violation of the terms of this chapter or any ordinance of this city or statute of the state of North Dakota, it shall be demolished.

5-0203. **DANGEROUS BUILDINGS - NUISANCES.** All "dangerous buildings" within the terms or Section 5-0201 are hereby declared to be public nuisances and shall be repaired, vacated, or demolished as hereinbefore and hereinafter provided.

5-0204. **DUTIES OF BUILDING ADMINISTRATOR.** The building administrator shall:

- (a) 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.
- (b) Inspect any building, wall, or structure reported (as hereinafter provided for) by any agent of the City as probably existing in violation of the terms of this chapter.
- (c) Notify in writing the owner, occupant, lessee, mortgagee, and all other persons having an interest in said building, as shown by the records in the office of the register of deeds of the county of Cass, of any building found by the building administrator to be a "dangerous building" within the standards set forth in Section 5-0201 of this chapter, that: (1) the owner must vacate, or repair, or demolish said building in accordance with the terms of the notice and this chapter; (2) the owner or occupant must vacate said building or may have it repaired in accordance with the notice and remain in possession. Provided, that any person notified under this subsection to repair, vacate, or demolish any building shall be given such reasonable time, not exceeding thirty days, as may be necessary to do, or have done, the work or act required by the notice provided for herein.
- (d) Set forth in the notice provided for in subsection (c) hereof a description of the building, or structure deemed unsafe, a statement of the particulars which make the building or structure a "dangerous building," and an order requiring the same to be put in such condition as to comply with the terms of this ordinance within such length of time, not exceeding thirty days, as is reasonable.
- (e) Report to the City Council any noncompliance with the "notice" provided for in subsections (c) and (d) hereof.
- (f) Appear at all hearings conducted by the City Council and testify as to the condition of "dangerous buildings."
- (g) Place a notice on all "dangerous buildings" reading as follows: "This building has been found to be a 'dangerous building' by the building administrator. This notice is to remain on this building until it is repaired, vacated, or demolished in accordance with the notice which has been given the owner, occupant, lessee, or mortgagee of this building and all other persons having an interest in said building as shown by the records of the register of

deeds of the county of Cass. It is unlawful to remove this notice until such notice is complied with."

5-0205. **DUTIES OF CITY COUNCIL.** The City Council shall:

- (a) Upon receipt of a report of the building administrator as provided for in Section 5-0204, subsection (e), give written notice to the owner, occupant, mortgagee, lessee and all other persons having an interest in said building as shown by the records of the register of deeds of the county of Cass to appear before it on the date specified in the notice to show cause why the building or structure reported to be a "dangerous building" should not be repaired, vacated, or demolished in accordance with the statement of particulars set forth in the building administrator's notice provided for herein in Section 5-0204, subsection (d).
- (b) Hold a hearing and hear such testimony as the building inspector or the owner, occupant, mortgagee, lessee or any other person having an interest in said building as shown by the records of the register of deeds of the county of Cass shall offer relative to the "dangerous building".
- (c) Make written findings of fact from the testimony offered pursuant to subsection (b) as to whether or not the building in question is a "dangerous building" within the terms of Section 5-0201.
- (d) Issue an order based upon findings of fact made pursuant to subsection (c) hereof commanding the owner, occupant, mortgagee, lessee, and all other persons having an interest in said building as shown by the records of the register of deeds of the County of Cass to repair, vacate, or demolish any building found to be a "dangerous building" within the terms of this chapter and provided that any person so notified, except the owners, shall have the privilege of either vacating or repairing said "dangerous building".
- (e) If the owner, occupant, mortgagee, or lessee fails to comply with the order provided for in subsection (d) hereof, within thirty days, the City Council shall cause such building or structure to be repaired, vacated, or demolished as the facts may warrant, under the standards, hereinbefore provided for in Section 5-0202 of this chapter. The cost to the City of Kindred of demolishing, repairing or removing any building or structure under this chapter shall be determined by the City Council after written notice to the property owner of a hearing thereon; and shall then be certified to the County Auditor as a special assessment levied upon the described

property and to be spread upon the taxes against said property.

- (f) Report to the city attorney the names of all persons not complying with the order provided for in subsection (d) of this section.

5-0206. **OWNER ABSENT FROM THE CITY.** All notices or orders provided for herein shall be sent by registered mail to such owner, occupant, lessee or mortgagee, and all other persons having an interest in said building, to the last known address of each, and a copy of such notice shall be posted in a conspicuous place on the "dangerous building" to which it relates. Such mailing and posting shall be deemed adequate service.

5-0207. **APPEAL.** The owner and the occupant shall have thirty (30) days from the date of the order provided for in Section 5-0205 hereof in which to appeal to the Courts from the action of the City Council. The City Council shall not demolish, repair, or remove the building or structure or cause the same to be done during the period of time herein provided for appeal.

5-0208. **PENALTY.** Any person violating any section of this chapter shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

CHAPTER 5-03

MOVING BUILDINGS

[Source: Ord. 2007-14, Sec. 1 (2007)]

SECTIONS:

- 5-0301. Housemovers Bond Required.
- 5-0302. Liability Bond Required.
- 5-0303. Permit Required/Application for Moving Permit.
- 5-0304. Certified Report of the Condition of the Existing Structure or Building.
- 5-0305. Recommendation by Planning and Zoning Commission.
- 5-0306. City Council Approval.
- 5-0307. Moving Permit Issuance.
- 5-0308. Building Permit Required.
- 5-0309. Removal of Wires, Cables or Pipes - Notice.
- 5-0310. Permit Required to Move Buildings that will Injure Trees.
- 5-0311. Removal of Debris and/or Nuisances.
- 5-0312. Penalty.
- 5-0313. Illegality of Provisions.

5-0301. **HOUSEMOVERS BOND REQUIRED.** Before issuing a moving permit, the housemover shall be required to file with the City Auditor a bond in the sum of not less than Five Thousand Dollars (\$5,000.00), the form thereof to be approved by the City Attorney and the City Council, said bond to run to the City and conditioned, among other things, that the person seeking such permit will pay all damages which may result to the City or any person residing within the City, or lawfully upon the streets or alleys of the City, as the result of the moving of such house or building, said damage to either person or property of any person or to the street, alley, or other public property of the City, and whether such damage is the result of the person seeking such permit or his employees; that the moving of such structure and the construction, improvement and alteration thereof required for compliance with this section shall be completed within three (3) months after the structure has been moved to its new location; and said bond further conditioned, that the said person shall keep the City harmless against all liability, judgments, costs and expenses which may accrue against the City as a consequence of the acts done by the housemover in such moving, and further conditions of the permit issued to him and within the laws of the state, the provisions of the code, and ordinances of the City.

5-0302. **LIABILITY BOND REQUIRED.** Before any house or building is moved as hereinbefore provided, the owner shall supply and furnish to the City a bond or certificate of deposit in the amount of not less than One Thousand Dollars (\$1,000.00), conditioned that said building, or alteration or improvements therein or thereon, shall in all respects comply with the requirements of this

ordinance, and that said construction, improvement or alterations will be completed within three (3) months after said building is located on any lot or property within the City, said bond to be written by corporate surety or with sufficient surety to be approved by the City Attorney as to form and the City Council as to the sufficiency of the sureties.

5-0303. **PERMIT REQUIRED/APPLICATION FOR MOVING PERMIT.** A moving permit is required when a building is going to be moved in to the City of Kindred and is more than 192 square feet in size. A form obtained from the City Auditor shall be completed and submitted to the City Auditor containing, but not limited to, the following information:

1. Date of application.
2. Name and address of applicant for permit.
3. Name and address of structure or building owner.
4. Name, address and North Dakota State contractor's license number of person, firm or corporation the applicant for permit will employ to do the moving.
5. Location of structure or building at the time of making application.
6. Proposed new location for structure or building.
7. Route or road along which it is proposed to move the structure or building from present location to proposed new location.
8. How long the moving of the structure or building is expected to take and when moving is expected to be completed if permit is granted.
9. The location of the existing foundation upon which the building is proposed to be located.

Source: Ord. 2022-100, Sec. 4

5-0304. **CERTIFIED REPORT OF THE CONDITION OF THE EXISTING STRUCTURE OR BUILDING.** A certified report of the condition of the existing structure or building shall be submitted to the City Auditor containing, but not limited to, the following information:

1. Report from an architect and/or structural engineer stating conformance with the requirements of the current City building code.
2. Report from a licensed mechanical engineer or contractor stating conformance with the requirements of the current City mechanical code.

3. Report from a licensed plumbing engineer or contractor stating conformance with the current City plumbing code.
4. Report from a licensed electrical engineer or contractor stating conformance with the current City electrical code.
5. Should it be found that the structure or building does not meet any of the above code requirements, the report shall state what action will be needed to bring the nonconforming item(s) into compliance with the code.
6. Photographs of all of the exterior sides of the structure or building and of the interior.
7. A site plan that shows location of the structure or building on the proposed new location.
8. A foundation plan for the structure or building.
9. A plan of any additions or alterations that may be made to the structure or building after moving is complete. This shall include foundation plan, floor plan and building elevations, as is required for new construction.
10. A statement from the Building Administrator regarding his review of the reports and plans and any recommendations regarding the structure or building's conformance to the City building code.
11. A statement from the Building Administrator that there is an existing foundation on which to move the building.

5-0305. **RECOMMENDATION BY PLANNING AND ZONING COMMISSION.** No person shall move into or within the city limits or extra-territorial jurisdiction of the City of Kindred without having a public hearing held by Kindred's Planning and Zoning Commission and getting final approval from the City Council. To obtain approval for moving a structure or building into or within the city limits or ,extra-territorial jurisdiction of the city, all required bonds shall be posted with the City Auditor, and the applicant shall submit to the City Auditor the application for moving permit and the certified report of the condition of the existing structure of building. The City Auditor, upon receiving the required information, shall forward the information to the Planning and Zoning Commission. The Planning and Zoning Commission shall mail notice to all adjoining property owners and all occupants located within 400 feet of the boundaries of the land on which the application has been submitted of the time, place and subject of the hearing. The Planning and Zoning Commission shall hold the hearing, and it may make a recommendation of whether to approve the moving permit or not. The Planning and Zoning Commission may recommend approval of the moving permit if it finds that the applicant has met all requirements contained herein for moving of the structure and it finds that the structure is suitable and

appropriate for the area where it is proposed to be moved in terms of its style, design, age, and condition. The Commission may place conditions upon its recommendation to the City Council. The Planning and Zoning Commission shall forward its recommendation and accompanying information to the City Council for final approval.

5-0306. **CITY COUNCIL APPROVAL.** The City Council may accept or reject the Planning and Zoning Commission's recommendation based upon the following: whether the applicant has met all of the requirements for moving structures as described herein, and whether the structure is suitable and appropriate for the area where it is proposed to be moved in terms of its style, design, age, and condition. The City Council may place conditions upon its approval of the moving permit.

5-0307. **MOVING PERMIT ISSUANCE.** If approval is granted by the City Council for moving a structure or building into or within the city limits, the City Auditor shall issue a moving permit after any conditions imposed by the City Council have been satisfied.

5-0308. **BUILDING PERMIT REQUIRED.** When a moving permit has been issued, and prior to moving a structure or building, the applicant shall submit a building permit application to the Building Administrator along with a copy of the approved moving permit, certified report of the condition of the existing structure or building, and required plans for final review. All structures moved into or within the city limits are regarded as new construction with respect building permit review and required inspections.

5-0309. **REMOVAL OF WIRES, CABLES OR PIPES - NOTICE.**

1. The applicant to whom the moving permit has been issued shall, before raising or moving any structure or building to which wires, cables or piping for any purpose are attached, notify the persons, associations, or corporations owning or controlling such wiring, cables or piping of the proposed moving of structure or building. The persons, associations or corporations so notified shall, within a reasonable time not exceeding 24 hours thereafter, disconnect and make safe all such electric wires, cables or piping.
2. In every case in which a moving permit shall be issued as herein provided for the removal of any structure or building, when such removal requires the displacement of any overhead electrical or other wire or cable, it shall be the duty of the person, association or corporation owing, operating or controlling such wire or cable to remove or displace the same, as far as may necessary, to permit the removal of structure or building. The person to whom a moving permit shall have been issued shall notify the persons, associations or corporations owning, operating or controlling such wire or cable to remove or displace the same to facilitate the removal of said structure or building, and shall exhibit to said persons,

associations or corporations the properly issued permit, authorizing the removal of said structure or building and it shall thereupon be the duty of said persons, associations or corporations, within reasonable time not exceeding 24 hours thereafter, to remove or displace such wires or cables sufficiently to allow the passage of said structure or building.

5-0310. **PERMIT REQUIRED TO MOVE BUILDINGS THAT WILL INJURE TREES.** No person, firm or corporation, whether licensed or otherwise, shall move any structure or building along any street, alley or other public way in such a manner as to interfere with or injure any tree, shrub or other vegetable growth without a written permit first obtained from the Superintendent of Parks. The applicant shall specify the structure or building to be moved and the proposed route. All necessary tree-trimming or shrub-trimming costs shall be paid by the applicant.

5-0311. **REMOVAL OF DEBRIS AND OR NUISANCES.** When a structure or building is to be moved from within the city limits, the applicant to which the moving permit is issued shall remove all debris and materials and fill all excavations to existing grade at the original structure or building site. The sewer service line shall be plugged and the water service line shall be shut off to the satisfaction of the City Engineer.

5-0312. **PENALTY.** Every person, firm or corporation, convicted of a violation of any of the provisions of this ordinance for which another penalty is not specifically provided herein, shall, upon conviction thereof, be punished by a fine of not more than \$1,500 or by imprisonment for not more than 30 days, or both such fine and imprisonment in the discretion of the court, the court to have the power to suspend said sentence, and to revoke the suspensions thereof.

Source: Ord. 2014-56, Sec. 2 (2015)

5-0313. **ILLEGALITY OF PROVISIONS.** Any illegal portion or portions of this ordinance shall not affect the validity of the remainder of the ordinance.

CHAPTER 5-04

FLOODPLAIN MANAGEMENT

(Source: Ord. 2022-99, Sec. 1)

SECTIONS:

- 5-0401. Statutory Authorization, Findings of Fact, Purpose, and Objectives.
- 5-0402. Definitions.
- 5-0403. General Provisions.
- 5-0404. Administration.
- 5-0405. Provisions for Flood Hazard Reduction.
- 5-0406. Penalties for Violations.

5-0401. **STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE, AND OBJECTIVES.** The Legislature of the State of North Dakota has in North Dakota Century Code, Chapters 40-47, 11-33 and 58-03, delegated responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City Council of the City of Kindred, North Dakota does ordain as follows:

1. **Findings of Fact.**

- (1) The flood hazard areas of the City of Kindred are subject to periodic inundation which can endanger life, result in loss of property, create health and safety hazards, disrupt commerce and governmental services, cause extraordinary public expenditures for flood protection and relief, and impair the tax base, all of which adversely affect the public health, safety, and general welfare.
- (2) Flood losses caused by the cumulative effect of obstructions in the special flood hazard areas cause increases in flood heights and velocities. Inadequately floodproofed, elevated or otherwise unprotected structures also contribute to the flood loss.

2. **Statement of Purpose.** It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding, and generally undertaken at the expense of the general public;

- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in special flood hazard areas;
- (6) To help maintain a stable tax base by providing for the second use and development of special flood hazard areas so as to minimize future flood blight areas;
- (7) To ensure that potential buyers are notified that property is in a special flood hazard area; and,
- (8) To ensure that those who occupy the special flood hazard areas assume responsibility for their actions.

3. **Methods of Reducing Flood Losses.** In order to accomplish its purposes, this ordinance includes methods and provisions for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- (4) Controlling filling, grading, dredging, and other development which may increase flood damage; and,
- (5) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

5-0402. **DEFINITIONS.** Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

1. "Appeal" means a request for a review of the City Auditor's interpretation of any provision of this ordinance or a request for a variance.

2. "Base flood or 100-year flood" means the flood having a one percent chance of being equaled or exceeded in any given year.
3. "Base Flood Elevation" (BFE) means the height of the base flood or 100-year flood usually in feet measured in the same datum (either NAVD88 or NDVD29) as the FIRM.
4. "Basement" means any area of the building having its floor subgrade (below ground level) on all sides.
5. "Best Available Data" (BAD) means water elevation information from any source used to estimate or determine a base flood elevation (i.e. high water mark).
6. "Community" means any political subdivision that has the authority to zone, or any Indian tribe or authorized tribal organization, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.
7. "Conveyance or hydraulic conveyance" means a geometric characteristic of a river or watercourse at a given point that determines the flow-carrying capacity at that point.
8. "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the special flood hazard area.
9. "Elevation Certificate" means a form available from FEMA for recording elevations of a proposed or existing structure.
10. "Existing Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.
11. "Expansion to an Existing Manufactured Home Park or Subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
12. "Flood Insurance Rate Map" (FIRM) means the official map issued by the Federal Emergency Management Agency where

special flood hazard areas are designated as Zones A, AE, AO, AH, A1-A30, or A-99.

13. "Flood Insurance Study" (FIS) means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Map, and the water surface elevation of the base flood.
14. "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters and/or; from the unusual and rapid accumulation or runoff of surface waters from any source.
15. "Floodproofing" (Dry) means protection provided a structure, together with attendant utilities and sanitary facilities, which is watertight two feet above the base flood elevation with walls that are substantially impermeable to the passage of water.
16. "Floodway or regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
17. "Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
18. "Letter of Map Revision Based on Fill (LOMR-F)" means a revision to the effective FIRM to remove a portion of land from the SFHA by elevating with fill.
19. "Lowest floor" means the lowest floor of a structure including the basement.
20. "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle" but does include "mobile home".
21. "Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
22. "New construction" means structures for which the "start of construction" commenced on or after the effective date of this ordinance.
23. "New Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on

which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

24. "Person" means any person, firm, partnership, association, corporation, limited liability company, agency, or any other private or governmental organization, which includes any agency of the United States, a state agency, or any political subdivision of the state.
25. "Reasonably safe from flooding" means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area, and that any subsurface waters related to the base flood will not damage existing or proposed buildings.
26. "Recreational vehicle" means a vehicle which is:
 - (a) built on a single chassis;
 - (b) 400 square feet or less when measured at the largest horizontal projection;
 - (c) designed to be self-propelled or permanently towable by a light duty truck;
 - (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use; including, but not limited to;
 - (e) travel trailers, trailers on wheels, park-model trailers, and other similar vehicles.
27. "Special Flood Hazard Area" (SFHA) means an area of land that would be inundated by a flood having a one percent chance of being equaled or exceeded in any given year.
28. "Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings,

piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

29. "Structure" means a walled and roofed building, including manufactured homes and gas or liquid above-ground storage tanks.
30. "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the building to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
31. "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:
 - (1) Before the improvement or repair is started; or
 - (2) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- (1) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or
 - (2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.
32. "Variance" means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.
 33. "Violation" means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by the community's floodplain management ordinance is presumed to be in violation until such time as that documentation is provided.

34. "Watercourse" means only the channel and banks of an identifiable watercourse, and not the adjoining floodplain areas. The flood carrying capacity of a watercourse refers to the flood carrying capacity of the channel, except in the case of alluvial fans, where a channel is not typically defined. The definition of watercourse in N.D.C.C. § 61-16-06 is not applicable in this ordinance.

5-0403. **GENERAL PROVISIONS.**

1. **Lands to Which This Ordinance Applies.** This ordinance shall apply to all special flood hazard areas within the jurisdiction of the City of Kindred.
2. **Basis for Establishing the Special Flood Hazard Areas.** The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for the Township of Normanna, North Dakota" dated September 30, 1987, with an accompanying Flood Insurance Rate Map is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file at the office of the auditor in Kindred, North Dakota.
3. **Compliance.** No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations.
4. **Greater Restrictions.** This ordinance is not intended to repeal, remedy, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
5. **Interpretation.** In the interpretation and application of this ordinance, all provisions shall be:
 - (1) Considered as minimum requirements;
 - (2) Liberally construed in favor of the governing body; and,
 - (3) Deemed neither to limit nor repeal any other powers granted under state statutes.
6. **Warning and Disclaimer or Liability.** The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This ordinance does not imply that land outside the special

flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of, the City of Kindred, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

7. **Severability.** If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.

5-0404. **ADMINISTRATION.**

1. **Establishment of Development Permit.** A development permit shall be obtained before construction or development begins within any special flood hazard area established in Section 5-0403.2. This includes properties mapped into the effective FIRM that have been removed from the SFHA by a LOMR-F. Application for a development permit shall be made on forms furnished by the City Council of Kindred and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill storage materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:
 - (1) Elevation in the same datum (either NAVD88 or NGVD29) as the FIRM, of the lowest floor of all structures documented on a certified Elevation Certificate based on Construction Drawings;
 - (2) Elevation in the same datum (either NAVD88 or NGVD29) as the FIRM to which any structure has been floodproofed;
 - (3) Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria in Section 5-0405.2-2; and,
 - (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
2. **Designation of the City Auditor.** The City Auditor is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.
3. **Duties and Responsibilities of the City Auditor.** Duties of the City Auditor shall include, but not be limited to:

3-1. **Permit Review**

- (1) Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
- (2) Approve or deny all applications for development permits required by adoption of this ordinance.
- (3) Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.
- (4) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 5-0405.3.

3-2. **Use of Other Base Flood Data.** When base flood elevation data has not been provided in accordance with Section 5-0403.2, BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS, the City Auditor shall obtain, review, and reasonably utilize any base flood elevation data and floodway data available (known as best available data) from a federal, state, or other source, as criteria for requiring that new construction, substantial improvements, or other development in the floodplain are administered in accordance with Section 5-0505.2, SPECIFIC STANDARDS.

3-3 **Information to be Obtained and Maintained.** Information to be obtained and maintained with all elevation readings certified by registered professional surveyor, engineer or architect, and all compliance with floodproofing regulations to be certified by a registered professional engineer or architect on an Elevation Certificate.

- (1) Obtain and record the actual elevation (in the same datum (either NAVD88 or NGVD29) as the FIRM) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- (2) For all new or substantially improved floodproofed structures:
 - (i) obtain and record the actual elevation (in the same datum (either NAVD88 or

NGVD29) as the FIRM) to which the structure has been floodproofed;

(ii) maintain the floodproofing certifications required in Section 5-0404.1(5).

(3) Maintain for public inspection all records pertaining to the provisions of this ordinance.

3-4. **Alteration of Watercourses.** The responsible person shall:

(1) Notify nearby communities, water resource districts, and the North Dakota Department of Water Resources, as necessary, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished; and,

(3) Notify the appropriate water resource district prior to removal or placement of fill within two hundred feet of the bank of a body of water during normal flow or stage.

3-5. **Interpretation of Flood Insurance Rate Map (FIRM) Boundaries.** Make interpretation where needed, as to the exact location of the boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 5-0504.4.

3-6. **Encroachment Analysis.** When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve

certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community first applies for and receives a Conditional Letter of Map Revision (CLOMR) through FEMA.

4. Variance Procedure.

4-1. Appeal Board.

- (1) The City Council as established by the City of Kindred shall hear and decide appeals and requests for variances from the requirements of this ordinance.
- (2) The City Council shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the City Auditor in the enforcement or administration of this ordinance.
- (3) Those aggrieved by the decision of the City Council, or any taxpayer, may appeal such decision to the District Court as provided in N.D.C.C. §§ 40-47-11, 11-33-12, or 58-03-14.
- (4) In passing upon such applications, the City Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance; and:
 - (i) the danger that materials may be swept onto other lands to the injury of others;
 - (ii) the danger to life and property due to flooding or erosion damage;
 - (iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (iv) the importance of the services provided by the proposed facility to the community;
 - (v) the necessity to the facility of a waterfront location, where applicable;
 - (vi) the availability of alternative locations, for the proposed use, which are not subject to flooding or erosion damage;

- (vii) the compatibility of the proposed use with existing and anticipated development;
 - (viii) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (x) the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (xi) the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (5) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre to less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xi) in Section 5-0404.4.4-1(4) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (6) Upon consideration of the factors of Section 5-0404.4-1(4) and the purposes of this ordinance, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
- (7) The City Auditor shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

4-2. Conditions for Variances

- (1) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the

procedures set forth in the remainder of this section.

- (2) Variances shall not be issued within the identified floodplain if any increase in flood levels during the base flood discharge would result.
- (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (4) Variances shall only be issued upon:
 - (i) a showing of good and sufficient cause;
 - (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and,
 - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, cause fraud on or victimization of the public as identified in Section 5-0404.4-1(4), or conflict with existing local laws or ordinances.
- (5) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

5-0405. **PROVISIONS FOR FLOOD HAZARD REDUCTION.**

1. **General Standards.** In all special flood hazard areas the following standards are required:

1-1. **Anchoring.**

- (1) All new construction and substantial improvements, including additions, shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame

ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

1-2. Construction Materials and Methods.

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (2) All new and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (3) All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

1-3. Utilities

- (1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,
- (3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

1-4. Subdivision Proposals.

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or 5 acres (whichever is less).

2. **Specific Standards.** In all special flood hazard areas where base flood elevation data have been provided as set forth in Section 5-0403.2 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS or Section 5-0404.3-2, Use of Other Base Flood Data, the following provisions are required:

2-1. **Residential Construction.** New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to at least one foot above the base flood elevation. This includes properties mapped into the effective FIRM that have been removed from the SFHA by a LOMR-F.

2-2. **Nonresidential Construction.** Construction and substantial improvement of any nonresidential structure shall either have the lowest floor, including basement, elevated to at least one foot above the base flood elevation **or**, together with attendant utility and sanitary facilities shall:

- (1) Be floodproofed to at least two feet above the base flood elevation, so that below this elevation the structure is watertight with walls substantially impermeable to the passage of water.
- (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- (3) Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Section 5-0404.3-3(2).

2-3. **Manufactured Homes.**

- (1) Require all manufactured homes placed within Zone A shall be installed using methods and practices which minimize

flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

- (2) Require all manufactured homes placed or substantially improved within Zones A 1-30, AH, or AE on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision which has incurred substantial damage, be elevated on a permanent foundation so the lowest floor of the manufactured home is elevated one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.
- (3) Require that manufacture homes placed or substantially improved on sites in an existing manufacture home park or subdivision within Zones A 1-30, AH, or AE not subject to other requirements of this section be elevated so that either:
 - (i) the lowest floor of the manufacture home is one foot above the base flood elevation, or
 - (ii) the manufacture home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36" in height above grade and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.

2-4. **Recreational Vehicles.** In A1-30, AH, and AE Zones, all recreational vehicles to be placed on a site must

- (i) be elevated and anchored to meet the requirements in 5-0405.2.2-3; OR

(ii) be on the site for less than 180 consecutive days; AND

(iii) be fully licensed and highway ready

3. **Shallow Flooding AO and AH Zones.** Located within the areas of special flood hazard established in Section 5-0403.2, are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

(1) All new construction and substantial improvements of **residential** structures have the lowest floor (including basement) elevated one foot above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).

(2) All new construction and substantial improvements of **non-residential** structures;

(i) have the lowest floor (including basement) elevated one foot above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or;

(ii) together with attendant utility and sanitary facilities be completely floodproofed to that level to meet the floodproofing standard as specified in Section 5-0405.2.2-2.

(3) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

4. **Floodways.** Located within the special flood hazard areas established in Section 5-0403.2 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

(1) Prohibit encroachments, including fill, new construction, substantial improvements, and other development

unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge. Any increase, as is used in this section, means any modeled impact greater than 0.00 feet.

(2) If Section 5-0405.1(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction requirements of this ordinance.

(3) Under the provisions of 44 CFR Section 65.12 of the NFIP Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in BFEs, provided that the community first applies for and receives a Conditional Letter of Map Revision (CLOMR) through FEMA.

5. **Enclosures.** New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

(1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

(2) The bottom of all openings shall be no higher than one foot above grade.

(3) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they allow the automatic entry and exit of floodwaters.

5-0406. **PENALTIES FOR VIOLATIONS.**

1. Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violations on conditions and safeguards established in connection with grants or variances

or conditional uses, shall constitute a class B misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be punished by a fine not exceeding \$1,500 or by imprisonment not to exceed 30 days or by both such fine and imprisonment for each such offense, and in addition shall pay costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

2. Nothing herein contained shall prevent the City Council from taking such other lawful action as is necessary to prevent or remedy any violation.

CHAPTER 5-05

MINIMUM HOUSING STANDARDS

SECTIONS:

- 5-0501. Adoption of Housing Code.
- 5-0502. Exceptions to Housing Code.
- 5-0503. Penalty.

5-0501. **ADOPTION OF HOUSING CODE.** There is hereby adopted by reference by the City Council, for the purpose of prescribing regulations governing standards, relative to housing in the City of Kindred, that certain code known as the Uniform Housing Code, recommended and compiled by the International Conference of Building Officials, being particularly the 1988 edition thereof, as the same are now established in said code, a copy of which is on file in the office of the Auditor for the City of Kindred, with the exception of the sections hereinafter set forth affecting local conditions of the City of Kindred, which sections shall be substituted for and in lieu of like sections or paragraphs in said Uniform Housing Code; the City Council of said City of Kindred, by this section hereby approves and adopts such rules and regulations, so modified, for the use and application within the city limits of Kindred, North Dakota. Provided, that any amendments of the 1988 edition of the Code may be adopted by the City by resolution.

5-0502. **EXCEPTIONS TO HOUSING CODE.** When any provisions of the Uniform Housing Code are in conflict with the Building Code, Mechanical Code, zoning provisions or other ordinances of the City of Kindred, those other ordinances shall prevail and supersede the provisions of the Uniform Housing Code.

5-0503. **PENALTY.** Any person violating any section of this chapter shall upon conviction be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

Source: Ord. 2014-56, Sec. 3 (2015)

CHAPTER 5-06

INTERNATIONAL PROPERTY MAINTENANCE CODE

(Source: Ord. 2011-33, Sec. 1 [2011])

SECTIONS:

- 5-0601. Adoption of International Property Maintenance Code.
- 5-0602. Amendment to International Property Maintenance Code.
- 5-0603. Penalty.
- 5-0604. Appeals.

5-0601. ADOPTION OF INTERNATIONAL PROPERTY MAINTENANCE CODE. There is hereby adopted by reference by the City Council, for the purpose of prescribing regulations governing standards, relative to housing in the City of Kindred, that certain code known as the International Property Maintenance Code, recommended and compiled by the International Code Council, being particularly the 2009 edition thereof, as the same are now established in said code, a copy of which is on file in the office of the Building Administrator for the City of Kindred, with the exception of the sections hereinafter set forth affecting local conditions of the City of Kindred, which sections shall be substituted for and in lieu of like sections or paragraphs in said International Property Maintenance Code; the City Council of said City of Kindred, by this section hereby approves and adopts such rules and regulations, so modified, for the use and application within the city limits of Kindred, North Dakota. Provided, that any amendments of the 2009 edition of the Code may be adopted by the City by resolution.

5-0602. AMENDMENT TO INTERNATIONAL PROPERTY MAINTENANCE CODE. The International Property Maintenance Code, as adopted in Section 5-0601 is hereby changed and amended as follows:

SECTION 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the *Property Maintenance Code* of ~~{NAME OF JURISDICTION}~~ the City of Kindred, hereinafter to as "this code."

SECTION 102.3 is hereby amended to read as follows:

102.3 Application of other codes. Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of ~~the International Building Code, International Fuel Gas Code, International Mechanical Code and the ICC Electrical Code.~~ Nothing in this code shall be construed to cancel, modify or set aside any

provision of the International Zoning Code all applicable ordinances adopted by the City of Kindred.

SECTION 103.5 is added to read as follows:

103.5 Fees. The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be as indicated in the following schedule:

- A. Initial Inspection - No charge
- B. First Re-inspection - No charge
- C. Second Re-inspection - As to the second re-inspection, a fee of \$100
- D. Third Re-inspection - As to the third re-inspection, a fee of \$100
- E. Fourth and continuing Re-inspection - as to the fourth and any subsequent re-inspection, a fee of \$100

SECTION 111 is hereby deleted in its entirety.

SECTION 112.4 is hereby amended to read as follows:

112.4 Failure to comply. Any person who shall continue any work after being served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable ~~to a fine of not less than [AMOUNT] dollars or more than [AMOUNT] dollars~~ subject to penalties prescribed by law.

SECTION 201.3 is hereby amended to add the following:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the *International Building Code, International Fire Code, International Fuel Gas Code* or the *International Mechanical Code*, such terms shall have meanings ascribed to them as in those codes. Throughout this code, whenever reference is made in this code to the International Plumbing Code it shall mean the North Dakota State Plumbing Code. Throughout this code, whenever reference is made to the ICC Electrical Code it shall mean the National Electrical Code together with the North Dakota State Wiring Standards.

SECTION 302.4 is hereby amended to read as follows:

302.4 Weeds. All *premises and exterior property* shall be maintained free from weeds or plant growth ~~in excess of (jurisdiction to insert height in inches)~~ as determined by the Kindred Health Department. All noxious weeds shall be ...

SECTION 304.14 is hereby amended to read as follows:

304.14 Insect screens. During the period from ~~{DATE}~~ April 1st to ~~{DATE}~~ October 31st, every door, window and other outside opening required for ventilation of habitable rooms, food preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch (16 mesh per 25 mm), and every screen door used for insect control shall have a self-closing device in good working condition.

Exception: Screens shall not be required where other approved means, such as air curtains or insect repellent fans, are employed.

SECTION 602.2 is hereby deleted in its entirety.

SECTION 602.3 is hereby amended to read as follows:

602.3 Heat supply. Every owner and operator of any building who rents, leases or lets one or more dwelling units or sleeping units on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat ~~during the period from [DATE] to [DATE]~~ to maintain a temperature of not less than 68°F (20°C) in all habitable rooms, bathrooms, and toilet rooms.

Exceptions:

1. When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. ~~The winter outdoor design temperature for the locality shall be as indicated in Appendix D of the *International Plumbing Code*.~~

2. ~~In areas where the average monthly temperature is above 30°F (-1°C) a minimum temperature of 65°F (18°C) shall be maintained.~~

SECTION 603.2 is hereby amended to read as follows:

603.2 Removal of combustion products. All fuel-burning equipment and appliances shall be connected to an approved chimney or vent.

~~**Exception:** Fuel-burning equipment and appliances which are labeled for unvented operation.~~

SECTION 704.4 is hereby amended to read in full as follows:

704.4 Interconnection. Where more than one smoke alarm is required to be installed by this Code within an individual dwelling unit in Group R-2, R-3, R-4 and in dwellings not regulated as Group R occupancies, the smoke alarms shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed and installed as required by the *International Residential Code* and *International Building Code*.

~~Exceptions:~~

~~1. Interconnection is not required in buildings which are not undergoing alterations, repairs, or construction of any kind.~~

~~2. Smoke alarms in existing areas are not required to be interconnected where alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for interconnection without the removal of interior finishes.~~

5-0603. **PENALTY.** Any person violating any section of this chapter shall upon conviction be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

Source: Ord. 2014-56, Sec. 4 (2015)

5-0604. **Appeals.** A person shall have the right to appeal a decision of the Code Official to the Board of Appeals. The Kindred City Commission shall be the Board of Appeals. An appeal in writing to the Code Official must be made within 20 days of the decision of the Code Official. The Kindred City Commission shall hear the appeal within 30 days of the Code Official receiving written notice of the appeal. The Commission may only reverse or modify a decision of the Code Official by a vote of at least three members of the Commission. If not all members of the Commission are present at the hearing, the person appealing the decision may request a postponement, which may extend the 30-day period to hold such a hearing. An application for an appeal shall be based on a

claim that the true intent of the Code has been incorrectly interpreted, the provisions of the Code do not fully apply, or an equally good or better form of construction is proposed. The commission shall have no authority to waive requirements of the Code.

CHAPTER 5-07

INTERNATIONAL RESIDENTIAL CODE

(Source: Ord. 2011-34, Sec. 1 [2011])

SECTIONS:

- 5-0701. Adoption of International Residential Code.
- 5-0702. Amendment to International Residential Code.
- 5-0703. Penalty.
- 5-0704. Fee for Copy of Relevant Code Provisions.
- 5-0705. Appeals.

5-0701. ADOPTION OF INTERNATIONAL RESIDENTIAL CODE. There is hereby adopted by reference by the City Council, for the purpose of prescribing regulations governing standards, relative to housing in the City of Kindred, that certain code known as the International Residential Code, recommended and compiled by the International Code Council, being particularly the 2009 edition thereof, as the same are now established in said code, a copy of which is on file in the office of the Building Administrator for the City of Kindred, with the exception of the sections hereinafter set forth affecting local conditions of the City of Kindred, which sections shall be substituted for and in lieu of like sections or paragraphs in said International Residential Code; the City Council of said City of Kindred, by this section hereby approves and adopts such rules and regulations, so modified, for the use and application within the city limits of Kindred, North Dakota, as well as for any area within the extraterritorial zoning jurisdiction of the City. Provided, that any amendments of the 2009 edition of the Code may be adopted by the City by resolution.

5-0702. AMENDMENT TO INTERNATIONAL RESIDENTIAL CODE. The International Residential Code, as adopted in Section 5-0701 is hereby changed and amended as follows:

SECTION R101.1 is hereby amended to read as follows:

R101.1 Titles. These provisions shall be known as the Residential Code for One- and Two-Family Dwellings of ~~{NAME OF JURISDICTION}~~ the City of Kindred, and shall be cited as such and will be referred to herein as "this code."

SECTION R104.8 is hereby amended to read as follows:

R104.1 General. The building official, member of the board of appeals or employee charged with the enforcement of this code. While acting for the jurisdiction in good faith and without malice in

the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act or omission performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be afforded all the protection provided by the city's insurance pool and immunities and defenses provided by other applicable state and federal laws and shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The building official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

SECTION R104.10.1 is hereby deleted in its entirety.

SECTION R105.2 is hereby amended to read as follows:

R105.2 Work exempt from permit.....

Building:

1. One-story detached accessory structures, provided the floor area does not exceed ~~200~~ 120 square feet ~~(185.8 m)~~.

2. Fences not over ~~6~~ 8.5 feet ~~(1829 mm)~~ high.

* * *

7. ~~Prefabricated~~ Sswimming pools that are less than 24 inches ~~(610 mm)~~ deep.

8. Swings and other playground equipment ~~accessory to a one or two-family dwelling.~~

9. Window awnings supported by an exterior wall which ~~do not project more than 54 inches (1372 mm) from the exterior wall and~~ do not require additional support.

SECTION R106.1.3 is hereby deleted in its entirety.

SECTION 108.3 is hereby amended to read as follows:

R108.3 Building Permit Valuations. Building permit valuation shall include total value of the work for which a permit is being issued, such as electrical, gas, mechanical, plumbing equipment and other permanent systems, including materials and labor. If, in the opinion of the building official, the valuation is underestimated on the application, the permit shall be denied, unless the applicant can show detailed estimates to meet the approval of the building official. Final building permit valuation shall be set by the building official.

SECTION R112 is hereby deleted in its entirety.

SECTION R201.3 is hereby amended to read as follows:

Section R201.3 Terms defined in other codes. Where terms are not defined in this code such terms shall have meanings ascribed to them as in other code publications of the International Code Council that have been adopted by Kindred. Wherever the term "International Plumbing Code" and/or "International Private Sewage Disposal Code" is used in the International Residential Code, it shall mean the North Dakota State Plumbing Code. Wherever the term 'ICC Electrical Code' is used in the International Residential Code, it shall mean the National Electrical Code together with the North Dakota State Wiring Standards. Wherever reference is made to flood plain requirements, it shall mean the applicable ordinances of the City of Kindred.

SECTION R301.2.4 is hereby deleted in its entirety.

TABLE R302.1 is hereby amended to read as follows:

**TABLE 302.1
EXTERIOR WALLS**

EXTERIOR WALL ELEMENT		MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
Walls ¹	(Fire-resistance rated)	1 hour with exposure from both sides	< 5 <u>3</u> feet
	(Not fire-resistance rated)	0 hours	≥ 5 <u>3</u> feet
Projections	(Fire-resistance rated)	1 hour on the underside	> 2 feet to 5 feet
	(Not fire-resistance rated)	0 hours	5 <u>3</u> feet
Openings	Not allowed	N/A	< 3 feet
	25% Maximum of Wall Area	0 hours	3 feet
	Unlimited	0 hours	5 feet
Penetrations	All	Comply with Section R317.3 304.2	< 5 feet
		None Required	5 feet

N/A = Not Applicable

1. A common 2-hour fire-resistance-rated wall is permitted for two or more family dwellings where the common wall is on a property line provided such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. Electrical installations shall be installed in accordance with chapters 33 through 42. Penetrations of electrical outlet boxes shall be in accordance with section 302.4.

SECTION R302.2 is hereby amended to read as follows:

R302.2 Townhouses. Each townhouse shall be considered a separate building and shall be separated by fire-resistance-rated wall assemblies meeting the requirements of Section 302.1 for exterior walls.

Exception: A common ± 2 hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against the exterior walls and the underside of the roof

sheathing. Electrical installations shall be installed in accordance with ~~Chapters 34 through 43~~ the National Electrical Code together with the North Dakota State Wiring Standards. Penetrations of electrical outlet boxes shall be in accordance with Section 302.4.

SECTION R307.1 is hereby amended to read as follows:

Section R307.1 Space required. Fixtures shall be spaced in accordance with Figure R307.1, ~~and in accordance with the requirements of Section P2705.1,~~ with the exception of the clearance in front of water closets and bidets which shall be at least 24 inches.

SECTION R309.3 is hereby deleted in its entirety.

SECTION R310.1 is hereby amended to read as follows:

Section R310.1 Emergency escape and rescue required. Basements and every sleeping room shall have at least one operable emergency and rescue opening. Such opening shall open directly into a public street, public alley, yard or court. Where basements contain one or more sleeping rooms, emergency egress and rescue openings shall be required in each sleeping room, but shall not be required in adjoining areas of the basement. Where emergency escape and rescue openings are provided they shall have a sill height of not more than 44 inches (1118 mm) above the floor. Where a door opening having a threshold below the adjacent ground elevation serves as an emergency escape and rescue opening and is provided with a bulkhead enclosure, the bulkhead enclosure shall comply with Section 310.3. The net clear opening dimensions required by this section shall be obtained by the normal operation of the emergency escape and rescue opening from the inside. Emergency escape and rescue openings with a finished sill height below the adjacent ground elevation shall be provided with a window well in accordance with Section R310.2.

Exceptions:

1. Basements used only to house mechanical equipment and not exceeding total floor area of 200 square feet (18.58 m²)

2. Below grade emergency escape and rescue windows may have a maximum sill height of 48 inches.

SECTION R310.2.1 is hereby amended to read as follows:

Section R310.2.1 -- Ladder and steps. Window wells with a vertical depth greater than 44 inches (1118 mm) shall be equipped with a permanently affixed ladder or steps usable with the window in the fully open position or, install a minimum 30"x16" permanently attached platform in the window well that will reduce the vertical depth of the window well to no more than 42" below the top of the window well and that will not impede the operation of the window. Ladders or steps required by this section shall not be required to comply with Sections R311.5 and R311.6. Ladders or rungs shall have a inside width of at least 12 inches (305 mm), shall project at least 3 inches (76 mm) from the wall and shall be spaced not more than 18 inches (457 mm) on center vertically for the full height of the window well.

Exception: Terraced window wells with a maximum of 24" per vertical rise and minimum of 12" horizontal projections on each level shall also be allowed in accordance with Figures 310.2.1(1) and 310.2.1(2).

SECTION R311.3.2 is hereby amended to read as follows:

R311.3.2 Floor elevations for other exterior doors. Doors other than the required egress door shall be provided with landings or floors not more than ~~7 $\frac{3}{4}$~~ 8 inches (196 mm) (203 mm) below the top of the threshold.

Exception: A landing is not required where a stairway of two or fewer risers with a total rise of less than 30 inches (762 mm) is located on the exterior side of the door, provided the door does not swing over the stairway.

SECTION R311.7.4.1 is hereby amended to read as follows:

Section R311.7.4.1 Riser height. The maximum riser height shall be ~~7 $\frac{3}{4}$~~ 8 inches (196 mm). The riser shall be measured vertically between leading edges of the adjacent treads. The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

SECTION R311.7.4.2 is hereby amended to read as follows:

Section R311.7.4.2 Tread depth. The minimum tread depth shall be ~~10~~ 9 inches (~~254~~ 228.6 mm). The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). Consistently shaped winders at the walkline shall be allowed within the same flight of stairs as rectangular treads and do not have to be within 3/8 inch (9.5 mm) of the rectangular tread depth.

Exception: Where a landing is not provided or required by Section 311.3.2 or 311.7.5, the top tread of a stair serving exterior doors other than the required exit door, and having in-swinging doors opening into an attached garage, shall be permitted to exceed the smallest tread by more than 3/8 inch (9.5 mm). Such a tread shall be at least 18 inches (457 mm) measured in the direction of travel.

Winder treads shall have a minimum tread depth of ~~10~~ 9 inches (~~254~~ 228.6 mm) measured between the vertical planes of the foremost projection of adjacent treads at the intersections with the walkline. Winder treads shall have a minimum tread depth of 6 inches (152 mm) at any point within the clear width of the stair. Within any flight of stairs, the largest winder tread depth at the walkline shall not exceed the smallest winder tread by more than 3/8 inch (9.5 mm).

SECTION R311.7.5 is hereby amended to read as follows:

Section R311.7.5 Landings for stairways. There shall be a floor or landing at the top and bottom of each stairway.

Exceptions:

1. A floor or landing is not required at the top of an interior flight of stairs, including stairs in an enclosed garage, provided a door does not swing over the stairs. ~~A flight of stairs shall not have a vertical rise larger than 12 feet (3658 mm) between floor levels or landings. The width of each landing~~

~~shall not be less than the width of the stairway served. Every landing shall have a minimum dimension of 36 inches (914 mm) measured in the direction of travel.~~

2. A landing is not required where a stairway with a total rise of less than 30 inches (762 mm) is located on the exterior side of the door, provided the door does not swing over the stairway.

A flight of stairs shall not have a vertical rise larger than 12 feet (3658 mm) between floor levels or landings. The width of each landing shall not be less than the width of the stairway served. Every landing shall have a minimum dimension of 36 inches (914 mm) measured in the direction of travel.

SECTION R312.1 is hereby amended to read as follows:

R312.1 Where Required. Guards shall be located along open-sided walking surfaces, including stairs, ramps and landings that are located more than 30 inches (762 mm) measured vertically to the floor or grade below. ~~at any point within 36 inches (914 mm) horizontally to the edge of the open side.~~ Insect screening shall not be considered as a guard.

SECTION R312.2 is hereby amended to read as follows:

R312.2 Height. Required guards at open-sided walking surfaces, including stairs, porches, balconies or landings, shall be not less than 36 inches (914 mm) high measured vertically above the adjacent walking surface, ~~adjacent fixed seating~~ or the line connecting the leading edges of the treads.

Exceptions:

1. Guards on . . .

SECTION R313 is hereby deleted in its entirety.

SECTION R314.3 is hereby amended to read as follows:

R314.3 Location. Smoke alarms shall be installed in the following locations:

1. ...
3. On each additional story of the dwelling, including basements but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level. In dwelling units where the ceiling height of a room open to the hallway serving the bedrooms exceeds that of the hallway by 24 inches (610 mm) or more, smoke detectors shall be installed in the hallway and in the adjacent room.

SECTION R322 is hereby deleted in its entirety.

SECTION R401.1 is hereby amended to read as follows:

R401.1 Application. The provisions of this chapter shall control the design and construction of the foundation and foundation spaces for all buildings. In addition to the provisions of this chapter, the design and construction of foundations in areas prone to flooding ~~as established by Table R301.2(1)~~ shall meet the provisions of ~~Section R324~~ the applicable requirements of the Ordinances of the City of Kindred. Wood foundations shall be designed and installed in accordance with AF&PA PWF.

(Balance of section is unchanged)

SECTION R401.3 is hereby amended to read as follows:

R401.3 Drainage. Surface drainage shall be diverted to a storm sewer conveyance or other approved point of collection ~~so as to not create a hazard.~~ Lots shall be graded to drain surface water away from foundation walls. ~~The grade shall fall a minimum of 6 inches (152mm) within the first 10 feet (3048mm).~~

~~Exception: Where lot lines, walls, slopes or other physical barriers prohibit 6 inches (152mm) of fall within 10 feet (3048mm), the final grade shall slope away from the foundation at a minimum slope of 5 percent and~~

~~the water shall be directed to drains or swales to ensure drainage away from the structure. Swales shall be sloped a minimum of 2 percent when located within 10 feet (3048mm) of the building foundation. Impervious surfaces within 10 feet (3048mm) of the building foundation shall be sloped a minimum of 2 percent away from the building.~~

SECTION R403.1.4.1 is hereby amended to read as follows:

Section R403.1.4.1 Frost protection. Except where ...

Exceptions:

1. Protection of freestanding accessory structures ~~with an area of 600 square feet (56 m²) or less of light framed construction and an eave height of 10 feet (3048 mm) or less~~ shall not be required.
2. Protection of freestanding, accessory structures with an area of 400 square feet (37 m²) or less, of other than light-framed construction, ~~with an eave height of 10 feet (3048 mm) or less~~ shall not be required.
3. Decks ~~not supported by a dwelling~~ need not be provided with footings that extend below the frost line.

Footings shall not bear on frozen soil unless the frozen condition is permanent.

(Balance of section is unchanged.)

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Table R404.1.2(10) is added as follows:

Table R404.1.2(10)
Foundation Wall Reinforcing

Active Pressure = 45pcf

Minimum Reinforcement for Concrete Foundation Walls		
Wall Height (h) feet	Wall Thickness (t) inches	Vertical Reinforcing
8	8	#4 @ 24" o.c. #5 @ 40" o.c.
	10	#4 @ 30" o.c. #5 @ 50" o.c.
9	8	#4 @ 18" o.c. #5 @ 28" o.c.
	10	#4 @ 24" o.c. #5 @ 36" o.c.
10	10	#4 @ 16" o.c. #5 @ 26" o.c.

Notes:

1. Chart is based on an active soil pressure of 45 pounds per cubic foot (pcf).
2. Reinforcing steel shall be ASTM A615 Fy - 60,000 pounds per square inch (psi).
3. The vertical reinforcing bars are to be located on the inside face.
4. Minimum concrete strength $F_c^1 = 3,000$ pounds per square inch (psi).
5. Backfill shall not be placed until first floor framing and sheathing is installed and fastened or adequately braced and the concrete floor slab is in place or the wall is adequately braced.

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Table R404.1.2(11) is added as follows:

Table R404.1.2(11)
Foundation Wall Reinforcing

Active Pressure = 65 pcf

Minimum Reinforcement for Concrete Foundation Walls		
Wall Height (h) Feet	Wall Thickness (t) inches	Vertical Reinforcing
8	8	#4 @ 18" o.c. #5 @ 26" o.c. #6 @ 40" o.c.
	10	#4 @ 24" o.c. #5 @ 36" o.c. #6 @ 52" o.c.
9	8	#4 @ 12" o.c. #5 @ 18" o.c. #6 @ 26" o.c.
	10	#4 @ 16" o.c. #5 @ 24" o.c. #6 @ 36" o.c.
10	10	#4 @ 12" o.c. #5 @ 18" o.c. #6 @ 24" o.c.

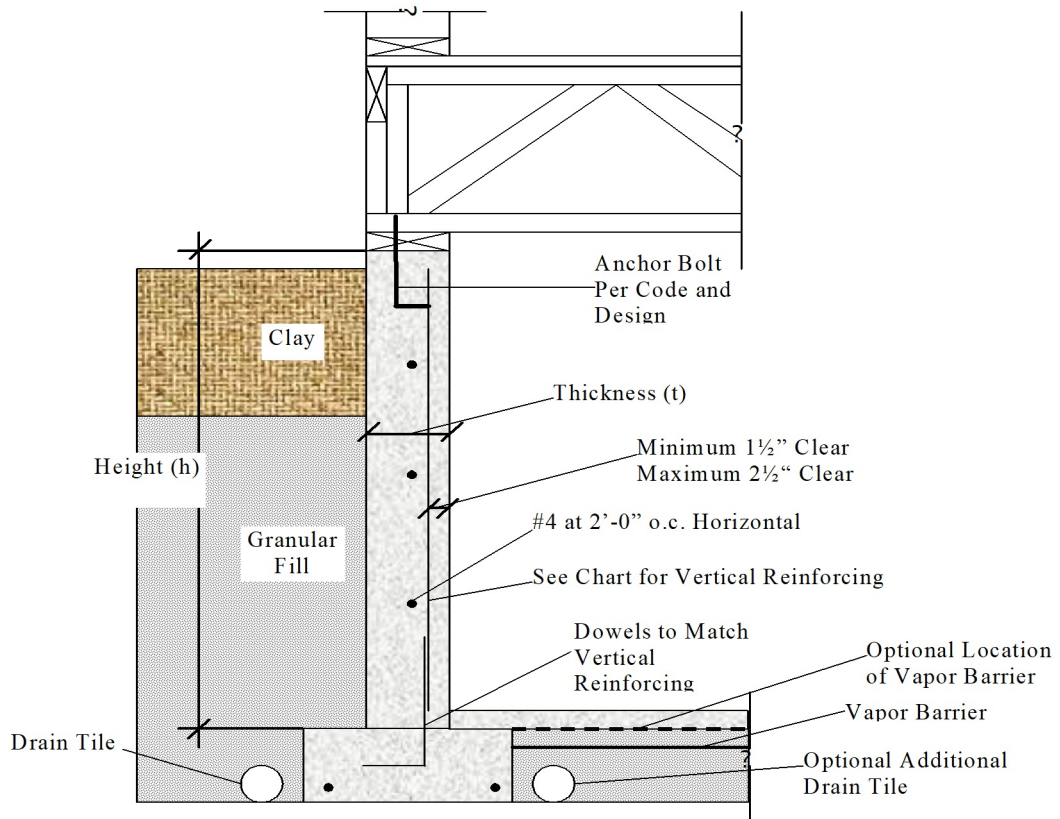
Notes:

1. Chart is based on an active soil pressure of 65 pounds per cubic foot (pcf).
2. Reinforcing steel shall be ASTM A615 Fy - 60,000 pounds per square inch (psi).
3. The vertical reinforcing bars are to be located on the inside face.
4. Minimum concrete strength $F_c^1 = 3,000$ pounds per square inch (psi).
5. Backfill shall not be placed until first floor framing and sheathing is installed and fastened or adequately braced and the concrete floor slab is in place or the wall is adequately braced.

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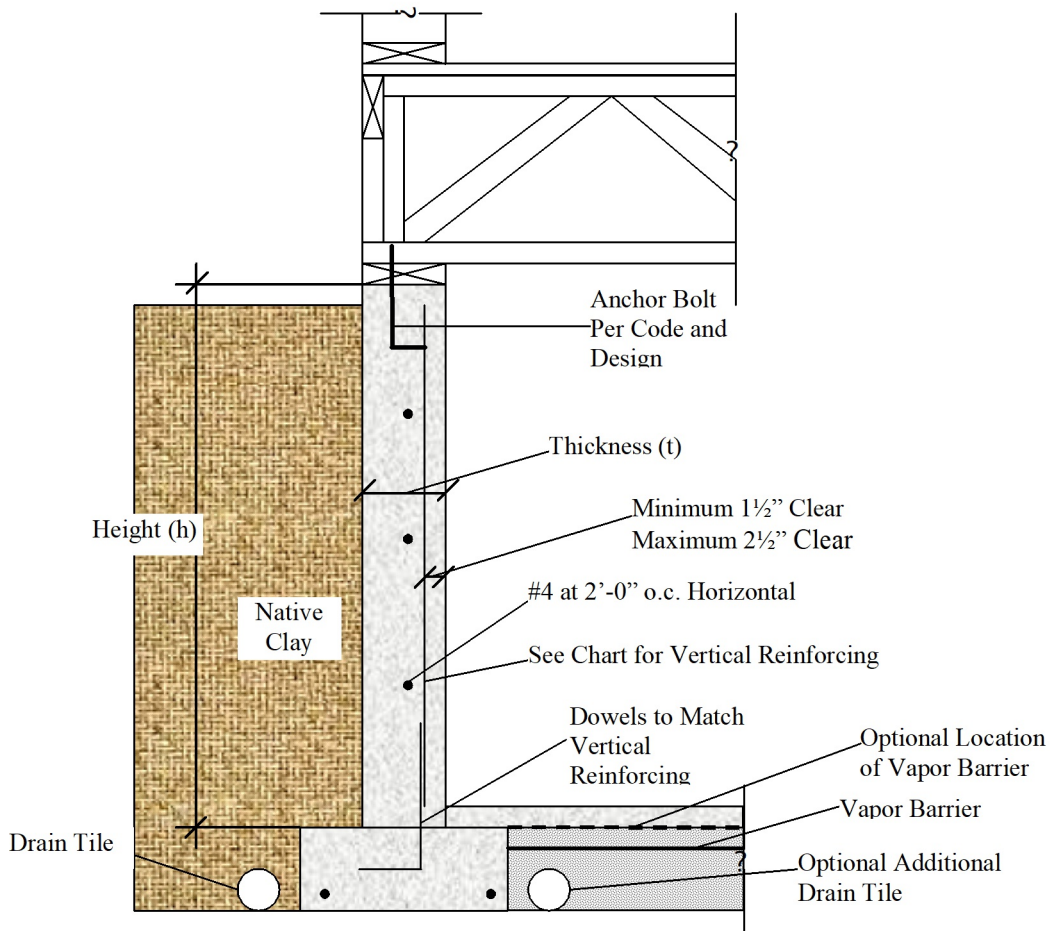
Figures R404.1.2(1) and R404.1.2(2) are hereby added as follows:

FIGURE R404.1.2(1)



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FIGURE R404.1.2 (2)



SECTION R404.1.2.2 is hereby amended to read as follows:

R404.1.2.2 Reinforcement for foundation walls.

Concrete foundation walls shall be laterally supported at the top and bottom. Horizontal reinforcement shall be provided in accordance with Table R404.1.2(1). Vertical reinforcement shall be provided in accordance with Table R404.1.2(2), R404.1.2(3), R404.1.2(4), R404.1.2(5), R404.1.2(6), R404.1.2(7), ~~or~~ R404.1.2(8), R404.1.2(10) or R404.1.2(11). Vertical reinforcement for flat basement walls retaining 4 feet (1219 mm) or more of unbalanced backfill is permitted to be determined in accordance with Table R404.1.2(9) and Figures R404.1.2(1) and R404.1.2(2). For basement walls supporting above grade concrete walls, vertical reinforcement shall be by Tables R404.1.2(2) through R404.1.2(8) or by Section

R611.6 for above-grade wall. In buildings assigned to Seismic Design Category D0, D1, or D2, concrete foundation walls shall also comply with Section R404.1.4.2.

SECTION R405.2.3 is hereby amended to read as follows:

Section R405.2.3 Drainage system. In other than Group I soils, a sump shall be provided to drain the porous layer and footings. The sump shall be at least ~~24~~ 18 inches ~~(610 mm)~~ in diameter or ~~20~~ 16 inches square ~~(0.0129m²)~~, shall extend at least 24 inches (610 mm) below the bottom of the basement floor and shall be capable of positive gravity or mechanical drainage to remove any accumulated water. The drainage system shall discharge into an approved sewer system or to daylight.

SECTION R506.2.3 is hereby amended to add an exception 5 to read as follows:

R506.2.3 Vapor retarder. ...

Exceptions:

* * *

5. Attached garages.

SECTION R602.10 is hereby amended to read as follows:

R602.10 Wall bracing. Buildings shall be braced in accordance with this section. Where a building, or portion thereof, does not comply with one or more of the bracing requirements in this section, those portions shall be designed and constructed in accordance with Section R301.1.

Exceptions:

1. Detached one- and two-family *dwelling*s located in Seismic Design Category C are exempt from the seismic bracing requirements of this section. Wind speed provisions for bracing shall be applicable to detached one- and two-family *dwelling*s.
2. The wall bracing requirements of section R602.10 of the 2006 International Residential Code may be used as an alternative to this section.

SECTION R703.6.2 is hereby amended to read as follows:

Section R703.6.2 Plaster. Plastering with portland cement plaster shall be not less than three coats when applied over metal lath or wire lath and shall be not less than two coats when applied over masonry, concrete, pressure-preservative treated wood or decay-resistant wood as specified in Section R319.1 or gypsum backing. If the plaster surface is completely covered by veneer or other facing material or is completely concealed, plaster application need be only two coats, provided the total thickness is as set forth in Table R702.1(1). Approved decorative coatings applied to a concrete or masonry surface shall be installed in accordance with the manufacturer's installation instructions.

SECTION R903.5 and Figure R903.5 are hereby deleted in their entirety.

SECTION R905.2.5 is hereby amended to read as follows:

R905.2.5 Fasteners. Fasteners for asphalt shingles shall be galvanized steel, stainless steel, aluminum or copper roofing nails, minimum 12 gage [0.105 inch (2.67 mm)] shank with a minimum 3/8 inch (9.5 mm) diameter head, ASTM F 1667, of a length to penetrate through the roofing materials and a minimum of 3/4 inch (19.1 mm) into the roof sheathing or other fasteners as approved by the building official and shingle manufacturer. Where the roof sheathing is less than 3/4 inch (19.1 mm) thick, the fasteners shall penetrate through the sheathing. Fasteners shall comply with ASTM F 1667.

SECTION R907 is hereby deleted in its entirety and relocated to the Appendices as Appendix R.

TABLE N1102.1 is hereby revised as follows:

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**TABLE N1102.1
INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT^a**

CLIMATE ZONE	FENESTRATION U-FACTOR	SKYLIGHT ^b U-FACTOR	GLAZED FENESTRATION SHGC	CEILING R-VALUE	WOOD FRAMED WALL R-VALUE	MASS WALL R-VALUE ^k	FLOOR R-VALUE	BASEMENT ^c WALL R-VALUE	SLAB ^d R-VALUE AND DEPTH	CRAWL SPACE ^e WALL R-VALUE
1	1.20	0.75	0.35 ^j	30	13	3/4	13	0	0	0
2	0.65 ⁱ	0.75	0.35 ^j	30	13	4/6	13	0	0	0
3	0.50 ⁱ	0.65	0.35 ^{e,j}	30	13	5/8	19	5/13 ^f	0	5/13
4 except Marine	0.35	0.60	NR	38	13	5/10	19	10/13	10, 2 ft.	10/13
5 and Marine 4	0.35	0.60	NR	38	20 or 13 + 5 ^h	13/17	30 ^f	10/13	10, 2 ft.	10/13
6	0.35	0.60	NR	49	20 or 13 + 5^h 19	15/19	30 ^e	10/13	10, 4 ft.	10/13
7 and 8	0.35	0.60	NR	49	20 or 13 + 5^h 19	19/21	30 ^c	10/13	10, 4ft	10/13

Footnotes to remain.

SECTION N1103.1.1 is hereby deleted in its entirety.

SECTION N1103.2.2 is hereby revised as follows:

N1103.2.2 Sealing. Ducts, air handlers, filter boxes and building cavities used as ducts shall be sealed. Joints and seams shall comply with Section M1601.4. ~~Duct tightness shall be verified by either of the following:~~

- ~~1. Post construction test: Leakage to outdoors shall be less than or equal to 8 cfm (3.78 L/s) per 100 ft² (9.29m²) of conditioned floor area or a total less than or equal to 12 cfm (5.66 L/s) per 100 ft² (9.29 m²) of conditioned floor area when tested at a pressure differential of 0.1 inch w.g (25 Pa) across the entire system, including the manufacturer's air handler end closure. All register boots shall be taped or otherwise sealed during the test.~~

- ~~2. Rough in test: total leakage shall be less than or equal to 6 cfm (2.83 L/s) per 100 ft² (9.29 m²) of conditioned floor area when tested at a pressure differential of 0.1 inch w.g. (25 Pa) across the roughed in system, including the manufacturer's air handler enclosure. All register boots shall be taped or sealed during the test. If the air handler is not installed at the time of the test, total leakage shall be less than or equal to 4 cfm (1.89 L/s) per 100 ft² (9.29 m²) of conditioned floor area.~~

SECTION N1104.1 is hereby deleted in its entirety.

SECTION M1301.1.1 is hereby deleted in its entirety.

SECTION M1401.5 is hereby deleted in its entirety.

SECTION M1502.4.4.1 is hereby amended to read as follows:

M1502.4.4.1 Specified Length. the maximum length of the exhaust duct shall be ~~25 (7620 mm)~~ 35 (10668) mm feet from the connection to the transition duct from the dryer to the outlet terminal. Where fittings are used, the maximum length of the exhaust duct shall be reduced in accordance with Table M1502.4.4.1.

SECTION M1601.4.9 is hereby deleted in its entirety.

SECTION M1603 is hereby added to read as follows:

SECTION M1603 General

SECTION M1603.1 is hereby added to read as follows:

M1603.1 General. The minimum unobstructed total area of supply and return air ducts from a warm-air furnace shall be in accordance with the manufacturer's installation instructions, but shall not be less than 2 square inches (1290 MM sq) for each 1,000 Btu/h (293W) output rating of the furnace. The minimum unobstructed total area of the supply and return air ducts from a central air-conditioning unit and/or heat pump shall be in accordance with the manufacturer's installation instructions, but shall be not less than 6 square inches (3870 mm sq) for each 1,000 Btu/h (293W) nominal cooling output rating. Dampers, grilles, or registers installed for the purpose of

controlling the supply airflow shall not be considered as obstructions.

SECTION M1701.2.1 is hereby added to read as follows:

M1701.2.1 Attic Spaces. Attic spaces shall not be used as a source of combustion air.

SECTION M1801.1 is hereby amended to read as follows:

M1801.1 Venting required. Fuel-burning appliances shall be vented to the outside in accordance with their listing and label and manufacturer's installation instructions ~~except appliances listed and labeled for unvented use...~~

SECTION M2001.4 is hereby deleted in its entirety.

SECTION M2101.3 is hereby amended to read as follows:

M2101.3 Protection of potable water. The potable water system shall be protected from backflow in accordance with the provisions listed in ~~Section P2902~~ the North Dakota State Plumbing Code.

SECTION M2101.10 is hereby amended to read as follows:

M2101.10 Tests. New Hydronic piping shall be isolated and tested hydrostatically at a pressure of not less than 100-pounds per square inch (psi) (689 kPa) for a duration of not less than 15 minutes.

SECTION M2201.6 is hereby deleted in its entirety.

SECTION G2404.7 is hereby deleted in its entirety.

SECTION G2406.2 is hereby amended to delete exceptions 3 and 4 as follows:

G2406.2 (303.3) Prohibited locations. *Appliances shall not ...*

Exceptions:

1. ...

~~3. A single wall-mounted unvented room heater is installed in a bathroom and such unvented heater equipped as specified in Section G2445.6 and has an input rating not greater than 6000 Btu/h~~

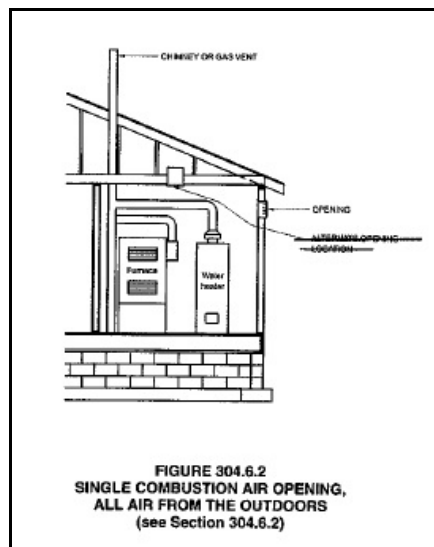
~~(1.76kW). The bathroom shall meet the required volume criteria of Section G2407.5.~~

~~4. A single wall-mounted unvented room heater equipped is installed in a bedroom and such unvented room heater is equipped as specified in Section G2445.6 and has an input rating not greater than 10,000 Btu/h (2.93W). The bedroom shall meet the required volume criteria of Section G2407.5.~~

53. The *appliance* is installed in a room or space that opens only into a bedroom or bathroom, and such room or space is used for no other purpose and is provided with a solid weather-stripped door equipped with an *approved* self-closing device. All *combustion* air shall be taken directly from the outdoors in accordance with Section G2407.6.

Figures G2407.6.1(1) AND G2407.6.1(2) are hereby deleted in their entirety.

Figure G2407.6.2 is hereby amended to delete the reference to an alternate opening location as shown.



SECTION G2407.11 is hereby amended to delete item number 5 and renumber subsequent item as follows:

G2407.11 (304.11) Combustion air ducts. Combustion air ducts shall comply with all the following:

1. Ducts shall be ...
- ~~5. Ducts shall not be screened where terminating in an attic space.~~

SECTION G2413.5 is hereby amended to read as follows:

Section G2413.5 (402.5) Allowable pressure drop. The design pressure loss in any piping system under maximum probable flow conditions, from the point of delivery to the inlet connection of the appliance, shall be such that the supply pressure at the appliance is greater than the minimum pressure required for proper appliance operation but such pressure loss shall not be greater than .5 inch water column.

SECTION G2417.4.1 is hereby amended to read as follows:

Section G2417.4.1 (406.4.3) Test pressure. The test pressure to be used shall not be less than one and on half times the proposed maximum working pressure, but not less than 3 25 psig (~~20 kPa gauge~~), irrespective of design pressure. Where the test pressure exceeds 125 psig (~~862 kPa gauge~~), the test pressure shall not exceed a value that produces a hoop stress in the piping greater than 50 percent of the specified minimum yield strength of the pipe.

SECTION G2419.2 is hereby amended to read as follows:

G2419.2 (408.2) Drips. Where wet gas exists, a drip shall be provided at any point in the line of pipe where condensate could collect. ~~A drip shall also be provided at the outlet of the meter and shall be installed so as to constitute a trap wherein an accumulation of condensate will shut off the flow of gas before the condensate will run back into the meter.~~

SECTION G2425.8 is hereby amended to read as follows:

G2425.8 (501.8) Appliances not required to be vented. The following *appliances* shall not be required to be vented:

1. Ranges.
2. Built-in domestic cooking ...
- ~~7. Room heaters listed for unvented use.~~

Where the *appliances* listed in Items 5 ~~thru 7~~ and 6 above are installed so that the aggregate input rating exceeds 20 *Btu* per hour per *cubic foot* (207 W/m^3) of volume of the room or space in which such *appliances* are installed, one or more shall be provided with venting *systems* or other *approved* means for conveying the *vent gases* to the outdoor atmosphere so that the aggregate input rating of the remaining *unvented appliances* does not exceed 20 *Btu* per hour *cubic foot* (207 W/m^3). Where the room or space in which the *appliance* is installed is directly connected to another room or space by a doorway, archway or other opening of comparable size that cannot be closed, the volume of such adjacent room or space shall be permitted to be included in the calculations.

SECTION G2425.12 is hereby amended to read as follows:

G2425.12 (501.12) Residential and low-heat appliances flue lining systems. Flue lining systems for use with residential-type and low-heat appliances shall be limited to the following:

1. Clay flue lining complying with the requirements of ASTM C 315 or equivalent when each appliance connected into the masonry chimney has a minimum input rating greater than 400,000 Btu/h. Clay flue lining shall be installed in accordance with Chapter 10.
2. Listed chimney lining systems complying with UL1777.
3. Other approved materials that will resist, without cracking, softening or corrosion, flue gases and condensate at temperatures up to 1,800°F (982°C).
 - a. Aluminum (1100 or 3003 alloy or equivalent) not less than 0.032 inches thick up to 8 inches in diameter.
 - b. Stainless steel (304 or 430 alloy or equivalent) not less than 26 gauge (0.018 inches thick) to 8 inches in diameter or not less than 24 gauge

(0.024 inches thick) 8 inches in diameter and larger.

When a metal liner is used other than a listed chimney liner a condensation drip tee shall be installed and supported in an approved manner.

SECTION G2427.5.2 is hereby amended to read as follows:

G2427.5.2 (503.5.3) Masonry chimneys. Masonry *chimneys* shall be built and installed in accordance with NFPA211 and shall be lined ~~with approved clay flue lining, a listed chimney lining system, or other approved material that will resist corrosion, erosion, softening or cracking from vent gases at temperatures up to 1,800 F (982 C)~~ as per G2425.12.

Exception: Masonry *chimney* flues serving listed gas *appliances* with *draft hoods*, Category I *appliances* and other gas *appliances* listed for use with Type B vents shall be permitted to be lined with a *chimney* lining system specifically listed for use only with such *appliances*. The liner shall be installed in accordance with the liner manufacturer's installation instructions. A permanent identifying attached at the point where the connection is to be made to the liner. The label shall read: This *chimney* liner is for *appliances* that burn gas only. Do not connect to solid or liquid fuel-burning appliances or incinerators."

SECTION G2442.6 is hereby amended to read as follows:

G2442.6 (618.6) Screen. Required outdoor air inlets shall be covered with a screen having $\frac{1}{4}$ inch (6.4 mm) openings. Required outdoor air inlets serving a nonresidential portion of a building shall be covered with screen having openings larger than $\frac{1}{4}$ inch (6.4 mm) and not larger than $\pm \frac{1}{2}$ inch ~~(25 mm)~~.

SECTION G2445 is hereby deleted in its entirety.

CHAPTERS 25 through 43 are hereby deleted in their entirety.

5-0703. PENALTY. Any person violating any section of this chapter shall upon conviction be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

Source: Ord. 2014-56, Sec. 5 (2015)

5-0704. FEE FOR COPY OF RELEVANT CODE PROVISIONS. Every licensed contractor, pursuant to Chapter 43-07 of the North Dakota Century Code, upon applying for a building permit, shall be provided a copy of the Building Code Ordinances of the City of Kindred and the relevant portions of the International Residential Code adopted by the City which apply to residential construction. The contractor will be charged a fee for such copies in an amount set by the City Council. A contractor will only be provided one copy of the International Residential Code sections and pay one fee for residential construction, no matter how many building permits are requested by that particular contractor. Provided, however, that if the City later adopts another Building Code, the contractor will again be required to pay another fee to get the revised Building Code provisions. Notwithstanding the above provisions, if a contractor shows the Building Official his/her copy of the appropriate Building Code, then the contractor shall just be supplied a copy of the Kindred Building Code Ordinances and shall not be required to be provided nor pay the charge for obtaining a copy of the relevant Building Code.

5-0705. Appeals. A person shall have the right to appeal a decision of the Code Official to the Board of Appeals. The Kindred City Council shall be the Board of Appeals. An appeal in writing to the Code Official must be made within 20 days of the decision of the Code Official. The Kindred City Council shall hear the appeal within 30 days of the Code Official receiving written notice of the appeal. The Council may only reverse or modify a decision of the Code Official by a vote of at least three members of the Council. If not all members of the Council are present at the hearing, the person appealing the decision may request a postponement, which may extend the 30-day period to hold such a hearing. An application for an appeal shall be based on a claim that the true intent of the Code has been incorrectly interpreted, the provisions of the Code do not fully apply, or an equally good or better form of construction is proposed. The Council shall have no authority to waive requirements of the Code.

CHAPTER 5-08

INTERNATIONAL EXISTING BUILDING CODE

(Source: Ord. 2011-35, Sec. 1 [2011])

SECTIONS:

- 5-0801. Adoption of International Existing Building Code.
- 5-0802. Amendment to International Existing Building Code.
- 5-0803. Penalty.
- 5-0804. Appeals.

5-0801. ADOPTION OF INTERNATIONAL EXISTING BUILDING CODE. There is hereby adopted by reference by the City Council, for the purpose of prescribing regulations governing standards, relative to housing in the City of Kindred, that certain code known as the International Existing Building Code, recommended and compiled by the International Code Council, being particularly the 2009 edition thereof, as the same are now established in said code, a copy of which is on file in the office of the Building Administrator for the City of Kindred, with the exception of the sections hereinafter set forth affecting local conditions of the City of Kindred, which sections shall be substituted for and in lieu of like sections or paragraphs in said International Existing Building Code; the City Council of said City of Kindred, by this section hereby approves and adopts such rules and regulations, so modified, for the use and application within the city limits of Kindred, North Dakota, as well as for any area within the extraterritorial zoning jurisdiction of the City. Provided, that any amendments of the 2009 edition of the Code may be adopted by the City by resolution.

5-0802. AMENDMENT TO INTERNATIONAL EXISTING BUILDING CODE. The International Existing Building Code, as adopted in Section 5-0801 is hereby changed and amended as follows:

SECTION 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the Existing Building Code of ~~(NAME OF JURISDICTION)~~ the City of Kindred hereinafter referred to as "this code."

SECTION 104.2.1.1 is hereby amended to read as follows:

104.2.1.1 Building evaluation. The code official is authorized to require an existing building to be investigated and evaluated at the owner's expense by a registered design professional based on the circumstances agreed upon at the preliminary

meeting to determine the existence of any potential nonconformance with the provisions of this code.

SECTION 104.8 is hereby amended to add a new final paragraph to read as follows:

104.8 Liability. The *code official*, member of the board of appeals or employee charged with the enforcement of this code. While acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act or omission performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be afforded all the protection provided by the city's insurance pool and immunities and defenses provided by other applicable state and federal laws and shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The building official or any subordinate shall not be liable for the cost in any action, suit or proceeding that is instituted in pursuant of the provisions of this code.

This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code

SECTION 104.10.1 is hereby deleted in its entirety.

SECTION 105.2 is hereby amended to read as follows:

105.2 Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

Building:

1. Sidewalks, retaining walls, and driveways not more than 30 inches (762 mm) above grade and not over any basement or story below and that are not part of an accessible route.
2. Painting, papering, tiling
6. Movable cases, counters and partitions not over 96 inches (1753 mm) in height.
7. Fences not over 8.5 feet high.
8. Swimming pools not located on a building roof.
9. Water tanks supported directly on grade.
10. Reroofing.

SECTION 107.3.1 is hereby amended to read as follows:

107.3.1. Approval of construction documents. When the *code official*... ..One set of construction documents so reviewed shall be retained by the *code official*. ~~The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the building official or by a duly authorized representative.~~

SECTION 109.3.3 is hereby deleted in its entirety and subsequent sections renumbered accordingly.

SECTION 112 is hereby deleted in its entirety.

SECTION 113.1 is hereby amended to read as follows:

113.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be ~~appointed by the applicable governing authority~~ the City Council of the City of Kindred and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business.

SECTION 113.3 is hereby deleted in its entirety.

SECTION 201.3 is hereby amended to add the following:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the other *International Codes* that have been adopted by Kindred, such terms shall have the meanings ascribed to them in those codes.

Wherever the term "International Plumbing Code" and/or the "International Private Sewage Disposal Code" is used in this Code, it shall mean the North Dakota State Plumbing Code. Wherever the term "ICC Electrical Code" is used in this Code, it shall mean the National Electric Code together with the North Dakota State Wiring Standards. Wherever the term "Flood Hazard Area" is used, it shall mean the Kindred Flood Plain Management ordinance together with the Flood Proofing Code of the city of Kindred, North Dakota.

SECTION 302.2 is hereby deleted in its entirety.

SECTION 303.2 is hereby deleted in its entirety.

SECTION 304.5 is hereby deleted in its entirety.

SECTION 308.2 is hereby deleted in its entirety.

SECTION 501.3 is hereby deleted in its entirety.

SECTION 506.2.4 is hereby deleted in its entirety.

SECTION 601.3 is hereby deleted in its entirety.

SECTIONS 603.3, 606.3.1 AND 606.3.2 are hereby deleted in their entirety.

SECTION 1003.5 is hereby deleted in its entirety.

SECTION 1101.4 is hereby deleted in its entirety.

SECTION 1201.2 is hereby amended by adding a new second paragraph to read as follows:

1201.2 Conformance. ~~The building shall be safe for human occupancy as determined by the *International Fire Code* and the *International Property Maintenance Code*. Any repair, alteration, or change of occupancy undertaken within the moved structure shall comply with the requirements of this code applicable to the work being performed. Any field fabricated elements shall comply with the~~

~~requirements of the International building Code or the International Residential Code as applicable. Buildings to be moved within this jurisdiction shall comply with provisions of this Chapter. Buildings to be moved into this jurisdiction shall comply with the provisions of the International Codes for new buildings and shall be certified as to that compliance by an agency approved by the code official.~~

SECTION 1202.6 is hereby deleted in its entirety.

SECTION 1301.2 is hereby amended to read as follows:

1301.2 Applicability. Structures existing prior to ~~{DATE TO BE INSERTED BY THE JURISDICTION}~~ 1952 in which there is work involving *additions, alterations, or changes of occupancy* shall be made to conform to the requirements of this chapter or the provisions of Chapters 4 through 12. The provisions of Section 1301.2.1 through 1301.2.5 shall apply to existing occupancies that will continue to be, or are proposed to be, in Groups A, B, E, F, M, R, and S. These provisions shall not apply to buildings with occupancies in Group H or Group I.

5-0803. Penalty. Any person violating any provision of the International Existing Building Code adopted by this title or any section of this title shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

5-0804. Appeals. A person shall have the right to appeal a decision of the Code Official to the Board of Appeals. The Kindred City Council shall be the Board of Appeals. An appeal in writing to the Code Official must be made within 20 days of the decision of the Code Official. The Kindred City Council shall hear the appeal within 30 days of the Code Official receiving written notice of the appeal. The Council may only reverse or modify a decision of the Code Official by a vote of at least three members of the Council. If not all members of the Council are present at the hearing, the person appealing the decision may request a postponement, which may extend the 30-day period to hold such a hearing. An application for an appeal shall be based on a claim that the true intent of the Code has been incorrectly interpreted, the provisions of the Code do not fully apply, or an equally good or better form of construction is proposed. The Council shall have no authority to waive requirements of the Code.

CHAPTER 5-09

INTERNATIONAL ENERGY CONSERVATION CODE

(Source: Ord. 2011-36, Sec. 1 [2011])

SECTIONS:

- 5-0901. Adoption of International Energy Conservation Code.
- 5-0902. Amendment to International Energy Conservation Code.
- 5-0903. Penalty.
- 5-0904. Appeals.

5-0901. ADOPTION OF INTERNATIONAL ENERGY CONSERVATION CODE. There is hereby adopted by reference by the City Council, for the purpose of prescribing regulations governing standards, relative to housing in the City of Kindred, that certain code known as the International Energy Conservation Code, recommended and compiled by the International Code Council, being particularly the 2009 edition thereof, as the same are now established in said code, a copy of which is on file in the office of the Building Administrator for the City of Kindred, with the exception of the sections hereinafter set forth affecting local conditions of the City of Kindred, which sections shall be substituted for and in lieu of like sections or paragraphs in said International Energy Conservation Code; the City Council of said City of Kindred, by this section hereby approves and adopts such rules and regulations, so modified, for the use and application within the city limits of Kindred, North Dakota, as well as for any area within the extraterritorial zoning jurisdiction of the City. Provided, that any amendments of the 2009 edition of the Code may be adopted by the City by resolution.

5-0902. AMENDMENT TO INTERNATIONAL ENERGY CONSERVATION CODE. The International Energy Conservation Code, as adopted in Section 5-0901 is hereby changed and amended as follows:

SECTION 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the Energy Conservation Code of ~~(NAME OF JURISDICTION)~~ the City of Kindred hereinafter referred to as "this code."

SECTION 103.3.1 is hereby amended to read as follows:

103.3.1 Approval of construction documents. When the *code official*... ..One set of construction documents so reviewed shall be retained by the *code official*. ~~The other set shall be returned to the applicant, shall be kept at the site of work and~~

~~shall be open to inspection by the building official or a duly authorized representative.~~

SECTION 109 is hereby deleted in its entirety.

SECTION 291.3 is hereby amended to read as follows:

201.3 Terms defined in other codes. Terms that are not defined in this code but are defined in the *International Building Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, ~~International Plumbing Code,~~* or the *International Residential Code* shall have the meanings ascribed to them in those codes.

Wherever the term "International Plumbing Code" and/or the "International Private Sewage Disposal Code" is used in this Code, it shall mean the North Dakota State Plumbing Code.

SECTION 401.2 is hereby amended to read as follows:

401.2 Compliance. Projects shall comply with Sections 401, 402.4, 402.5, and 403.1, 403.2.2, 403.2.3, and 403.3 through 403.9 (referred to as the mandatory provisions) and either:

1. Sections 402.1 through 402.3, 403.2.1 and 404.1 (prescriptive); or
2. Section 405 (performance).

Compliance with this chapter may also be demonstrated by compliance with Chapter 11 of the International Residential Code.

5-0903. Penalty. Any person violating any provision of the International Energy Conservation Code adopted by this title or any section of this title shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

5-0904. Appeals. A person shall have the right to appeal a decision of the Code Official to the Board of Appeals. The Kindred City Council shall be the Board of Appeals. An appeal in writing to the Code Official must be made within 20 days of the decision of the Code Official. The Kindred City Council shall hear the appeal within 30 days of the Code Official receiving written notice of the appeal. The Council may only reverse or modify a decision of the Code Official by a vote of at least three members of the Council. If not all members of the Council are present at the hearing, the person appealing the decision may request a postponement, which may

extend the 30-day period to hold such a hearing. An application for an appeal shall be based on a claim that the true intent of the Code has been incorrectly interpreted, the provisions of the Code do not fully apply, or an equally good or better form of construction is proposed. The Council shall have no authority to waive requirements of the Code.

TITLE VI.

FIRE PROTECTION AND PREVENTION

CHAPTERS:

- 6-01. International Fire Code.
- 6-02. Public Conduct in Case of Fire.
- 6-03. Fireworks.

CHAPTER 6-01

INTERNATIONAL FIRE CODE

(Source: Ord. 2011-31, Sec. 1 [2011])

SECTIONS:

- 6-0101. Adoption of International Fire Code.
- 6-0102. Definitions.
- 6-0103. Modifications of International Fire Code.
- 6-0104. Storage of Flammable Liquids.
- 6-0105. Storage of Explosives and Blasting Agents.
- 6-0106. Modifications by Chief of Volunteer Fire Department.
- 6-0107. Appeals.
- 6-0108. Validity.
- 6-0109. Penalties.

6-0101. ADOPTION OF INTERNATIONAL FIRE CODE. There is hereby adopted by reference by the City Council, for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, the provisions of the Code known as the International Fire Code, being particularly the 2009 edition thereof, as the same are now established in said Code, save and except such portions as are hereinafter deleted, modified, or amended by ordinance, or in accordance with other provisions of this title. A copy of said Code is on file in the office of the Chief of the volunteer fire department of the City of Kindred, and the same is hereby adopted and incorporated as fully as if set out in length herein, and from the date on which this ordinance shall take effect, the provisions thereof shall be controlling within the limits of the City as well as for any area within the extraterritorial zoning jurisdiction of the City. Provided, that any amendments of the 2009 edition of the International Fire Code may be adopted by the City by resolution. The International Fire Code is also adopted as part of the International Building Code of the City of Kindred.

6-0102. DEFINITIONS.

1. Whenever the word "municipality" is used in the International Fire Code, it shall mean the City of Kindred.
2. Whenever the term "corporation counsel" is used in the International Fire Code, it shall mean the city attorney for the City of Kindred.
3. Whenever the term "International Plumbing Code" is used in the International Fire Code, it shall mean the North Dakota state plumbing code.

4. Whenever the term "ICC Electrical Code" is used in the International Fire Code, it shall mean the National Electric Code together with the North Dakota State Wiring Standards.
5. Whenever the word "jurisdiction" is used in the International Fire Code, which code is hereinbefore more specifically identified in Section 6-0101, it shall be held to mean the corporate limits of the City of Kindred, North Dakota, as well as any area within the extraterritorial zoning jurisdiction of the City.
6. Whenever the term "chief" is used in the International Fire Code, as hereinbefore more specifically identified in Section 6-0101, the same shall be construed to mean the chief of the volunteer fire department of the City of Kindred, North Dakota.

6-0103. MODIFICATIONS OF INTERNATIONAL FIRE CODE. The International Fire Code is hereby changed and amended as follows:

SECTION 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the *Fire Code* of ~~[NAME OF JURISDICTION]~~ of the City of Kindred, hereinafter referred to as "this code."

SECTION 102.1 is hereby amended to read as follows:

102.1 Construction and design provisions. The construction and design provisions of this code shall apply to:

1. Structures, facilities and conditions arising after the adoption of this code.
2. Existing structures, facilities and conditions not legally in existence at the time of adoption of this code.
- ~~3. Existing structures, facilities and conditions when required in Chapter 46.~~
43. Existing structures, facilities and conditions which, in the opinion of the *fire code official*, constitute a distinct hazard to life or property.

SECTION 105.6.16 is hereby amended to read as follows:

105.6.16 Flammable or combustible liquids. An operational permit is required:

1. To use or operate ...
2. to store, handle or use Class 1A liquids in excess of ~~5 (19L)~~ 30 gallons, ~~Class 1B liquids in excess of 60 gallons, Class 1C liquids in excess of 90 gallons~~ in a building or ~~in excess of 10 gallons (37.9 L)~~ outside of a building, except that a permit is not required for the following:
 - 2.1. The storage or use of Class I liquids in the fuel tank of a motor vehicle, aircraft, motorboat, mobile power plant or mobile heating plant, unless such storage, in the opinion of the code official, would cause an unsafe condition.
 - 2.2. The storage or use of paints, oils, varnishes or similar flammable mixtures when such liquids are stored for maintenance, painting or similar purposes for a period of not more than 30 days.
3. To store, handle or use Class II or Class IIIA liquids in excess of ~~25 (95L)~~ 120 gallons in a building or in excess of ~~60 (227 L)~~ 120 gallons outside a building, except for fuel oil used in connection with oil-burning equipment.
4. To store, handle or use Class II or ...

SECTION 105.6.23 is hereby amended to read as follows:

105.6.23 Hot work operations. An operational permit is required for hot work including, but not limited to:

- ~~1. Public exhibitions and demonstrations where hot work is conducted.~~
- 2~~1~~. Use of portable hot work equipment inside a structure.

Exception: Work that is conducted under a construction permit.
- 3~~2~~. Fixed-site hot work equipment such as welding booths.

43. Hot work conducted within a hazardous fire area.
- ~~5. Application of roof coverings with the use of an open flame device.~~
- ~~6. When approved, the fire code official shall issue a permit to carry out a Hot Work Program. This program allows approved personnel to regulate their facility's hot work operations. The approved personnel shall be trained in the fire safety aspects denoted in this chapter and shall be responsible for issuing permits requiring compliance with the requirements found in Chapter 26. These permits shall be issued only to their employees or hot work operations under their supervision.~~

SECTION 105.6.29 is hereby deleted in its entirety.

SECTION 105.6.32 is hereby deleted in its entirety.

SECTION 105.6.39 is hereby deleted in its entirety.

SECTION 105.7.1 is hereby deleted in its entirety.

SECTION 105.7.3 is hereby deleted in its entirety.

SECTION 105.7.5 is hereby deleted in its entirety.

SECTION 105.7.6 is hereby deleted in its entirety.

SECTION 105.7.10 is hereby amended to read as follows:

105.7.10 LP-gas. A construction permit is required for installation of or modification to an LP-gas system with a single container in excess of 2000 gallons water capacity or the aggregate capacity of containers is more than 4000 gallons in water capacity.

SECTION 105.7.11 is hereby deleted in its entirety.

SECTION 105.7.13 is hereby deleted in its entirety.

SECTION 105.7.14 is hereby deleted in its entirety.

SECTION 108 is hereby deleted in its entirety.

SECTION 109.3 is hereby amended to read as follows:

109.3 Violation penalties. Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be guilty of a ~~{SPECIFY OFFENSE}~~ infraction, punishable by a fine of not more than ~~{AMOUNT}~~ five hundred (500) dollars. ~~or by imprisonment not exceeding {NUMBER OF DAYS}, or both such fine and imprisonment.~~ Each day that a violation continues after due notice has been served shall be deemed a separate offense.

SECTION 111.4 is hereby amended to read as follows:

111.4 Failure to comply. Any *person* who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not ~~less than {AMOUNT} dollars or more than {AMOUNT}~~ five hundred (500) dollars.

SECTION 201.3 is hereby amended to read as follows:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the *International Building Code, International Fuel Gas Code or International Mechanical Code*, such terms shall have the meanings ascribed to them as in those codes.

Throughout this code, wherever reference is made to the International Plumbing Code it shall mean the North Dakota State Plumbing Code.

SECTION 202 is hereby amended to read as follows:

OCCUPANCY CLASSIFICATION. For the purposes of this code, certain occupancies are defined as follows:

...

[B] Educational Group E. Educational Group E occupancy includes, among others, the use of a building or structure, or a portion thereof, by six or more persons at any one time for educational purposes through the 12th grade. Religious educational rooms and religious

auditoriums, which are accessory to places of religious worship in accordance with Section 508.3.1 of the *International Building Code* and have occupant loads of less than 100, shall be classified as Group A-3 occupancies.

Day care. The use of a building or structure, or portion thereof, for educational, supervision or personal care services for more than ~~five~~ eighteen children older than 2 ½ years of age shall be classified as an E occupancy. ...

[B] Institutional Group I. Institutional Group I occupancy includes, among others, the use ...

[B] Group I-4, day care facilities. This group shall include buildings and structures occupied by persons of any age who receive custodial care for less than 24 hours by individuals other than parents or guardians, relatives by blood marriage, or adoption, and in a place other than the home of the person cared for. A facility such as the above with ~~five~~ eighteen or fewer persons shall be classified as Group R-3 or shall comply with the *International Residential Code* in accordance with Section 101.2 of the *International Building Code*. Places of worship during religious functions are not included.

Adult care facility. A facility that provides accommodations for less than 24 hours for more than five unrelated adults and provides supervision and personal care services shall be classified as Group I-4.

Exception: Where the occupants are capable of responding to an emergency situation without physical assistance from the staff the facility shall be classified as Group A-3.

Child care facility. A facility that provides supervision and personal care on less than a 24-hour basis for more than ~~five~~ eighteen children 2 ½ years of age or less shall be classified as Group I-4.

Exception: A child day care facility which provides care for more than ~~five~~ eighteen but no more than 100 children 2 ½ years or less of age, when the rooms where such children are cared for are located on the level of exit discharge and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E.

Residential Group R ...

R-3 Residential occupancies where the occupants are primarily permanent in nature and not classified as R-1, R-2, R-4 or I, including:

Buildings that do not contain more than two dwelling units.

Adult care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours.

Child care facilities that provide accommodations for ~~five~~ eighteen or fewer persons of any age for less than 24 hours.

Congregate living facilities with 16 or fewer persons.

Adult and child care facilities that are within a single-family home are permitted to comply with the *International Residential Code*.

SECTION 308.1.4 is hereby amended to read as follows:

308.1.4 Open-flame cooking devices. Charcoal burners and other open-flame cooking devices shall not be operated on combustible balconies or decks or within 10 feet (3048 mm) of combustible construction.

Exceptions:

1. One- and two-family *dwellings*.
2. Where buildings, balconies and decks are protected by an *automatic sprinkler system*.
3. LP-gas cooking devices having LP-gas container with a water capacity not greater than ~~2½ pounds [nominal 1 pound (0.454 kg)]~~ 47.8 pounds [nominal 20 pounds (9 kg)] LP-gas capacity].

SECTION 315.2.1 is hereby amended to read as follows:

315.2.1 Ceiling clearance. Storage shall be maintained 2 feet (610 mm) or more below the ceiling in non-sprinklered areas of buildings or a minimum of 18 inches (457 mm) below sprinkler head deflectors in sprinklered areas of buildings.

Exception: This requirement does not apply to storage adjacent to and within 30 inches of the wall area.

SECTION 404.1 is hereby amended to read as follows:

404.1 General. Fire safety, evacuation and lockdown plans and associated drills shall comply with the requirements of Sections 404.2 through 404.5.1 when required by the code official.

SECTION 405.1 is hereby amended to read as follows:

405.1 General. Emergency evacuation drills ~~complying~~ shall comply with the provisions of this section ~~shall be conducted at least annually in the occupancies listed in Section 404.2 or when required by the fire code official.~~ Drills shall be designed in cooperation with the local authorities.

SECTION 408.8.3 is hereby amended to read as follows:

408.8.3 Fire safety and evacuation instructions. Information shall be provided in the fire safety and evacuation plan when required by Section 404 to allow guests to decide whether to evacuate to the outside, evacuate to an *area of refuge*, remain in place, or any combination of the three.

SECTION 408.9 is hereby deleted in its entirety.

SECTION 510 is hereby deleted in its entirety.

SECTION 806.1.1 is hereby amended to read as follows:

806.1.1 Restricted occupancies. Natural cut trees shall be prohibited in Group A, E, I-1, I-2, I-3, I-4, M, R-1, R-2 and R-4 occupancies.

Exceptions:

1. Trees located in areas protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2 shall not be prohibited in Groups A, E, M, R-1 and R-2.
2. Trees shall be allowed within dwelling units in Group R-2 occupancies.
3. For purposes of this provision, churches shall not be deemed public buildings and may utilize natural or resin bearing cut trees in the altar area of the church. No electric lighting is allowed on the tree.

SECTION 903.2.7 is hereby amended to read as follows:

903.2.7 Group M. An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy where one of the following conditions exists:

1. Where a Group M fire area exceeds 12,000 square feet (1115 m²).
2. Where a Group M fire area is located more than three stories above grade plane.
3. Where the combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 m²).
4. ~~A Group M occupancy is used for the display and sale of upholstered furniture.~~

SECTION 903.3.1 is hereby amended to read as follows:

903.3.1 Standards. Sprinkler systems shall be designed with a 5 psi safety margin and installed in accordance with Sections 903.3.1.1, 903.3.1.2 or 903.3.1.3.

SECTION 903.1.1 is hereby amended to read as follows:

903.3.1.1 NFPA 13 sprinkler systems. Where the provisions of this code require that a building or portion thereof be equipped throughout with an *automatic sprinkler system* in accordance with this section, sprinklers shall be installed throughout in accordance with NFPA 13 except as provided in Section 903.3.1.1.1.

Sprinkler heads in unoccupied mall tenant spaces may be installed at ceiling height if allowed by the code official. Permission will be granted on an individual basis. Combustible storage shall not be allowed in these unoccupied tenant spaces if sprinkler heads are installed at ceiling height. Signage shall be provided outlining the storage restrictions.

SECTION 907.9.3 is hereby deleted in its entirety.

SECTION 1009.4.2, Exception 5 is hereby amended to read as follows:

1009.4.2 Riser height and tread depth. Stair riser heights shall ...

Exceptions:

1. Alternating tread devices...
5. In Group R-3 occupancies; within dwelling units in Group R-2 occupancies; and in Group U occupancies that are accessory to a Group R-3 occupancy or accessory to individual dwelling units in Group R-2 occupancies; the maximum riser height shall be ~~7¾ inches (197 mm)~~ 8 inches; the minimum tread depth shall be ~~10 inches (254 mm)~~ 9 inches; ...

SECTION 2203.1 is hereby amended to read as follows:

1. Ten feet (3048 mm) or ...
6. On new installations, dispensing devices used to fill portable containers with home heating fuels shall not be located on the same island where Class I liquids are dispensed.

SECTION 3404.2.13.1.4 is hereby amended to read as follows:

3404.2.13.1.4 Tanks abandoned in place. Tanks abandoned in place shall be as follows:

1. Flammable and combustible liquids ...
7. Site assessment is required to determine if there are any spills, leaks, or discharge from the tank system. Records of site assessment shall be kept on the site of tank location.

SECTION 3405.3.7.5.1 is hereby to read as follows:

3405.3.7.5.1 Ventilation. Continuous mechanical ventilation shall . . .

Exception:

1. Where natural ventilation can be shown to be effective for the materials used, dispensed or mixed.
2. When approved by the chief, continuous ventilation may be provided for one complete air change per hour, if supplemented with mechanical ventilation designed to provide for a complete air change six times per hour. The non-continuous ventilation equipment and any lighting fixtures shall be operated by the same switch located outside of the door.

SECTION 3803.2.1.6 is hereby amended to read as follows:

3803.2.1.6 Use with self-contained torch assemblies. Portable LP-gas containers are allowed to be used to supply *approved* self-contained torch assemblies or similar appliances. Such containers

shall not exceed a water capacity of ~~2½ pounds (1 kg)~~ 12 pounds.

CHAPTER 46 is hereby deleted in its entirety.

APPENDIX B "Fire-Flow Requirements for Buildings" is hereby adopted in its entirety.

APPENDIX C "Fire Hydrant Locations and Distribution" is hereby adopted in its entirety.

6-0104. STORAGE OF FLAMMABLE LIQUIDS. The limits referred to in the International Fire Code, in which storage of flammable or combustible liquids in outside above-ground tanks is prohibited, are hereby established as follows: "The corporate limits of the City of Kindred, North Dakota, except for property zoned A-Agricultural and M-Heavy Industrial, or property in the C-Light Commercial and CM-Heavy Commercial/Light Industrial for which a conditional use permit has been granted.

The limits referred to in the International Fire Code, in which new bulk plants for flammable or combustible liquids are prohibited, are hereby established as follows: "The corporate limits of the City of Kindred, North Dakota."

6-0105. STORAGE OF EXPLOSIVES AND BLASTING AGENTS. The limits referred to in the International Fire Code, in which storage of explosives and blasting agents is prohibited, are hereby established as follows: "The corporate limits of the City of Kindred, North Dakota."

6-0106. MODIFICATIONS BY CHIEF OF VOLUNTEER FIRE DEPARTMENT. The chief of the volunteer fire department of the City of Kindred, North Dakota, shall have the power to modify any of the provisions of this chapter upon application in writing by the owner or lessee, or his duly authorized agent, when there are particular difficulties in the way of carrying out the strict letter of the provisions of this chapter, provided that the spirit of this chapter shall be observed, public safety secured, and substantial justice done. The particulars of such modification when granted or allowed and the decision of the chief of the volunteer fire department of the City of Kindred, North Dakota, thereon shall be entered upon the records of the department and a signed copy shall be furnished the applicant.

6-0107. APPEALS. A person shall have the right to appeal a decision of the Code Official to the Board of Appeals. The Kindred City Council shall be the Board of Appeals. An appeal in writing to the Code Official must be made within 20 days of the decision of the Code Official. The Kindred City Council shall hear the appeal within 30 days of the Code Official receiving written notice of the appeal. The Council may only reverse or modify a decision of the

Code Official by a vote of at least three members of the Council. If not all members of the Council are present at the hearing, the person appealing the decision may request a postponement, which may extend the 30-day period to hold such a hearing. An application for an appeal shall be based on a claim that the true intent of the Code has been incorrectly interpreted, the provisions of the Code do not fully apply, or an equally good or better form of construction is proposed. The Council shall have no authority to waive requirements of the Code.

6-0108. VALIDITY. The City Council of the City of Kindred, North Dakota, hereby declares that should any section, paragraph, sentence, or word of this ordinance hereby adopted be declared for any reason to be invalid, it is the intent of the City Council of the City of Kindred, North Dakota, that it would have passed all other portions of this ordinance independent of the elimination herefrom of any such portion as may be declared invalid.

6-0109. PENALTY. Any person violating any provision of the fire code adopted by this title or any section of this title shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

CHAPTER 6-02

PUBLIC CONDUCT IN CASE OF FIRE

SECTIONS:

- 6-0201. Persons Allowed on Fire Fighting Vehicles.
- 6-0202. Persons Allowed to Proceed to Fire Hall.
- 6-0203. Persons Allowed to Assist in Fire Extinguishment.
- 6-0204. Fire Chief May Command Assistance.

6-0201. **PERSONS ALLOWED ON FIRE FIGHTING VEHICLES.** No person except members of the fire department or such persons as are authorized by the Fire Chief or Chief in charge shall ride on the fire truck or other vehicle containing fire apparatus.

6-0202. **PERSONS ALLOWED TO PROCEED TO FIRE HALL.** In cases when the fire siren on the fire hall has sounded, no persons except members of the fire department or such persons as are authorized by the Fire Chief or Chief in charge shall proceed to the fire hall.

6-0203. **PERSONS ALLOWED TO ASSIST IN FIRE EXTINGUISHMENT.** No persons except members of the fire department or such persons as are authorized by the Fire Chief or Chief in charge shall assist in the extinguishment of fires or preservation of property exposed to fire during the time the fire department is engaged in the extinguishment of a fire or preservation of property exposed to a fire, nor shall any person hinder or delay the fire department or any member thereof in performing his duty in the extinguishment of a fire or preservation of property exposed to a fire.

6-0204. **FIRE CHIEF MAY COMMAND ASSISTANCE.** The Fire Chief or Chief in charge shall have the power to command such assistance from persons in attendance at any fire in the extinguishment of fires and for the preservation of property exposed to fire as may, in his judgment, be required.

CHAPTER 6-03

FIREWORKS

(Source: Ord. 2007-19, Sec. 1 [2007])

SECTIONS:

- 6-0301. Fireworks Defined.
- 6-0302. Fireworks - Discharging of, Sale of.
- 6-0303. Exceptions to Fireworks Restriction.

6-0301. FIREWORKS DEFINED. As used in this chapter, the term "fireworks" means any substance or combination of substances or articles prepared for the purpose of producing a visible or an audible effect by explosion or detonation and includes blank cartridges, toy cannons and toy canes in which explosives are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, sky rockets, roman candles, daygo bombs, or other fireworks of like construction, and any fireworks containing any explosive or compound, or any tablets, or other device containing any explosive substance and commonly used as fireworks. The term "fireworks" shall not include toy pistols, toy guns in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, and toy pistol caps which contain less than twenty-five hundredths of a grain of explosive composition per cap.

6-0302. FIREWORKS - DISCHARGING OF, SALE OF. Except as otherwise provided in this ordinance, it shall be unlawful for any person to offer for sale, expose for sale, sell at retail or wholesale, use, explode or possess any fireworks within the limits of the City of Kindred.

6-0303. EXCEPTIONS TO FIREWORKS RESTRICTION.

- 1. a. Public Display. This ordinance shall not prohibit supervised public displays of fireworks by any person, organization or association within the City for which a permit shall have been first obtained from the City Council. The application for such permit, in such form as may be required by the City Council, shall be filed with the City Auditor and by him referred to the Chief of the Fire Department for investigation to determine whether the operator of the display is competent and whether the display is of such character and is to be so located, discharged, or fired that it will not be hazardous to property or endanger any person. The Chief of the Fire Department shall report the results of his investigation to the City Council who shall

determine whether such permit shall be issued or the application ejected. Nothing in this ordinance shall be construed to prohibit the use of fireworks by airplanes and railroads or other transportation agencies for signal purposes or illumination or the sale or use of blank cartridges or pyrotechnic special effects for a motion picture, television, show or theater, or sale or possession of powder for reloading cartridges or firearms used for hunting or trap shooting, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations.

- b. Private Display. Any individual who is at least 12 years of age may use, explode or possess any fireworks within the limits of the City of Kindred during the period beginning July 3 through and including July 5 of each year. Individual use or explosion of fireworks during this time is not permitted after 11:00 p.m. The individual use, explosion, or possession of fireworks at any other time during the year is prohibited.
2. Sales. This ordinance shall not prohibit sales of fireworks in compliance with North Dakota statutes if the person, organization, or association attempting to sell fireworks first obtains a permit from the City Council. The application for such permit, in such form as may be required by the City Council, shall be filed with the City Auditor 60 days before the proposed date of sale and referred by the City Auditor to the Chief of the Fire Department for investigation to determine whether the proposed seller is competent and whether the place of selling and/or storage of fireworks is of such character and is so located so that it will not be hazardous to property or endanger any person. The Chief of the Fire Department shall report the results of the investigation to the City Council, who shall determine whether such permit shall be issued or the application rejected.
3. Permit Requirements: The number of permits that may be issued during a calendar year shall be set by the City Council from time to time by resolution. The City Council, in determining whether to grant a permit for the sale of fireworks, shall base its decision on the following factors:
 - a. whether the seller complies with all relevant laws, restrictions and regulations having to do with the transportation, storage and sales of fireworks;

- b. the recommendation of the Chief of the Fire Department;
- c. the location of the proposed place of selling and its proximity to businesses, residences, and major traffic arteries;
- d. the zoning district classification that the proposed place of selling is located in; and
- e. such other factor as the City Council deems relevant.

In issuing a permit for the display or sales of fireworks, the City assumes no liability for any damage to persons or property resulting from such displays or sales.

- 4. Fee. The fee for the permit shall be in the amount set by the City Council from time to time by resolution.

Source: Ord. 2015-61, Sec. 3

TITLE VII.

HEATING, AIR-CONDITIONING AND COMBUSTION UNITS

CHAPTERS:

- 7-01. International Mechanical Code.
- 7-02. Heating and Air-Conditioning Plants.
- 7-03. Combustion Units.
- 7-04. Chimneys and Flues.
- 7-05. Gasoline Stoves.
- 7-06. Penalty.
- 7-07. International Fuel Gas Code.

CHAPTER 7-01

INTERNATIONAL MECHANICAL CODE

(Source: Ord. 2011-32, Sec. 1 [2011])

SECTIONS:

- 7-0101. Definitions.
- 7-0102. Scope of Title.
- 7-0103. Minimum Requirements.
- 7-0104. Emergency Repairs.
- 7-0105. Certificate of Authority Required.
- 7-0106. Standards Adopted.
- 7-0107. Modifications of International Mechanical Code.
- 7-0108. Appeals.

7-0101. DEFINITIONS. The following words, terms and phrases, when used in this title, shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

1. "Person" includes any individual, firm, partnership, joint adventure, association, corporation, estate, receiver, or any other group or combination acting as a unit, and the plural as well as the singular number; their agents, employees and representatives.
2. "Building Inspector" means the Building Inspector of the City of Kindred and his authorized assistants.
3. "Heating and Air-Conditioning Plant" includes any heating or air-conditioning plant or system and the component parts thereof (except combustion units as defined in Paragraph 4 of this section) including but not limited to steam boilers, hot water boilers and warm air furnaces.
4. "Combustion Unit" includes any stoker, oil burner, oil burning equipment, gas burner, gas burning equipment, conversion burner, or incinerator and their component parts.
5. "Cooling System" is all of that equipment intended or installed for the purpose of cooling air by mechanical means and discharging such air through ducts into any room or space. This definition shall not include any evaporative cooler.

7-0102. SCOPE OF TITLE. This title shall govern the construction, installation, alteration, maintenance and repair of all heating and air-conditioning plants; chimney flues, combustion

units, gas burners, gas burner equipment and appliances; and gasoline stoves installed in or for all buildings within the City of Kindred, North Dakota, as well as for any area within the extraterritorial zoning jurisdiction of the City, except that the owner-occupant of any single family dwelling may, with the assistance of members of his family and household, personally perform any work governed by this title, but before doing the same shall obtain a permit therefor from the Building Inspector and pass inspection as hereinafter provided.

7-0103. MINIMUM REQUIREMENTS. The provisions of this title shall be held to be minimum requirements adopted for the protection of the health, welfare and safety of the community.

7-0104. EMERGENCY REPAIRS. In case of emergency, repair work may be proceeded without first obtaining the permit hereinafter required. Application for such permit shall be made within 24 hours after repairs are commenced, Sundays and holidays excepted. This Section shall not be construed to limit the right of Xcel Energy and its authorized employees to render necessary services.

7-0105. CERTIFICATE OF AUTHORITY REQUIRED. Except as is otherwise provided in Section 7-0102 and Section 7-0104 of this title, no person shall engage in or carry on the construction, installation, alteration, maintenance and repair of heating and air-conditioning plants and combustion units and gas burners, gas burner equipment and appliances within the City of Kindred, or advertise, hold-out or otherwise represent himself as being qualified to perform such work without first securing and continuing in force a "Certificate of Authority" as hereinafter prescribed in this title.

7-0106. STANDARDS ADOPTED. The following standards are hereby adopted for all heating, air conditioning and other gas, oil, or coal consuming appliances within the City limits of Kindred, as well as for any area within the extraterritorial zoning jurisdiction of the City.

1. All heating, air conditioning, or other gas, oil, or coal consuming appliances for either domestic or commercial use installed in the City of Kindred shall bear a seal of approval from the American Gas Association, American Standards Association, Underwriters Laboratories, or other nationally recognized testing laboratory.
2. The provisions of the International Mechanical Code, sponsored by the International Code Council, 2009 edition, is hereby adopted as the mechanical code. Any amendments to the 2009 edition of the International Mechanical Code may be adopted by the City by resolution.

7-0107. MODIFICATIONS OF INTERNATIONAL MECHANICAL CODE. The International Mechanical Code as adopted in Section 7-0106(2) is hereby changed and amended to read as follows:

SECTION 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the *Mechanical Code* of ~~{NAME OF JURISDICTION}~~ the City of Kindred, hereinafter referred to as "this code."

SECTION 103.2 is hereby deleted in its entirety.

SECTION 103.3 is hereby deleted in its entirety.

SECTION 103.4 is hereby renumbered and amended to read as follows:

~~103.4~~ 103.2 Liability. The code official, member of the board of appeals or employee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally, and is hereby relieved from personal liability for any damage accruing to persons or property as a result of an act or by reason of an act or omission in the discharge of official duties.

Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The code official or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this code.

This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

SECTION 106.4.8 is hereby deleted in its entirety.

SECTION 106.5.2 is hereby amended as follows:

106.5.2 Fee schedule. The fees for mechanical work shall be as indicated in the ~~following~~ schedule as established by the Kindred City Council.

SECTION 106.5.3 is hereby amended as follows:

106.5.3 Fee refunds. The code official ~~shall~~ is authorized to order the refunding of fees as follows:

1. The full amount of any fee paid hereunder which was erroneously paid or collected.
2. Not more than eighty [80] percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.
3. Not more than eighty [80] percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan review effort has been expended.

The code official shall not authorize the refunding of any fee paid, except upon written application filed by the original permittee not later than 180 days after the date of fee payment.

SECTION 109.2 is hereby deleted in its entirety.

SECTION 201.3 is hereby amended to read as follows:

201.3 Terms defined in other codes. Wherever reference is made in this code to the International Plumbing Code it shall mean the North Dakota State Plumbing Code. Wherever in this code reference is made to the ICC Electrical Code it shall mean the National Electrical Code together with the North Dakota State Wiring Standards. Where terms are not defined in this code and are defined in the International Building Code, International Fire Code, or the International Fuel Gas Code, such terms shall have meanings ascribed to them as in those codes.

SECTION 305.4 is hereby amended read as follows:

305.4 Interval of support. Piping shall be supported at distances not exceeding the spacing specified in Table 305.4, or in accordance with MSS SP-69. In addition to the requirements of Table 305.4, piping and tubing shall be supported within 2 feet (610 mm) of every bend or angle.

SECTION 307.2.2 is hereby amended to read as follows:

307.2.2 Drain pipe materials and sizes. Components of the condensate disposal system shall be cast iron, galvanized steel, copper, cross-linked polyethylene, polybutylene, polyethylene, ABS, CPVC or PVC pipe or tubing. All components shall be selected for the pressure and temperature rating of the installation. Joints and connections shall be made in accordance with the applicable provisions of ~~Chapter 7 of the International~~ the North Dakota State Plumbing Code relative to the material type. Condensate waste and drain line shall be not less than 3/4-inch (19 mm) internal diameter and shall not decrease in size from the drain pan connection to the place of condensate disposal. Where the drain pipes from more than one unit are manifolded together for condensate drainage, the pipe or tubing shall be sized in accordance with Table 307.2.2.

SECTION 508.2 is hereby amended to read as follows:

Section 508.2. Compensating hoods. Manufacturers of compensating hoods shall provide a label indicating minimum exhaust flow and/or maximum makeup airflow that provides capture and containment of the exhaust effluent. Short circuit compensating hoods are prohibited.

SECTION 508.2.1 is hereby added to read as follows:

508.2.1 Compensating Hood Make-up Air. Compensating hoods shall extract at least 40% of the required exhaust air flow from the kitchen area.

SECTION 701.2 is hereby added to read as follows:

701.2 Attic space. Attic space shall not be used for combustion air.

SECTION 1104.2 is hereby amended to add the following new third exception:

1104.2 Machinery room. ...

Exceptions: ...

3. If an existing refrigerating system is replaced or if an existing refrigeration plant is increased by not more than 50% of its original capacity, but not more than 100 tons per system using a nonflammable class A1 or B1 refrigerant and the refrigeration machinery room was not provided in the original installation prior to 1994, a refrigeration machinery room shall not be required. If the existing refrigeration is not located in a general machinery room separated from occupied spaces, a refrigeration machinery room shall be provided. The space containing the refrigeration machinery shall meet the requirements of Section 1104.3.4, protection from refrigerant decomposition, and Section 1105.3, requiring refrigerant detection. If the requirements of 1104.3.4 and 1105.3 cannot be met, a refrigeration machinery room shall be provided.

7-0108. APPEALS. A person shall have the right to appeal a decision of the Code Official to the Board of Appeals. The Kindred City Council shall be the Board of Appeals. An appeal in writing to the Code Official must be made within 20 days of the decision of the Code Official. The Kindred City Council shall hear the appeal within 30 days of the Code Official receiving written notice of the appeal. The Council may only reverse or modify a decision of the Code Official by a vote of at least three members of the Council. If not all members of the Council are present at the hearing, the person appealing the decision may request a postponement, which may extend the 30-day period to hold such a hearing. An application for an appeal shall be based on a claim that the true intent of the Code has been incorrectly interpreted, the provisions of the Code do not fully apply, or an equally good or better form of construction is proposed. The Council shall have no authority to waive requirements of the Code.

CHAPTER 7-02

HEATING AND AIR-CONDITIONING PLANTS

SECTIONS:

- 7-0201. Definitions.
- 7-0202. Permit and Approval of Plans Required: When.
- 7-0203. Duties and Powers of the Building Inspector.
- 7-0204. Appeals.
- 7-0205. Duties of Owner and Contractor.
- 7-0206. Replacements, Alterations, Additions and Repairs to Existing Heating and Air-Conditioning Plants.
- 7-0207. Clearances.
- 7-0208. Consent Required: Soliciting Prohibited.
- 7-0209. Modifications.

7-0201. **DEFINITIONS.** The following words, terms and phrases, when used in this title, shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

1. The term "Gravity Warm Air Heating System" means any and all warm air furnaces enclosed within a casing of any type and any and all appurtenances thereto or connections therewith, intended to heat any building or enclosure by gravity air circulation only, wherein no mechanical forces or equipment is applied.
2. The term "Forced Air Conditioning" means one or more air heating units within individual housings or within one common housing, one or more motor driven blowers, or fans, smoke or vent pipes, individual leader pipes or trunkline systems, or both, with necessary control dampers for supply and return air, automatic controls, registers, faces and grills; and with provisions for other appurtenances such as filters, air washers, ozonators, humidifiers, etc., as may be desired.
3. The term "Floor Furnace" means a self-contained floor furnace, suspended from the floor of the space being heated, with means for observing the flame and lighting the furnace from the space heated.
4. The term "Warm Air Ceiling Panel System" means a system of heating wherein warm air is circulated through a ceiling "panel" to provide heat.

5. The term "clearance" means the distance prescribed between heating equipment and parts thereof and any structural combustible construction.

7-0202. **PERMIT AND APPROVAL OF PLANS REQUIRED: WHEN.** It shall be unlawful for any person to construct or install any heating or air-conditioning plant in or for any building, or to alter or repair any such existing heating or air-conditioning plant without first making written application to and securing a permit from the Building Inspector. Such application shall be accompanied by:

1. A plan or sketch in duplicate for such proposed construction, installation, alteration or repair, if required by the Building Inspector.
2. Where a permit is applied for the installation of any steam or hot water boiler, warm air furnace, or any device performing some specific service in connection with any heating or air-conditioning plant, the capacity of which device might affect, in whole or in part, the efficiency of the plant, the application shall be accompanied by test data, measurements, ratings, capacities, or such other information required by the Building Inspector from which the ratings or capacities of such boilers, furnaces or devices may be determined. The Building Inspector may require that such test data, measurements, ratings, or capacities shall be verified by affidavit of the manufacturer thereof or the contractor making such application. Where a rating cannot be secured from the manufacturer there shall be supplied the Input Boiler Rating.
3. The Building Inspector may waive the requirement of a permit where the alterations, or repairs to any existing heating or air-conditioning plant will not exceed \$50.00, when such alteration or repair will not exceed the rated capacity of such, heating or air-conditioning plant and are not of such a nature as to render an inspection of the same desirable or necessary.

7-0203. **DUTIES AND POWERS OF THE BUILDING INSPECTOR.** It shall be the duty of the Building Inspector and he shall have the power:

1. To enforce the provisions of this title relating to heating and air-conditioning plants.
2. To make all necessary inspections of such plants.
3. To require all necessary tests to be made to determine the tightness of any steam or hot water installation or

any air-conditioning plant, or any portion thereof, or any sheet metal ducts or pipes connected therewith, and to supervise such tests.

4. To require the immediate removal of any material or construction which conceals or covers up any newly installed portion of such plant prior to its inspection and approval by the Building Inspector.
5. To post a "Stop Work" notice on the premises where the work is in progress and to notify anyone concerned of such a notice when the work or project is being performed in violation of this title. After the posting of such notice no person shall do any further work on such project until the particular defect or violation has been eliminated to the satisfaction of the Building Inspector, when such notice shall be removed by the Building Inspector.

7-0204. **APPEALS.** A person may appeal orders, decisions, or determinations made by the building inspector relative to the application and interpretation of Title X of the ordinances of the City of Kindred. This appeal shall be to the City Council of the City of Kindred. The appeal must be in writing and filed with the City Auditor within thirty (30) days of the order, decision or determination made by the building inspector.

7-0205. **DUTIES OF OWNER AND CONTRACTOR.** It shall be the duty of the owner of a building or the contractor employed by him:

1. To notify the Building Inspector immediately upon completion of those portions of a new building or any addition to an older building upon completion of those portions of a heating or air-conditioning plant which are thereafter to be concealed or covered up, that said plant is ready for inspection and testing. There shall be posted by the owner or contractor in a conspicuous position on some portion of the installation a notice substantially in the following form:

"WARNING: This installation and piping have not been inspected and approved by the Building Inspector and must not be covered up or concealed until so inspected and approved."

No other person than the Building Inspector shall remove such notice until the heating or air-conditioning plant has been inspected and approved by him. He shall then attach a certificate of such inspection and approval.

2. To notify the Building Inspector upon the completion of any installation of a heating or air-conditioning plant

that the work is ready for inspection and tests by registering the number of the permit and the location of the work in an inspection order register book to be kept in the office of the Building Inspector for that purpose. Such tests shall be made by the contractor in the presence of and under the supervision of the Building Inspector. If found satisfactory and in compliance with the provisions of this title, the Building Inspector shall approve the same. Where approval is refused by the Building Inspector for any of the reasons set forth in this title, correction of such installations shall be made to meet such objections, and upon notice to the Building Inspector as above provided, he shall make a re-inspection thereof.

7-0206. **REPLACEMENTS, ALTERATIONS, ADDITIONS AND REPAIRS TO EXISTING HEATING AND AIR-CONDITIONING PLANTS.** The following regulations shall apply:

1. To replacements of existing equipment. Such replacements shall be of such capacity as would be required under this title if the same were installed for use in connection with a new plant or system, and designed to meet the heating or air-conditioning requirements for said building. Provided, however, that in a building other than a single family dwelling, where in the opinion of the Building Inspector, it would be impracticable or work an unnecessary hardship to require complete compliance with the foregoing requirements, a steam or hot water boiler, warm air furnace, fan, blower, air-conditioning equipment or appurtenance, based as to capacity on the connected load, may be installed to replace any existing equipment of like nature.
2. To alterations of existing equipment. Such alterations shall be made in conformity with the requirements of this title insofar as may be practicable in the judgment of the Building Inspector without impairing the efficient operation of the system, as a whole, or any portion thereof.
3. To additions to existing equipment. Wherever the heating or air-conditioning requirements of any existing building are hereafter increased either by the construction of an addition thereto or by an increase in the portions of the building to be heated or air-conditioned, or in any other manner, the capacity of such heating or air-conditioning plant shall be increased to that capacity which would be required by this title for a new installation, designed to meet equal heating or air-conditioning requirements.

4. To repairs of existing equipment. All such repairs shall be made in such manner as to restore the equipment as near as is practicable to its original sound condition. When repaired, such equipment shall be subjected to such tests as may be required, in the judgment of the Building Inspector to satisfactorily demonstrate its ability to meet the service requirements to which it may normally be subjected.

7-0207. **CLEARANCES.**

1. Installations. Heating equipment and parts thereof shall be so located that the clear space between any heated surface and combustible construction is sufficient to prevent temperatures of more than 160 degrees on such constructions. Unless specifically provided otherwise, the clearance generally shall be as shown in Table I, following:

TABLE I - CLEARANCE WITH NO PROTECTION

Heating Unit	Above (a)	<u>Minimum Clearance in Inches</u>		
		Sides and Front and Rear	Smoke or Vent Pipe	
Mechanical Warm Air Furnaces (with fan) automatically fired, with 250 degree temp. limit control (b)				
Burning liquid or solid fuel 18"	6"	6"	4	8 "
Burning gas 9" (c)	6"		6"	18"
Gravity Furnaces				
Burning liquid or solid fuel 18"	18"	18"	4	8 "
Burning gas 9" (c)	18"	18"	1	8 "

(a) The clearance above warm air furnaces shall be measured from the furnace bonnet or warm air plenum chamber.

(b) "Mechanical warm air furnaces with 250 degrees temp. limit control" shall be defined as automatically fired warm air furnaces equipped with a fan to circulate the air and with approved automatic temperature limit controls that cannot be set higher than 250 degrees and if coal stoker is

fired, equipped also with an automatic overrun control to operate the fan when the air reaches a temperature not higher than 250 degrees even though the controlling thermostat is not calling for heat.

- (c) These clearances do not apply to approved type B gas vents (approved vent piping of non-combustible, corrosion-resistant material of adequate strength and heat insulating value and having bell and spigot or other acceptable joints). These clearances may be reduced to 6 inches for approved gas appliances which produce flue gas temperatures not in excess of 350 degrees at the outlet of the draft hood when burning gas at the manufacturer's input rating.
- 2. Attic furnaces. Attic furnaces or furnaces in attics shall not be installed unless of a type approved for such use with installation in accordance with the mounting and clearance provisions of this section.
- 3. Clearances required with protection. Heating furnaces may be installed with clearance to woodwork or other combustible material, as provided in the National Building Code and adopted by the City of Kindred.

7-0208. **CONSENT REQUIRED: SOLICITING PROHIBITED.** All installations, alterations, repairs or inspections of heating and air-conditioning plants shall be made only by order or authorization of the owner or manager of any building. No person shall engage in house to house canvassing or soliciting for the sale or supplying of such services.

7-0209. **MODIFICATIONS.** Where circumstances or conditions of any particular installation are unusual and such as to render the strict application of this title impracticable, the Building Inspector may, if he deems it safe, permit such modification as will provide a substantially equivalent degree of safety.

CHAPTER 7-03

COMBUSTION UNITS

SECTIONS:

- 7-0301. Definitions.
- 7-0302. Duties and Powers of Building Inspector.
- 7-0303. Stoker Installation.
- 7-0304. Oil Burner Installation.
- 7-0305. Gas Burner Installation.

7-0301. **DEFINITIONS.** The following words, terms and phrases, when used in this title, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. The term "Stoker" means a mechanical device for feeding solid fuel into the combustion chamber of a boiler or furnace used in connection with a heating plant whether automatically or manually controlled.
2. "Oil Burner" shall mean any device designed to burn fuel oil having a flash point of 100 degrees Fahrenheit or higher, as determined by the Tag Closed Test in accordance with the method of test adopted by the American Society for Testing Materials (ASTM Designation D56-36), and having a fuel tank or container with a capacity of more than ten gallons connected thereto.
3. "Oil Burning Equipment" shall include oil burners and all tanks, piping, pumps, control devices and accessories, including blowers for the distribution of warmed air connected to the burners.
4. The term "Gas Burner" means a device for the final conveyance of the gas or a mixture of gas and air, to the combustion zone of a boiler, furnace, device or appliance used in connection with a heating system and shall include conversion burners and gas designed appliances as hereinafter defined.
5. The term "Gas Burner Equipment" shall include gas burners, as above defined, and all piping, shut-off valves, fans, blowers, control devices and accessories connected to the burners.
6. The term "Conversion Burner" means a gas burning appliance designed to supply gaseous fuel to and properly burn the same within the combustion chamber of a boiler,

furnace or other device originally designed to burn another fuel.

7. The term "Gas Designed Appliance" means all gas burning space heating appliances designed for the exclusive use of gaseous fuels either natural or manufactured.

7-0302. **DUTIES AND POWERS OF BUILDING INSPECTOR.** It shall be the duty of the Building Inspector and he shall have the power:

1. To enforce the provisions of this title relating to combustion units as herein defined.
2. To make all necessary inspections of such units.
3. To require all necessary tests to be made to determine the safety, adequacy and efficiency of such units.

7-0303. **STOKER INSTALLATION.** The construction, arrangement, equipment and manner of installation of all stokers, hereafter installed for use in connection with heating plants in or for buildings in the City of Kindred and the alteration hereafter of all such stoker installations shall conform to the following provisions:

1. Non-automatic Stokers Not Allowed: Exceptions: When. Stokers which are not equipped with automatic means of preventing excessive pressure or temperatures of the heating medium shall not be installed or operated in any location where a competent attendant will not be constantly on duty on the premises while the stoker is in operation.
2. Automatic Controls. Each mechanical stoker shall be equipped with at least one (1) high limit control so connected as to shut off power from stoker drive in the event of excessive pressure in a steam boiler or excessive temperature in a hot water boiler or warm air furnace casing. Each steam boiler or hot water boiler shall be equipped with a low water cut-off.

Where there may be an over-run of heat due to sustained period of operation for the stoker, a reverse action control or equivalent control shall be installed in hot water or steam systems so as to relieve this condition.

On all installations where operation of stokers is controlled by an aquastat, pressurestat or furnacestat, a second control, either aquastat, pressurestat or furnacestat shall be installed in the 110 volt line ahead of all controls as a high limit or safety control.

3. Stoker Capacity, Setting Heights and Combustion Space. The capacity of a stoker for any given installation shall be in accordance with load carrying capacity set forth by the Stokers Manufacturing Association. In any event, the stoker installed shall have a capacity or feed rate not to exceed 50% greater than that required in said table of Stoker Manufacturers' Association.

The distance from retort to crown sheet and the space for combustion, within any boiler or furnace, shall be such as to secure efficient smokeless combustion and shall be in accordance with the Table set forth by the Stokers Manufacturers' Association. Where stokers are installed in old boilers and strict compliance with the foregoing requirements cannot be met, minor modifications may be made subject to the approval of the Building Inspector.

4. Alterations to Combustion Chambers. Where stokers are installed in downdraft boilers, the upper grates shall be removed and baffling changed where necessary to secure an unrestricted combustion space.
5. Used Stokers: Reconditioned. It shall be hereafter unlawful for any person to install any used stoker, or for the Building Inspector to issue any permit authorizing such installation until such person shall have first submitted, with his application for such permit to install, a copy of the purchase order stating that a used, repaired or reconditioned stoker is to be installed and bearing a statement by the installer that said stoker has been properly reconditioned and will comply in every way with the requirements of this title for new equipment as to operation and adjustment.
6. Approval Required: It shall be unlawful for any person to install within the City of Kindred any stoker not approved by the Stoker Manufacturers' Association.
7. Stoker Equipment Installation Permit Required. Any person may install an approved stoker and its associated equipment in accordance with the provisions of this title, but no stoker equipment shall be installed in the City of Kindred unless and until the Building Inspector shall have issued a permit for the specific installation.
8. Application. Application for the installation permit herein required shall be made in writing signed by the dealer or installer, stating the location of the property or building in which the installation is intended, the name, type and model of the stoker, type and model of controls, stoker capacity, setting heights and combustion space, accompanied by a sketch, if deemed necessary by

the Building Inspector, showing the layout of controls for the purpose of installation.

9. Granting Permits. Within forty-eight (48) hours after filing of the application and sketch, the Building Inspector shall issue such a permit or in writing notify the applicant of changes required before a permit will be issued or the reason why the application is denied. Upon the required changes being made in the application or sketch, a permit shall be issued. No stoker equipment of a different kind than that specified in the application and no other changes shall be made, nor shall the installation be made in any other manner than as described in such application or shown in the sketch submitted therewith.
10. Inspection of Installations. All installations of stokers installed within the City of Kindred shall be inspected by the Building Inspector. An approval of installation shall be given the installer before any stoker is turned on for use. Installers of stokers shall give at least twenty-four (24) hours notice that a stoker installation is ready for inspection.

7-0304. **OIL BURNER INSTALLATION.** The construction, arrangement and manner of installation of all oil burners and oil burning equipment hereafter installed for use in connection with heating plants in or for buildings in the City of Kindred and the alteration or repair hereafter of such, installations shall conform to the following provisions:

1. Exception. This title does not apply to oil heaters and oil lamps equipped with a wick or a mechanical device, the movement of which is essential to flame adjustment, or to such portable apparatus as blow torches, soldering pots, etc., but does include all types, classes and sizes of oil burning water heaters and space heaters, regardless of their oil container or tank capacity.
2. Approval Required. It shall be unlawful for any person to install within the City of Kindred any oil burner not approved by the Underwriters Laboratories or other nationally recognized testing laboratory.
3. Inspection. The Building Inspector shall automatically approve any oil burners listed by the Underwriters Laboratory or any other nationally recognized inspection board or laboratory. Oil burners not listed by the Underwriters Laboratory or any other nationally recognized board or laboratory shall not be approved.

4. Oil Heating Equipment: Installation Permit. Any qualified person may install approved oil burning equipment in connection with an approved oil burner in accordance with the provisions of this title, but no oil burning equipment shall be installed in the City of Kindred, unless and until the Building Inspector shall have issued a permit for the specific installation.
5. Definition of Permit. A permit is the written authority of the Building Inspector issued pursuant to this title for the installation of an oil burner and its associated equipment covered by this title or any material entering into the composition thereof.
6. Application for Installation Permit. Application for an installation permit shall be made in writing signed by the dealer or installer stating the location of the property in which the installation is intended, the name, type, and model of the burner, type and model of controls, the number and capacity of tanks for storage of fuel, accompanied by a sketch, if deemed necessary by the Building Inspector, showing the layout of the proposed installation.
7. Granting Permits. Within forty-eight (48) hours after filing of an application and sketch in accordance with this title, the Building Inspector shall issue such permit or in writing notify the applicant of changes required before a permit will be issued or the reasons why the application is denied. Upon the required changes being made in the application or sketch a permit shall be issued. No oil burner or equipment of a different kind than that specified in the application and no tanks of different sizes, kind or quality shall be installed nor shall the installation be made in any manner other than as described in such application or shown in the sketch submitted therewith.
8. Inspection of Installation. All installations of oil burners or equipment within the City of Kindred shall be inspected by the Building Inspector. An approval of installation shall be given the installer before any oil burner is turned on for use. The installer shall give at least eight (8) hours notice that the installation is ready for inspection.
9. Installation of Used Oil Burners: Procedure to be Required. No person shall install a used oil burner for use in connection with a heating plant until he shall have furnished the Building Inspector with a statement that said oil burner has been put in first class operating condition and a letter from the purchaser

acknowledging that said purchaser is buying a used oil burner.

10. Fuel Oil. The grade of fuel oil used with any oil burner shall be one which tests and experience have shown to be suitable for use with that burner. The oil shall have a flash point not less than 100 degrees Fahrenheit, determined as specified in paragraph 2 of Section 7-0701 of this chapter and shall be free from acid, grit and fibrous or other foreign matter likely to clog or inure the burner or valves.
11. Commercial Standard. The commercial standards (Grades 1, 2, 3, 5, and 6) for domestic and industrial fuel oil, set up by the U.S. Department of Commerce, Bureau of Standards Bulletin CS 12-4U (effective June 5, 1940) shall constitute standard grades for fuel oil sold or delivered to oil burners within the City of Kindred and it is hereby declared a violation of this title for any person to deliver for use as fuel in an oil burner or burners, or put into the storage tank of any oil burner or burners a grade of oil heavier than that which has been approved by the Building Inspector for use in such burner or burners.
12. Secondary Controls: Thermostats. All domestic types of oil burner installations in the City of Kindred shall be equipped with a modern type of thermostat for the secondary control of the oil burner.
13. Electrical Installations. Electrical installations used in connection with oil burning equipment shall be installed in accordance with the electrical code of the City of Kindred.
14. Combustion Chamber Dimensions. It shall be unlawful for any person to install any oil burner into a combustion chamber of a design, size or type other than that which has been specified by the manufacturer as being the correct design, size or type for the size of nozzle and angle of atomization, with which the oil burner being installed is so equipped.
15. Flue Gas Analysis Tests. Before any final approval shall be given by the Building Inspector on any installation of any type of oil burner covered by the provisions of this title, the person installing the same shall make a test or tests commonly known as a flue gas analysis in the presence of the inspecting officer if deemed necessary by the Building Inspector. The findings of such analysis shall be recorded upon the inspection approval form.

7-0305. **GAS BURNER INSTALLATION.**

1. Approval of Gas Burner.

- a. Permit Required. No apparatus or equipment to be used with gas supply from the general gas distribution system of the Northern States Power Company within the City of Kindred shall be installed or connected for use without a permit having been secured therefore from the Building Inspector.
- b. Certificate Required. No permits shall be issued by the Building Inspector for the installation or connection for use of any gas-fired apparatus or equipment (except domestic ranges, refrigerators, water heaters, or any gas equipment other than space heating equipment, having an input rating of less than 50,000 BTU per hour) supplied from the general gas distribution system of the Northern States Power Company located within the City of Kindred unless the application for said permit for such installation or connection is accompanied by a certificate from said company operating such system stating that it has the facilities and capacity to serve the equipment or apparatus at the location designed.
- c. Refusal of Gas Service - When. The Northern States Power Company shall refuse gas service to the premises wherein any gas-fired installation or connection is made contrary to the terms of this title, upon discovery of same, until the same has been remedied or disconnected and removed.
- d. Standards. All installations of mains, regulator stations, services and meter installations shall conform to the Gas Construction Standards on file in the office of the City Engineer of the City of Kindred. Such standards shall not be effective until approved by the City Council and any changes in such standards shall not be effective unless approved by the Building Inspector of the City of Kindred. However, regardless of such standards every high or medium pressure service shall have an outside shutoff valve and all low pressure services installed after January 1, 1962, shall have outside shutoff valves.

2. Appliances with Input of 400,000 BTU or Less.

- a. Scope. The construction arrangement, manner of installation, alteration and repair of all gas burners, gas burner equipment and appliances as herein defined having an input capacity of 400,000 BTU per hour or less shall conform to provisions of this title.
- b. Definitions. For the purpose of this Section the following definitions shall apply:
- (1) Gas Burners and Gas Burner Equipment. The term "gas burner" shall mean a device for the final conveyance of gas or a mixture of gas and air to the combustion zone of a steam or hot water boiler, furnace, or to any device or appliance used in connection with a space heating system and shall include conversion burners, gas designed heating appliances, power gas burners and atmospheric gas burners. The term "gas burner equipment" shall include gas burners as above defined, together with all fans, blowers, control devices, accessories connected to the burners and piping involved in supplying the burner.
 - (2) Conversion Burner. The term "Conversion Burner" shall mean a gas burning device designed to supply gaseous fuel to and properly burn this fuel in the combustion space of equipment, originally designed to burn another fuel.
 - (3) Gas Designed Heating Appliance. The term "gas designed heating appliance" shall mean any space heating appliance designed for the exclusive use of gaseous fuel, excepting such auxiliary heaters as gas logs, radiant heaters, etc.
 - (4) Power Gas Burner. A "power gas burner" is one which either gas or air or both are supplied at pressures exceeding, for gas, the normal line pressure at the burner and for air atmospheric pressure, the added pressure being applied at the burner.
 - (5) Atmospheric Burner. An "atmospheric burner" is a device (other than a gas range or a gas water heater) in which air at atmospheric pressure is injected into the burner by a jet

of gas under pressure not more than the house line pressure and whose input exceeds 50,000 BTU per hour.

- c. Approval of Gas Burners. It shall be unlawful for any person, firm, corporation, or agent to install any gas burner, as defined within this title until such gas burner has been approved by the Building Inspector of the City of Kindred. The Building Inspector may approve all gas burners meeting the minimum requirements for approval or listing by the American Standards Association, sponsored by the American Gas Association and in compliance with requirements of this code.
- d. Installation of Used Gas Burners. It shall be unlawful to install any used gas burner and no permit shall be issued authorizing such installation until the licensed installer shall have first submitted with this application for permit a copy of the purchase order stating that a used burner is to be installed and bearing an acknowledgment by the purchaser that such is the case together with a statement by the licensed installer that said burner has been reconditioned and will comply in every way with ordinance requirements for new equipment as to operation, safety standards and adjustments. No used gas burner shall be installed unless it is of a type, make and model currently approved for installation in the City of Kindred.
- e. Type of Gas. The requirements of this title shall apply to gas burners supplied with natural gas from the general distribution system within the City of Kindred. Burners and their installation where supplied with other types of gas, such as bottled or liquified petroleum gas, shall conform to the requirements of this title where applicable together with the requirements of the American Gas Association and the National Board of Fire Underwriters pertaining to the type of gas to be used.
- f. Ventilation. Gas burners and gas burning appliances as hereinbefore defined shall not be installed for operation in a room where the normal facilities for ventilation do not permit proper combustion of the gas, unless special provision is made for supplying sufficient air for complete combustion.

Gas burners, gas burner appliances and space heaters will not be permitted in bedrooms, rooms used for sleeping purposes, bathrooms or any confined space or area unless proper provisions are made for the supply of primary and secondary air for combustion from outside of the building. Provisions shall also be made for proper venting to the outside.

Method of securing air for combustion and the proper venting of the appliances shall be secured from the Building Inspector before work is started on any specific installation.

- g. General. The installation of conversion burners shall be made in conformance with the American Standards Association requirements as sponsored by the American Gas Association and with requirements herein set forth.
- h. Preparation of Boilers and Furnaces. Before a gas burner is installed in any existing boiler or furnace, all flues, fire pots, combustion chambers and connecting joints through which flue gases are conducted shall be thoroughly cleaned, examined for leaks and draft conditions and made gas tight as shown by a smoke bomb test or its equivalent.
- i. Flues and Flue Pipes. The chimney flue and flue pipe shall be examined and reconditioned if necessary so that they will freely conduct the flue gases to the outer air. Where flue pipes are rusted or burned out, they shall be replaced by new pipe.
- j. Removal of Oil Burners. Where a gas burner is installed and an oil burner removed, it shall be mandatory that the vent and fill pipes to the storage tank be removed and all openings to the storage tank plugged.
- k. Draft Hoods. Each gas burning appliance shall be equipped with a draft hood or its equivalent designed to:
 - (1) Insure the ready escape of the products of combustion in the event of no draft, back draft, or stoppage beyond the appliance.
 - (2) Prevent a back draft from entering the appliance.

- (3) Neutralize the effect of stack action of the flue upon the operation of the appliance.

The draft hood shall be placed in and made a part of the flue pipe from the appliance or shall be in the appliance itself. Such device shall have a free area equal to or greater than the cross-sectional area of the flue pipe connected thereto subject to the approval of the Building Inspector.

The draft hood shall be located at a point not lower than the top of the highest flue passage in the appliance.

Appliances of the revertible flue type shall have the draft hood located at least one foot higher than the top of the highest flue passage. Proper provision shall be made, subject to the approval of the Building Inspector, to prevent the accumulation of gas in any part thereof. Revertible flue type furnaces shall have as a minimum a two (2) inch bleeder cut through if trapped more than twelve (12) inches.

1. Flue Pipes. The internal cross-sectional area of the flue pipe between the appliance and the chimney liner shall be such as to provide not less than one square inch of flue area per 7,500 hourly BTU input. In no case shall this flue pipe be less than five (5) inches in diameter for central heating gas appliances nor less than four (4) inches in diameter for space heating appliances and it shall not be larger than the next integral inch diameter above the sizes given in the following table:

Minimum Permissible Flue Sizes
For Gas Burner Installations

<u>Input Rating</u> <u>BTU per hour</u>	<u>Area of</u> <u>Flue Outlet Sq. inch</u>	<u>Diameter</u> <u>Flue Pipe Inches</u>
95,500	12.6	4
147,000	19.6	5
212,250	28.3	6
288,750	38.5	7
377,250	50.3	8
477,000	63.6	9

Based on 1 sq. in. flue area per 7,500 BTU per hour input.

NOTE: If flue pipe exceeds 10 feet in length or contains more than two elbows, use next size larger pipe and draft hood.

In cases where the outlet from the appliance is larger than the above indicated size, an orifice plate may be inserted, or a section of the flue pipe restricted to the size indicated between the appliance outlet and the draft diverter. In special cases with high chimneys or flues, the above schedule of areas may be modified subject to specific approval of the Building Inspector.

The draft hood should ordinarily be located adjacent to the appliance. In cases where it appears desirable to place the draft hood at a distance from the appliance, the size of the restricted section may be modified according to the length and rise of the flue pipe.

The proportioned section at the flue outlet of the appliance eliminates the necessity of using an adjustable damper in the flue pipe and such damper will not be permitted.

Where dampers are an integral part of the boiler or furnace, they shall be removed or permanently secured in the wide open position, except such dampers the function of which is to alter the passage of the flue gases through the appliance, which shall be locked in such a position as not to interfere with the normal operation of the burners.

- m. Construction of Flue Pipes. Material used for flue pipe shall be such as to resist the corrosive action of flue gases.

Flue pipe of existing systems shall be relocated where necessary and new flue pipe installations shall be so made as to avoid sharp turns or other constructional features which could create excessive resistance to the flow of flue gases. Flue pipe shall slope upward to chimney.

Flue pipe shall be tightly connected to the chimney liner, so as to prevent infiltration of cold air.

No baffles shall be applied which will interfere with the proper combustion of gas.

Flue pipe shall be well supported to prevent sagging and shall not be installed closer than six

(6) inches to any combustible building materials unless flue pipe is covered with incombustible insulation such that the surface temperature of the exterior surface thereof attain a temperature of not higher than one hundred twenty-five (125) degrees Fahrenheit when the appliance is under continuous operation.

All space heating equipment shall be of the vented type and properly vented to an effective flue. Heaters of a sealed unit type vented through a wall to the atmosphere will be accepted if approved by the American Gas Association.

- n. Radiant Heaters. Radiant Heaters or other unvented heaters of less than 25,000 BTU input may be installed in fireplaces providing the chimney has a positive draft with the damper closed.
- o. Gas Burners. Gas burners of all types shall consist of assembled and tested units and shall be accompanied by complete and comprehensive installation and operation instructions. The burner or burners shall be located according to the manufacturers' instruction and shall be so secured that they will not twist, slide or drop out of position.
- p. Installation of Gas Burners. The burners shall be so installed as to be readily accessible for cleaning and inspection. The burner or burners shall be so installed that no part of the flames impinge on the heating surface so as to cause incomplete combustion.

Air shutters shall be adjusted to produce a proper flame at the prevailing gas pressure.

On all installations where the combustion air pressure can exceed the house line pressure, an approved check valve or other approved device shall be installed in the gas supply line to prevent air from backing into the gas line.

- q. Air Intake. Where secondary air is necessary, secondary air opening or openings shall be provided of sufficient area to supply an adequate amount of air for complete combustion under the specified draft conditions and at the maximum rate of firing.

Where an automatic secondary air control is provided, the construction shall be such that in

case the control fails in any way, either the gas will be shut off or the secondary air door will remain open.

The air intake of power burners shall be so located as to prevent the possibility of accidental closure. The gas and air supply shall be equipped with controls coordinated to prevent opening of the gas supply until the air supply is adequate for proper combustion and to shut off the gas supply in the event of failure of the air supply.

- r. Pilots. Each gas burner shall be equipped with a safety device arranged to prevent the flow of gas through the main burner unless the pilot flame is burning, to consist of a thermostatic pilot or other approved type of safety device. The operation of this device shall not depend upon the closing of an electric circuit to shut off the main gas supply. Gas burners installed under Section 2n are exempt from this provision.

Pilot burners shall be rigidly supported in such a manner that their position relative to the main burner or burners will be fixed.

Pilot burner or burners shall be so placed that they can be safely lighted and they shall be readily accessible or removable for cleaning.

The gas supply line to the pilot or pilots shall be connected to vertical main gas supply lines or to the side or top of horizontal lines ahead of the main burner governor and appliance shut-off valve and shall be provided with a separate cock. Provided, however, that where complete shut-off type automatic pilot is provided with approved flow interrupter, the pilot line shall be connected to this control and such control shall be located ahead of the main burner governor and after the appliance shut-off valve.

Room heaters, floor furnaces and recessed wall heaters shall be equipped with complete shut-off type of automatic pilot.

Thermostatic safety pilots shall be so adjusted that main gas supply will be shut off within three minutes after pilot flame has been extinguished under continuous operating conditions.

Copper or iron tubing shall not be used for supply piping within the burner heat zone to pilot burners.

- s. Main Shut-off Valve or Cock. A manually operated approved shut-off valve or cock shall be installed at each appliance to shut off the entire gas supply to appliance.

Such valve or cock shall be so located that it is readily accessible at about five (5) feet above the floor and shall clearly indicate the "on" and "off" positions, or direction of rotation to open or close. Where a cock is provided, the opening handle shall be securely attached to the plug in such manner that it may not be readily removed.

- t. Automatic Control. Electric control valves shall be installed according to the instructions furnished by the manufacturer. All heating equipment shall be automatically controlled by thermostat except heaters installed in fireplaces as provided in Paragraph 2n.

- u. Electric Wiring. All electrical connections shall be made in accordance with the provisions of all Building and Electrical codes relating to the installation of electric wiring in 2v.

- v. Gas Pressure Regulators. An approved gas pressure regulator shall be installed on the downstream side of the pilot supply on all gas burners and a pressure regulator and pilot filter shall be installed in all pilot lines, downstream from the pilot shut-off cock, on all burners. Pressure regulators and pilot filters shall be of a type listed for approval by the American Gas Association and shall be approved by the Building Inspector.

- w. Limiting Devices. The boiler or furnace shall be equipped with safety devices arranged to limit high steam pressures or water temperatures, as well as high air temperature in warm air furnaces and all such devices shall be subject to the approval of the Building Inspector.

Each gas fired steam boiler shall be equipped with a low-water cut-off approved by the Building Inspector.

Safety devices operated electrically shall not depend upon the closing of a circuit to shut off

the main gas supply. This requirement shall not be construed as prohibiting the use of electrical regulating devices, providing the required safety devices are also installed. Controls shall be so connected that maximum inherent safety provided by such controls will be attained.

Safety shut off valves, if used, shall be tested to assure gas tightness of the seal when in the closed position; the valve assembly shall be gas tight in all positions. Packing glands shall be designed so that the valve will not be made inoperative by excessive tightening of the packing nut.

Either the valve shall incorporate means for requiring a manual operation for reopening of the valve after it has closed or the electrical circuit shall be so arranged as to require a manual operation to reopen the valve after it has been closed. In no case shall valves be able to be opened manually until safety pilots are lighted and circuit completed or low-water cut-off circuit has been completed.

- x. Piping. Gas piping installed for serving conversion burners or gas designed heater appliances shall be sized for a total pressure drop not exceeding 0.3 inches water gauge from the meter to the burner for the total connected load. A separate pipe from the meter is to be preferred and in no case shall the service pipe be smaller than the size of equipment connection. All gas piping shall be installed in conformance with the provisions of this title and in conformance with American Standard Association's requirements.

- y. Chimney Liners. Except as exempted in this section and except on approved incinerators as designated in this title, masonry chimneys serving gas fired boilers, furnaces or heating devices, whether of the gas designed type or fired by gas conversion burners, shall be lined continuously from the thimble to the top with an approved incombustible, acid and corrosion resisting liner of the same equivalent internal cross-sectional area as the flue pipe or pipes extending from the appliance or other appliances to the chimney liner. A condensation pocket shall be provided at the base of said liner with provisions for a drip, so arranged that excessive condensation of flue products may be disposed of without damage to chimney, foundation, floor or footings. Such

liners shall be constructed of material having a thickness before coating of not less than No. 22 U.S. Standard Gauge. Where such liners are constructed of uncoated materials and inherent characteristics of which show a high degree of resistance to acids and corrosion, a lighter gauge may be used, subject to the approval of the Building Inspector. If the masonry chimney is of Type A Underwriter's construction and is provided with a glazed tile flue liner or a vitrified bell type flue liner installed with bells upward, set in acid and moisture resistant mortar, of ample size for the load but not less than 8" equivalent diameter, the above flue liner may be omitted. In the event the chimney flue serving the conversion fired or gas designed appliance also serves one or more appliances other than gas fired, the above provided liner may be omitted. On larger installations where burners are in more or less continuous operation and stack temperatures are sufficiently high to minimize the possibility of condensation within the chimney, the chimney liner may be omitted, subject to the approval of the Building Inspector.

- z. Adequacy of Draft. In the event conditions at the time of installation are such that the chimney or vertical flue has insufficient natural draft to properly carry away the products of combustion or is subject to down drafts, provision shall be made by the installer to rectify existing conditions, or provide mechanical means of maintaining constant updraft during appliance operation.
- aa. Adjustment of Burners. After the piping has been thoroughly purged, the pilot burner shall be lighted and adjusted and the burners put into operation in accordance with the manufacturer's instructions.
- ab. Pilot Operation. Pilot flames shall effectively ignite the gas at the main burner or burners and shall be adequately protected from drafts. A device which under normal chimney draft conditions is at least equal in performance to the draft hood hereinbefore provided for, shall be interpreted as fulfilling the second part of this requirement as far as chimney drafts are concerned.

Pilot flames shall not become extinguished when the main burner or burners are turned on or off in a

normal manner, either manually or by automatic controls.

Luminous flame pilots shall not show carbon deposits when adjusted according to the manufacturer's instructions.

Where escapement pilots are used, their flames shall be freely ignited by the constant burning pilot.

ac. Burner Operation. The flames from each burner shall freely ignite the gas from adjacent burners when operating at the normal gas pressure or when the main control valve is regulated to deliver about one-third (1/3) the full gas rate, except where additional pilots are provided. If the additional pilot is a runner type pilot, this pilot must be proven by a safety mechanism before the main burner valve can open.

Burner flames shall not flash back upon immediate ignition, nor upon turning the gas cock until the gas rate to the burner is about one-third (1/3) the full supply.

Burner flames shall not flash back when the gas is turned on or off by any automatic control mechanism.

Main burner flames shall ignite freely from each constant burning pilot when the main control valve is regulated to deliver about one-third (1/3) the full gas rate and when pilot flame is reduced to minimum point at which it will actuate the safety thermostatic device. The holding port of multiple port pilots must satisfactorily ignite the main burner if the ignition port, or ports, are stopped.

Burners shall be of such design that ignition from pilot or pilots shall carry to all ports or burner heads protected by the pilot at inputs from one-third (1/3) to maximum rating.

When ignition is made in a normal manner, the flames shall not flash outside appliance. Burners shall not expel gas through air openings in mixer faces when operating at the normal burner pressure.

Note: In making the test under Part ac., care shall be exercised to prevent the accumulation of unburned gas in the

appliance or flues which might result in explosion or fire.

- ad. Appliance Performances. The flue gas temperature as taken on the appliance side of the draft hood shall not exceed 480 degrees Fahrenheit above that of the air temperature surrounding the appliance. The concentration of CO₂ shall not exceed 9%, the concentration of CO shall not exceed .04%, the concentration of oxygen shall be not less than 4% nor more than 10%.

Method of Test: Gas Designed Equipment - The rate of flow of the gas shall be adjusted to within plus or minus two (2) percent of the required hourly BTU input rating at the manifold pressure specified by the manufacturer. When the prevailing pressure is less than the manifold pressure specified, the gas rate shall be adjusted at the prevailing pressure. The appliance shall be allowed to operate until the stack temperature becomes stabilized, after which a sample of the flue products shall be taken at a point in the flue after the outlet of the appliance but ahead of the draft hood, and analyzed for carbon dioxide, carbon monoxide and oxygen.

Method of Test: Conversion Burners - The rate of flow of gas shall be adjusted to within plus 5% or minus 15% of 1.7 times the calculated hourly BTU heat loss of the building in which it is installed. The appliance shall be allowed to operate until the stack temperature becomes stabilized, after which a sample of the flue products shall be taken at a point in the flue after the outlet of the appliance but ahead of the draft hood, and analyzed for carbon dioxide, carbon monoxide and oxygen.

The various controls of the appliance shall be checked by the installer to insure their proper operation.

Upon completion of the test of any newly installed gas burning equipment as hereinafter provided in Section 2-ad and its subsections, the installer shall file with the Building Inspector, in duplicate, complete records of such test, if deemed necessary by the Building Inspector.

- ae. Instructions to the Owner and/or Occupant. The owner and/or occupant shall be thoroughly instructed by the installer as to the proper and safe operation of the appliance before it is placed

in service, such instructions to include actual demonstration to the customer or his authorized agent of the processes of lighting and turning off the gas burner. A printed set of instructions, enclosed in an envelope labeled "Instructions to Customer" shall be securely attached to the gas valve.

A metallic plate, suitably etched or stamped, setting forth detailed instructions for the safe lighting and shutting off of the appliance, shall be permanently attached to the appliance in a prominent position near the lighting apertures. The size of type used shall be not smaller than ten (10) point and the wording contained thereon shall be subject to the approval of the Building Inspector. This plate shall also state make and model numbers of the burner and show the rate hourly gas BTU input.

3. Technical Regulations for Gas Burner Installation Exceeding 400,000 BTU.

- a. Scone. The construction, arrangement, manner of installation, alteration and repair of all gas burners for steam and hot water boilers, furnaces, industrial power and process uses shall conform to this title. The requirements for installation of gas burning equipment in power boilers as adopted by the American Standards Association, sponsored by the American Gas Association, shall be considered herein as minimum requirements.

Before approval for installation is granted for initial installation, after adoption of this title, plans and specifications and/or official literature and data, including piping arrangements, type and model of controls, capacities of equipment, and wiring diagram shall be submitted to the Building Inspector for preliminary approval. Upon receiving preliminary approval, the installation shall then be made accordingly, and final approval shall not be granted until the equipment has been tested in the presence of the Building Inspector. Such tests shall consist of orsat testing, within acceptable limits where applicable, pressure regulation, stack temperature, control operation, pilot turn down, flame lockout and such other tests as may be deemed necessary by the Building Inspector.

- b. Definitions. For the purpose of this section, the following definitions shall apply:

- (1) Gas Burners and Gas Burning Equipment: the term "gas burner" shall mean a device for the final utilization of gas, or a mixture of gas and air in any steam hot water boiler, furnace, air heater and devices and appliances for power industrial, space heating and process used in connection with a heating system or commercial and industrial applications, and shall include conversion burners, gas designed equipment, power burners, atmospheric burners, dual fuel burners and process and industrial equipment and shall include all auxiliary and equipment accessories including flue pipe control devices, electric wiring diagrams, piping diagrams, gas controls, safety controls, and accessories in connection with the equipment and all piping supplying said equipment with gas, air or mixtures thereof.
- (2) Conversion Burner: The term "conversion burner" shall mean a gas burning device designed to supply gaseous fuel to and properly burn this fuel in the combustion space of equipment originally designed to burn another fuel.
- (3) Power Gas Burner: A power gas burner is one in which either gas or air or both are supplied at pressures exceeding, for gas, the normal line pressure at the burner and for air, atmospheric pressure; the added pressure being applied at the burner.
- (4) Atmospheric Burner: An atmospheric burner is defined as a device in which the air at atmospheric pressure is induced into the burner by a jet of gas under pressure not more than the house line pressure.
- (5) Dual Fuel Burner: A dual fuel burner is defined as a burner designed to burn either gas or oil but not both simultaneously.
- (6) Gas Designed Equipment: Gas designed equipment is defined as equipment designed as an integral unit for burning gas only as fuel.
- (7) Process and Industrial Equipment: Process and industrial equipment is defined as all gas burning equipment burning gas or a mixture of

gas and air for industrial process applications.

- (8) Gas Pressure: For the purposes of this title, gas supply pressure shall be classified as follows:

Low Pressure - up to and including 14" W.C.

Medium Pressure - from 14" W.C. to & including 25 P.S.I. gauge

High Pressure - over 25 P.S.I. gauge

c. General Regulations.

- (1) All burners for space heating applications shall be accompanied by complete and comprehensive operating instructions and wiring diagrams.
- (2) Where burners are equipped with secondary air shutters or louvres, they must be designed or counter-balanced so as to drop to a wide open position in the event of failure or breakage of connecting linkage. They shall also be of sufficient area to supply adequate air for complete combustion under specified draft conditions and at maximum rate of firing.
- (3) The burner or burners shall be located according to the manufacturer's instructions and shall be so secured that they will not slide, twist or drop out of position.
- (4) The burner or burners shall be so installed as to be readily accessible for cleaning and inspection.
- (5) The burner or burners shall be so installed that no part of flame shall impinge on heating surface so as to cause incomplete combustion.
- (6) On all installations where the combustion air pressure can exceed the house line pressure, an approved check valve or other approved device, shall be installed in the gas supply line to prevent air from backing into the gas line.
- (7) Under no condition shall the equipment be fired at a capacity greater or less than that shown in the official data supplied by the manufacturer, or at greater or less gas

pressure than the maximum or minimum pressures, as listed by the manufacturer, or as approved by the Building Inspector.

- (8) All equipment is to be installed in the basic manner in which the original approval was obtained, and wiring and piping diagrams shall accompany each permit application when the input is 1,000,000 BTU per hour or more and when different from the original approval or requested by the Building Inspector.

- d. Piping. All gas piping under this section shall be wrought iron or black steel pipe where applicable with malleable or steel fittings and shall be designed so that the pressure drop through the piping does not exceed that which will supply the proper pressure for the particular application and shall be carefully tested for leaks. Adequate drips shall be installed at any point at which liquid condensate could collect, and such drips shall be readily accessible for cleaning. Gas piping shall not be supported from other pipes and shall be securely hung so that proper grade will be maintained.

An approved type of main shut-off cock shall be installed in a readily accessible location for the convenient operation of the burner and ahead of all other gas controls. When this cock is two (2) inches in size or larger, or the gas pressure exceeds fourteen (14") in W.C. pressure, it shall be of the lubricated plug type and in all cases shall have a permanently attached handle, which shall clearly indicate the "on" and "off" position.

A firing cock of a suitable type may be installed downstream of all controls that start and stop the flow of gas to the firing equipment if desired.

All pilot lines shall be equipped with an approved shut-off cock.

- e. Combustion Gas Controls. For a burner or a combination of burners not exceeding 500,000 BTU input per hour, a combustion control of the on and off type may be used. This control may be of either the quick opening or slow opening type.

For a burner or a combination of burners not exceeding 5,000,000 BTU input per hour, approved on and off type of controls may be used, provided a

slow opening automatic gas valve is used. This valve shall have a maximum closing time of five (5) seconds. In addition to the slow opening valve, an approved automatic valve of the positive closing type shall be installed upstream of the slow opening type of valve.

For burners or a combination of burners with an input exceeding 5,000,000 BTU per hour, an approved modulating, or high-low type of gas control must be used in addition to the slow opening and positive gas valves described in Subsection 3-e, or an approved combination modulating and slow opening valve. This modulating or high-low control shall be of a type that controls the firing rate of the equipment throughout its entire range and so adjusted that the minimum and maximum firing rate stays within the limit as specified for the equipment by the manufacturer and within the limits of the particular application to which it is applied.

Modulating controls may use steam, air, hydraulic or electricity as an actuating medium and shall be so arranged that the gas burning equipment starts and stops in the minimum firing position for the particular application and suitable means shall be provided to prevent starting of the main flame until the controls are in the minimum firing position on installation exceeding 5,000,000 BTU per Hr.

Modulating controls that are inter-connected by mechanical linkage to inlet air louvres of natural draft burners, shall have this linkage so arranged that the louvres will go to the open position in the event of failure of the linkage, provided such failure could change the fuel-air ratio.

On equipment with approved programming controls, the positive closing gas valve may be of either the automatic or the manual reset type. On equipment with constantly proved pilot, and on which the positive closing valve and flame failure control relay does not program with the starting and stopping of the main flame, the valve shall be of the approved manual reset type. On equipment with an input of less than 5,000,000 BTU per hour, automatic types of positive closing may be used on either type of pilot control provided that they do not require the closing of a circuit or relay, and are of the "normally closed" type of valve.

- f. Gas Pressure Regulators. Approved types of gas regulators shall be used on all gas burning equipment. These regulators shall maintain a stable gas pressure to the equipment, within the range of pressure set up by the manufacturer of the gas burning equipment.

For low pressure, an approved gas pressure regulator shall be installed.

For medium pressure, an approved pressure regulator shall be installed upstream of all other controls when the inlet pressure is not regulated by the utility and this regulator shall be rated at not less than the maximum street pressure.

Where the inlet pressure is regulated by the utility at a pressure not exceeding five (5) psi, an approved regulator shall be installed. This regulator shall be rated at not less than five (5) psi and may be either up or down stream of other operating controls.

For high pressure, not less than two gas pressure regulators shall be installed downstream of the Utility Company meter, one of these to be normally at the meter location and pressure reduction shall be accomplished in not less than two stages. Both the first and second regulators shall be designed for, and capable of handling the maximum street pressure available. If a third stage of regulation is desired, this regulator shall be rated for not less than the outlet pressure of the first stage regulator unless installed downstream of the operating controls.

A limiting device shall be installed on the downstream side of the final stage of pressure regulation, on medium and high pressure. This limiting device shall be so arranged that it will close the main gas control valves in the event the gas pressure exceeds the proper regulated pressure. This limiting device shall be so arranged that it will require manual re-cycling or re-setting before the equipment can be put back in operation.

- g. Operating and Limit Controls. Steam boilers shall be equipped with not less than one operating control, and one high limit control, and low water cut-off.

Hot water boilers shall be equipped with not less than one operating and one high limit control, activated by boiler water temperature. Operating controls actuated by water temperature shall be of immersion type, mounted directly into the boiler water, the high limit control may be of the surface type, mounted on the rise or risers adjacent to the boiler, ahead of all flow and other controls.

Warm air furnaces shall be equipped with not less than one operating and one high limit control. These controls shall be so located that failure of fans or air circulation through the unit will not appreciably affect their operation, or such fans shall be equipped with air switches to prevent operation of the equipment in the event of fan failure.

Thermostats, where directly operating the gas burning equipment, may be considered operating controls.

Where forced or induced draft is used, an approved air switch shall be installed to prevent operation of the equipment at any time such draft is not definitely established and maintained at predetermined adequate setting.

Electrically operated safety device shall not rely on closing a circuit or relay to close the main gas valve or valves.

Primary air fans shall be equipped with an approved positive method of preventing the burner from starting or remaining in operation in the event of failure of the primary air source.

- h. Plain Pilot. Each burner shall be equipped with a plain gas pilot or gas pilots in addition to the safety pilot to insure smooth lighting of the burner so that there will be no roll back or heavy detonations during lighting off period, except that where the burner unit is of such size that safety pilot only will light burner smoothly, the plain pilot may be omitted. The pilot flame shall effectively ignite the gas at the burner and shall be so designed as to be adequately protected from drafts where required. Pilot flames shall not become extinguished by the main burners when starting or stopping them in a normal manner. Luminous flame pilots shall not show carbon deposit

during the period of tests when adjusted according to the manufacturer's instructions.

Where the vertical or upshop type of burner consisting of a multiplicity of heads is used, a minimum of one plain gas pilot for each eight heads must be used. In arriving at the number of pilots, the safety pilot will be counted as one plain gas pilot above eight heads; below eight heads there must be at least one plain gas pilot and a safety pilot unless the Building Inspector approves a lesser number.

- i. Safety Pilots and Controls. Where the total input to any gas burning device exceeds 400,000 BTU all burners shall be equipped with approved flame rectifier, flame conductivity or scanner cell types of safety controls. Heat sensitive type of pilots will not be permitted.

Safety pilots shall be so designed that upon insertion of pilot after removal for repairs or cleaning, pilot will be in the same position relative to main burner as when originally installed. The pilot flame shall be in such a position that in the event of a drop in gas pressure, the contact between the pilot flame and flame rod or scanner shall be broken before the point where the pilot light will fail to reliably ignite the main burner.

The control system used in conjunction with the electronic safety pilot shall be of a type to lock out the main flame in approximately five (5) seconds or less, and shall require a manual re-set operation before flame can be reestablished. All safety pilots shall be equipped with positive closing automatic gas valves, and shall close in the event of an indicated failure.

Forced or induced draft equipment and natural draft type burners with supplementary air fans with modulating or closing air shutters with an input in excess of 1,000,000 BTU per hour shall be so arranged that a pre-purge period of approximately thirty (30) seconds is obtained. This pre-purge shall occur before establishing ignition on intermittent or interrupted pilots and before establishing main flame or continuously proved pilots.

Where a switch is installed in a low water cut-off circuit to keep the circuit to the safety shut-off valve closed when blowing down water column, switch must be of the push button type so that when operator releases button the control circuit to safety shut-off valve will be normal.

All pilot burners shall be supported in such a manner that their position relative to the main burner or burners will remain fixed.

Pilot lines shall be connected to vertical supply lines when possible. When horizontal line is used, connection must be made on top or side. Connection must be ahead of all controls, (except pressure regulator on medium and high pressure) and main shut-off valve and shall be provided with separate shut-off cock. Where gas pressure is greater than that for which pilots are designed, a pressure regulator (pilot regulator) must be installed on the downstream side of pilot line shut-off cock.

Safety shut-off valves shall be tested to assure gas tightness of the seam when in a closed position; the valve assembly shall be gas tight in all positions. Packing glands shall be designed so that the valve will not be made inoperative by excessive tightening of the packing nut.

- j. Venting of Controls. Pressure regulators, slow opening gas valves and other gas equipment requiring venting shall be vented to a safe point outside of the building, or to a point in the breaching or stack, where the volume or flow of air is such that a combustible mixture cannot be obtained.
- k. Draft Controls. Approved draft controls are to be used on all equipment, except when forced and induced draft is used in conjunction with controls that modulate the forced or induced draft in the direct ratio with the fuel modulation, and shall be used with forced or induced draft modulating systems when they are attached to a stack which may disturb fuel air ratio due to its draft intensity to the equipment.
 - (1) Barometric Draft Controls: These draft controls are to be of the "gas" type control, free to swing both ways. Barometric type draft controls shall have a cross sectional area equal to approximately seventy-five

percent (75%) of the cross sectional area of the breaching from equipment which they are regulating.

(2) Mechanical Draft Controls: This type of control may use hydraulic pressure steam, air or electricity as an actuating medium and shall be so arranged that they will program to the open position before ignition is established or interrupted or intermittent piloted equipment, and before main flame is established on constantly proved pilot equipment and shall be equipped with a positive means of delaying the equipment, before the open position is obtained.

l. Dual Fuel Equipment. All dual fuel equipment, using gas as one of the fuels must comply with the requirements of this section, in controlling the gas equipment and shall be so arranged that no adjustments are changed or required when changing fuels. Dual fuel equipment shall be equipped with an on-off-on type of transfer switch that will not pass through the center off position without stopping in the "off" position.

m. Inspection and Tests. All installations shall be carefully tested for the proper operation of all controls and electrical circuits. Upon completion of fire testing and adjustment, a complete test report shall be filed with the Building Inspector in accordance with forms supplied by the Building Inspector.

Piping shall be carefully tested for leaks.

n. Industrial Applications. On certain industrial and process applications, where certain parts of these regulations cannot be met as required, individual approval must be obtained from the Building Inspector before a permit will be issued or installation can be made.

o. Air Intake. Gas burning equipment in buildings where adequate air for combustion is not assured, shall have fresh air intakes of the permanently open type, or with closeable dampers. Air intakes with closeable or automatic type dampers that program with the equipment, shall be equipped with a positive lockout device to prevent operation of the equipment unless the damper is open to a predetermined position.

4. Incinerators: Domestic or Portable Type.

- a. General Provisions. Portable or domestic incinerators or rubbish burners may be installed and vented into the same flue with gas fired boilers, furnaces or heating devices, providing the incinerator or rubbish burner installation conforms to the following requirements:
- (1) The incinerator shall be designed with gas or constant electrical auxiliary heating elements to facilitate the drying and combustion of garbage.
 - (2) When gas fired, the incinerator shall conform to the American Standard Requirements for Domestic Gas-Fired Incinerators.
 - (3) When equipped with electric heaters, the incinerator shall conform to standards established by the Underwriters' Laboratories, Inc., and features shall meet the requirements of the standards for gas-fired equipment.
 - (4) The incinerator shall bear the manufacturer's tag or name plate permanently attached stating the fuel for which the unit is designed and the input rating.
- b. Venting. The vent from the incinerator shall be connected to a masonry flue by means of a smoke pipe constructed of metal suitable for operation of 1800 degrees F. temperature. Where such smoke pipe is within eighteen (18) inches of combustible materials, such materials shall be provided with one-half ($\frac{1}{2}$) inch fireproof insulation.

Where the masonry chimney is of Type A construction and is provided with a glazed tile flue liner or a vitrified bell type flue liner installed with bells upward, of ample size for the load of the incinerator in addition to other appliances connected thereto, but not less than eight (8) inches equivalent diameter, the metal chimney liner required elsewhere in this code, may be omitted.

Where the masonry flues are not provided with tile flue liners as above described then the flue shall be provided with flue liner constructed of materials approved for operation with temperatures of 1200 degrees F., this liner to receive the vents

from the incinerator and other devices and to be sized for the total load.

An approved spark arrester shall be installed on the chimney or flue to which the incinerator is connected.

- c Piping. The piping for incinerator shall conform to the requirements of Paragraph 2-x.

CHAPTER 7-04

CHIMNEYS AND FLUES

SECTIONS:

- 7-0401. Owner's Duty to Provide Proper Chimney.
- 7-0402. Chimney and Flue Draft Measurements.
- 7-0403. Regulation of Drafts.
- 7-0404. Draft Measurements.

7-0401. **OWNER'S DUTY TO PROVIDE PROPER CHIMNEY.** It shall be the duty of the owner of any new building in which it is hereafter proposed to install any warm air furnace, steam or hot water boiler or any conversion burner using a liquid or solid fuel, for use in connection with a heating system in such building to provide an all-purpose chimney with at least a seven (7) inch flue to withstand a minimum temperature of 1000 degrees F., thereby providing a chimney suitable for utilizing all types of fuel; and in all old construction where new heating plants are to be installed, the chimney shall be inspected and repaired so as to be put in first-class condition and an approved chimney liner installed if required by the Building Inspector.

7-0402. **CHIMNEY AND FLUE DRAFT MEASUREMENTS.** Before any final approval shall be given by the Building Inspector on an installation of any type of combustion unit herein covered by the provisions of this title, the person, firm or corporation or their agents making the installation of the burner shall make in the presence of the inspecting officer a test or tests for determining the amount of draft actually present upon or in connection with any and all burners attached to the chimney or flue, if requested by the Building Inspector.

7-0403. **REGULATION OF DRAFTS.** Chimney and flue drafts shall be set or regulated in such a manner as to be in accordance with the specifications of the burner's manufacturer or in compliance with the American Society of Heating and Ventilating Engineers.

7-0404. **DRAFT MEASUREMENTS.** Draft measurements shall be recorded upon the final inspection approval certificate if required by the Building Inspector.

CHAPTER 7-05

GASOLINE STOVES

SECTIONS:

- 7-0501. Standards for the Installation, Maintenance and Use of Gasoline Stoves for Cooking and Heating.
- 7-0502. Classification.
- 7-0503. Standards - Location of Stoves.
- 7-0504. Location of Outside Tanks.
- 7-0505. Fuel Piping.
- 7-0506. Care and Attendance.

7-0501. **STANDARDS FOR THE INSTALLATION, MAINTENANCE AND USE OF GASOLINE STOVES FOR COOKING AND HEATING.** These standards shall apply to all new and existing installations and all persons shall be governed by the provisions hereinafter set forth whether or not specifically named.

7-0502. **CLASSIFICATION.** The following classifications are designed for the purpose of giving recognition to various types of stoves now being manufactured and used, on the basis of the hazards involved in operation and use:

Class A. Stationary Stoves Furnished with Anti-flooding Device: Stoves of this classification feed the fuel to the burners either by gravity or pressure from the tank located at the stove, whose liquid capacity does not exceed approximately one (1) gallon, or employ pressure feed or fuel from an outside tank whose fuel capacity does not exceed six (6) gallons and in all cases are furnished with anti-flooding devices. Stoves of this classification are regarded as constituting the least danger.

Class B. Stationary Stoves Not Furnished With Anti-flooding Device: Stoves of this classification feed the fuel to the burners either by gravity or pressure from a tank located at the stove, whose liquid capacity does not exceed approximately one (1) gallon, or employ pressure feed or fuel from an outside tank whose fuel capacity does not exceed six (6) gallons and are not furnished with anti-flooding devices. Stoves of this classification are regarded as more dangerous than those of Class A. The possibility of drafts extinguishing the burner flame is of prime importance in connection with Class B Stoves, which are not provided with anti-flooding devices.

Class C. Portable Heaters Equipped with Anti-flooding Device: Heaters of this classification feed the fuel to the burner by

pressure from a tank located at the heater whose liquid capacity does not exceed approximately one (1) gallon and are designed and intended to be readily carried from one place to another as desired and used as a source of local heat and are always equipped with anti-flooding devices. Heaters in this classification are regarded as even more dangerous than those covered in Class A and B since their gasoline supply is in close proximity to the flame and they are portable, whereby rendering it possible that they may be placed too close to combustible material.

7-0503. **STANDARDS - LOCATION OF STOVES:** Stoves should be placed on the floor or on permanent foundations and never on boxes, shelves, or temporary supports. Locations in close proximity to wooden shelves, cupboards or other combustible materials shall not be allowed.

Stoves shall be located away from windows or other openings where drafts may blow curtains or draperies into contact with the flame.

Stoves provided with outside storage tanks shall be attached to the floor to prevent breaking of fuel lines.

7-0504. **LOCATION OF OUTSIDE TANKS.** Outside tanks which may have a fuel capacity of not exceeding six (6) gallons (U.S.) and which feed the fuel either directly to the burner or to the one-gallon tank mounted on the stove shall be so located that no artificial light will be required while filling.

Installation of such tanks shall be made outside the building well removed from all openings where escaping fuel or vapor may enter or accumulate. Tanks shall be suitably protected from extreme heat and accumulations of ice and snow.

7-0505. **FUEL PIPING.** Fuel piping for connecting outside tanks to stationary stoves shall be 3/16 inch O.D. seamless drawn copper or brass tubing having a wall thickness of at least 3/64 inch and shall be of suitable quality to withstand the effects of handling and manipulation in installation and use. Tubing shall be provided with approved fittings not depending upon ordinary solder for strength.

The piping shall not be secured in place with staples or other fittings likely to injure the tubing. Tubes shall be run in iron pipes from supply tank to inside of building wall and be protected by wooden moldings or iron pipe where the distance above the floor is less than seven (7) feet.

Fuel piping shall in no case be concealed behind walls or ceilings and shall be protected by sleeves where passing through floors, partitions or walls.

Fuel piping shall be supported in ceiling runs at intervals not exceeding six (6) feet by metal strips or the equivalent.

When piping is installed near electric wiring, the requirements of the National Electrical Code shall be observed. Where tubes cross wires, pipes or metal girders, protection from mechanical injury shall be provided.

Tubing shall be thoroughly tested after all connections have been made and shall not show loss within one (1) hour at a pressure of fifty (50) pounds per square inch.

Tubing shall be provided with a separate shut-off valve installed inside the building at a point easily reached in an emergency.

7-0506. **CARE AND ATTENDANCE.** Reserve supplies of fuel oil shall be kept in standard safety cans or filling cans or in larger containers conforming to the standards for storage and handling of flammable liquids.

Filling of tanks or reservoirs on stoves in buildings shall be by daylight only and not in the same room where or while any fire, blaze or flame of any kind is burning.

Filling tanks shall be carefully done in order to avoid spilling and splashing with the attendant hazards.

Stoves shall be kept clean and manufacturer's directions closely followed.

CHAPTER 7-06

PENALTY

SECTIONS:

7-0601. Penalty.

7-0601. **PENALTY.** Any person violating any of the provisions of this title, or failing to comply therewith, or who violates or fails to comply with any code, standard or requirement therein adopted by reference, or who constructs or installs any heating or air conditioning plant, gas burning equipment or appliance or combustion unit in violation of any plans, specifications or sketches upon which the same was submitted and approved or any permit issued thereunder shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. The imposition of one penalty for any violation or non compliance of this title shall not excuse or permit the same to continue; and all such persons shall be required to correct or remedy such violations or non-compliances within a reasonable time; and when not otherwise specified, each ten (10) days that prohibited conditions are maintained shall constitute a separate offense. The application of the above penalty shall not be held to prevent the enforced correction or removal of prohibited conditions.

CHAPTER 7-07

INTERNATIONAL FUEL GAS CODE
(Source: Ord. 2011-37, Sec. 1 [2011])

SECTIONS:

- 7-0701. Adoption of International Fuel Gas Code.
- 7-0702. Amendment to International Fuel Gas Code.
- 7-0703. Appeals.

7-0701. ADOPTION OF INTERNATIONAL FUEL GAS CODE. There is hereby adopted by reference by the City Council, for the purpose of prescribing regulations governing standards, relative to housing in the City of Kindred, that certain code known as the International Fuel Gas Code, recommended and compiled by the International Code Council, being particularly the 2009 edition thereof, as the same are now established in said code, a copy of which is on file in the office of the Building Administrator for the City of Kindred, with the exception of the sections hereinafter set forth affecting local conditions of the City of Kindred, which sections shall be substituted for and in lieu of like sections or paragraphs in said International Fuel Gas Code; the City Council of said City of Kindred, by this section hereby approves and adopts such rules and regulations, so modified, for the use and application within the city limits of Kindred, North Dakota, as well as for any area within the extraterritorial zoning jurisdiction of the City. Provided, that any amendments of the 2009 edition of the Code may be adopted by the City by resolution.

7-0702. AMENDMENT TO INTERNATIONAL FUEL GAS CODE. The International Fuel Gas Code, as adopted in Section 7-0701 is hereby changed and amended as follows:

SECTION 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the Fuel Gas Code of ~~{NAME OF JURISDICTION}~~ the City of Kindred, hereinafter referred to as "this code."

SECTION 103.2 is hereby deleted in its entirety.

SECTION 103.3 is hereby deleted in its entirety.

SECTION 103.4 is hereby renumbered and amended to read as follows:

~~103.4~~ **103.2 Liability.** The code official, member of the board of appeals or employee charged with

the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally, and is hereby relieved from personal liability for any damage accruing to persons or property as a result of an act or by reason of an act or omission in the discharge of official duties.

Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The code official or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuant of the provisions of this code.

This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

SECTION 106.5.8 is hereby deleted in its entirety.

SECTION 106.6.2 is hereby amended as follows:

106.6.2 Fee schedule. The fees for mechanical work shall be as indicted in the ~~following~~ schedule as established by the Kindred City Council.

SECTION 106.6.3 is hereby amended as follows:

106.6.3 Fee refunds. The code official ~~shall~~ is authorized to order the refunding of fees as follows:

1. The full amount of any fee paid hereunder which was erroneously paid or collected.
2. Not more than eighty [80] percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

3. Not more than eighty [80] percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan review effort has been expended.

The code official shall not authorize the refunding of any fee paid, except upon written application filed by the original permittee not later than 180 days after the date of fee payment.

SECTION 109 is hereby deleted in its entirety.

SECTION 201.3 is hereby amended to read as follows:

201.3 Terms defined in other codes. Wherever reference is made in this code to the International Plumbing Code it shall mean the North Dakota State Plumbing Code. Wherever in this code reference is made to the ICC Electrical Code it shall mean the National Electrical Code together with the North Dakota State Wiring Standards. Where terms are not defined in this code and are defined in the International Building Code, International Fire Code, or International Fuel Gas Code, such terms shall have meanings ascribed to them as in those codes.

SECTION 303.3 Items 3 and 4 are hereby deleted in their entirety:

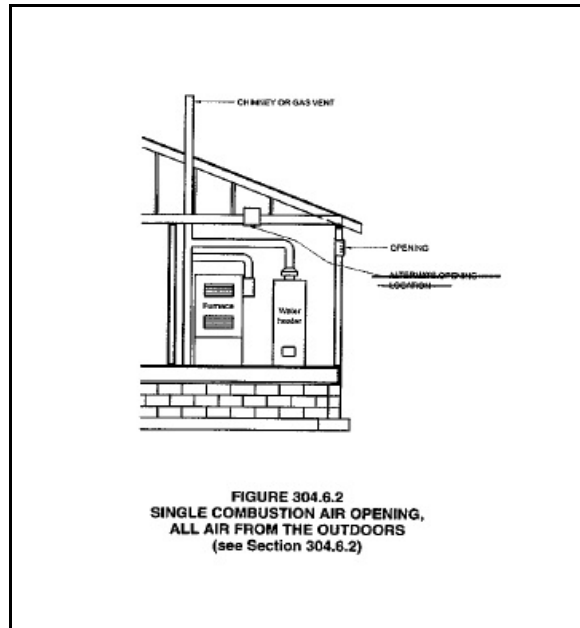
303.3 Prohibited locations.

- ~~3. A single wall-mounted unvented room heater is installed in a bathroom and such unvented room heater is equipped as specified in Section 621.6 and has an input rating not greater than 6,000 Btu/h (1.76 kW). The bathroom shall meet the required volume criteria of Section 304.5.~~
- ~~4. A single wall mounted unvented room heater is installed in a bedroom and such unvented room heater is equipped as specified in Section 621.6 and has an input rating not greater than 10,000 Btu/h (2.93 kW). The bedroom shall meet the required volume criteria of Section 304.5.~~

FIGURE 304.6.1 (1) is hereby deleted in its entirety.

FIGURE 304.6.1 (2) is hereby deleted in its entirety.

FIGURE 304.6.2 is hereby amended as shown below:



SECTION 304.6.2 is hereby amended to read as follows:

304.6.2 One-permanent-opening method. One permanent opening, commencing within 12 inches (305 mm) of the top of the enclosure, shall be provided. The *appliance* shall have clearances of at least 1 inch (25 mm) from the sides and back and 6 inches (152 mm) from the front of the *appliance*. The opening shall directly communicate with the outdoors or through a vertical or horizontal duct to the outdoors, ~~or spaces that freely communicate with the outdoors (see Figure 304.6.2)~~ and shall have a minimum free area of 1 square inch per 3,000 Btu/h (734mm²/kW) of the total input rating of all appliances located in the enclosure and not less than the sum of the areas of all vent connectors in the space.

SECTION 304.11 (5) is hereby amended to read as follows:

304.11 Combustion air ducts. *Combustion air ducts* shall ...

1. Ducts shall ...

5. Ducts shall not be ~~screened where terminating~~ terminate in an attic space.
6. Horizontal upper ...

SECTION 403.3 is hereby amended to read as follows:

403.3 Other materials. Material not covered by the standards specifications listed herein shall be investigated and tested to determine that it is safe and suitable for the proposed service, and, in addition, shall be recommended for that service by the manufacturer and shall be *approved* by the code official. Listed LPG hose may be used with natural gas when used for temporary heating at a maximum length of 50 feet.

SECTION 403.10.1 is hereby amended to add exception as follows:

403.10.1 Pipe joints. Pipe joints shall ...

Exception: Gas supply systems with pressures 5 psig or greater and gas pipe joints 2½ inches or larger, regardless of pressure, shall be welded.

SECTION 403.10.4 to hereby amended to read as follows:

403.10.4 Metallic fittings. Metallic fittings shall ...

1. Threaded fittings in sizes ~~larger than 4 inches (102mm)~~ 2½ inches or larger shall not be used except where *approved*.
2. Fittings uses ...

SECTION 406.4 is hereby amended to read as follows:

406.4 Test pressure measurement. Test pressure shall be measured with a manometer or with a pressure-measuring device designed and calibrated to read, record, or indicate a pressure loss caused by leakage during the pressure test period. The source of pressure shall be isolated before the pressure tests are made. ~~Mechanical gauges used to measure test pressures shall have a range such that the highest end of the scale is not greater than five times the test pressure.~~ Dial gauges used to measure test pressures shall be performed with gauges of 2 psi incrimination or less and have a

range not exceeding 100 psi unless otherwise approved.

SECTION 406.4.1 is hereby amended to read as follows:

406.4.1 Test pressure. The test pressure to be used shall be no less than 1½ times the proposed maximum working pressure, but not less than ~~3~~ 25 psig (~~20~~ kPa gauge), irrespective of design pressure. Where the test pressure exceeds 125 psig (862 kPa gauge), the test pressure shall not exceed a value that produces a hoop stress in the piping greater than 50 percent of the specified minimum yield strength of the pipe.

SECTION 408.2 is hereby amended to read as follows:

408.2 Drips. Where wet gas exists, a drip shall be provided at any point in the line of pipe where condensate could collect. ~~A drip shall also be provided at the outlet of the meter and shall be installed so as to constitute a trap wherein an accumulation of condensate will shut off the flow of gas before the condensate will run back into the meter.~~

SECTION 411.2 is hereby amended to read as follows:

411.2 Manufactured home connections. Manufactured homes shall be connected to the distribution *piping* system by ~~one of the following materials:~~

- ~~1. Metallic pipe in accordance with Section 403.4.~~
- ~~2. Metallic tubing in accordance with Section 403.5.~~
- ~~3. Listed and labeled connectors in compliance with ANSI Z21.75/CSA 6.27 and installed in accordance with the manufacturer's installation instructions.~~

SECTION 415.1 is hereby amended to add the following:

415.1 Interval of support. *Piping* shall be supported at intervals not exceeding the spacing specified in Table 415.1. Spacing of supports for CSST shall be in accordance with the CSST manufacturer's instructions. In addition to the requirements of Table 415.1, piping and tubing

shall be supported within 2 feet of every bend or angle.

SECTION 501.8 is hereby amended by deleting item 8 and renumbering as follows:

501.8 Appliances not to be vented. The following appliances ...

1. Ranges. ...
- ~~8.~~ ~~Room heaters listed for unvented use.~~
- ~~9~~8. Direct-fired makeup air heaters.
- ~~10~~9. Other appliances *listed* for unvented use and not provided with flue collars.
- ~~11~~10. Specialized equipment of limited input such as laboratory burners and gas lights.

SECTION 501.12 is hereby amended to read as follows:

501.12 Residential and low-heat appliances flue lining systems. Flue lining systems for use with residential-type and low-heat appliances shall be limited to the following:

1. Clay flue lining complying with the requirements of ASTM C 315 or equivalent when each appliance connected into the masonry chimney has a minimum input rating greater than 400,000 Btu/h. Clay flue lining shall be installed in accordance with the *International Building Code*.
2. *Listed* chimney lining systems complying with UL1777.
3. Other *approved* materials that will resist, without cracking, softening or corrosion, flue gases and condensate at temperatures up to 1,800°F (982°C).
 - a. Aluminum (1100 or 3003 alloy or equivalent) not less than 0.032 inches thick to 8 inches diameter.
 - b. Stainless steel (304 or 430 alloy or equivalent) not less than 26 gauge

(0.018 inches thick) to 8 inches diameter or not less than 24 gauge (0.024 inches thick) 8 inches diameter and larger.

When a metal liner is used other than a listed chimney liner a condensation drip tee shall be installed and supported in an approved manner.

SECTION 503.5.3 is hereby amended to read as follows:

503.5.3 Masonry chimneys. Masonry chimneys shall be built and installed in accordance with NFPA 211 and shall be lined ~~with approved clay flue lining, a listed chimney lining system or other approved material that will resist corrosion, erosion, softening or cracking from vent gases at temperatures up to 1,800°F (982°C).~~ as per sec. 501.12.

SECTION 503.5.6.1 is hereby amended to read as follows:

503.5.6.1 Chimney lining. Chimneys shall be lined in accordance with NFPA 211 and Section 501.12.

Exception: Where an existing chimney complies with Sections 503.5.6 through 503.5.6.3 and its sizing is in accordance with Section 503.5.5, its continued use shall be allowed ~~where the appliance vented by such chimney is replaced by an appliance of similar type, input rating and efficiency when, in more than one appliance venting system the secondary appliance, such as a water heater, is replaced and the primary heating appliance remains.~~

SECTION 621 is hereby deleted in its entirety.

7-0703. APPEALS. A person shall have the right to appeal a decision of the Code Official to the Board of Appeals. The Kindred City Council shall be the Board of Appeals. An appeal in writing to the Code Official must be made within 20 days of the decision of the Code Official. The Kindred City Council shall hear the appeal within 30 days of the Code Official receiving written notice of the appeal. The Council may only reverse or modify a decision of the Code Official by a vote of at least three members of the Council. If not all members of the Council are present at the hearing, the person appealing the decision may request a postponement, which may extend the 30-day period to hold such a hearing. An application for an appeal shall be based on a claim that the true intent of the Code has been incorrectly interpreted, the provisions of the Code

do not fully apply, or an equally good or better form of construction is proposed. The Council shall have no authority to waive requirements of the Code.

TITLE VIII.

PLUMBING CODE

CHAPTERS:

8-01. General Provisions.

CHAPTER 8-01

GENERAL PROVISIONS

SECTIONS:

- 8-0101. Adoption of North Dakota State Plumbing Code.
- 8-0102. Amendment of State Plumbing Code.
- 8-0103. State to Administer and Enforce Code.
- 8-0104. Right of Entry.
- 8-0105. Protection of Water Supply System.
- 8-0106. Penalty.
- 8-0107. License Required.

8-0101. **NORTH DAKOTA STATE PLUMBING CODE ADOPTED.** The North Dakota State Plumbing Code is hereby adopted and all installations, repairs and alterations of plumbing shall, from the effective date of this ordinance, be performed in accordance with its provisions. The installation in buildings of the pipes, fixtures, and other facilitating apparatus for bringing water into, and using the same in buildings, and for removing liquids and water-carried wastes therefrom and including the practice, materials, and fixtures used in the installation, maintenance, extension, and alteration of all piping, fixtures, appliances and appurtenances in connection with any of the following: sanitary drainage or storm drainage facilities, the venting system, and the public or private water-supply systems, within or adjacent to any building or other structure, or conveyance, also the practice and materials used in the installation, maintenance, extension, or alteration of the storm water or sewage system of any premises to their connection with any point of public disposal or other terminal in the City of Kindred, North Dakota, shall meet the provisions of the North Dakota State Plumbing Code as the same are now established in said Code, copies of which said Code are on file with the City Auditor and are hereby a part of the chapter by reference, with the exception of the sections hereinafter set forth affecting local conditions in the City, which sections shall be substituted for and in lieu of any like sections or paragraphs in the North Dakota State Plumbing Code; and the City Council, by this section, hereby approves and adopts such rules and regulations, as so modified, for use and application in the City of Kindred, including any area within the extraterritorial zoning jurisdiction of the City.

8-0102. **AMENDMENT OF STATE PLUMBING CODE.**

- A. No services shall be constructed from a main for any purpose having a greater capacity than fifty percent of the main, and in no case shall a service be larger than eight inches in diameter.

- B. Services one and one-half inches in diameter or less shall be of copper pipe, which shall conform to the latest revision ASTM Specification B88-33 for underground services known as Type "L" soft tubing, or greater. Taps on water mains may be made up to two inches in diameter except on mains of six inches diameter or less when taps larger than one inch will not be permitted.
- C. Services one and one-half inches in diameter or less which are located in the same trench as the sewer service main, shall conform to the latest revision ASTM Specification B88-33 for underground services known as Type "K" soft tubing, or greater, and said water service pipe must be placed at an elevation at least twelve inches above the sewer service.
- D. If the water service is placed in the same trench as the sewer service, the sewer service shall be subject to the following requirements:
 - (i) Shall not leak when subjected to a ten-foot head of water, or equivalent.
 - (ii) Joints must be water-tight and root-proof.
 - (iii) A sewer pipe must be dwv schedule 40 plastic or heavier.
 - (iv) The sewer service must be installed at least twelve inches lower than the water service.
- E. Services over one and one-half inches in diameter shall be either copper or PVC 900 pipe connected to the main by a Zapping sleeve and valve or tee. Gate valves below four inches shall not be used. Any service less than four inches in size shall have a four-inch gate valve with proper reducers.
- F. No new service shall be constructed and no existing service shall be changed in such manner that more than one building shall be on same service.
- G. Copper services shall have at least two feet of extra length between the main and the curb cock.
- H. 1. All new businesses that have deep fryers or grills, prepare or cook meat, or require a grease extracting hood that exceed 100 mg. per liter FOG regulation, must install a grease trap or interceptor. All grease traps and interceptors must be designed using standard engineering principles for sedimentation and floatation in gravity separators. Sufficient grease and storage

capacity is required, with the minimum capacity of 50 GPM flow rate. Other treatment works or devices designed to remove greases from the wastewater may be used but must be approved in writing by the City Agent. All businesses maintaining grease trap interceptors must maintain the grease traps and interceptors so that they perform in the manner in which they are designed. Each business must maintain a log setting forth the maintenance on the grease traps or interceptors, which logs shall be available for inspection by an employee of the City of Kindred within the normal business hours of the business.

2. Businesses that exist as of the date of this ordinance that have deep fryers or grills, prepare or cook meat, or require a grease extracting hood that exceeds 100 mg. per liter FOG regulation, are grandfathered and are not required to install a grease trap or interceptor as set forth above, except the business must do so if any of the following conditions apply:

- (i) The business undertakes a major renovation of the cooking area in the business.
- (ii) The business makes major upgrades to kitchen equipment in the business.

Any existing business which is required to install grease traps and interceptors as a result of this section shall be ordered to install one within a reasonable period of time as set in a written notice from the City Agent.

8-0103. **STATE TO ADMINISTER AND ENFORCE CODE.** The administration and enforcement of this chapter shall be by the State of North Dakota, who shall be referred to in this chapter as the "administrative authority" and who is hereby authorized to enforce the provisions of this chapter and to make the inspections and tests required thereunder. The State may appoint a person or persons to act on its behalf as such administrative authority. The State shall be responsible for the setting and collection of fees, the granting of permits and the inspections required by the North Dakota State Plumbing Code.

8-0104. **RIGHT OF ENTRY.** The administrative authority shall have the right to enter any premises at reasonable times for the purpose of inspecting any plumbing system.

8-0105. **PROTECTION OF WATER SUPPLY SYSTEM.** The administrative authority shall make such rules and regulations in furtherance of the purposes of this title and not inconsistent with the specific provisions of this title for the installation, repair or alteration of air-conditioning systems, water-treatment

equipment, and water-operated devices as may be deemed necessary to properly protect the water supply system.

8-0106. **PENALTY.** Any person violating any provision of the plumbing code adopted by this title or any section of this title shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

8-0107. **LICENSE REQUIRED.** No individual or company shall engage in the business of plumbing in the City of Kindred unless at all times a registered and license master plumber, who is responsible for the proper installation thereof, is in charge of such work. No person shall engage in the business of plumbing as a master plumber or journeyman plumber without being licensed and registered as a master plumber or journeyman plumber by the State of North Dakota. No local license will be required.

TITLE IX.

WATER AND SEWERS

CHAPTERS:

- 9-01. Utility Established.
- 9-02. Water Services.
- 9-03. Sewer Service.
- 9-04. Storm Water Management.

CHAPTER 9-01
UTILITY ESTABLISHED

SECTIONS:

- 9-0101. Water and Sewer Utility Created.
- 9-0102. Scope of Utility.
- 9-0103. Service Charges - Use Of.
- 9-0104. Policy on Improvements - Extensions.

9-0101. **WATER AND SEWER UTILITY CREATED.** The waterworks and sewerage facilities now owned by this City or hereafter acquired, were and are hereby declared to be and to constitute a public utility of the City, to be held, operated, maintained, improved, extended and administered as a single undertaking to be known as the "water and sewer utility". The properties of said utility shall include all plants, systems, works, instrumentalities, equipment, materials, supplies, lands, easements, rights in land, water rights, contract rights, franchises, dams, reservoirs, sewage disposal plants, intercepting sewer, trunk connections, sewer and water mains, filtration works, pumping stations, and all parts and appurtenances of the foregoing which are used or useful in connection with the obtaining of a water supply and the conservation, treatment and disposal of water for public and private uses and/or useful in connection with the collection, treatment and disposal of sewage, waste and storm waters.

9-0102. **SCOPE OF UTILITY.** The properties of said utility and all future improvements, extensions and enlargements thereof, together with all cash and other assets held in the City's Water and Sewer Utility Fund and all moneys to be derived thereafter from the services, facilities, products and by-products of said utility, shall be and are hereby appropriated and dedicated to the purpose of insuring the public health, safety and welfare by furnishing and making available water and sewerage service to the City and its inhabitants and industries. Said utility shall at all times be under the management and control of the governing body of the City and shall by it be operated and maintained in such manner as to provide its service with maximum efficiency and at the minimum cost which is compatible with the plan of operation herein described.

9-0103. **SERVICE CHARGES - USE OF.** Said utility shall at all times be so operated and maintained, and rates and charges for its services, facilities, products and by-products shall be such, as to make the utility self-supporting and self-perpetuating. Such charges from time to time imposed and collected shall be made and

kept adequate to pay as incurred all costs of operation and maintenance of said utility and to establish and maintain reasonable operating reserves; to product net revenues which shall be sufficient at all times to pay promptly the principal and interest due on all obligations of the City incurred for the improvements, extension and enlargement of said utility, to the extent that such obligations are according to their terms payable from said net revenues, and to establish and maintain adequate reserves for the security of said obligations; and to produce surplus net revenues, over and above the current principal, interest and reserve requirements, in amounts sufficient to provide reasonable allowances for depreciation and replacement of the utility plus a reasonable return on the City's capital investment therein which surplus net revenues, when actually on hand, and to the extent that they are not required as a reserve for depreciation and replacement, may from time to time be appropriated by the governing board to pay or contribute to the cost of any other City functions, subject to the limitations now or hereafter prescribed by law.

The foregoing appropriations shall not, however, be deemed or construed to preclude the City from defraying any part or all of the expense of any improvement, enlargement or extension of the water and sewer utility by the levy of special assessments or taxes or the issuance of general obligation bonds, whenever and to the extent that such actions authorized in the manner provided by law and is deemed fair and equitable by the governing body.

9-0104. **POLICY ON IMPROVEMENTS - EXTENSIONS.** It is hereby declared to be the policy of the City, subject to such modifications as shall be deemed by the governing body to be required by special circumstances in individual cases, and subject to such modifications as may hereafter be made by ordinance amendatory hereof or supplemental hereto, that the cost of capital improvements, enlargements and extensions of said utility shall be paid in the following manner:

2. Where water mains not exceeding six inches or sanitary sewer mains not exceeding eight inches in diameter are installed adjacent to residential properties, and where water mains not exceeding eight inches or sewer mains not exceeding ten inches in diameter are installed adjacent to commercial properties, the total cost thereof shall be assessed against the properties abutting on such improvements, in sums proportionate to and not exceeding the total benefits determined to be derived therefrom by the respective properties. Water and sewer mains of the dimensions above described are referred to herein as

"lateral" mains and other mains are referred to as "trunk" mains.

3. Where a trunk main is installed, the governing body upon advice of the City Engineer, or his designate, shall estimate the probable cost of construction of a lateral main at the same time and place, and such estimated cost shall be assessed against the properties abutting on such main and in the manner above provided.
4. Twenty percent of the cost of any sanitary sewer in excess of the estimated cost of a lateral sewer at the same time and place shall be assessed against the properties determined by the governing board to require the immediate construction of such main as a trunk sewer, including properties served or capable of being served by lateral sewers connected thereto, in amount proportionate to and not exceeding the benefits determined to be derived by said respective properties from such trunk sewer.
5. The total cost of storm sewers shall be assessed against properties within the area determined to be benefitted thereby, in amounts proportionate to and not exceeding the benefits determined to be derived therefrom by the respective properties.
6. Where a portion of the benefits of any of the foregoing improvements is deemed to accrue primarily to the City at large, a portion not exceeding 20 percent of the cost thereof as determined by the governing body with the concurrence of the Board of Budget Review, may be paid by the levy of ad valorem taxes upon all property within the City over the same period as the levies of assessments for such improvements, or any portion or all of such cost may be paid out of current funds duly provided in the budget, or from the proceeds of general obligation bonds duly authorized by the electors.
7. Such portion of the cost of any improvements, extension or additions to the utility as is not paid by special assessments and taxes levied and actually collected in respect thereof shall be paid from the net revenues of the utility.
8. Where due to any error or omission or to any special circumstances a special assessment is not levied against any property benefitted by an improvement at the time of the construction thereof in accordance with the program described in this section, the City reserves the right to levy a supplemental special assessment upon such property or to impose or collect a special charge for the connection of such property with the utility system in such amount as shall be required to pay its just share of the assessable cost of such improvement.

CHAPTER 9-02
WATER SERVICE

SECTIONS:

- 9-0201. Water System.
- 9-0202. Water Superintendent.
- 9-0203. Water Service - Application For.
- 9-0204. Water Service - Construction Of - Maintenance by Owner.
- 9-0205. Water Service - To Property Not Previously Assessed.
- 9-0206. Water Service - To Property With Delinquent Assessments.
- 9-0207. Water Service - Who May Tap.
- 9-0208. Water Service - Meter Required, Exceptions.
- 9-0209. Water Service - Branch Service - When.
- 9-0210. Water Service - Meters, Location, Seals.
- 9-0211. Water Service - Meter Purchase Required.
- 9-0212. Water Service - Services - Installation Of.
- 9-0213. Curb Cocks.
- 9-0214. Check Valves.
- 9-0215. Regulations Governing Service.
- 9-0216. Rates and Charges.
- 9-0217. Rates and Charges - Liability For.
- 9-0218. Private Fire Hydrants.

9-0201. **WATER SYSTEM.** All land, buildings, machinery, equipment, tools and apparatus, water mains, hydrants, service connections and all other property used for the purpose of furnishing a water supply to the City, and the inhabitants thereof, now owned or to be owned by this City whether acquired by the issue of general obligation bonds, special assessment warrants or other obligations of this City, shall constitute and be known as the waterworks system.

9-0202. **WATER SUPERINTENDENT.** A water superintendent shall be appointed by the governing board. If he is a part time employee, and if he is also a City employee in some other capacity, only his services respecting the water system shall be an operating charge of the system. It shall be the duty of the water superintendent to exercise control and management of the waterworks system. He shall have power and authority to employ, subject to the approval of the governing body, all such engineers, filter plant operators, meter readers, laborers and other employees, as may be necessary to the operation of the waterworks system. All such employees shall be subject to his orders and directions, and he shall be responsible for their acts. He shall have power and authority to purchase such materials, supplies, and repairs for the waterworks system, with the approval of the governing body of the City, as shall be reasonably necessary for the operation of such system. He shall keep such books and records of matters pertaining to the operation of the system, as are necessary to show the operation and condition

thereof. He shall perform such other duties and have such other powers and authority as are hereinafter provided for.

9-0203. **WATER SERVICE - APPLICATION FOR.** Any party desiring water service from said utility for premises not theretofore connected with the system shall apply for a connection on a form provided by the municipality. Such application shall state an exact description of the premises to be served, and, the uses, both general and special, to which the water is to be put, and the estimated amount of water to be used for a quarter-annual period. Such application shall be filed with the City Auditor, and the applicant shall thereupon pay to the City Auditor, as and for a connection charge, a sum to be set by resolution by the governing body, or in lieu thereof shall deliver a written agreement to pay said sum, said agreed sum to be payable without interest in equal monthly installments, the first to be due and payable immediately upon delivery of such agreement and the succeeding instalments one with each of the monthly water bills next thereafter issued. Such payment or written agreement shall be returned to the applicant if the application is refused. Said connection charge shall be in full payment of the cost of installing the service pipe or pipes from the municipality's main opposite the premises to the owner's property line (unless the cost thereof has been assessed against the property) and for water curb cocks, installation of water meters, and supervision of the customer's connection with the system.

9-0204. **WATER SERVICE - CONSTRUCTION OF - OWNERSHIP - MAINTENANCE BY OWNER.** The cost of original installation of all plumbing between the main and any service devices maintained by the property owner and all extensions made to such plumbing, as well as all repairs, shall be borne entirely by the property owner, although such plumbing and service as well as the meters shall at all reasonable times be subject to inspection by a duly authorized representative of the municipality. Any repairs found to be necessary by such representatives shall be made promptly, or the municipality will discontinue service.

All services shall be constructed by licensed plumbers at the owner's expense, and each service shall be maintained by the owner. Services heretofore acquired by the issuance of special assessment warrants and assessed against the property, or which may be acquired in the future in like manner, shall likewise be maintained by the owner. The property owner will own the water service. The City will own the curb cock. "Services" means the service line running from and including the point of corporation with the City main to owner's premises.

Source: Ord. 2019-75, Sec. 1

9-0205. **WATER SERVICE - TO PROPERTY NOT PREVIOUSLY ASSESSED.** No permit shall be issued for the mating of any connection between any water or sewer lines and any property which has not been previously benefitted by existing water and/or sewer lines, or

whenever the owners of such property have not been assessed for such water and sewer facilities, unless and until such person shall have paid or made a written agreement with the City to pay in monthly installments within a maximum of two (2) years an amount of money as may be therefore determined by the governing body. Such amount shall be based upon the area served and benefit resulting to the property involved. Within thirty (30) days from the date of receipt of such application, the governing body shall determine the amount of money required to be paid before such connection shall be made and shall advise the applicant property owner of such determination. All such moneys paid and received pursuant to the provisions of this section shall be placed in the Water and Sewer Utility Fund and shall be expended in accordance with the purposes of such fund.

Source: Ord. 2019-75, Sec. 2

9-0206. **WATER SERVICE - TO PROPERTY WITH DELINQUENT ASSESSMENTS.** No permit shall be issued for the making of any connection between any water main of the City and any property on which any special water main assessment taxes are delinquent.

9-0207. **WATER SERVICE - WHO MAY TAP.** No person other than an employee of the water department under the supervision of the water superintendent, shall make any tap or connection to a main. The tapping of any mains of said system, and the insertion of the corporation cock in said main shall be done under the supervision of the water superintendent.

9-0208. **WATER SERVICE - METER REQUIRED - EXCEPTIONS.** It shall be unlawful for any person to use water from any premises without the consent of the owner, or to use water from the municipal water system except when drawn through a meter, or when not drawn through a meter, to have made arrangements with the water superintendent for a "flat rate" account as hereafter provided for in Section 9-0216 herein. No person except an authorized representative of the water superintendent shall turn on or off or tamper with any curb cock.

9-0209. **WATER SERVICE - BRANCH SERVICE - WHEN.** Unless special permission is granted by the water superintendent, each premises shall have a separate and distinct water service connection, and where permission is granted for branch service systems each branch system must have its own separate meter and separate curb cock.

9-0210. **WATER SERVICE - METERS, LOCATION, SEALS.** Meters shall be firmly and substantially set in a workmanlike manner in a convenient and readily accessible location for reading and inspection. No tap or withdrawal of water by the consumer for any purpose shall be permitted ahead of the water meter, or between the meter and the main line. The consumer shall not, after original installation of a meter, make any alterations or additions which

will interfere with the repair, maintenance, reading, or operation of the meter.

Meters shall at all times be sealed and such seals shall not have been broken. Meters shall be removed only by authorized employees of the waterworks department.

9-0211. **WATER SERVICE - METER PURCHASE REQUIRED.** There shall be and hereby is established a covenant between the City and the property owner requiring a water meter. Upon installation of a water meter, the property owner will be charged the actual present cost of the water meter. The City agrees to maintain and service said meter without future cost to the property owner. The City further agrees to provide, free of charge, replacement meters as is necessary should a meter become inoperable through no negligence of the property owner. Such original costs of the meter may not be recovered from the City should the property owner dispose of the facility receiving said water service through any means.

Source: Ord. 2019-75, Sec. 3

9-0212. **WATER SERVICE - SERVICES - INSTALLATION OF.** In installing water service, all taps shall be driven, streets excavations made corporation cocks inserted, pipes installed from main to curb, and the curb cock installed in an iron box to which the service is to be connected, in accordance with the City specifications and under the supervision of the water superintendent. All services installed on private property must meet the minimum requirements set forth in the Exterior Work Installation Checklist, a copy of which is on file with the City Auditor. All service pipes connected with the water system shall be laid a minimum of seven (7) feet below the established grades or as low as the street mains. All sewer service pipes shall be of a material approved by the water superintendent.

Source: Ord. 2019-75, Sec. 4

9-0213. **CURB COCKS.** There shall be a curb cock in every service line attached to the water mains, the same to be placed as near as possible to the curb if on a street, or within one foot of the alley line if the main is located in the alley. Curb cocks shall be supplied with strong and suitable "T" handles and shall be enclosed in a substantial iron case covered with a tight fitting iron lid with the letter "W" cast upon it. There shall be one or more stops and waste cocks attached to every supply pipe at some point between the curb cock and the meter so that the water can be shut off and the meter and the house plumbing entirely drained. There shall be another such stop and waster cock in the pipe on the house side of the meter.

9-0214. **CHECK VALVES.** Check valves are hereby required on all water connections to steam boilers, irrigation systems, or any other connection deemed by the water superintendent to require one. Safety and release valves shall be placed on all boilers or other

steam apparatus connected with the water system where the steam pressure may be raised in excess of fifty pounds per square inch.

Source: Ord. 2019-75, Sec. 5

9-0215. **REGULATIONS GOVERNING SERVICE.** The following rules and regulations shall be considered a part of the contract with every person who takes water supplied by the City through the City waterworks system and every such person who takes water shall be considered as having expressed his agreement to be bound thereby.

1. Shutting Off Water; Who Authorized. No person except an authorized employee of the water department shall shut off or turn on the water at the curb cock to any premises without first obtaining permission from the water department.
2. City Reserves Right To Shut Off Water - Notice. In the case of making repairs or constructing new work, the City reserves the right to shut off the water at once and keep the same shut off as long as may be necessary to accomplish such purposes. The City shall in such cases make such effort as is practicable to give previous notice to consumers.
3. Non-Liability of City for Deficient Supply or Quality of Water. It is expressly provided that the City shall in no event be or become liable to any consumer of Water for a deficiency in the supply of water or the quality thereof, wheter by shutting off the same to make repairs or to construct new work or for any other cause whatsoever.
4. Shutting Off Water: Charge For. The City Council shall set the water shut-off fee by Resolution.
5. Entrance and Access to Premises by Waterworks Employee. Authorized employees of the water department shall have free access to any premises supplied with water, at proper times, to inspect and ascertain the condition of the meters and fixtures, or for reading meters, and no owner or occupant shall refuse such employees such access. The water department shall have the right to enter any premises and remove the meter for the purpose of examination and test after first notifying the owner or occupant, and to shut off the water to premises where free access is prevented.
6. Fire Hydrants, Who May Open. No persons except City employees in the performance of their official duties shall open or cause to be opened any fire hydrant without the written permission of the water superintendent.

9-0216. **SUBSECTION (A) RATES AND CHARGES.** Rates and charges shall be set by resolution of the City Council.

9-0217. **RATES AND CHARGES - LIABILITY FOR.** Owners of premises where water is supplied shall notify the water superintendent in case any tenant moves from said premises, prior to such moving. In case said tenant moves from said premises to other premises in the City, and is there supplied with water, he shall be liable for the water used at his former residence up to the time of moving, and the water department shall take such measures to enforce the collection of such water bill, as are provided for in the case of non-payment of other water bills. In case said tenant moves away from said City where he is not directly supplied by said water department and refuses or neglects to pay said bill within fifteen (15) days after notice thereof, then and in that event the owner of the property for which said bill was rendered shall be liable for said bill, and the water department shall take such measures to enforce collection of such water bill, as are provided for in the case of nonpayment of other water bills.

The owner or owners of all real property in the City furnished water service or service line repairs shall be responsible for the payment of any and all such charges, regardless of who the occupant or tenant may be. On request of the owner or owners the Water Superintendent will bill the occupant or tenant for such charges, but if such charges are not paid when due by the occupant or tenant, the owner or owners shall be responsible for such charges and they shall be assessed to the property served. It shall be the duty of the City Auditor to certify to the County Auditor such unpaid water or service charges that are unpaid in the same manner and at the same time as other assessments are certified, and they shall be assessed and collection in the same manner.

9-0218. **PRIVATE FIRE HYDRANTS.** Source: Ord. 2022-93, Sec. 1

1. Hydrants within private property installed in the city limits of the City of Kindred must meet the following requirements:
 - a. Copies of engineered plans or drawings, accurately indicating the main size, the location of all valves, hydrants and thrust blocks to be installed, must be submitted to the City Engineer with utility drawings at least fifteen (15) working days prior to beginning of any construction.
 - b. The City Auditor and the Kindred Fire Department must be notified in writing by the owner when the hydrant(s) will be available for use and when they are placed in service.
 - c. Construction may not commence until the plans required under this chapter have been submitted and

approved. No building may be occupied until hydrants for its protection are placed in service and accepted.

2. All locations of hydrants within private property must be approved by the Kindred Fire Department.
3. An auxiliary gate valve must be installed at the main line tee to permit the repair and replacement of the hydrant without disruption of water service.
4. Any water from any private hydrant used for non-emergency purposes must be metered in accordance with the terms and conditions set by the City of Kindred. The property owner must provide written notification to the City Auditor at least 24 hours prior to any such non-emergency use. The property owner will be responsible for any and all costs associated with any non-emergency use.
5. Unobstructed access to hydrants within private property must be maintained at all times. The City of Kindred, or any representative thereof, or the Kindred Fire Department will have the right to go upon the premises and to use the hydrant for testing, flushing and public emergency uses.
6. All hydrants within private property will be subject to inspection by a duly authorized representative of the City, both during the course of construction and after construction is complete. The inspector will have the authority to determine whether or not materials of construction, methods of construction and workmanship comply with working drawings and specifications. The contractor will provide for reasonable tests and proof of quality materials as requested by the inspector. The inspector may require that work be suspended for due cause. For purposes of this section, "due cause" includes adverse weather conditions, poor workmanship, the use of questionable materials or methods of construction, and non-adherence to specifications and drawings.
7. All hydrants within private property, following completion of construction, must be inspected at least once during a 12-month period. All property owners with private hydrants must allow the inspector access to conduct the inspection. Any repairs will be the responsibility of the property owner and must be completed within the specified time period determined by the inspector.

8. Any maintenance, repairs or replacement required on hydrants within private property must be done by a licensed and bonded contractor with the City.
9. Any and all costs associated with inspection, maintenance, repairs and/or replacement of hydrants within private property will be the responsibility of the property owner.

CHAPTER 9-03
SEWER SERVICE

SECTIONS:

- 9-0301. Application For.
- 9-0302. Rates.
- 9-0303. Charges.
- 9-0304. Installation of Service.
- 9-0305. The User of Public and Private Sewers and Water Systems.
- 9-0306. Inspection and Surcharge Authority Regarding Improper Connection to City Sewer System.

9-0301. **APPLICATION FOR.** Application for sewer service shall be filed with the City Auditor upon a form to be supplied by the City. The application shall state the name of the applicant and the premises to be served. The applications shall be accompanied by a fee for the connection charge, in an amount as may be from time to time set by the governing body.

9-0302. **RATES.** The sewer rates to be charged shall be fixed from time to time by resolution of the City Council, and the City reserves the right to change the rates from time to time as it deems best.

9-0303. **CHARGES.**

1. The Water Department is hereby authorized to add the sewer charge provided herein to its charges for water services and waste collection and submit the same on a bill in connection with said water service bills. The Water Department shall be authorized to discontinue all utility services if the entire bill shall not be paid, including the bill for sewer charges. In all places where water service is provided, the monthly charge set forth shall be added to and collected as a part of the water bill and collected by the Water Department of the City. Said sums shall become delinquent upon the same dates of the water bill upon which the same is charged. If said service charge is not paid when due, the water service of said premises may be shut off in the same manner as provided for water.
2. In all places where water service is not provided, the charge above set forth shall be paid to the Water Department of the City upon monthly bills from said Water Department.
3. If the service charge so established is not paid when due, said sum may be recovered by the City in an action

of law against the owners or occupants or both of the property so served and may also be assessed against the premises so served and collected and returned in the same manner as other county and municipal taxes are assessed, certified, and collected and returned.

9-0304. **INSTALLATION OF SERVICES.** All sewer taps, street excavations and replacement thereof and installation of lines from the City sewer mains to the property line shall be under the control of the City Engineer or other authorized person. Installation must be in accordance with the City specifications. All services installed on private property must meet the minimum requirements set forth in the Exterior Work Installation Checklist, a copy of which is on file with the City Auditor.

Source: Ord. 2019-75, Sec. 6

9-0305. **THE USE OF PUBLIC AND PRIVATE SEWERS AND WATER SYSTEMS.**

1. Certain sanitary regulations are hereby created for the City of Kindred, North Dakota.
2. It shall be unlawful to discharge to any natural outlet within the City of Kindred any sanitary sewage, industrial waste or other polluted waters, except where suitable treatment has been provided.
3. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy unit, septic tank, cesspool, or other facility intended or used for the disposal of sewage and water within the City.
4. The owner of all houses, buildings or property used for human occupancy within the City is hereby required at his expense to install suitable toilet facilities therein and to connect such facilities directly with the proper public sewer system in accordance with provisions of this ordinance within thirty (30) days after the public sewer system has been constructed by the City, provided that said public sewer system is within 200 feet of the property line.

The cost of original installation of all plumbing between the main and any service devices maintained by the property owner and all extensions made to such plumbing, as well as all repairs, shall be borne entirely by the property owner.

All services must be constructed by a licensed plumber at the owner's expense, and each service must be maintained by the owner. Services heretofore acquired by the issuance of special assessment warrants and assessed

against the property, or which may be acquired in the future in like manner, shall likewise be maintained by the property owner. The property owner will own the sewer service. "Service" means the service line running from and including the point of connection with the City main to the owner's premises.

Source: Ord. 2019-75, Sec. 7

5. Where a public sanitary sewer system is not available, the building toilet facilities shall be connected to a private sewage system, which system shall be approved by the City and which shall be inspected on occasion as the City may desire. The City shall not approve any private sewage system unless the same discharges into a suitable drainage field and said septic tank or cesspool shall not be permitted to be discharged into any public way or public stream.
6. At such time as the public sewer system becomes available to the property served by private sewage system, direct connections shall be made to the public sewer system in compliance with this ordinance, and any septic tank, cesspool or similar private sewage facility shall be abandoned and filled with suitable material.
7. In the event property which has a private water system connects to the City public water system, said connection shall be made and maintained so that water from the private system cannot become intermixed with the public system, and the failure to do so will be a violation of this ordinance.
8. Every person, firm or corporation convicted of a violation of any of the provisions of this Chapter for which another penalty is not specifically provided, shall, upon conviction thereof, be punished by a fine of not more than \$50. Each daily continuance of the violation shall be treated as a separate violation hereof.

9-0306. INSPECTION AND SURCHARGE AUTHORITY REGARDING IMPROPER CONNECTIONS TO CITY SEWER SYSTEM.

1. Discharges of storm water, groundwater, roof runoff, yard drainage, yard fountain or pond overflow, or other surface runoff waters into areas with inadequate drainage tend to create a harborage for insect and vermin infestations and are hereby deemed a nuisance. No owner, occupant or user of property therefore may discharge any storm water, groundwater, roof runoff, yard drainage, yard fountain or pond overflow, or other surface runoff waters in such a manner so as to allow the collection of

the same on their property or other properties without proper drainage. Discharges of storm water, groundwater, roof runoff, yard drainage, yard fountain or pond overflow, or other surface runoff waters by the use of such devices as sump pumps must be made directly into the storm sewer system of the City of Kindred or drainage ditches which run thereto.

2. Every person owning improved real estate that discharges into the City's sanitary sewer system shall allow City employee(s) to inspect the building to confirm that there is no sump pump or other prohibited discharge into the sanitary sewer system during the prohibited time period. Any person refusing to allow their property to be inspected within fourteen (14) days of the date City employee(s) are denied admittance to the property shall immediately become subject to a surcharge hereinafter provided for.
3. A surcharge of \$100.00 per month is hereby imposed and added to every sewer billing mailed on and after July 1, 2004, to property owners who are not in compliance with paragraph 1 of this section. The surcharge shall be added every month through November 30, 2005, until and unless the property is in compliance. The surcharge shall continue to be levied monthly for the months of March through November (both inclusive) for every year on properties not complying with paragraph 1 of this section. Provided, the surcharge shall not be charged unless a property has been inspected and found not to be in compliance, or if the person owning improved real estate refuses to allow an inspection.
4. When a structure is being constructed in the City of Kindred, if at or prior to final inspection City staff determine that the sump pump connection has been illegally connected to the City's sanitary sewer system such that there will be a permanent discharge into the City's sanitary sewer system, there shall be levied a \$500 administrative fine against the general contractor for the structure found to be in violation. If after 24 hours after written notice from the City the general contractor has not remedied the situation so that the sump pump connection can be arranged so that no surface runoff or groundwater can enter into the City's sanitary sewer system from May 1 to November 30 of each year, there shall be an additional \$100 administrative fine for each day such a violation exists. In addition, the Building Inspector shall not issue another building permit within the jurisdiction of the Building Inspector of the City of Kindred for that contractor until the violation has been remedied and any administrative fine has been fully paid to the City. A contractor who is

informed of the administrative penalty shall have seven (7) days from the date of his notification of the same to request, in writing, a hearing on the issue of whether or not the basis for the administrative penalty actually exists. Such letter must be filed with the City Auditor of the City of Kindred. Upon receipt of such a letter, in a timely fashion the City Auditor shall set the matter for hearing at the next City Council meeting. The contractor claiming that the basis for the penalty is incorrect shall have the burden at that hearing to establish that the violation set forth by the City staff is, in fact, incorrect. The City Council shall either confirm the determination of violation by City staff or modify or eliminate the penalty if the evidence is such that it establishes no violation occurred.

CHAPTER 9-04

STORM WATER MANAGEMENT

SECTIONS:

- 9-0401. General Provisions.
- 9-0402. Storm Water Management Plan.
- 9-0403. Suspension, Revocation and Stop Work Orders.
- 9-0404. Violations and Enforcement.

9-0401. GENERAL PROVISIONS.

- A. Purpose. This chapter sets forth uniform requirements for storm water management systems within the City of Kindred. In the event of any conflict between the provisions of this chapter or other regulations adopted by the City of Kindred, State or Federal authorities, the more restrictive standard prevails. The objectives of this chapter are as follows:
1. To promote, preserve, and enhance the natural resources within the City of Kindred from adverse or undesirable impacts occasioned by development or other activities;
 2. To protect and promote the health, safety, and welfare of the people and property through effective storm water quantity and quality management practices.
 3. To regulate land development activity, land disturbing activity, or other activities that may have an adverse and/or potentially irreversible impact on storm water quantity, water quality and/or environmentally sensitive lands and to encourage compatibility between such uses;
 4. To establish detailed review standards and procedures for land development activities throughout the City of Kindred, thereby achieving a balance between urban growth and development and the protection of water quality; and
 5. To provide for adequate storm water system analysis and design as necessary to protect public and private property, water quality and existing natural resources.

This Chapter applies in the City of Kindred, North Dakota, and to persons outside the City who are, by contract or agreement with the City, users of the City

storm water management system. Except as otherwise provided herein, the City Public Works Director, or his/her designee, shall administer, implement, and enforce the provisions of this Chapter.

- B. Definitions. For the purpose of this chapter and the Storm Water Management Policy, the following terms, phrases, and words, and their derivatives, will have the meaning as stated in this section. When inconsistent with the context, words used in the present tense include the future tense. Words in plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and the word "may" is always permissive.
1. "Applicant" means any person or group that applies for a building permit, subdivision approval, zoning change, approach, excavation or special use permit, storm water plan approval, storm water management permit or any other permit which allows land disturbing activities. Applicant also means that person's agents, employees, and others acting under this person's or group's direction. The term "applicant" also refers to the permit holder or holders and the permit holder's agents, employees, and others acting under this person's or group's direction.
 2. "Base Flood," "Regional Flood," or "100 Year Flood" means the flood having a one percent chance or probability of being equaled or exceeded in any given year (i.e., 100-year flood) - also referred to as the regional flood or 100-year flood.
 3. "City" means the City of Kindred or the City Council of the City of Kindred.
 4. "City Public Works Director" means the City Public Works Director of the City of Kindred or authorized agent.
 5. "Control Measure" means a practice or combination of practices to control erosion and attendant pollution, see also Best Management Practices.
 6. "Design Events" means the critical rainfall events used to measure the storm water impacts of the proposed land or site development.
 7. "Detention Facility" means a natural or manmade structure, including wetlands used for the temporary storage of runoff and which may contain a

permanent pool of water, or may be dry during times of no runoff.

8. "Development" means any land disturbance activity that changes the site's runoff characteristics in conjunction with residential, commercial, industrial or institutional construction or alteration.
9. "Developer" means a person, firm, corporation, sole proprietorship, partnership, federal or state agency, or political subdivision thereof engaged in a land disturbance and/or land development activity.
10. "Discharge" means the release, conveyance, channeling, runoff, or drainage, of storm water, including snow melt.
11. "Erosion" means removing the surface of the land by the action of water, wind, ice, or gravity. Erosion can be accelerated by the activities of man and nature.
12. "Impervious Area" means a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than existed prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas; and concrete, asphalt, or gravel parking lots and roads.
13. "Land Development Activity" means the act of subdivision or platting properties for personal use, adding value or for the purposes of resale. This includes the construction and/or demolition of buildings, structures, roads, parking lots, paved storage areas, and similar facilities.
14. "Land Disturbing Activity" means any land change that may result in soil erosion from water or wind and the movement of sediments into or upon waters or lands within the City's jurisdiction, including construction, clearing & grubbing, grading, excavating, transporting and filling of land. Within the context of this ordinance, land disturbance activity does not mean:

- (a) Minor land disturbance activities such as home gardens and an individual's home landscaping, repairs, and maintenance work, which will not result in sediments entering the storm water system.
 - (b) Additions or modifications to existing single family structures that result in creating under five thousand (5,000) square feet of exposed soil or impervious surface and will not result in sediments entering the storm water system.
 - (c) Construction, installation, and maintenance of trees, fences, signs, posts, poles, and electric, telephone, cable television, utility lines or individual service connections to these utilities, which result in creating under five thousand (5,000) square feet of exposed soil or impervious surface and will not result in sediments entering the storm water system.
 - (d) Tilling, planting, or harvesting of agricultural, horticultural, or silvicultural (forestry) crops.
 - (e) Emergency work to protect life, limb, or property and emergency repairs, unless the land disturbing activity would have otherwise required an approved erosion and sediment control plan, except for the emergency. If such a plan would have been required, then the disturbed land area shall be shaped and stabilized in accordance with the City's requirements as soon as possible.
15. "Landowner" means any person holding title to or having a divided or undivided interest in land.
16. "Natural Water" means a river, stream, pond, channel or ditch.
17. "Noncompliance Fee" means the administrative penalty, or fee, which may be assessed to a Landowner, Developer, or their Contractor(s) for noncompliance with the provisions and/or conditions of an approved storm water plan and/or permit or the violation of any other provisions contained in this storm water ordinance.
18. "Owner or Occupant" means any person owning or using a lot, parcel of land, or premises connected

to and discharging Storm Water into the storm water system of the City, and who pays for and is legally responsible for the payment of storm water rates or charges made against the lot, parcel of land, building or premises, if connected to the Storm Water system or who would pay or be legally responsible for such payment.

19. "Person" means any developer, individual, firm, corporation, partnership, franchise, association, owner, occupant of property, or agency, either public or private.
20. "Prohibited Discharge" means a non-storm water discharge into the storm water system or a natural water, including but not limited to:
 - (a) Debris or other materials such as grass clippings, vegetative materials, tree branches, earth fill, rocks, concrete chunks, metal, other demolition or construction materials, or structures.
 - (b) The disposal or misuse of chemicals or any other materials that would degrade the quality of waters within the system, including, but not limited to chemicals (fertilizers, herbicides, pesticides, etc.) or petroleum-based products (gasoline, oil, fuels, solvents, paints, etc.).
 - (c) Erosion and sediment originating from a property and deposited onto City streets, private properties or into the storm water conveyance system, including those areas not specifically covered under an approved Storm Water Management Plan or Storm Water Permit.
 - (d) Failure to remove sediments transported or tracked onto City streets by vehicles or construction traffic immediately after it is deposited on the street.
 - (e) For the purposes of this ordinance, Prohibited Discharges do not include the following, unless information is available to indicate otherwise:
 - Water line flushing
 - Landscape irrigation
 - Diverted stream flows

- Rising ground water
 - Uncontaminated ground water infiltration
 - Uncontaminated pumped ground water
 - Discharges from potable water sources
 - Foundation drains
 - Air conditioning condensate
 - Irrigation water
 - Springs
 - Water from crawl space pumps
 - Footing drains
 - Lawn watering
 - Individual residential car washing
 - Flows from riparian habitats and wetlands
 - De-chlorinated swimming pool discharges
 - Street wash water
21. "Regional Flood" a.k.a. Base Flood or 100-year flood.
22. "Runoff" means the rainfall, snowmelt, dewatering, or irrigation water flowing over the ground surface and into open channels, underground storm sewers, and detention or retention ponds.
23. "Sediment" means solid material or organic material that, in suspension, is being transported or has been moved by air, water, gravity, or ice, and deposited at another location.
24. "Sediment Control" means the methods employed to prevent sediment from leaving the development site. Examples of sediment control practices include, but are not limited to silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection, and temporary or permanent sedimentation basins.
25. "Site" means the entire area included in the legal description of the parcel or other land division on which the land development or land disturbing activity is proposed in the storm water plan or permit application.
26. "Stabilize" means to make the site steadfast or firm, minimizing soil movement by mulching and seeding, sodding, landscaping, placing concrete, gravel, or other measures.
27. "Storm Sewer" means a pipe or conduit for carrying storm waters, surface runoff, and drainage, excluding sewage and industrial wastes.

28. "Storm Water" means precipitation runoff, storm water runoff, snow melt runoff, and any other surface runoff and drainage. Storm water does not include construction site dewatering.
29. "Storm Water Detention" means temporary storage of storm water runoff in ponds, parking lots, depressed grassy areas, rooftops, buried underground tanks, etc., for future or controlled release. Used to delay and attenuate flow.
30. "Storm Water Management" means the planned set of public policies and activities undertaken to regulate runoff and reduce erosion and maintain or improve water quality under various specified conditions within various portions of the drainage system. It may establish criteria for controlling peak flows and/or runoff volumes, for runoff detention and retention, or for pollution control, and may specify criteria for the relative elevations among various elements of the drainage system. Storm water management is primarily concerned with limiting future flood damages and environmental impacts due to development, whereas flood control aims at reducing the extent of flooding that occurs under current conditions.
31. "Storm Water Management Policy" means specific guidance to carry out drainage and storm water management policies.
32. "Storm Water Management Plan" means a document containing the requirements identified by the City, that when implemented will provide solutions to storm water management problems that may occur as a result of the proposed development or land disturbing activity. A Storm Water Management Permit is not required as part of but may be included in a Storm Water Management Plan. The plan that a designer formulates to manage urban storm water runoff for a particular project or drainage area. It typically addresses such subjects as characterization of the existing and future site development, land use, and grading plan, peak rates of runoff, flow duration, runoff volumes for various return frequencies, locations, criteria and sizes of detention or retention ponds and conveyances; runoff control features; land parcels, easement locations, opinions of probable costs, measures to enhance runoff quality, salient regulations, and how the plan addresses them, and

consistency with secondary objectives such as public recreation, aesthetics, public safety, and groundwater recharge. It may be submitted to regulatory officials for their review for adoption.

33. "Storm Water Management System" means physical facilities that collect, store, convey, and treat storm water runoff in urban areas. These facilities normally include detention and retention facilities, streets, storm sewers, inlets, open channels, and special structures, such as inlets, manholes, and energy dissipaters.
34. "Storm Water Retention" means storage designed to eliminate or reduce the frequency of subsequent surface discharge. Wet ponds are the most common type of retention storage (though wet ponds may also be used for detention storage).
35. "Structure" means anything manufactured, constructed, or erected which is normally attached to or positioned on land, including portable structures, earthen structures, roads, parking lots, and paved storage areas.
36. "Subdivision" means any tract of land divided into building lots for private, public, commercial, industrial, etc. development for the purpose of sale, rent, or lease, including planned unit development.
37. "Temporary Protection" means a short-term method employed to prevent erosion. Examples of such protection are straw, mulch, erosion control blankets, wood chips, and erosion netting.
38. "Undeveloped Land" means land that in its current state has not been impacted by significant land disturbance activities, annexed into the City or subdivided into multiple ownership lots and is typically zoned agricultural.
39. "Violation" means the willful or negligent act of noncompliance with the conditions attached to an approved storm water plan and/or permit, or any other provisions contained in this ordinance, subject to enforcement and penalty or noncompliance fees.
40. "Watercourse" means the natural path for the flow of water where there is sufficient natural and accustomed runoff to form and maintain a distinct and defined channel or an open channel facility

that has been constructed for such purpose. This shall include any easements obtained for the purposes of runoff conveyance.

9-0402. STORM WATER MANAGEMENT PLAN. A written Storm Water Management Plan Application shall be filed with the City Public Works Director, or his/her designee, as required by this Chapter and by the City's Storm Water Management Policy.

- A. Application Fee. A fee, as adopted by the City Council and set forth in the Storm Water Management Policy, must accompany all applications for Storm Water Management Plan approval.
- B. Operation, Maintenance and Inspection. All Storm Water Management Systems shall be designed to minimize the need for maintenance, to provide easy vehicle and personnel access for maintenance purposes, and to be structurally sound (per the Standards). All Storm Water Management Systems shall have a plan of operation and maintenance that assures continued effective removal of pollutants carried in Storm Water Runoff. The City Public Works Director, or his/her designee, may inspect all public and private Storm Water Management Systems at any time. The City Public Works Director, or his/her designee, shall retain enforcement powers for assuring adequate operation and maintenance activities through plan conditions, penalties, noncompliance orders and fees.

The Public Works Director may inspect all public and private storm water management systems at any time. Inspection records will be kept on file at the Public Works office. It shall be the responsibility of the applicant to obtain any necessary easements or other property interests to allow access to the storm water management system for inspection and maintenance purposes for the City. The applicant shall promptly allow the City and their authorized representatives, upon presentation of credentials to:

- a. Enter upon the permitted site for the purpose of obtaining information, examination of records, conducting investigations, inspections, or surveys.
- b. Bring such equipment upon the permitted site as is necessary to conduct such inspections, surveys and investigations.
- c. Examine and copy any books, papers, records, or memoranda pertaining to activities or

records required to be kept under the terms and conditions of this permitted site.

- d. Inspect the storm water pollution control measures.
- e. Sample and monitor any items or activities pertaining to storm water pollution control measures.

Any temporary or permanent obstruction to the safe and easy access of such an inspection shall be promptly removed upon the inspector's request. The cost of providing such access shall be the responsibility of the applicant.

- C. Easements. Easements may be required as conditions to the issuance of a Storm Water Management Plan approval. If a Storm Water Management Plan involves directing some or all of the site's runoff to a drainage easement, the applicant or his designated representative shall obtain from the property owners any necessary easements or other property interests concerning the flowing of such water.
- D. Plan Applicability. A Storm Water Management Plan approval issued under this chapter runs with the land and is a condition of plat or development approval. Any Landowner or subsequent Landowner of any parcel within the plat or development area must comply with the plan or any approval, condition, revision, or modification of the Plan. Failure to comply with this Plan shall constitute a violation and subject the Developer, and/or Landowner to the enforcement provisions, penalties, and noncompliance fees.
- E. Plan Amendment. Storm Water Management Plans may be amended only by a written request submitted to the City Public Works Director, or his/her designee,. This request shall contain the reason for the change and documentation related to any additional change in projected impacts, which may result from amendment approval. Amendment requests submitted prior to final approval of a plan application shall be considered part of the original submittal. Amendment requests filed after Plan approval shall be considered following the same procedures as if it were a new application and subject to all applicable fees and review periods. Provided, the City Public Works Director, or his/her designee, may waive all or part of the fees if the amendment is minor.

9-0403. SUSPENSIONS, REVOCATIONS AND STOP WORK ORDERS.

- A. Storm Water Violations and Reporting. The City Public Works Director, or his/her designee, shall document the reporting of a violation in writing. Such violations may be obtained via a site inspection, or a public complaint followed by a site inspection. At a minimum the complaint file shall contain the name and address of the owner, date, time and nature of the violation as well as other information as deemed necessary to document site conditions, including photos and personal conversation records. In the case of a public complaint the file shall also, if voluntarily provided, contain the name address and phone number of the individual filing the complaint. In addition, the complaint file shall contain records documenting subsequent site inspections, compliance actions and a memo outlining the determination of the City Public Works Director, or his/her designee, and any enforcement action taken and/or any noncompliance fees levied.
- B. Emergency Suspension. The City Public Works Director, or his/her designee, may for cause order the suspension of a Storm Water Management Plan when the City Public Works Director, or his/her designee, determines that an actual or threatened discharge presents or may present an imminent or substantial danger to the health or welfare of persons downstream, or substantial danger to the environment. If any person is notified of such suspension and then fails to comply voluntarily with the suspension order, the City shall commence whatever steps are necessary to obtain compliance. The City Public Works Director, or his/her designee, may reinstate the Storm Water Management Plan upon proof of compliance with all plan conditions. The City Public Works Director, or his/her designee, may also order the immediate suspension of all work if a person or entity is conducting an activity for which a permit is needed without first obtaining the appropriate permit. The suspension shall remain in effect until the required permit(s) are obtained.
- C. Non-Emergency Revocation. A Storm Water Management Plan may be revoked following notice. An opportunity for a hearing will be provided. The City Public Works Director, or his/her designee, may revoke a plan for cause, including but not limited to:
1. Violation of any terms or conditions of the applicable plan;

2. False statements on any required reports or applications;
3. Obtaining a plan by misrepresentation or failure to disclose fully all relevant facts; or
4. Any other violation of this chapter or related ordinance.

The City Public Works Director, or his/her designee, may revoke a Storm Water Management Plan and order a temporary work stoppage to bring a project into compliance. Notice of such an order shall be given and a hearing opportunity provided. Under a revoked plan no additional permit approvals (i.e., building, excavation, etc.) shall be issued for any properties within the area included within the plan boundaries until approved by the City Public Works Director, or his/her designee,. In addition, the City may deny new permits (i.e., storm water, building, excavation, etc.) to the Permittee or Landowner in violation for projects in other locations until current permits are brought into compliance

- D. Notification. Whenever the City Public Works Director, or his/her designee, finds that any person has violated or is violating this chapter, Storm Water Management Plan and/or its conditions, or any prohibition, limitation or requirement contained herein, the City Public Works Director, or his/her designee, shall serve upon such person a written notice stating the nature of the violation. Within seven (7) days of the date of the notice, unless a shorter time frame is set by the City Public Works Director, or his/her designee, due to the nature of the violation, a plan satisfactory to the Public Works Director for correction thereof must be submitted to the City Public Works Director, or his/her designee,. If a satisfactory plan is not submitted in a timely manner, or the terms of such plan are not followed, the City Public Works Director, or his/her designee, may order all work in the affected area to cease until submittal of such a plan and compliance with the plan is happening. If a person disagrees with the determination of the City Public Works Director, or his/her designee,, that person may, within 15 days of the order of the City Public Works Director, or his/her designee,, request a hearing.
- E. Hearing. If a person requests a hearing to contest the order of the City Public Works Director, or his/her designee,, a notice of hearing must be served on the person appealing the order, specifying the time and place of the hearing to be held regarding the order of the City Public Works Director, or his/her designee,, and

directing the person appealing to show cause why the order of the City Public Works Director, or his/her designee, should not be upheld. Unless the Public Works Director has suspended the plan and ordered work to stop due to emergency, any order stopping all work shall be stayed until after the hearing. The notice must be served personally or by registered or certified mail at least five (5) days before the hearing. The evidence submitted at the hearing shall be considered by the City Auditor, or his/her designee, who shall then shall either, uphold, modify, or rescind the order of the City Public Works Director, or his/her designee,. An appeal of the decision may be taken to the District Court according to law. Provided, that if the City Auditor or his/her designee upholds an order stopping work, such work suspension shall not be stayed because of the appeal to the District Court.

- F. Legal Action. The discharge of deposited or eroded materials onto public rights-of-way or public storm sewer systems within the City of Kindred shall be considered an offense and may result in an order to remove such materials. Removal of such materials shall be at the Landowner's expense based on the properties from which they originated. The Landowner shall have twelve (12) hours after receiving the notice to remove these materials. If such materials are not removed, others may remove them under the City Public Works Director's, or his/her designee's, direction and any associated costs shall be the responsibility of the Landowner and, if unpaid within 90 days, may be recommended for assessment action by the City Council against property of the violator.

If any person commences any land disturbing activities which result in increased Storm Water quantity or Storm Water quality degradation into the City's Storm Water Management System contrary to the provisions of this chapter, federal or state requirements or any order of the City Public Works Director, or his/her designee,, the City Attorney may, commence action for appropriate legal and/or equitable relief including administrative or criminal penalties.

9-0404. VIOLATIONS AND ENFORCEMENT.

- A. Responsibility for Enforcement. The Public Works Director is authorized to enforce this chapter.
- B. Violations. All violations of this chapter and of law will be subject to the remedies and penalties provided in

this chapter, the Kindred Municipal Code and state law, where applicable. The city includes the extraterritorial zoning jurisdiction of the city.

C. Enforcement Procedures. The following enforcement procedures shall apply to violations of this chapter:

1. Non-Emergency matters - In the case of violations of this chapter that do not constitute an emergency, the Public Works Director may:
 - a. Issue a notice of violation
 - b. Issue an administrative order; or
 - c. Issue an administrative order with fine.

All notices and orders shall be issued to the property owner and to any other person who is alleged to be in violation of this chapter or of the terms of any permit or condition granted and to any applicant for any relevant permit.

2. Emergency matters - In the case of violations of this chapter that do constitute an emergency situation, the city shall use all remedies, penalties and enforcement powers available under this chapter without prior notice, but the Public Works Director must send notice simultaneously with beginning enforcement action to the property owner, to any other person who is party to the agreement and to applicants for any relevant permit and must advise persons affected by the action taken that a hearing will be held within seven days from the date of such action. At the hearing, the City Council will determine whether there were appropriate grounds for the action taken, and whether the action taken should continue.
3. Administrative compliance orders - procedure - Persons receiving an administrative order or an administrative order with fee shall have 12 hours, or such longer period as the Public Works Director allows, to correct the violation. If the violation is not corrected within the required time frame, the Public Works Director and city attorney shall use all penalties, remedies, and enforcement powers available under this chapter.
4. Administrative compliance order with fee/administrative complaint or citation - procedure - The Public Works Director shall include in the administrative complaint the amount of administrative fee to be paid by the person against whom the citation or complaint is issued. The

authorized city employee or representative issuing the administrative citation need not issue an administrative order before issuing an administrative complaint.

5. Order to show cause - hearing - In the event the Public Works Director has issued an administrative order or an administrative order with fee, if the violation is not corrected by timely compliance, the Public Works Director may order any person who causes or allows an unauthorized discharge to show cause before the City Council why sewer service should not be shut off. A notice shall be served on the offending party, specifying the time and place of a hearing to be held by the City Council regarding the violation, and directing the offending party to show cause before said board why an order should not be made directing the shut off service. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least 10 days before the hearing.

D. Remedies and Enforcement Powers. The city shall have the following remedies and enforcement powers:

1. Withhold permits - The city may deny or withhold all permits, certificates, or other forms of authorization as to any applicant for a permit. Instead of withholding or denying an authorization, the city may grant such authorization subject to the condition that the violation be corrected. This enforcement provision applies regardless of whether the current owner or applicant is responsible for the violation in question. The city may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements owned by a person who owns, developed or otherwise caused an uncorrected violation of a provision of this chapter or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by a decision-making body. This provision applies regardless of whether the property for which the permit or other approval is sought is the property in violation.
2. Revoke permits - A permit may be revoked when the Public Works Director determines that:

- a. There is departure from the plans, specifications, or conditions as required under terms of a permit or approved plan;
 - b. The plans, specifications, or conditions were obtained by false representation or was issued by mistake; or
 - c. Any of the provisions of this chapter are being violated as to the project under the permit.
3. Revoke plan or other approval - When a violation of this chapter involves a failure to comply with approved plans or conditions to which the approval of such plans was made subject, the Public Works Director or City Council charged with enforcement of the provisions of this chapter may, upon notice to the applicant and other known parties in interest (including any holders of building or other permits affected) and after a public hearing, revoke the plan or other approval or condition its continuance on strict compliance, the provision of security or such other conditions as the Public Works Director or City Council may reasonably impose.
4. Injunctive relief - The city may seek an injunction or other equitable relief in court to stop any violation of this chapter.
5. Abatement - The city may seek a court order in the nature of mandamus, abatement, injunction or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed prior to the violation.
6. Restitution - The city may seek an order requiring restitution as a condition to be met by a person before any plan is restored, before the person is allowed to lawfully discharge into the sewer system, or before other action may be taken by the person as determined by an appropriate order.
7. Costs of damage - Any person violating any of the provisions of this chapter or who initiates an activity causes a deposit, obstruction, or damage or other impairment to the city's storm water management system is liable to the city for any expense, loss, or damage caused by the violation or the discharge. The city may bill the person violating this chapter the costs of any cleaning,

repair or replacement work caused by the violation of storm water discharge, and if unpaid within ninety (90) days may result in assessment of such costs against the violator's property.

8. City attorney's fees and costs - In addition to the fees and penalties provided herein, the city may recover reasonable attorney's fees, court costs, court reporter's fees, and other expenses of litigation by appropriate action against the person found to have violated this chapter or the orders, rules, regulations and permits issued hereunder.
9. Other remedies - The city shall have such other remedies as are and as may be from time to time provided by North Dakota law and municipal codes for the violation of this chapter or related provisions.
10. Remedies cumulative - The remedies and enforcement powers established in this chapter are cumulative. The City Council may hold a single hearing to consider evidence and render decisions on appeals from administrative citations or complaints, orders to show cause or other administrative proceedings involving one or more alleged violators stemming from the same occurrence or series of occurrences.

- E. Enforcement - non-compliance and re-inspection fees. Any person who is found to have violated an order of the Public Works Director made in accordance with this chapter, or who has failed to comply with any provision of this chapter and the orders, rules, regulations, plans, and permits issued hereunder, is guilty of an offense. Each day on which a violation occurs or continues to exist shall be deemed a separate and distinct offense. A schedule for noncompliance and re-inspection fees, which may be imposed for violation of this chapter, may be approved by the city council.
- F. Other Powers. In addition to the enforcement powers specified in this chapter, the city may exercise any and all enforcement powers granted to them by North Dakota law.
- G. Continuation. Nothing in this chapter shall prohibit the continuation of previous enforcement actions undertaken by the city pursuant to previous and valid ordinances and laws.

- H. Power and Authority of Inspectors - Right of Entry. Where it is necessary to make an inspection to enforce the provisions of this code, or where the engineers or inspections officer has reasonable cause to believe that there exists in a structure or upon a premises a condition which is contrary to or in violation of this code which makes the structure or premises unsafe, dangerous or hazardous, the engineer or inspections officer is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this code, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises is unoccupied, the engineer or inspections officer shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the engineer shall have recourse to the remedies provided by law to secure entry.
- I. Savings Clause - conflict. In the event that any provision, paragraph, word, section or article of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections and articles shall not be affected and shall continue in full force and effect; all ordinances and parts of ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of such inconsistency or conflict.

TITLE X.

BUSINESS LICENSES AND REGULATIONS

CHAPTERS:

- 10-01. Alcoholic Beverages.
- 10-02. Gambling.
- 10-03. Pawn Brokers.
- 10-04. Sunday Opening - Food Stores.
- 10-05. Tobacco Licensing.

CHAPTER 10-01

ALCOHOLIC BEVERAGES

SECTIONS:

- 10-0101. Definitions.
- 10-0102. License Required.
- 10-0103. Licenses - Regulations as to Classes - Fees.
- 10-0104. License - Qualifications.
- 10-0105. Liability Insurance Required of Licensees.
- 10-0106. License Application.
- 10-0107. Investigation of Applicant.
- 10-0108. Issuance, Renewal and Transfer of Licenses.
- 10-0109. License Fees - Disposition of Fees.
- 10-0110. Posting of Licenses.
- 10-0111. Licenses - Termination, Suspension and Revocation.
- 10-0112. Location of Licensed Alcoholic Beverage Establishments.
- 10-0113. Hours of Sale - Prohibition of Sales on Holidays.
- 10-0114. Restrictions on Sale, Service or Dispensing of Alcoholic Beverages.
- 10-0115. Delivery of Alcoholic Beverages.
- 10-0116. Rules for Possession of Alcoholic Beverage by a Licensee
- 10-0117. Licensed Premises - Requirements For.
- 10-0118. Inspection of Licensed Premises to be Allowed.
- 10-0119. Cabaret License.
- 10-0120. Application of Chapter.
- 10-0121. Penalty.
- 10-0122. Severability Clause.
- 10-0123. Special Permits for Sale of Alcoholic Beverages.
- 10-0124. Outdoor Drinking Facilities (Beer Gardens)

10-0101. **DEFINITIONS.** In this chapter unless the context or subject matter otherwise requires:

1. "Agent": A person or entity acting on behalf of the license holder or an employee of the license holder, but who is not an employee.
2. "Alcoholic Beverages": Any liquid intended for drinking by human beings which contains one-half of one percent or

more of alcohol by volume. All alcoholic beverages shall be deemed intoxicating.

3. "Beer": Any malt beverage containing more than one-half of one percent of alcohol by volume.
4. "City": The City of Kindred.
5. "Club" or "lodge": Any corporation or association organized for civic, fraternal, social, or business purposes, or for the promotion of sports. Said club or lodge shall have at least one hundred (100) members at the time of the license application.
6. "Council": The City Council of the City of Kindred, North Dakota.
7. "Incompetent": Someone under a guardianship whom has been judged legally incompetent.
8. "Intoxicating Liquor" and "liquor": Any alcoholic beverage, except beer.
9. "Licensed Premises": The bar area, dining rooms, meeting rooms and all other areas or places alcoholic beverages are regularly or occasionally sold, served, dispensed, or consumed by patrons. In the alternative, any person applying for a license under the provision of this article may describe, depict or otherwise identify in this application for a license various areas or spaces which shall constitute the licensed premises. The Council, in its discretion, requires any applicant to so describe, depict or otherwise identify the licensed premises as a condition for the issuance of a license under the provisions of this article.
10. "Off Sale": The sale of alcoholic beverages in original packages for the consumption off or away from the premises where sold. This provision shall not prohibit the licensee from dispensing and the customer from consuming a free sample as defined by the laws of this state.
11. "On Sale": The sale of alcoholic beverages for consumption only on the licensed premises where sold.
12. "Package" and "Original Package": Any container or receptacle holding alcoholic beverages, when such container or receptacle is corked or sealed by the

manufacturer thereof, and when the cork or seal has not been removed or broken prior to the sale of such package to the purchaser.

13. "Person(s)": Any individual, firm, corporation, association, club, partnership, society, or any other organization.
14. "Recreational Establishment": Any pool hall, bowling alley, arcade or similar establishment having facilities or devices designated to provide for the amusement or leisure activities of its patrons.
15. "Sale" and "sell": All manners or means of furnishing of alcoholic beverages, including the selling, exchange, disposition of, and keeping for sale of such alcoholic beverages.
16. "Wholesaler": 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.
17. "Wine": The alcoholic beverage obtained by a fermentation of agricultural products containing natural or added sugar, or such beverage fortified with brandy and containing not more than 24% alcohol by volume.

10-0102. **LICENSE REQUIRED.** No person, as defined in Section 10-0101 of this chapter, shall sell, exchange, or keep for sale any alcoholic beverages, as defined in Section 10-0101 of this chapter, without first having obtained a license pursuant to the provisions of this chapter and posting said license in a conspicuous place or premises..

10-0103. **LICENSES - REGULATIONS AS TO CLASSES - FEES.**

1. Licenses authorizing the sale of alcoholic beverages within the City of Kindred shall be divided into the following classes:
 - A. Wholesaler's License. The annual license fee for wholesaler's license shall be the amount set by resolution of the City Council, payable in advance at the time of the issuance of the license.

- B. Retail On and Off Premises Beer, Wine and Liquor License. The annual license fee for retail beer, wine and liquor on and off sale premises license shall be the amount set by resolution of the City Council, payable in advance at the time of the issuance of the license.
 - C. Retail Off Premises Beer, Wine and Liquor License. The annual license fee for retail beer, wine and liquor off sale premises license shall be the amount set by resolution of the City Council, payable in advance at the time of the issuance of the license.
 - D. Restaurant On-Premises License. The annual license fee for a restaurant on-premise license shall be the amount set by resolution of the City Council, payable at the time of issuance of the license.
2. The licenses for the sale of alcoholic beverages set out above shall be in effect for a period of one year commencing July 1 of each year and terminating June 30 of the following year. If an application is made for a license during the licensing year, the license that is granted shall only be for the unexpired portion of such year ending June 30, at which time an application for renewal of the license must be made. The license fee for the partial year shall be prorated so that it equals one-twelfth (1/12th) of the licensing fee set out above times the number of months the license will be in effect. The entire license fee for the portion of the year shall be paid at the time of the issuance of the license.
3. If an application is for a new liquor license, or a transfer of a license, not a renewal of an existing license, in addition to the annual license fee set forth above, an initial application fee, payable to the City of Kindred, must accompany the license application fee. The amount of the initial application fee shall be twenty-five percent (25%) of the annual license fee set out above for the license or licenses for which application is being made. Such initial application fee shall not be refunded, whether or not a license is granted by the City, and the initial application fee shall not be prorated, even if the initial application is for a portion of a year.

Source: Ord. 2019-76, Sec. 1

10-0104. **LICENSE - QUALIFICATIONS.** No retail license for the sale of alcoholic beverages shall be issued to any applicant unless the following requirements are met:

1. Residence Requirement.

- (a) If applicant is an individual, the applicant, or its designee, must live within 30 miles of the City of Kindred, or the applicant's establishment must employ a manager who lives within 30 miles of the City of Kindred.
- (b) If the applicant is a partnership, a partner or partners owning at least 50 percent of the partnership must live within 30 miles of the City of Kindred.
- (c) If applicant is a corporation, a shareholder or shareholders owning at least 50 percent of the corporation's outstanding stock, or a full-time managing agent designated in the license application who is an officer and shareholder of the corporation, must live within 30 miles of the City of Kindred.

If applicant does not live within 30 miles of the City of Kindred, as required above, at the time at which the application is submitted, a license may be granted to such an applicant upon the condition that the applicant satisfies the above residence requirement within three (3) months after the approval of the license.

2. Age.

The applicant, and all partners, and all officers, directors and shareholders holding more than five percent of the outstanding stock of the corporation shall be at least 21 years of age.

3. Fitness.

The applicant must not be deemed by the City Council to be unfit to engage in the business for which the license is sought.

4. Owner of Business.

No license shall be issued to any person as the representative or agent of another, and the license may be issued only to the owner or owners of the business being conducted at the location sought to be licensed.

5. Taxes.

No license shall be issued, transferred or renewed for any location in which the real and/or personal property taxes are delinquent and unpaid.

A wholesaler's license may be issued to any person eligible therefor under the terms of the laws of the State of North Dakota, or any amendments thereto, who shall be engaged in the business of selling alcoholic beverages to licensed retail dealers or in interstate commerce only, provided, that no license shall be granted to any wholesaler who shall, directly or indirectly own or control, or have any financial interest in the ownership, control or operation of a licensed retail on sale and off sale business.

Source: Ord. 2021-87, Sec. 1

10-0105. **LIABILITY INSURANCE REQUIRED OF LICENSEES.** Every person licensed under the authority of this chapter, other than wholesalers, shall deposit with the City Auditor, not later than thirty (30) days after a license is issued, proof of liability and liquor liability insurance (Dram Shop). Such insurance shall provide coverage for at least the minimum amounts as set by the City Council by resolution. The adequacy of any such insurance shall be determined by the governing body of the City.

10-0106. **LICENSE APPLICATION.** Any person desiring to obtain the issuance, transfer or renewal of a license for the sale of alcoholic beverages shall make and file an application for such license with the City Council, through the City Auditor. In the case of a renewal of the license, such application must be submitted at least twenty (20) days prior to the expiration date of the license. The application shall be made on a form approved by the Council and made available through the office of the City Auditor. In addition to the information supplied on the application form, the Council, the City Auditor, City Agent or his designee, may require such other information as they deem necessary in determining whether or not a license should be issued to the applicant. If a license is granted, the licensee shall have the affirmative duty of informing the City Auditor in writing within thirty (30) days of any changes in the facts supplied to the City in the application previously submitted.

10-0107. **INVESTIGATION OF APPLICANT.** The City Agent, or such other person as may be designated by the City Agent, shall investigate the facts stated in the application and the character, reputation, and fitness of the applicant, and shall report on said matters to the City Council.

For purposes of this section the fitness of the applicant includes all owners, partners, shareholders, officers and directors

of the corporations as well as a managing agent if designated in the application form.

10-0108. **ISSUANCE, RENEWAL AND TRANSFER OF LICENSES.**

1. No license shall be issued, renewed or transferred without the approval of the City Council. A change in the location of the licensed premises shall be deemed to be a transfer.
2. If the application is for a new license, or a transfer of an existing license to a new location, then notice that the applicant has applied for a license to sell alcoholic beverages at a place designated in the application, and that the application will be acted upon by the City Council on a certain day and time, shall be published in a newspaper in the City at least ten (10) days before the date set for the hearing on the application. Such notice shall be signed by the City Auditor and the expense of its publication, in addition to the license fee, shall be paid by the applicant to the City Auditor before publication.
3. No new license, or a transfer of a license to a new location, shall be issued unless and until the applicant has proven, to the satisfaction of the governing body, that the following conditions have been met. Provided, however, that these conditions shall not apply to license renewals:
 - a. That the premises to be licensed have a minimum of 3,000 sq. ft. of interior floor space available and devoted to the business for which the premises are licensed.
 - b. That sufficient, well-lighted off-street parking will be available to the patrons of the establishment of the applicant.
 - c. That the establishment in question will be a definite asset to the City.
 - d. That the licensed premises have a separate entrance or entrances from any other business and have no interior connection by which customers may move directly from another business to the licensed premises. Provided, however, that this restriction will not apply to eating establishments, motels or hotels that apply for a liquor license as part of their operation.

Additional factors to be considered in the granting of a new license:

- a. The proximity of other businesses licensed to sell alcoholic beverages.
- b. Protests of neighboring property owners or occupants.
- c. Interference with neighboring properties.
- d. Public convenience necessity.
- e. Suitability of premises for sale of alcoholic beverages.
- f. Recommendations and reports of appropriate city officials, including the City Agent, Chief of the Fire Department, Building Inspector, and Health Officer.
- g. Zoning regulations.
- h. Proximity of schools, churches, funeral homes, public buildings or buildings used by and for minors.

10-0109. **LICENSE FEES - DISPOSITION OF FEES.** All license fees collected by the City Auditor shall be credited to the general fund of the City.

10-0110. **POSTING OF LICENSES.** Licenses issued to licensees shall be posted in a conspicuous place in that portion of the premises for which the license has been issued.

10-0111. **LICENSES - TERMINATION, SUSPENSION AND REVOCATION.** All licenses issued under the provisions of this chapter, unless otherwise specifically provided, shall terminate on June 30 following the date of issuance; provided however, that any license issued under the provisions of this chapter may, under certain circumstances, terminate automatically, or be terminated, suspended or revoked by the City Council.

1. Any license issued under the provisions of this chapter shall automatically terminate:
 - (a) Upon the death of the licensee unless, upon application to the Council by the personal representative of the decedent, the Council shall consent to the carrying on of such business by the personal representative. Said application must be submitted to the Council within thirty (30) days of the licensee's death.

- (b) When the licensee, for any reason, ceases business at the licensed premises. Business shall be deemed to have ceased when no sale of alcoholic beverages occurs on the licensed premises for a period of at least thirty (30) consecutive business days; provided, however, upon written request of the licensee, the Council in its discretion may grant a period of up to sixty (60) additional days before business shall be deemed to have ceased.
 - (c) When any license or permit of the licensee from the United States Government or the State of North Dakota to sell alcoholic beverages at the licensed premises has terminated or been suspended or revoked.
2. The Council may, in its discretion, suspend or revoke for cause any license issued under the provisions of this chapter. The grounds for suspension or revocation shall, among others, include the following:
- (a) The licensee has filed a Petition of Bankruptcy.
 - (b) An individual licensee, one of the partners in a partnership licensee, or one of the officers in a corporation licensee, or any individual designated in the application as manager of the licensed business is convicted of violating any of the provisions of this chapter.
 - (c) An individual licensee, one of the partners in a partnership licensee, or one of the officers, directors or shareholders in a corporation licensee, or any individual designated in the application as manager of the licensed business is convicted of any state or federal felony.
 - (d) The business of the licensee, at the location licensed, is conducted in such a manner as to be in violation of the health, sanitary or other regulations or ordinances of the City of Kindred.
 - (e) The licensee, having been given a conditional license pursuant to Section 10-0104 because of failure to meet the residence requirements of this chapter, fails to have the required residency within the three (3) month period.
 - (f) If the licensee ceases to be a legal bona fide resident of the City of Kindred and the State of North Dakota as required in Section 10-0104.

- (g) The licensee has made any false statement in his application for a license.
 - (h) If the licensee fails to notify the City Auditor in writing within thirty (30) days of any change in the facts supplied to the City in the application for its license.
3. The grounds enumerated in subsection 2 of this section shall not be deemed to be exclusive and any license issued under the provisions of this chapter may be suspended or revoked by the Council for any other reason deemed by the Council to be sufficient in order to promote the public health, safety, morals and general welfare of the people of the City of Kindred. When any license is suspended or revoked by the Council pursuant to the provisions of this section, or when the licensee voluntarily ceases business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through him.
4. No license issued under the provisions of this chapter shall be suspended or revoked for cause by the Council without a public hearing. In the event that the Council intends to consider the suspension or revocation of any license for cause, the City Auditor shall notify the licensee in writing and inform the licensee of the reason for the hearing, and specify the time and place of the hearing. The notice, and any affidavits filed in support of the suspension or revocation shall be served in the same manner as provided by law with the service of the summons in the civil action, or by registered mail. No suspension or revocation hearing shall be held before the expiration of five (5) days (or longer period if required by State law) after the date of the service of the notice upon the licensee or the mailing of the notice by registered mail.

If, upon such hearing, it appears to the Council that sufficient cause exists for the suspension or revocation of the license issued pursuant to the provisions of this chapter, the Council shall make its order suspending or revoking the license.

10-0112. **LOCATION OF LICENSED ALCOHOLIC BEVERAGE ESTABLISHMENTS.** No alcoholic beverage license shall be issued for any building, room or place within one hundred fifty (150) feet of any church, public or parochial school grounds, or synagogue. The distance to be measured in a straight line from the building in

which said school or church is conducted to the principal public entrance of the place in which the liquor is dispensed, except in case of a church or synagogue where the governing body thereof gives the licensee written permission to locate within the said prescribed limits, and such written permission is approved and filed with the City Council. The foregoing shall not apply to lodges and clubs as defined herein. No license to sell liquor under the provisions of this chapter shall entitle the holder thereof to carry on such business at more than one location under any one license, and each license shall contain the legal description of the place where the holder thereof operates such business.

10-0113. HOURS OF SALE - PROHIBITION OF SALES ON HOLIDAYS.

1. A person may not dispense or permit the consumption of alcoholic beverages on a Licensed Premises between two o'clock (2:00) a.m. and eight o'clock (8:00) a.m., on Christmas Day, or after six o'clock (6:00) p.m. on Christmas Eve. In addition, a person may not provide off-sale after two o'clock (2:00) a.m. on Thanksgiving Day or between two o'clock (2:00) a.m. and eight o'clock (8:00) a.m. on Sundays. A person that violates this section is guilty of a class A misdemeanor.
2. Nothing in this section shall be construed as permitting the sale or dispensing of intoxicating liquor when such sales are prohibited by state or federal law.

Source: Sec. 1, Ord. 2005-4 (2005); Sec. 1, Ord 2009-27 (2009); Ord. 2022-94, Sec. 1 (2022)

10-0114. RESTRICTIONS ON SALE, SERVICE OR DISPENSING OF ALCOHOLIC BEVERAGES.

1. No licensee, his agent or employee, shall sell, serve or dispense any alcoholic beverage to a person under 21 years of age; no licensee, his agent, or employee, shall permit any person under 21 years of age to be furnished with any alcoholic beverage upon the licensed premises.
2. No licensee, his agent or employee shall sell, serve or dispense, nor permit to be furnished with any alcoholic beverage upon the licensed premises, any habitual drunkard, an intoxicated person, a person under guardianship after written notice of such guardianship by the legal guardian and during the continuance of such guardianship.

3. No licensee, his agent or employee shall be permitted to sell to any person upon credit any intoxicating liquor.
4. No person under 21 years of age shall be permitted to enter any room of a licensed premises in which alcoholic beverages are sold, served or dispensed, except as provided in subsection 5 of this section. Nor shall anyone under the age of 21 years be employed in any room or rooms on a licensed premises which alcoholic beverages are sold on-sale, except as provided in subsection 5 of this section.
5. Any person under 21 years of age may enter and remain on a licensed premises while alcohol is being sold or displayed, at the discretion of the owner of the licensed premises, if:
 - a. the individual is accompanied by a parent or guardian who is twenty-one years of age or older. For purposes of this section, "guardian" means an individual who has the legal responsibility for the health and well-being of the individual under twenty-one years of age;
 - b. the individual is on the premises to consume a meal or in an emergency situation;
 - c. the premises serves at a tabletop, food that is prepared in a kitchen with at least an indoor grill; and
 - d. the individual is not on the licensed premises after nine o'clock p.m.

or if:

- e. employed by the restaurant as a food waiter/waitress, busboy/girl under the direct supervision of a person 21 or more years of age, and not engaged in the sale, dispensing, delivery or consumption of alcoholic beverage;
- f. the person is a law enforcement officer entering the premises in the performance of official duty; or
- g. the person is between the ages of 18 to 21 years of age and has been employed by the liquor licensee to work in the capacity of musicians under the direct supervision of a person 21 or more years of age.

Any person who is 19 years of age or older but under 21 years of age may be employed by the restaurant to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person 21 or more years of age, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages.

6. No off-premise liquor or beer licensee shall permit the opening or consumption of alcoholic beverages upon the licensed premises; provided, however, the licensee may permit the sampling of alcoholic beverages upon the licensed premises without charge to the consumer.

Source: Ord. 2015-62, Sec. 1

10-0115. **DELIVERY OF ALCOHOLIC BEVERAGES.** No licensed retail alcoholic beverage dealer, the officers, employees or agents in the City of Kindred shall deliver or shall cause to be delivered to any customer outside of the licensed premises, any alcohol or alcoholic beverages sold under the terms and provisions of this chapter, unless the package containing such liquor shall be securely wrapped and shall contain on the outside, in plain, legible writing, the name of the dealer selling the same and also the name and address of the purchaser.

No driver of any taxicab operating or driving the same in the City of Kindred shall at any time possess, carry or have in such taxicab any alcohol or alcoholic beverages of the kind and character referred to in this section, excepting only that such driver may accept for delivery to a customer from a licensed dealer, any package(s) as described above.

No owner, operator, officer, or employee or driver of any taxicab in the City of Kindred shall accept from any person, except a liquor dealer regularly licensed by , any order for the delivery of any such alcohol or alcoholic beverage as described above.

Any police or other peace officer of the City shall have the right to enter and search any taxicab, operating in the City under a license from said City, or elsewhere, at any time there may be a reason to believe or suspect that the driver of such vehicle is violating the provisions.

The violation of any of the provisions of this section by any licensed alcoholic beverage dealer, agents, officers or employees, the owner of any taxicab, or the driver thereof, shall be grounds for the revocation of the license issued for that purpose and where a driver of any taxicab is found guilty of violating the terms and provisions of this section, the license of the owner of such

taxicab may also, in the discretion of the City Council, be revoked.

10-0116. **RULES FOR POSSESSION OF ALCOHOLIC BEVERAGE BY A LICENSEE.**

1. Possession of Unstamped Liquor Illegal. No alcohol or alcoholic beverages, as defined by the laws of the State of North Dakota, shall be permitted to be owned, held, or possessed upon any licensed premises, or by any person to whom a license has been issued unless the tax stamp, as provided by the laws of the State of North Dakota has been properly affixed thereto, and unless taxes on said alcohol and alcoholic beverages have been paid, and the possession of any container of any kind in which such alcohol or alcoholic beverage is found which does not bear the proper stamps issued by the State of North Dakota shall be deemed to be illegal and a violation of this section.
2. Purchase to be from Licensed Wholesaler. No licensee shall purchase, have, or possess any alcohol or alcoholic beverages as defined by the laws of the State of North Dakota unless licensee has purchased the same from a wholesaler duly licensed pursuant to the provisions of the laws of the State of North Dakota.
3. Invoices to be Filed, Contents of. Each licensee shall keep on file all invoices covering purchases of such alcohol or alcoholic beverages, showing the name and license number of the wholesaler, and the name of the municipality issuing such wholesale license. Such invoices shall be retained in possession of the licensee and shall, at all times, be open to inspection by any police officer or peace officer in the State of North Dakota.
4. Records to be Kept. Each licensee under this chapter shall keep a book showing the kinds and quantities of all alcoholic beverages purchased by him, together with the name of the person from whom purchased, the license number of the wholesaler selling such alcoholic beverages to said licensee, and the name of the municipality issuing such wholesale license.

10-0117. **LICENSED PREMISES - REQUIREMENTS FOR.**

1. Every on-sale retail premise licensed for the sale of alcoholic beverages must be equipped with adequate and sufficient lavatories and toilets separately maintained for men and women and kept in a clean and sanitary condition.

2. Every on-sale licensee for the sale of alcoholic beverages shall equip his establishment with tables and chairs in sufficient numbers to accommodate his patrons.
3. Every licensee is hereby made responsible for the conduct of the place of business and is required to maintain order and sobriety in such place of business. No intoxicated person(s) shall be permitted to remain upon the premises licensed or to be served any alcoholic beverages by any licensee.
4. Every licensee of an off sale liquor license which has a drive-in window for service must provide sufficient lighting so as to remove any and all traffic hazards that might arise as a result of the drive-in window and provide for motor vehicle ingress and egress to and from said facility without in any way impeding, hampering, delaying or jeopardizing the safe flow of motor vehicle traffic.

10-0118. **INSPECTION OF LICENSED PREMISES TO BE ALLOWED.** The licensee accepts the license privileged upon the condition, which need not elsewhere be expressed, that the City Council or the City Agent, may, at any time, enter upon the premises licensed for the purpose of inspection, or to determine whether the premises are being conducted in compliance with the ordinances of the City.

10-0119. **CABARET LICENSE.**

1. DEFINITIONS.

- (a) Entertainment - shall be defined for purposes of this Ordinance to mean all forms and types of performing or entertaining for patrons on licensed premises without regard as to whether such entertainment is provided by means of live performances or manually operated, electronic systems designed for stereophonic playback of prerecorded signals: provided, however, that entertainment shall not be deemed to include the use of any television, radio or coin operated music machine.
- (b) Live performances - shall be defined for the purpose of this Ordinance to mean any person who for consideration, monetary or otherwise, performs in person on a licensed premise as a singer, musician, dancer, comedian, model, or any other type of entertainer.

2. No licensee under this Chapter shall permit entertainment for more than one day a week any given week without first having obtained a cabaret license as hereinafter provided.
3. There shall be no license fee for a cabaret license.
4. The application for cabaret license shall be made by the licensee on forms provided by the City Auditor's office of the City of Kindred. The granting of a cabaret license shall be subject to the approval of the Council and it may be suspended or revoked in conformance with procedures established under Section 10-0111.
5. No live performances are permitted on a licensed premise which contain any form of dancing. Such prohibition on dancing does not include the incidental movement or choreography of singers or musicians which are made in connection with their singing or playing of a musical instrument. This restriction applies to all licensed premises whether or not they have a cabaret license.
6. No live performances are permitted on a licensed premise which involve the removal of clothing, garments or any other costume. Such prohibition does not include the removal of headwear or footwear; or the incidental removal of a tie, suitcoat, sportcoat, jacket, sweater or similar outer garments. Incidental removal for purposes of this section shall mean the removal of a garment or article of clothing which is not a part of the act or performance. This restriction applies to all licensed premises whether or not they have a cabaret license.
7. No entertainment on a licensed premise shall contain:
 - (a) The performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;
 - (b) The actual or simulated touching, caressing or fondling of the breasts, buttocks, anus or genitals;
 - (c) The actual or simulated displaying of the pubic hair, anus, vulva or genitals; or the nipples of a female.

This restriction applies to all licensed premises whether or not they have a cabaret license.

8. A licensee shall have the duty and responsibility to make available for inspection by a City Agent an identification card, such as a driver's license, containing a photograph and the age of all entertainers or performers on the licensed premise. The licensee shall not permit a person to make a live performance on the licensed premise if the licensee is not able to obtain the required identification from the performer.

Source: Ord. 2013-42, Sec. 1 (2013)

10-0120. **APPLICATION OF CHAPTER.** This chapter shall apply to all territory within the corporate limits of the City and, as permitted by state law to such outlying contiguous territory without the corporate limits within which the City may exercise police jurisdiction, as defined by law.

10-0121. **PENALTY.** Any person, firm or corporation violating the terms of this chapter shall, upon conviction thereof, be punished by a fine not to exceed \$1,500 or imprisonment not to exceed 30 days, or by both such fine and imprisonment, at the discretion of the Court. Provisions of Section 1-0807 shall also apply. Such a penalty should be in addition to the authority of the City Council to suspend or revoke a license pursuant to Section 10-0111.

Source: Ord. 2014-56, Sec. 7 (2015)

10-0122. **SEVERABILITY CLAUSE.** If any section, subsection, sentence or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the ordinance.

10-0123. **SPECIAL PERMITS FOR SALE OF ALCOHOLIC BEVERAGES.**

1. Authorization. The City Council shall have the authority to issue special permits for the sale of alcoholic beverages when authorized to do so by state law as provided in Sections 5-0201.1, 5-0205.1, 5-0205.2, or any other state statute now in effect, or as amended, or enacted in the future which provides authority for cities to issue special permits for the sale of alcoholic beverages.
2. Licenses and Special Conditions. Any person or entity seeking a permit as authorized by paragraph 1 of this section must apply to the City Council for such a permit. The City, in granting such a permit, shall have the authority to put additional conditions on the license

over and above the conditions and requirements provided in state law, if the Council deems it desirable to do so.

3. License Fee. The City, by resolution, may provide a schedule for fees for such special permits, which fees shall not exceed the maximum permitted by state law.
4. Restrictions on License. Any special permits given pursuant to this section shall be subject to all of the provisions of Chapter 10-01 of the Revised Ordinances of 2004 of the City of Kindred, except where such provisions are in conflict with the provisions of state law authorizing special permits.
5. Revocation of License. The special licenses authorized by this section may be suspended or revoked by the City for violations of the terms of this section, as well as any other provisions of Chapter 10-01. In addition, violation of the provisions of this section also subject a violator to suspension or revocation of any other license for the sale of alcoholic beverages issued by the City of Kindred pursuant to Section 10-0111.

10-0124. **OUTDOOR DRINKING FACILITIES (BEER GARDENS)**.

(Source: Ord. 2015-60, Sec. 1)

1. Outdoor drinking facilities must be operated by an attached establishment maintaining a current City of Kindred on-sale beer and liquor license.
 - a. The establishment must abide by all rules and regulations as set forth by the North Dakota Century Code and any City ordinance involving the sale of alcoholic beverages.
 - b. No person other than the business owner or an employee of the business may serve any alcohol consumed on-site.
 - c. The square footage of the outdoor drinking facility must not exceed one-half ($\frac{1}{2}$) of the establishment's current square footage, and may not extend more than a combined total of fifty (50) feet parallel to the street beyond the sidewalls of the attached establishment, as determined by the City of Kindred Planning and Zoning.
 - d. The ratio of outdoor seats to indoor seats must not exceed one (1) outdoor seat for each two (2) indoor seats.

- e. The property owner must daily maintain all areas adjacent to and including areas where tables and chairs are located in a clean and sanitary manner, including the provision of appropriate trash receptacles.
 - i. This includes sweeping any adjacent right-of-way where the outdoor drinking facility is located and the immediate clearing of any food debris, broken glass, and other trash. Materials associated with the bar must be removed from the right-of-way by sweeping and picking up or vacuuming.
 - ii. Debris may not be swept, washed, hosed, or blown into the adjacent streets and/or parking areas.
- f. The outdoor drinking facility must have a minimum of two (2) exits, one of which will be the adjacent bar facility. The exits must be clearly marked with signs at each exit. These signs will be no smaller than eight and one-half (8½) inches by eleven (11) inches and displayed at a height of five (5) feet from ground level.
 - i. The exit must remain unobstructed and clearly visible from all areas of the beer garden.
 - ii. The exit mechanism must be easily operated and cannot require a key to exit.
- g. The outdoor drinking facility must be enclosed by a privacy fence at least six (6) feet tall, and must be constructed in such a way so that no person may crawl through or under it or any beverages may be passed to the other side.
- h. The outdoor drinking facility must be properly lit as to ensure no dark areas within where persons under the age of twenty-one (21) may confine themselves.
- i. Outdoor music/entertainment.
 - i. All live outdoor music and entertainment, including, but not limited to, live bands or disc jockeys, must end at or before 1:00 a.m., and may be held at each establishment through permits issued by the City of Kindred. Any

limit to the number of any such events will be set by resolution of the City Council.

ii. Music played in the outdoor drinking facility through jukebox speakers or otherwise will be allowed during business hours and will be subject to the Noise Violation provisions and penalties listed in Chapter 12-08 of the Revised Ordinances of 2004 of the City of Kindred, as may be amended.

j. Beer Garden closes at 1:00 a.m.

k. Smoking. The establishment must abide by all rules and regulations as set forth by the North Dakota Century Code, and any City ordinance, regarding smoking in the Beer Garden.

2. Penalties:

a. Noise Violations

i. 1st of night - Bar is warned

ii. 2nd of night - Beer Garden is closed for the night

b. Beer Garden Violations

i. Failure of a licensee to comply with the conditions for issuance of an outdoor drinking facility license, as determined by the Cass County Sheriff or designee, may, after notice and opportunity to be heard, result in immediate suspension or revocation of the outdoor drinking facility license or refusal to renew the outdoor drinking facility license. Violation hereof will be an infraction punishable by a penalty of one hundred dollars (\$100.00) per violation. Each day of a violation will be considered a separate offense. Such a penalty may be in addition to the authority of the City Council to suspend or revoke a license pursuant to Section 10-0111.

ii. The termination or suspension of an establishment's liquor license, for any reason, will cause the outdoor drinking facility license to also terminate or be held in suspension.

iii. The outdoor drinking establishment must be inspected and approved of by the Cass County Sheriff or designee.

3. Approval Procedure:

- a. The establishment must provide a drawing of proposed locations of tables, chairs and partitions to designate the proposed outdoor drinking area.
- b. The City Council will review the application.
- c. The establishment will provide any information requested by the City to ensure compliance with conditions and regulations of the outdoor drinking area.
- d. The outdoor drinking facility license will expire at the same time as all other liquor licenses.
- e. The establishment will pay for the outdoor drinking facility license in the amount of \$150.00 per year. This amount will be added to the current cost of the establishment's annual liquor license and will be due at the time of the establishment's license renewal.

CHAPTER 10-02

GAMBLING

SECTIONS:

- 10-0201. Games of Chance.
- 10-0202. Application for Local Gambling License or Site Authorization.
- 10-0203. Limitation on Site Authorizations.
- 10-0204. Limitation on Hours and Participation of Games of Chance.
- 10-0205. Availability of Records.
- 10-0206. Work Permits.
- 10-0207. Failure to Display Work Permit -- Revocation or Suspension.
- 10-0208. Failure to Obtain a Work Permit.
- 10-0209. Revocation of Site Authorization.
- 10-0210. Hearing Before City Council.
- 10-0211. Severability Clause.

10-0201. **GAMES OF CHANCE.** Notwithstanding any other provision of the ordinances of the City of Kindred to the contrary, it shall not be unlawful to play or conduct games of chance pursuant to Chapter 53-06.1 of the North Dakota Century Code, as that chapter may be amended from time to time, and any implementing rules and regulations of the Attorney General and guidelines established by the City of Kindred by ordinance or resolution.

10-0202. **APPLICATION FOR LOCAL GAMBLING LICENSE OR SITE AUTHORIZATION.** No person or entity shall conduct a game of chance as defined in Section 10-0201 without first having obtained a license or site approval as required by state law. Applications for local gaming licenses, or applications for site approval shall be made to the City Auditor of the City of Kindred. No site authorization nor gambling license shall be granted by the City of Kindred unless the applicant follows the procedures and pays the fees as set by the City by resolution, which resolution shall be on file with the City Auditor.

10-0203. **LIMITATION ON SITE AUTHORIZATIONS.** No site authorization for pull tabs, jars, punch boards, twenty-one, or sports pools shall be granted by the City except to premises having an on-sale liquor license from the City of Kindred. This section shall not repeal site authorizations in effect on the date this ordinance is adopted, nor shall it apply to renewals of site authorizations in effect on the date this ordinance is adopted. Provided, however, that the renewal of site authorizations which

would otherwise be prohibited by this section may not expand the type of gambling to be conducted at the site, nor the maximum number of black jack tables to be used at the site over the types of gambling and number of tables permitted by the site authorization in effect on the date of the adoption of this ordinance.

10-0204. **LIMITATION ON HOURS AND PARTICIPATION OF GAMES OF CHANCE.** A person under 21 years of age may not participate in the games of pull tabs, jars, punch boards, twenty-one, or sports pools. No games of chance shall be conducted in licensed liquor premises, or at premises for which site authorizations have been granted by the City of Kindred other than during the hours when alcoholic beverages may be dispensed in accordance with the applicable regulations of the State of North Dakota and the City of Kindred.

10-0205. **AVAILABILITY OF RECORDS.** The person or entity obtaining the site authorization shall make available to the City and/or the North Dakota Attorney General's office for inspection and audit any and all records relating to the expenses, proceeds, and distribution of the proceeds from the authorized site. Failure to do so upon reasonable notice shall be grounds for suspension or revocation of the site authorization.

10-0206. **WORK PERMITS.** All gaming employees at sites authorized to conduct games of chance under the Class A and Class B license provisions of the North Dakota charitable gambling laws for any form of gambling in shall be required to have a work permit. Gaming employees for purposes of this section shall be defined as dealers, overseers, pit bosses, bingo operators, pull tab operators, accountants, bookkeepers and the gaming committee directly connected with the operation and supervision of the card tables, tip jars and other gaming activities. The procedure and requirements for obtaining a work permit are as set out below:

1. The person applying for his or her work permit shall submit an application on a form provided by the City Auditor. The form shall include such information as the City may reasonably require with respect to the identity and personal history of the applicant. The truthfulness of the information supplied by the applicant shall be sworn by the applicant under oath in writing. The application shall be accompanied by the fingerprints and a recent photograph of the applicant meeting the specifications of the City.
2. The applicant shall accompany his application with a non-refundable fee in the amount of \$20.00. The license shall only permit the person to be a gaming employee within the City of Kindred for a particular charitable organization. If the applicant desires to work for a

different charitable organization within the City of Kindred, the applicant must apply for another work permit. The cost for a subsequent permit whether as a result of losing the first permit, or changing the charitable organization for which a person is employed shall be accompanied with a non-refundable fee in the amount of \$5.00. The applicant for a subsequent permit shall not have to complete another initial application form. However, the person seeking a subsequent permit to work for a different charity shall fill out a form listing the name of the charity by which he/she was formerly employed, the name of the new charity with whom he/she is going to be employed, and the reason for his/her change of employment. If he/she was discharged or allowed to resign, the applicable facts shall be listed on said form.

3. The application for a work permit shall be submitted to the City Auditor, who may request any law enforcement agency to review the same. The City Auditor shall issue or deny the work permit not more than thirty (30) days after the applicant has submitted to the City a completed application form accompanied with the required photograph, fingerprints and application fee. The City shall not issue a work permit to any person:
 - (a) Who is under the age of twenty-one (21);
 - (b) Who submits false information on his/her application;
 - (c) Who has been convicted of a felony within the last two (2) years;
 - (d) Who has been convicted of any misdemeanor involving theft of property or services, shoplifting or related criminal offense within the last two (2) years;
 - (e) Who is determined by the Attorney General of the State of North Dakota to have participated in organized crime or unlawful gambling;
 - (f) Who is otherwise determined by the gambling enforcement officer to not be a fit and proper person to engage in such work pursuant to Section 53-06.1-06(10)(b) of the North Dakota Century Code.

4. A person who has been denied a work permit pursuant to this section shall have the right to appeal the denial to the City Council by filing a written notice of appeal with the City Auditor within ten (10) days after the receipt of the denial of the work permit. Upon failure to file such notice within the ten (10) day period, the action of the gambling enforcement officer denying such work permit shall be final and conclusive. The gambling enforcement officer upon denial of a work permit shall give the applicant written notice of the denial setting forth the reason for the denial and the appeal procedure.
5. All gaming employees required to have a work permit shall be required to conspicuously display it about his/her person while engaged in gaming activities.
6. No person shall be required to have or display a work permit prior to December 31, 2003.

10-0207. **FAILURE TO DISPLAY WORK PERMIT - REVOCATION OR SUSPENSION.** Failure to display the work permit as required by this Chapter shall be cause for revocation or suspension of a gaming employee's work permit. The gambling enforcement officer shall notify the person of the revocation or suspension of his permit for violation of this section which revocation shall go into effect ten (10) days after receipt of the notice. The notice shall also state that the employee has ten (10) days from the receipt of the notice to file a written appeal with the City Auditor requesting a hearing before the City Council.

10-0208. **FAILURE TO OBTAIN A WORK PERMIT.** It shall be unlawful for a person to work as a gaming employee without obtaining a proper work permit as required by this chapter, or to work as a gaming employee after such work permit has been revoked or is under suspension pursuant to this chapter.

10-0209. **REVOCATION OF SITE AUTHORIZATION.** It shall be the responsibility of the holder of a site authorization not to allow persons to work as gaming employees at their site who do not have the proper work permit. In addition, it shall be the responsibility of the holder of the site authorization to require all its gambling employees to display their work permit as required by this chapter. The gambling enforcement officer shall notify the City Council if the holder of a site authorization is not complying with the provisions of this section, and such noncompliance shall be grounds for suspension or revocation of the site authorization. In addition, the gambling enforcement officer shall notify the City Council if the holder of the site authorization is violating any of the terms of the site authorization issued by the City of Kindred, or any applicable state law or regulations of the Attorney General. Such noncompliance with the provisions of the site authorization,

state law, or regulations of the Attorney General shall also be grounds for suspension or revocation of the site authorization.

10-0210. **HEARING BEFORE CITY COUNCIL.** Any person who is denied a work permit, or whose work permit is suspended or revoked, and who files a written appeal within the ten (10) day period shall be entitled to a hearing before the City Council to review the denial, suspension, or revocation. The hearing shall be held at the next regularly scheduled meeting of the City Council after the written appeal has been filed with the City Auditor. A sound recording shall be kept of the hearing, and after the completion of the hearing the City Council shall prepare its findings in writing.

The City Auditor upon receipt of notice from the gambling enforcement officer that there are grounds to suspend or revoke a site authorization, shall notify the holder of the site authorization of the date at which the City Council will have a hearing to determine whether or not to suspend or revoke the site authorization. There shall be a sound recording of such hearing, and after the completion of the hearing the City Council shall make its findings in writing.

10-0211. **SEVERABILITY CLAUSE.** The invalidity of any section, clause, sentence or any provisions of this ordinance shall not affect the validity of any part of this ordinance which can be given affect without such invalid part or parts.

CHAPTER 10-03

PAWNBROKERS

SECTIONS:

- 10-0301. "Pawnbroker" Defined.
- 10-0302. License Required.
- 10-0303. Licenses - Fees For.
- 10-0304. Bond - Conditions Of.
- 10-0305. Licenses - Expiration Of.
- 10-0306. Licenses - Revocation Of.
- 10-0307. City Auditor to Keep Register of Licenses.
- 10-0308. Record of Goods Pawned or Consigned -- Duty of Licensee.
- 10-0309. Record of Goods Pawned or Consigned -- Copy to Chief of Police.
- 10-0310. Description of Property When Necessary.
- 10-0311. Licensees Not to Sell Property Within Forty-eight Hours.
- 10-0312. Licensees -- Notice Not to Sell Property -- Sale or Redemption of Property Not Allowed.
- 10-0313. Transactions with Minors -- Consent of Parents Required.
- 10-0314. Severability Clause.
- 10-0315. Penalty.

10-0301. **"PAWNBROKER" DEFINED.** As used in this chapter, unless the context or subject matter otherwise requires, the term "pawnbroker" shall mean any person who:

1. Loans money on deposit or pledge of personal property, or other valuable thing;
2. Deals in the purchasing of personal property or other valuable thing, on condition of selling the same back again at a stipulated price; or
3. Loans money, secured by chattel mortgage on personal property, taking possession of the property or any part thereof so mortgaged.

10-0302. **LICENSE REQUIRED.** Every person before engaging in the business of pawnbroker, as defined in Section 10-0301, or dealer in secondhand goods in the city shall obtain from the City a license so to do.

10-0303. **LICENSES - FEES FOR.** Every pawnbroker, and every dealer in secondhand goods, before commencing business shall pay into the City treasury the required fee which shall be established by resolution of the City Council.

10-0304. **BOND - CONDITIONS OF.** Before the issuance of a license by the City Auditor to any person as a pawnbroker or dealer in secondhand goods, the person applying for said license shall execute a bond to the City of Kindred in a sum set by the City Council by resolution with sufficient sureties, to be approved by the City Attorney, conditioned that the said applicant will, in every particular, conform to the requirements of this chapter and with the requirements of any law or ordinance which may hereafter be passed concerning pawnbrokers and secondhand dealers.

10-0305. **LICENSES - EXPIRATION OF.** Each license granted and issued under this chapter shall expire at the expiration of one year next following the granting and issuing of the same, unless sooner revoked as hereinafter provided.

10-0306. **LICENSES - REVOCATION OF.** Every license issued under the provisions of this chapter shall be issued upon the distinct understanding that such license may be revoked by the City Council at any time, or by the court upon the conviction of the holder of a violation of this chapter. If the person so convicted shall have a license under the provisions of this chapter and said license is revoked, a new license shall not be issued to the same person within six months thereafter, except by consent of four-fifths of the City Council.

10-0307. **CITY AUDITOR TO KEEP REGISTER OF LICENSES.** The City Auditor shall keep a register of all the licenses granted under this chapter in which he shall record the name of the person licensed, the time of issuing the license, and the place of business of such person.

10-0308. **RECORD OF GOODS PAWNED OR CONSIGNED -- DUTY OF LICENSEE.** Every person who shall be engaged in the business of pawnbroker as defined in Section 10-0301 or dealer in secondhand goods shall keep a book in which shall be clearly written in ink at the time of each loan, purchase, or consignment an accurate account or description, in the English language, of the goods, articles, or other things pawned, pledged, received, deposited, purchased, or placed on consignment, the amount of money loaned or paid therefor, the time of the receipt of the same, the name, residence, and description of the person pawning, pledging, selling, or consigning the same, which book, as well as the article pawned, purchased, or consigned, shall, at all reasonable times, be open to the inspection of the City Council, the police commissioner, the city attorney, City Auditor, or any member of the police force.

10-0309. **RECORD OF GOODS PAWNEED OR CONSIGNED -- COPY TO CITY.** It shall be the duty of every pawnbroker or dealer in secondhand goods to make out and deliver to the City Auditor or Agent designated by the City Council by resolution, every day before the hour of 12:00 Noon, a legible and correct copy from the book required to be kept in Section 10-0308 of all personal property or other valuable things received, deposited, purchased, or placed on consignment during the preceding day, together with the time when received, deposited, purchased, or consigned, a description of the person or persons and an impression of the right thumbprint of the person or persons by whom such articles were left in pledge or from whom the same were purchased or taken on consignment.

Should the right thumb be amputated or crippled then the left thumb may be used and the copy of the print should be so marked.

10-0310. **DESCRIPTION OF PROPERTY WHEN NECESSARY.** No person shall be required to furnish the description of any property purchased from private residences, manufacturers, or wholesale dealers having an established place of business or of goods purchased at open sale from any bankrupt stock or from any other person doing business and having an established place of business in the City. Such goods, however, must be accompanied by a bill of sale or other evidence of open or legitimate purchase and must be shown to the City Council, the police commissioner, the city attorney, City Auditor, or any member of the police force when demanded.

10-0311. **LICENSEES NOT TO SELL PROPERTY WITHIN FORTY-EIGHT HOURS.** No personal property received on deposit or purchased by any pawnbroker or dealer in secondhand goods shall be sold or permitted to be redeemed from the place of business of such person for the space of forty-eight hours after the copy and statement required to be delivered to the City Auditor or Agent designated by the City Council by resolution shall have been received as required by Section 10-0309.

10-0312. **LICENSEES--NOTICE NOT TO SELL PROPERTY--SALE OR REDEMPTION OF PROPERTY NOT ALLOWED.** Whenever the City Auditor or Agent designated by the City Council by resolution shall notify any dealer or dealers not to sell any property received on deposit or purchased by them or permit the same to be redeemed, such property shall not be sold or permitted to be redeemed until such time as may be determined by the City Agent who required them to be held.

10-0313. **TRANSACTIONS WITH MINORS -- CONSENT OF PARENTS REQUIRED.** No person granted a license under the provisions of this chapter shall purchase or receive any article or thing of value from, or transact any business as provided herein with, any person

who has not reached the age of eighteen years, without the written consent of such minor's parent or guardian.

10-0314. **SEVERABILITY CLAUSE.** The invalidity of any section, clause, sentence or any provisions of this ordinance shall not affect the validity of any part of this ordinance which can be given effect without such invalid part or parts.

10-0315. **PENALTY.** Any person violating any section of this chapter shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

CHAPTER 10-04

SUNDAY OPENING - FOOD STORES

SECTIONS:

10-0401. Opening Food Stores on Sunday.

10-0401. **OPENING FOOD STORES ON SUNDAY.** Food stores may be operated on Sunday as provided in Subsection 30 of Section 12.1-30-03 of the North Dakota Century Code, without limitation as to the number of employees which may work at any one time on a Sunday.

CHAPTER 10-05

TOBACCO LICENSING

(Source: Ord. 2014-50, Sec. 1 (2014))

SECTIONS:

- 10-0501. Definitions.
- 10-0502. License Required.
- 10-0503. Prohibited Sales.
- 10-0504. Administrative Remedies.
- 10-0505. Criminal Penalties.

10-0501. **DEFINITIONS.**

1. E-CIGARETTE, ELECTRONIC CIGARETTE, OR ELECTRONIC SMOKING DEVICE. Any electronic oral device, such as one composed of a heating element and battery or electronic circuit, or both, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, or e-pipe, or under any other product, name or descriptor, and also includes any cartridge or other component of the device.
2. INDIVIDUALLY-PACKAGED TOBACCO PRODUCTS. Any package containing only one individually-wrapped tobacco product. This definition includes, but is not limited to, single packs of cigarettes, single bags of tobacco product for rolling, and individual cans of tobacco product for chewing or sniffing.
3. PROBATIONARY PERIOD. A period of 12 months for a violation which is not within any period of probation already established by a violation of any of this section, which 12 months shall be defined as commencing on the date of the said first offense and shall extend for 12 consecutive months thereafter. If any subsequent offenses occur within the said 12-month period, the probationary period for any such subsequent offense shall extend for either the same 12 consecutive months from the date of the first offense, as described above, or for a period of 6 months from the date of the subsequent offense, whichever period would expire later. For purposes of this section, an offense is deemed to have occurred when the offense is committed, and not the date of judgment or conviction.

4. SELF-SERVICE MERCHANDISING. Any open display of tobacco products to which the public has access without the intervention of an employee of the retail establishment.
5. TOBACCO PRODUCTS. Any product that is made from or derived from tobacco, which contains nicotine or a similar substance, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, e-cigarette, electronic cigarette, or an electronic smoking device. Tobacco product also includes pipes and rolling papers, but does not include any product specifically approved by the U.S. Food and Drug Administration for legal sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.
6. VENDING MACHINE. Any mechanical, electric, or electronic device which, upon insertion of money, tokens, or any other form of payment, dispenses tobacco products.

10-0502. **LICENSE REQUIRED.** No person or entity shall directly or indirectly, or by means of any device, keep for retail sale, sell at retail, or otherwise dispense any tobacco products within the City of Kindred without a City of Kindred tobacco product dealer's license. Any person or entity that has a state license for the sale of tobacco products issued pursuant to Chapter 57-36 of the North Dakota Century Code shall automatically be deemed to have a license issued by the City of Kindred for the sale of tobacco products without the need for an application to the City or any action of the City of Kindred. As long as the person or entity has a state license issued under Chapter 57-36 for the sale of tobacco products, they shall be deemed to have a license from the City of Kindred for the sale of tobacco products, unless and until the City license is suspended or revoked pursuant to this chapter. There shall be no fee for the municipal license.

10-0503. **PROHIBITED SALES.**

1. No person or entity shall sell, offer for sale, give away or deliver any tobacco product to any person under the age of eighteen (18) years.
2. No person shall sell or dispense any tobacco product through the use of a vending machine except as follows:
 - a. A vending machine may be used to dispense tobacco products in an area within a factory, business, office or other place not open to the general public or to which persons under eighteen (18) years of age are not generally permitted access.

- b. A vending machine may be used to dispense tobacco products on the premises of a licensed on-sale or off-sale intoxicating liquor establishment, including club licenses. Provided, however, that if an on-sale licensed premises is also a restaurant, a vending machine located in a portion of the premises in which minors are allowed must be operable only by activation of an electronic switch operated by an employee of the establishment before each sale, or by insertion of tokens provided by an employee of the establishment before each sale.
3. No person shall sell or dispense any tobacco product through the use of self-service merchandising methods or displays.

10-0504. **ADMINISTRATIVE REMEDIES.**

1. ADMINISTRATIVE FINE, SUSPENSION, OR REVOCATION. Any violation of the City's regulations relating to the issuance of tobacco products' license or of any conditions/restrictions attached to the issuance of such license shall be cause for the imposition of an administrative fine, license suspension, and/or license revocation.

If the violation relates to the sale of tobacco products to minors by a licensee or licensee's employees, the following administrative suspensions, or revocations shall be imposed:

- a. The first such violation shall subject licensee to a written warning.
- b. The second violation within the probationary period shall subject licensee to a 3-day suspension of the license.
- c. The third violation within the probationary period shall subject licensee to a 10-day suspension of the license.
- d. Subsequent violations within the probationary period shall subject licensee to a 30-day license suspension.
- e. If any sale of tobacco products occurs on licensee's premises during a period of suspension, the license shall be suspended for the full probationary period.

- f. For purposes of establishing the number of offenses committed by a licensee, the licensee is deemed to have committed only one offense during any 24-hour day.
2. ADMINISTRATIVE HEARING/WAIVER. Upon receipt of information indicating that a license violation has occurred, the City Auditor or his designee shall send a license violation notice to licensee by certified mail. The license violation notice shall indicate the nature of the violation and whether such violation will result in an administrative fine, license suspension, or license revocation.

If the proposed disposition includes a license suspension, revocation, or fine, the notice shall also indicate that licensee has the option of requesting a hearing before the City Council prior to the license suspension, revocation, or imposition of fine, or waiving such hearing and accepting the disposition described in the license violation notice. The licensee shall file a written request for a hearing within ten (10) days of the date specified in the license violation notice, or licensee shall be deemed to have waived its right to a hearing. Upon receipt of a hearing request, the City Auditor or his designee shall schedule a hearing before the City Council at the earliest opportunity and shall send a hearing notice to licensee by certified mail.

3. CLERK PENALTIES. Any employee of a license holder who is in violation of the restriction attached to a tobacco product license shall be subject to an administrative fine of Fifty and no/100 Dollars (\$50.00).

SECTION 10-0505. CRIMINAL PENALTY.

1. PENALTY. Any person, firm or corporation violating the terms of this chapter shall, upon conviction thereof, be punished by a fine not to exceed \$1,500.00 or imprisonment not to exceed 30 days, or by both such fine and imprisonment, at the discretion of the Court. Provisions of Section 1-0807 shall also apply. Such a penalty should be in addition to the authority of the City Council to suspend or revoke a license pursuant to Section 10-0504.

Source: Ord. 2014-56, Sec. 8 (2015)

TITLE XI.

ANIMALS

CHAPTERS:

- 11-01. Chickens, Domestic Fowl, Farm Animals and Vicious
Animals. (Source: Ord. 2020-84, Sec. 1)
- 11-02. Dogs and Cats.

CHAPTER 11-01

(Source: Ord. 2020-84, Sec. 1)

CHICKENS, DOMESTIC FOWL, FARM ANIMALS AND VICIOUS ANIMALS

SECTIONS:

- 11-0101. Unlawful to Run at Large in City.
- 11-0102. Unlawful to Keep Domestic Fowl and Farm Animals - Exception.
- 11-0103. Vicious Animals.
- 11-0104. Registration and Coop Required.
- 11-0105. Definitions.
- 11-0106. Confinement.
- 11-0107. Chicken Coops and Chicken Runs.
- 11-0108. Private Restrictions and Covenants on Property.
- 11-0109. Penalty.
- 11-0110. Enforcement.

11-0101. **UNLAWFUL TO RUN AT LARGE IN CITY.** It shall be unlawful for the owners, keepers and custodians of chickens or hen pheasants, to permit, suffer or allow the same to run at large on the streets, avenues, alleys, parks or public grounds within the limits of the City of Kindred, or to be tethered or staked in such a manner as to go upon any street, sidewalk, crosswalk, or public ground within the city. Any such animals found within the corporate limits of the city except on property zoned with an "A-Agricultural District" are declared to be public nuisances. This section does not apply to the owners of any farm animals kept as a part of any state educational institution or the owners of any farm animals temporarily exhibited at any fair or agricultural exhibition, provided said animals are stabled and cared for in a sanitary manner approved by the health department.

11-0102. **UNLAWFUL TO KEEP DOMESTIC FOWL AND FARM ANIMALS - EXCEPTION.** Unless otherwise allowed under this Chapter, no ducks, geese or other domestic fowls, horses, cattle, sheep, swine or goats shall be kept within the City limits of the City of Kindred, except that chickens and hen pheasants may be kept within the limits of the City provided the provisions of this Chapter are met; and farm animals may be kept on property zoned as "A-Agricultural District" under the Land Development Code (Chapter 4 of the Revised Ordinances of 2004 of the City of Kindred) of the City of Kindred.

11-0103. **VICIOUS ANIMALS.** No person or persons in the City, being the owner of, or keeper of, any dangerous, vicious, or unruly animal shall not suffer the same to run at large. For purposes of this section, the words "owner," "running at large," and "suffer"

shall be defined as in Section 11-0203 of the ordinances of the City of Kindred.

11-0104. **REGISTRATION AND COOP REQUIRED.** It is unlawful for any person to own, control, keep, maintain or harbor chickens or hen pheasants on any premises within the City unless said chickens are registered with the city and contained in a chicken coop. No registration will be issued for the keeping or harboring of more than eight (8) chickens and/or hen pheasants on any premises. The keeping or harboring of male chickens or roosters is prohibited. The breeding of chickens or hen pheasants on any premises within the City is prohibited.

- (a) A building permit that meets building standards must be obtained for the construction and installation of the chicken coop. The building permitting process will define coop specs and distance requirements from property lines.
- (b) The building permit application must include:
 - i. a scaled diagram indicating the location of any enclosure, chicken coop and chicken run, and the approximate size and distance from adjoining structure(s) and property lines. To the extent a chicken coop or run is intended to be moveable, the scaled diagram must indicate the area or areas into which they may be located should the permit be granted;
 - ii. the number of chickens and/or hen pheasants to be maintained at the premises; and
 - iii. a statement that the applicant/permittee will at all times keep the chickens and/or hen pheasants in accordance with this ordinance and all the conditions prescribed by the City Council, or modification thereof, and failure to obey such conditions will constitute a violation of the provisions of this Chapter and grounds for cancellation of the chicken registration.

No permit will be issued for an incomplete application.

- (c) The City Council may refuse to grant or renew a yearly registration for failure to comply with the provisions of this Chapter, if a nuisance condition is created, or if the public health and safety would be unreasonably endangered by the granting or renewing of registration.
- (d) Chicken and hen pheasant registration must include a NPIP (National Poultry Improvement Plan) certificate. Only NPIP certified chickens and/or hen pheasants are allowed within the City of Kindred.

- (e) Chickens and hen pheasants must be kept and handled in a sanitary manner to prevent the spread of communicable disease among birds or to humans. Any person keeping chickens and/or hen pheasants must immediately report any unusual illness or death of the fowl to the Cass County Public Health Department.

11-0105. **DEFINITIONS.** The following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (a) "At large" means a chicken out of its chicken coop or run, off the premises or not under the custody and control of the owner.
- (b) "Brooder" means a small pen designed to rear young poultry.
- (c) "Chicken coop" means a structure for housing chickens made of wood or other similar materials that provides shelter from the elements.
- (d) "Chicken run" means an enclosed outside yard for keeping chickens.
- (e) "Farm Animal" means any of the following: horse of any kind, cattle, sheep, swine, goats.
- (f) "Person" means for purposes of this article and unless the context suggests otherwise, the resident, property owner, custodian, or keeper or of any chicken and shall include, where the context of the provision allows, any natural person, co-tenancy, partnership, corporation, limited liability company or other form of separate business entity recognized by North Dakota state law.
- (g) "Premises" means, for purposes of this article only, a residential single dwelling parcel of real property.

11-0106. **CONFINEMENT.** Every person who owns, controls, keeps, or harbors chickens and/or hen pheasants must always keep them confined and may not allow them to run at large. They must be secured in a chicken coop from sunset to sunrise each day. Chickens and/or hen pheasants may be allowed out of their coop and run so long as they are kept in a fenced backyard and are not allowed to run at large.

11-0107. **CHICKEN COOPS AND CHICKEN RUNS.**

- (a) Except as set forth in this section, chicken coops and runs, as accessory structures, must comply with the setback requirements set forth in the Kindred City Zoning Ordinances for accessory uses. Chicken coops and chicken runs may not be located within the front yards and are subject to a three (3) foot setback from any adjacent property. All chicken coops must be a minimum of four (4) square feet per chicken in size. Attached fenced-in chicken runs must have a minimum of ten (10) square feet per chicken, including the chicken coop and may not exceed twenty (20) square feet per chicken and fencing may not exceed six (6) feet in total height from adjacent ground level. Chicken runs may be enclosed with wood or woven wire materials or a combination thereof. To the extent the setback provisions of the Kindred City Zoning Ordinances conflict with the setback or other provisions of this Chapter, the setback or other provisions of the Kindred City Zoning Ordinances will apply.
- (b) Chicken coops are not allowed to be in any part of a home or a garage that is attached to a home. No chickens or hen pheasants are allowed inside the dwelling unless younger than 8 weeks of age and confined to a brooder.
- (c) Feed must be kept in metal predator proof containers. All stored manure must be placed within a fully enclosed container. No more than three cubic feet of manure may be stored. All other manure not used for fertilizing must be removed. The henhouse, chicken run and pen and surrounding area must be kept free from trash and accumulated manure. Chicken manure may be placed in yard compost piles.
- (d) Neither odors nor noise may be present at the lot line to the extent that it results in a public nuisance or is in violation of any noise ordinance or is overly odorous and causes complaints.
- (e) The owner must take necessary action to reduce the attraction of predators and rodents and the potential infestation of insects and parasites. If problems arise and are not dealt with according to the penalty provisions of this ordinance, Animal Control will intervene and take necessary actions to remedy the situation.

11-0108. **PRIVATE RESTRICTIONS AND COVENANTS ON PROPERTY.**

- (a) Notwithstanding the issuance of a chicken registration by the City, private restrictions and/or covenants on the

use of property are enforceable and take precedence over a chicken registration. A chicken registration issued to a person whose premises are subject to private restrictions and/or covenants that prohibit the keeping of chickens or hen pheasants is void. The interpretation and enforcement of the private restriction is the sole responsibility of the private parties involved.

- (b) For any person who proposes to keep chickens in the yard of a rented single-family residential dwelling, the applicant must present a signed statement from the owner of the dwelling consenting to the applicant's proposal for keeping chickens on the premises.

11-0109. **PENALTY.** In addition to being a nuisance, any violation of this ordinance is an infraction, punishable by a fine of at least One Hundred and 00/100 Dollars (\$100.00). Each day the violation continues is considered a separate offense.

11-0110. **ENFORCEMENT.** Upon a complaint filed with the City Auditor related to a violation of this ordinance, the City Auditor will cause notice to be provided to the Owner. The notice, stating the violation and what action is required, will be delivered to the Owner and provide said Owner ten (10) days to comply. If compliance is not completed within ten (10) days, the City will have the authority to abate the nuisance. Costs related to said abatement will be the responsibility of the Owner and will be assessed to the property if not paid. An hourly rate, to be set by resolution of the City Council, will be charged for the abatement, along with any applicable clean-up costs and attorney's fees.

CHAPTER 11-02

DOGS AND CATS

SECTIONS:

- 11-0201. Dogs or Cats Running at Large Declared a Nuisance.
- 11-0202. Dogs or Cats Running at Large Prohibited.
- 11-0203. Definitions of Terms.
- 11-0204. Identification and Vaccination Required.
- 11-0205. **Reserved for Future Use.**
- 11-0206. Impounding Dog or Cat Running at Large.
- 11-0207. **Reserved for Future Use.**
- 11-0208. **Reserved for Future Use.**
- 11-0209. Animal Kennels and Shelters.
- 11-0210. Dogs and Cats Having Fierce, Dangerous or Vicious Propensities.
- 11-0211. Habitually Barking, Crying or Howling Animal Cat Declared Public Nuisance.
- 11-0212. Habitually Barking, Crying or Howling Dog or Cat - Procedure for Complaint.
- 11-0213. Collection of Animal Solid Waste.
- 11-0214. Rabies Control.
- 11-0215. Penalty for Harboring a Habitually Barking, Crying or Howling Animal.
- 11-0216. Penalties.
- 11-0217. Enforcement.

11-0201. **DOGS OR CATS RUNNING AT LARGE DECLARED A NUISANCE.** All dogs or cats running at large within the limits of the City of Kindred contrary to the provisions of this chapter are hereby declared a nuisance.

11-0202. **DOGS OR CATS RUNNING AT LARGE PROHIBITED.** Any person who is the owner or has in his possession any dog or dogs or cat, male or female, shall not suffer the same to run at large, contrary to the provisions of this chapter, within the City of Kindred. No person having the custody or control of any animal will permit the same to be off the property limits of its owner or keeper, or on any street, public park, school grounds or public place in the City of Kindred without being effectively restrained by chain or leash not exceeding six (6) feet in length. This requirement does not apply if the animal is within the confines of a vehicle.

Source: Ord. 2018-71, Sec. 1

11-0203. **DEFINITIONS OF TERMS.** As used in this chapter, unless the context otherwise indicates, (a) "owner" means any

person, firm, association or corporation owning, keeping, or harboring a dog or cat or both; (b) "running at large" means not on the premises of the owner, and not under the control of the owner or keeper, or a member of his immediate family, either by a leash, cord, or chain; and (c) "suffer" means without regard to the intent of the owner and is intended to create a strict liability offense.

11-0204. **IDENTIFICATION AND VACCINATION REQUIRED.**

1. All dogs and cats kept or maintained in the City must be vaccinated against rabies.

2. All dogs and cats kept or maintained in the City must have some identification on them that provides the animal's owner information. Identification includes, but is not limited to, valid microchips or any tag or collar with owner contact information, including a valid phone number for the owner.

3. No person, group, association, or corporation may keep or maintain more than five dogs or cats.

4. Failure to vaccinate and/or provide identification for a dog or cat, as required in this section, shall be punishable as an infraction, and shall carry a minimum penalty of at least a fine of One Hundred and no/100 Dollars (\$100.00).

Source: Ord. 2012-39, Sec. 1 (2012); Ord. 2015-61, Sec. 4; Ord. 2018-71, Sec. 2; Ord. 2022-98, Sec. 1

11-0205. **RESERVED FOR FUTURE USE.** (Repealed by Ord. 2022-98, Sec. 1)

11-0206. **IMPOUNDING DOG OR CAT RUNNING AT LARGE.** If any dog or cat, male or female, shall be found running at large, said dog or cat shall be impounded.

Source: Ord. 2015-61, Sec. 5; Ord. 2022-98, Sec. 3

11-0207. **RESERVED FOR FUTURE USE.** (Repealed by Ordinance No. 2015-61)

11-0208. **RESERVED FOR FUTURE USE.** (Repealed by Ordinance No. 2015-61)

11-0209. **ANIMAL KENNELS AND SHELTERS.**

1. No animal kennel or shelter shall be permitted in a residentially-zoned area within the City nor within 300 feet of a residentially-zoned area or any existing actual residence. Provided further that if the animal kennel or shelter involves the temporary or permanent outside housing or keeping of animals, that written permission must first be obtained from all owners within 300 feet of the animal kennel or shelter.

2. For purposes of this section, the following definitions shall apply:
- (a) Animal kennel - is a licensed or unlicensed facility, public or private, engaged in the business of breeding, buying, selling, or boarding animals.
 - (b) Animal shelter - is a licensed or unlicensed facility, public or private, used to confine, keep or house at any one time more than one animal seized, lost, abandoned, or given over by owners, which animals are not intended to be "permanently owned and maintained" at the facility by the owner of the facility.
 - (c) Permanently owned and maintained - shall mean the person housing or keeping an animal shall have the intent of permanently keeping and owning the animal, and in cases of dogs and cats, having the animals properly licensed and maintained pursuant to the provisions of Chapter 11 of the revised ordinances of the City of Kindred.

11-0210. **DOGS AND CATS HAVING FIERCE, DANGEROUS OR VICIOUS PROPENSITIES.** The owner of any dangerous, fierce, or vicious dog or cat which shall have bitten any person shall be guilty of an offense. If any dangerous, fierce, or vicious dog or cat shall be found running at large and cannot be safely taken up and impounded, such dog or cat may be slain by any policeman.

11-0211. **HABITUALLY BARKING, CRYING OR HOWLING ANIMAL DECLARED PUBLIC NUISANCE.** No person shall keep or harbor any animal which habitually barks, cries or howls. Any such animals which habitually bark, cry or howl are hereby declared to be a public nuisance. "Habitual barking, crying or howling" shall be defined as barking, crying or howling for repeated intervals of at least three minutes with less than one minute of interruption. Such barking, crying or howling must be audible off of the owner or keeper's premises.

Source: Ord. 2012-39, Sec. 2 (2012)

11-0212. **HABITUALLY BARKING, CRYING OR HOWLING DOG OR CAT - PROCEDURE FOR COMPLAINT.** Any person desiring to sign a complaint against the owner of a habitually barking, crying or howling dog or cat must contact the City Auditor or other person designated by the City Council and state his or her name, address, and facts supporting the alleged nuisance. The City, upon receipt of a sufficient complaint, shall then notify the person owning,

harboring, or keeping the animal that a complaint has been received and that such nuisance must be abated within forty-eight (48) hours, and remain abated for a period of two (2) months. Notice shall be sufficient for purposes of this section if the alleged violator is informed orally of the complaint or if notice of the complaint is posted upon a door of the residence where the alleged violation occurred. If the animal is not quieted within the above time period, and for the prescribed time period, a formal citation may be issued and served upon the owner.

Source: Ord. 2015-61, Sec. 6

11-0213. **COLLECTION OF ANIMAL SOLID WASTE.** Every person having custody or control of a dog or cat shall be equipped to, and collect said animal's solid waste when eliminated on property owned by the City of Kindred, the Park Board, the School District, or any private property. No person having custody or control of any dog or cat under this ordinance will allow the accumulation of excrement or other waste materials from said dog or cat which results in foul or noxious odors that are offensive to surrounding residents. Any person who wishes to make a complaint regarding violations of this section must report the violation to the City Auditor.

SOURCE: Ord. 2005-3, Sec. 1 (2005); Ord. 2015-61, Sec. 7; Ord. 2018-71, Sec. 3

11-0214. **RABIES CONTROL.**

1. If a dog or cat is believed to have rabies, or has been bitten by an animal suspected of having rabies, or bites a human being, such dog or cat shall be confined on the owner's premises and only be allowed outside of an enclosure under the direct supervision of an adult, provided the owner can provide proof that the animal is currently vaccinated for rabies. If no proof of a current rabies vaccination is provided, the animal will be quarantined with a licensed veterinarian or the city pound at the expense of the owner, for a period of ten (10) days from the date of the bite or from the date the animal is suspected of having rabies. The owner shall notify the City of Kindred the fact that the dog or cat has been exposed to rabies or has bitten a human being and, if in the discretion of the City Council the dog or cat is not properly confined by the owner, the City Auditor is empowered to have such dog or cat removed from the owner's premises to the local pound or local veterinarian, and there placed under observation for a period of ten (10) days at the expense of the owner.
2. Every owner, or other person, upon ascertaining a dog or cat is rabid, shall immediately notify the City, which shall either remove the dog or cat to the pound or summarily destroy it.

3. If the animal shows clinical signs of rabies during the period of isolation, it must be humanely destroyed immediately in a manner that preserves the brain intact, and the brain tissue shall be transferred to the proper authorities to be examined for rabies.
4. Any animal confined in the pound under the provisions of this section shall not be released until all expenses of impoundment and related veterinary care are fully paid. Owners of any dog or cat that is to be placed in the pound or destroyed pursuant to the provisions of the above sections may request the City Auditor to review the impoundment or decision to destroy the animal.
5. The owner or other person in charge of any dog or cat, upon demand by any peace officer, must surrender the dog or cat which has bitten a human or domestic animal, or which is suspected as having been exposed to rabies, to city or state officials or to a licensed veterinarian as directed by the city or state officials. It is unlawful for an owner or other person in charge of an animal to fail or refuse to surrender the animal as required by this section. Notwithstanding any other provision of this title, any dog or cat that has bitten a human or domestic animal, or that is suspected of having rabies, may be seized by any peace officer.

Source: Ord. 2022-98, Sec. 4

11-0215. **PENALTY FOR HARBORING A HABITUALLY BARKING, CRYING OR HOWLING ANIMAL.** In addition to being a nuisance, harboring a habitually barking, crying or howling animal shall be punishable as an infraction and shall carry a minimum penalty of a fine of at least One Hundred and no/100 Dollars (\$100.00) or ten (10) hours of community service.

Source: Ord. 2012-39, Sec. 3 (2012)

11-0216. **PENALTIES.** In addition to being a nuisance, any violation of this ordinance will be an infraction, punishable by a fine of at least One Hundred and 00/100 Dollars (\$100.00). Each day the violation continues is a separate offense.

Source: Ord. 2018-71, Sec. 4

11-0217. **ENFORCEMENT.** Upon a complaint filed with the City Auditor related to a violation of section 11-0213 of this ordinance, the City Auditor will cause notice to be provided to the Owner. The notice, stating the violation and what action is required, will be delivered to the Owner and provide said Owner ten (10) days to comply. If compliance is not completed within ten (10) days, the City will have the authority to abate the nuisance.

Costs related to said abatement will be the responsibility of the Owner and will be assessed to the property if not paid. An hourly rate, to be set by resolution of the City Council, will be charged for the abatement, along with any applicable clean-up costs and attorneys fees.

Source: Ord. 2018-71, Sec. 5

TITLE XII.

PUBLIC CONDUCT - OFFENSES

CHAPTERS:

- 12-01. Criminal Offenses - General.
- 12-02. Obstruction of Government Operations and Law Enforcement.
- 12-03. Civil Rights.
- 12-04. Offenses Against Persons.
- 12-05. Offenses Against Property.
- 12-06. Theft and Related Offenses.
- 12-07. Offenses Against Public Order, Health, Safety and Sensibilities.
- 12-08. Noise Violations.
- 12-09. Possession of Marijuana.
- 12-10. Purchase of Alcoholic Beverages by Person Under 21 Years of Age.
- 12-11. Possession of Cigarettes and Tobacco Products
- 12-12. Curfew for Minors.

CHAPTER 12-01

CRIMINAL OFFENSES - GENERAL

SECTIONS:

- 12-0101. Criminal Attempt.
- 12-0102. Criminal Conspiracy.
- 12-0103. Aiding Consummation of a Crime.

12-0101. **CRIMINAL ATTEMPT.**

1. A person is guilty of a criminal attempt if, acting with the kind of culpability otherwise required for commission of an offense, he intentionally engages in conduct which, in fact, constitutes a substantial step toward commission of the offense. A "substantial step" is any conduct which is strongly corroborative of the firmness of the actor's intent to complete the commission of the offense. Factual or legal impossibility of committing the offense is not a defense, if it could have been committed had the attendant circumstances been as the actor believed them to be.
2. A person who engages in conduct intending to aid another to commit an offense is guilty of criminal attempt if the conduct would establish his complicity as an accomplice under N.D. Cent. Code § 12.1-03-01 were the offense committed by the other person, even if the other is not guilty of committing or attempting the offense, for example, because he has a defense of justification or entrapment.
3. Criminal attempt is an offense if the crime attempted is an offense, except that whenever it is established by a preponderance of the evidence at sentencing that the conduct constituting the attempt did not come dangerously close to commission of the offense, an attempt to commit an offense shall be punished as an infraction. Criminal attempt to commit an infraction is an infraction.

12-0102. **CRIMINAL CONSPIRACY.**

1. A person commits conspiracy if he agrees with one or more persons to engage in or cause conduct which, in fact,

constitutes an offense or offenses prescribed by the ordinances of this city, and any one or more of such persons does an overt act to effect an objective of the conspiracy. The agreement or the overt act must occur within the city. The agreement need not be explicit, but may be implicit in the fact of collaboration or existence of other circumstances.

2. If a person knows or could expect that one with whom he agrees has agreed or will agree with another to effect the same objective, he shall be deemed to have agreed with the other, whether or not he knows the other's identity.
3. A conspiracy shall be deemed to continue until its objectives are accomplished, frustrated, or abandoned. "Objectives" includes escape from the scene of the crime, distribution of booty, and measures, other than silence, for concealing the crime or obstructing justice in relation to it. A conspiracy shall be deemed abandoned if no overt act to effect its objectives has been committed by any conspirator during the applicable period of limitations.
4. It is no defense to a prosecution under this section that the person with whom such person is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.
5. Accomplice liability for offenses committed in furtherance of the conspiracy is to be determined as provided in N.D. Cent. Code § 12.1-03-01.
6. Conspiracy shall be subject to the same penalty as that provided for the offense or offenses constituting the objective of the conspiracy.

12-0103. **AIDING CONSUMMATION OF A CRIME.** A person is guilty of the offense of aiding consummation of an offense against the ordinances of this city if he intentionally aids another to secrete, disguise, or convert the proceeds of the offense against the ordinances or otherwise profits from the offense.

CHAPTER 12-02

OBSTRUCTION OF GOVERNMENT OPERATIONS AND LAW ENFORCEMENT.

SECTIONS:

- 12-0201. Public Servants Permitting Escape.
- 12-0202. Criminal Contempt.
- 12-0203. Hindering Proceedings by Disorderly Conduct.
- 12-0204. Impersonating Officials.
- 12-0205. False Reports to Law Enforcement Officers.

12-0201. **PUBLIC SERVANTS PERMITTING ESCAPE.** A public servant concerned in official detention, as defined by N.D. Cent. Code § 12.1-08-06(3), pursuant to process issued by a court, judge, or magistrate is guilty of an offense against the ordinances of this city if he negligently permits an escape.

12-0202. **CRIMINAL CONTEMPT.**

1. The municipal court has power to punish for contempt of its authority only for the following offenses:
 - a. Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
 - b. Misbehavior of any of its officers in their official transactions;
 - c. Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.
2. Except as otherwise provided, a criminal contempt proceeding under this section shall be deemed a prosecution for an offense for the purposes of N.D. Cent. Code Chapters 12.1-01 through 12.1-05, N.D. Cent. Code Chapter 12.1-32, and Article V of this chapter.
3. A criminal contempt proceeding under this section is not a bar to subsequent prosecution for a specific offense if the court certifies in the judgment of conviction of criminal contempt, or the order terminating the proceeding without acquittal or dismissal, that a summary criminal contempt proceeding was necessary to prevent

repetition of misbehavior disruptive of an ongoing proceeding and that subsequent prosecution as a specific offense is warranted. In a subsequent prosecution, the defendant shall receive credit for all time spent in custody and any fine paid by him pursuant to the criminal contempt proceeding.

4. This section shall not be construed to deprive a court of its power, by civil contempt proceedings, to compel compliance with its lawful writ, process, order, rule, decree, or command or to compensate a complainant for losses sustained by reason of disobedience or resistance thereto, in accordance with the prevailing usages of law and equity, including the power of detention.

12-0203. **HINDERING PROCEEDINGS BY DISORDERLY CONDUCT.** A person is guilty of an offense if he recklessly hinders an official city proceeding by noise or violent or tumultuous behavior or disturbance.

12-0204. **IMPERSONATING OFFICIALS.** A person is guilty of an offense if he falsely pretends to be a public servant of this city and acts as if to exercise the authority of such public servant.

12-0205. **FALSE REPORTS TO LAW ENFORCEMENT OFFICERS.** A person is guilty of an offense if he intentionally or knowingly provides or gives a false report or false information to a law enforcement officer, unless such false statement is given with the intent to falsely implicate another, or involves a false report of a crime calling for an emergency response in which case, such false report would be a Class A Misdemeanor.

CHAPTER 12-03

CIVIL RIGHTS

SECTIONS:

- 12-0301. Discrimination in Public Places.
- 12-0302. Preventing Exercise of Civil Rights.

12-0301. **DISCRIMINATION IN PUBLIC PLACES.** A person is guilty of an offense if, whether or not acting under color of law, he, by force, or threat of force or by economic coercion, intentionally:

1. Injures, intimidates, or interferes with another because of his sex, race, color, religion, or national origin and because he is or has been exercising or attempting to exercise his right to full and equal enjoyment of any facility open to the public.
2. Injures, intimidates, or interferes with another because of his sex, race, color, religion, or national origin in order to intimidate him or any other person from exercising or attempting to exercise his right to full and equal enjoyment of any facility open to the public.

12-0302. **PREVENTING EXERCISE OF CIVIL RIGHTS.** A person is guilty of an offense if, whether or not acting under color of law, he, by force or threat of force or by economic coercion, intentionally:

1. Injures, intimidates, or interferes with another because he is or is about to exercise his civil rights, or because he has exercised his civil rights.
2. Intimidates or prevents another from aiding a third person to exercise his civil rights.

CHAPTER 12-04

OFFENSES AGAINST PERSONS

SECTIONS:

- 12-0401. Simple Assault.
- 12-0402. Harassment.

12-0401. **SIMPLE ASSAULT.**

1. A person is guilty of an offense if he:
 - a. Willfully causes bodily injury to another human being; or
 - b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. Consent to the conduct causing bodily injury to all persons injured by the conduct is a defense if:
 - a. The conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or
 - b. The conduct and the injury are reasonably foreseeable hazards of an occupation or profession or of medical or scientific experimentation conducted by recognized methods, and the persons subjected to such conduct or injury, having been made aware of the risks involved, consent to the performance of the conduct or the infliction of the injury.
3. Assent does not constitute consent, within the meaning of this ordinance if:
 - a. It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense and such incompetence is manifest or known to the actor;

- b. It is given by a person who by reason of youth, mental disease or defect, or intoxication, is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or
- c. It is induced by force, duress, or deception.

12-0402. **HARASSMENT.** A person is guilty of an offense if, with intent to frighten or harass another, he/she:

- 1. Makes/sends a telephone call, email, or text message anonymously or in offensively coarse language; or
- 2. Makes/sends repeated telephone calls, emails, or text messages, whether or not a conversation ensues, with no purpose of legitimate communication.

Source: Ord. 2015-61, Sec. 8

CHAPTER 12-05

OFFENSES AGAINST PROPERTY

SECTIONS:

- 12-0501. Criminal Mischief.
 - 12-0502. Tampering with or Damaging Property of Public Service.
 - 12-0503. Defense of Consent - Property of Another.
 - 12-0504. Criminal Trespass.
 - 12-0505. Registration in Public Schools.
-

12-0501. **CRIMINAL MISCHIEF.** A person is guilty of an offense if he:

1. Willfully tampers with tangible property of another so as to endanger person or property; or
2. Willfully damages tangible property of another.

Conduct is punishable as criminal mischief under this ordinance when any pecuniary loss if intentionally caused is not in excess of one hundred dollars; if recklessly caused is not in excess of two thousand dollars; and if the damage to tangible property of another are not by means of an explosive or a destructive devise.

12-0502. **TAMPERING WITH OR DAMAGING PROPERTY OF PUBLIC SERVICE.** A person is guilty of an offense if he negligently causes a substantial interruption or impairment of a public communication, transportation, supply of water, gas, power, or other public service by:

1. Tampering with or damaging the tangible property of another;
2. Incapacitating an operator of such service; or
3. Negligently damaging the tangible property of another by fire, explosive, or other dangerous means.

12-0503. **DEFENSE OF CONSENT - PROPERTY OF ANOTHER.** For prosecutions of criminal mischief under Section 12-0501 or tampering with or damaging a public service under Section 12-0502:

1. Whenever it is an element of the offense that the property is of another, it is a defense to a prosecution under those sections that the other has consented to the actor's conduct with respect to the property.
2. Property is that "of another" if anyone other than the actor has a possessory or proprietary interest therein.

12-0504. **CRIMINAL TRESPASS.** A person is guilty of an offense if:

1. Knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by actual communication to the actor by the person in charge of the premises or other authorized person or by posting in a manner reasonably likely to come to the attention of intruders; but the name of the person posting the premises must appear on each sign in legible characters; or
2. He remains upon the property of another after being requested to leave the property by a duly authorized person; but

if the place entered is a building, occupied structure, storage structure or separately secured or occupied portion thereof or is so enclosed as to manifestly exclude intruders or the person committing this offense has previously been convicted or pled guilty to a criminal trespass within two years from the date of the commission of this offense, then the offense shall be a Class A Misdemeanor and not within the purview of this ordinance.

12-0505. **REGISTRATION IN PUBLIC SCHOOLS.** During such time as regularly scheduled classes are in session, no person shall enter or remain in any public elementary or secondary school building within the City of Kindred without first registering in the main office of said school; provided, however, this section shall not apply to members of the School Board of the Kindred School District, faculty and employees of the Kindred School District, and students enrolled in that school.

Reasonable notification of the requirements of this section shall be conspicuously posted at the entrance to every public elementary and secondary school within the City of Kindred, and no complaint for a violation of this section shall issue unless such notice is given.

CHAPTER 12-06

THEFT AND RELATED OFFENSES

SECTIONS:

- 12-0601. Consolidated Theft Offenses.
- 12-0602. Theft of Property.
- 12-0603. Theft of Services.
- 12-0604. Theft of Property Lost, Mislaid, or Delivered by Mistake.
- 12-0605. Thefts Punishable Under City Ordinance.
- 12-0606. Defenses and Proof As To Theft and Related Offenses.
- 12-0607. Definitions.
- 12-0608. Making or Uttering Slugs.

12-0601. **CONSOLIDATED THEFT OFFENSES.**

- 1. Conduct denominated theft in Sections 12-0602 to 12-0604 constitutes a single offense designed to include the separate offenses heretofore known as larceny, stealing, purloining, embezzling, obtaining money or property by false pretense, extorting, blackmailing, fraudulently converting, receiving stolen property, misappropriating public funds, swindling, and the like.
- 2. A charge of theft under Sections 12-0602 to 12-0604 which fairly apprises the defendant of the nature of the charges against him shall not be deemed insufficient because it fails to specify a particular category of theft. The defendant may be found guilty of theft under such charge if his conduct falls under Section 12-0602 to 12-0604, so long as the conduct proved is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case he must meet. Any person violating any provision of Sections 12-0602 to 12-0604 is guilty of a class B misdemeanor.

12-0602. **THEFT OF PROPERTY.** A person is guilty of theft if he:

1. Knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof;
2. Knowingly obtains the property of another by deception with intent to deprive the owner thereof, or intentionally deprives another of his property by deception; or
3. Knowingly receives, retains, or disposes of property of another which has been stolen, with intent to deprive the owner thereof.

12-0603. **THEFT OF SERVICES.** A person is guilty of theft if:

1. He intentionally obtains services, known by him to be available only for compensation, by deception, false token, or other means to avoid payment for services; or
2. Having control over the disposition of services of another to which he is not entitled, he knowingly diverts those services to his own benefit or to the benefit of another not entitled thereto.

Where compensation for services is ordinarily paid immediately upon their rendition, as in the case of hotels, restaurants, and comparable establishments, absconding without payment or making provision to pay is prima facie evidence that the services were obtained by deception.

12-0604. **THEFT OF PROPERTY LOST, MISLAID, OR DELIVERED BY MISTAKE.** A person is guilty of theft if he:

1. Retains or disposes of property of another when he knows it has been lost or mislaid; or
2. Retains or disposes of property of another when he knows it has been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property.

and with intent to deprive the owner of it, he fails to take readily available and reasonable measures to restore the property to a person entitled to have it.

12-0605. **THEFTS PUNISHABLE UNDER CITY ORDINANCE.** Theft under Sections 12-0602 to 12-0604 may be punished as an offense against the city ordinances if the highest value by any reasonable

standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that he was stealing, or which the actor could reasonably have anticipated to have been the property or services involved, does not exceed \$500, and if:

1. The theft was not committed by threat;
2. The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft;
3. The defendant was not a public servant or an officer or employee of a financial institution who committed a theft in the course of his official duties;
4. The property stolen is not a firearm, ammunition, explosive or destructive device, or an automobile, aircraft, or other motor-propelled vehicle;
5. The property does not consist of any government file, record, document, or other government paper stolen from any government office or from any public servant;
6. The defendant is not in the business of buying or selling stolen property and he does not receive, retain, or dispose of the property in the course of that business;
7. The property stolen does not consist of any implement, paper, or other thing uniquely associated with the preparation of any money, stamp, bond, or other document, instrument, or obligation of the State of North Dakota;
8. The property stolen does not consist of livestock taken from the premises of the owner;
9. The property stolen does not consist of a key or other implement uniquely suited to provide access to property the theft of which would be a felony and was not stolen to gain such access;
10. The property stolen is not a card, plate, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit, or is not a debit card, electronic fund transfer card, code, or other means of access to an account for the purposes of initiating electronic fund transfers; or

11. The property stolen is not a prescription drug as defined in Section 43-15.3-01, NDCC.

The provisions of Section 12-0605 shall be amended automatically to conform with any subsequent amendments to Section 12-23-05, North Dakota Cent. Code, dealing with the grading of theft offenses so that Section 12-0605 shall give the City jurisdiction of all class B misdemeanor theft offenses.

Source: Ord. 2014-56, Sec. 9 (2015)

12-0606. **DEFENSES AND PROOF AS TO THEFT AND RELATED OFFENSES.**

1. It is a defense to a prosecution under Section 12-0601 to 12-0607 that:
 - a. The actor honestly believed that he had a claim to the property or services involved which he was entitled to assert in the manner which forms the basis for the charge against him; or
 - b. The victim is the actor's spouse, but only when the property involved constitutes household or personal effects or other property normally accessible to both spouses and the parties involved are living together. The term "spouse", as used in this section, includes persons living together as husband and wife.
2.
 - a. It shall be a prima facie case of theft under this chapter if it is shown that a public servant or an officer, director, agent, or employee of, or a person connected in any capacity with a financial institution has failed to pay or account upon lawful demand for money or property entrusted to him as part of his official duties or if an audit reveals a shortage or falsification of his accounts.
 - b. It shall be prima facie evidence that the actor knows that property has been stolen if it is shown that, being a dealer, he acquired it for a consideration which he knew to be far below its reasonable value. "Dealer" means a person, whether licensed or not, who has repeatedly engaged in transactions in the type of property involved.

12-0607. **DEFINITIONS.** Applicable to Section 12-0601 to 12-0606.

1. "Deception" means:
 - a. Creating or reinforcing a false impression, including false impressions as to fact, law, status, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not substantially perform the promise unless it is part of a continuing scheme to defraud; or
 - b. Preventing another from acquiring information which would affect his judgment of a transaction; or
 - c. Failing to correct a false impression which the actor previously created or reinforced, or which he knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or
 - d. Failing to correct an impression which the actor previously created or reinforced and which the actor knows to have become false due to subsequent events; or
 - e. Failing to disclose a lien, adverse claim, or other impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained or in order to continue to deprive another of his property, whether such impediment is or is not valid, or is or is not a matter of official record; or
 - f. Using a credit card, charge plate, or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer (1) where such instrument has been stolen, forged, revoked, or canceled, or where for any other reason its use by the actor is unauthorized, and (2) where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument; or
 - g. Any other scheme to defraud. The term "deception" does not, however, include falsifications as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary

persons in the group addressed. "Puffing" means an exaggerated commendation of wares in communications addressed to the public or to a class or group.

2. "Deprive" means:
 - a. To withhold property or to cause it to be withheld either permanently or under such circumstances that a major portion of its economic value, or its use and benefit, has, in fact, been appropriated; or
 - b. To withhold property or to cause it to be withheld with the intent to restore it only upon the payment of a reward or other compensation; or
 - c. To dispose of property or use it or transfer any interest in it under circumstances that make its restoration, in fact, unlikely.
3. "Fiduciary" means a trustee, guardian, executor, administrator, receiver, or any other person acting in a fiduciary capacity, or any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.
4. "Financial institution" means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.
5. "Obtain" means:
 - a. In relation to property, to bring about a transfer or purported transfer of an interest in the property, whether to the actor or another; or
 - b. In relation to services, to secure performance thereof.
6. "Property" means any money, tangible or intangible personal property, property (whether real or personal) the location of which can be changed (including things growing on, affixed to, or found in land and documents although the rights represented thereby have no physical location), contract right, chose-in-action, interest in or claim to wealth, credit, or any other article or thing of value of any kind. "Property" also means real property the location of which cannot be moved if the

offense involves transfer or attempted transfer of an interest in the property.

7. "Property of another" means property in which a person other than the actor or in which a government has an interest which the actor is not privileged to infringe without consent, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person or government might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement. "Owner" means any person or a government with an interest in property such that it is "property of another" as far as the actor is concerned.
8. "Receiving" means acquiring possession, control, or title, or lending on the security of the property.
9. "Services" means labor, professional service, transportation, telephone, mail or other public service, gas, electricity and other public utility services, accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or other property.
10. "Stolen" means property which has been the subject of theft or robbery or a vehicle which is received from a person who is then in violation of N.D. Cent. Code § 12.1-23-06.
11. "Threat" means an expressed purpose, however communicated, to:
 - a. Cause bodily injury in the future to the person threatened or to any other person; or
 - b. Cause damage to property; or
 - c. Subject the person threatened or any other person to physical confinement or restraint; or
 - d. Engage in other conduct constituting a crime; or

- e. Accuse anyone of a crime; or
- f. Expose a secret or publicize an asserted fact, whether true or false, tending to subject a person living or deceased, to hatred, contempt, or ridicule or to impair another's credit or business repute; or
- g. Reveal any information sought to be concealed by the person threatened; or
- h. Testify or provide information or withhold testimony of information with respect to another's legal claim or defense; or
- i. Take or withhold official action as a public servant, or cause a public servant to take or withhold official action; or
- j. Bring about or continue a strike, boycott, or other similar collective action to obtain property or deprive another of his property which is not demanded or received for the benefit of the group which the actor purports to represent; or
- k. Cause anyone to be dismissed from his employment, unless the property is demanded or obtained for lawful union purposes; or
- l. Do any other act which would not in itself substantially benefit the actor or a group he represents but which is calculated to harm another person in a substantial manner with respect to his health, safety, business, employment, calling, career, financial condition, reputation, or personal relationship. Upon a charge of theft, the receipt of property in consideration for taking or withholding official action shall be deemed to be theft by threat regardless of whether the owner voluntarily parted with his property or himself initiated the scheme.

12-0608. **MAKING OR UTTERING SLUGS.**

- 1. A person is guilty of an offense if he makes or utters a slug or slugs which do not exceed fifty dollars in value with intent to deprive a supplier of property or service sold or offered by means of a coin machine or with

knowledge that he is facilitating such a deprivation by another person.

2. In this section:

- a. "Slug" means a metal, paper, or other object which by virtue of its size, shape, or any other quality is capable of being inserted, deposited or otherwise used in a coin machine as an improper but effective substitute for a genuine coin, bill, or token;
- b. "Coin machine" means a coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle designed (1) to receive a coin or bill of a certain denomination or a token made for the purpose; and (2) in return for the insertion or deposit thereof, automatically to offer, provide, assist in providing, or permit the acquisition of property or a public or private service.
- c. "Value" of the slugs means the value of the coins, bills, or tokens for which they are capable of being substituted.

CHAPTER 12-07

OFFENSES AGAINST PUBLIC ORDER, HEALTH, SAFETY AND SENSIBILITIES

SECTIONS:

- 12-0701. Engaging in a Riot.
- 12-0702. Disobedience of Public Safety Orders Under Riot Conditions.
- 12-0703. Disorderly Conduct.
- 12-0704. Defense When Conduct Consists of Speech or Other Expression.
- 12-0705. Prostitution.
- 12-0706. Refrigerators Abandoned or Unattended Out of Doors.
- 12-0707. Urinating in Public.

12-0701. **ENGAGING IN A RIOT.**

1. A person is guilty of an offense if he engages in a riot.
2. "Riot" means a public disturbance involving an assemblage of five or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government function.
3. A person shall be convicted under Section 12-0101 or 12-0102 of attempt or conspiracy to commit an offense under this section only if he engages in the prohibited conduct under circumstances in which there is a substantial likelihood that his conduct will imminently produce a violation of this section. Mere presence at a riot is not an offense under this section.

12-0702. **DISOBEDIENCE OF PUBLIC SAFETY ORDERS UNDER RIOT CONDITIONS.** A person is guilty of an offense if, during a riot as defined in Section 12-0701.2, or when one is immediately impending, he disobeys a reasonable public safety order to move, disperse, or refrain from specified activities in the immediate vicinity of the riot. A public safety order is an order designed to prevent or control disorder, or promote the safety of persons or property, issued by the senior law enforcement official on the scene.

12-0703. **DISORDERLY CONDUCT.** A person is guilty of violating the ordinances of this City if, with intent to harass, annoy, or

alarm another person or in reckless disregard of the fact that another is harassed, annoyed or alarmed by his behavior, he:

1. Engages in fighting, or in violent, tumultuous or threatening behavior;
2. In a public place, uses abusive, insulting, or offensive language, or an abusive, insulting, or offensive gesture, under circumstances in which such language by its very utterance, or gesture, is likely to cause or provoke a disturbance or breach of the peace;
3. Makes unreasonable noise;
4. Obstructs vehicular or pedestrian traffic, or the use of a public facility;
5. Persistently follows a person in or about a public place or places;
6. While loitering in a public place for the purpose of soliciting sexual contact, he solicits such contact;
7. Creates a hazardous or seriously alarming condition by any act which he is not licensed or privileged to do;
8. Enters on the property of another and for a lewd or unlawful purpose looks into a dwelling on the property through any window or other opening in the dwelling;
9. Not being a peace officer, discharges a firearm or displays a deadly weapon in a public place;
10. Exposes his genitals under circumstances in which, in fact, his conduct is likely to be observed by a person who would be offended or alarmed, and with intent to arouse or gratify the sexual desire of any person, including the actor;
11. Throws any missile in a public place or in any place where there is any person to be endangered thereby, although no injury to any person ensues; or
12. Creates, by chemical means, a noxious and unreasonable odor in a public place.

12-0704. **DEFENSE WHEN CONDUCT CONSISTS OF SPEECH OR OTHER EXPRESSION.**

1. If conduct that would otherwise violate Section 12-0703.3 (unreasonable noise) or Section 12-0703.4 (obstructing traffic or public facility) consists of speech or other communication, of gathering with others to hear or observe such speech or communication, or of gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political, or religious questions, the actor must be ordered to move, disperse, or otherwise remedy the violation prior to his arrest if he has not yet intentionally harmed the interests of others which those sections seek to protect.
2. The order required by this section may be given by a peace officer, a fireman, a person with authority to control the use of the premises, or any person directly affected by the violation.
3. It is a defense to prosecution under Section 12-0703.3 or 4:
 - a. That in circumstances in which this section requires an order no order was given;
 - b. That an order, if given, was manifestly unreasonable in scope; or
 - c. That an order, if given, was promptly obeyed.

12-0705. **PROSTITUTION.**

1. A person is guilty of the offense of prostitution if he:
 - a. Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business; or
 - b. Solicits another person with the intention of being hired to engage in sexual activity.
2. Testimony of a person against his or her spouse shall be admissible to prove offenses under this section involving that spouse's prostitution.

3. In this section:

- a. "Sexual activity" means sexual act or sexual contact as those terms are defined in N.D. Cent. Code § 12.1-20-02.
- b. A "house of prostitution" is any place where prostitution is regularly carried on by a person under the control, management, or supervision of another.
- c. An "inmate" is a prostitute who acts as such in or through the agency of a house of prostitution.

12-0706. **REFRIGERATORS ABANDONED OR UNATTENDED OUT OF DOORS.**

1. The provisions of this ordinance shall apply to any ice box, refrigerator, freezer or ice chest, having a capacity of one and one half cubic feet or more, and any other airtight container in which a child could become entrapped and suffocate (hereinafter referred to in this ordinance as a dangerous container). No person, firm, corporation or organization shall abandon any such refrigerator, freezer, ice box, ice chest or dangerous container any place in the city. No person shall leave any such refrigerator, freezer, ice box, ice chest or dangerous container unattended out of doors without first having removed the door or cover. The purpose of this ordinance is to prevent children from dying for lack of air as a result of being locked in such a refrigerator, ice chest, ice box, or dangerous container.
2. No refrigerator, freezer, ice chest or ice box with a capacity of one and one half cubic feet or more shall be left out of doors for the purpose of selling ice cubes, unless such device is designed so that there is no door large enough for a baby or child to enter or to be placed in the device, provided that the device may have one larger door that is locked and can be unlocked and opened only by an attendant, not by any customer.
3. In addition to the other penalties and remedies provided in this ordinance, any city officer or employee finding any freezer, refrigerator, ice box, ice chest or dangerous container covered by this ordinance unattended in any place out of doors or cover, in violation of this ordinance, shall immediately take steps to avoid the danger of a child being trapped inside. These steps shall include:

- a. The door will be opened to see if any baby or child is inside.
- b. If there is an owner, attendant or other person in charge at the premises, such person shall be notified that the device must be moved at once or the door or cover removed at once by removal of the hinges, latches or other such device.
- c. If there is no owner, attendant or other person in charge at the premises, the front door or cover shall be removed by removing the hinges, latch, lock or similar devices holding the door in place. Provided, that a refrigerator held shut only by magnetism not jammed or stuck may have the hinges or latch left on temporarily if, in the opinion of the city employee or officer taking action under this ordinance, such temporary leaving of the condition creates no immediate danger to life.
- d. If circumstances indicate that the device is abandoned, the city shall arrange to remove the same to a licensed landfill for disposal.
- e. If there is no owner, attendant or other person in charge on the premises where any action is taken under this section, the city officer or employee who took action under this section shall notify the owner, attendant or person in charge in writing as soon as possible. If the owner or attendant is unknown, or if no address is known for any owner, attendant or other person in charge, written notice shall be left on the premises where the refrigerator or other device is found to be in violation of the provisions of this ordinance.

12-0707. **URINATING IN PUBLIC.** It shall be unlawful to urinate or defecate on any public street, or upon any public sidewalk or in any other public place; in or on any vehicle in public or in any store, assembly hall, corridor, entryway or other place open to and used by the public, except in a restroom, and then only in a toilet or urinal or other fixture normally used for that purpose.

CHAPTER 12-08

NOISE VIOLATIONS

SECTIONS:

- 12-0801. Definitions.
- 12-0802. Unnecessary Noise Prohibited.
- 12-0803. Unlawful Noise - Determination.
- 12-0804. Motorized Vehicles.
- 12-0806. Aircraft.
- 12-0807. Exemptions.
- 12-0808. Application for Special Permit.
- 12-0809. Enforcement.
- 12-0809. Penalty.
- 12-0810. Severability.

12-0801. **DEFINITIONS.** For purposes of this chapter certain words and phrases used herein are defined as follows:

1. "Ambient noise" is the all-encompassing noise associated with a given environment, being usually composite of sounds from many sources, near and far.
2. "'A' band level" is the total sound level of all noise as measured with a sound level meter using the "A" weighing network. The unit measurement is the dB(A). "dB" is the abbreviation for the decibel. "dB(A)" is a weighted decibel which closely approximates the human ear response to sound.
3. "Bel" is the common logarithmic value of any sound intensity as related to the standard threshold of audibility (minimum detectable sound 10-12 watts per square meter).
4. "Decibel" is one-tenth (1/10) of a bel as measured on the "A" scale of a standard sound meter.
5. "Cycle" is the complete sequence of value of a periodic quantity that occur during a period.
6. "Frequency" of a function periodic in time is the reciprocal of the primitive period. The unit is the cycle per unit time and must be specified.

7. "Sound-level meter" is an instrument including a microphone, an amplifier, an output meter, and frequency weighing networks for the measurement of noise and sound levels in a specified manner.
8. "Person" is a person, person's firm, association, co-partnership, joint venture, corporation or any entity public or private in nature.
9. "Emergency work" is work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger.
10. "Emergency vehicles" are those vehicles such as ambulance, fire, police, and other city vehicles operating in time of emergency.

12-0802. **UNNECESSARY NOISE PROHIBITED.** It shall be unlawful for any person to make 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 limits of the City of Kindred.

12-0803. **UNLAWFUL NOISE - DETERMINATION.** The standards which shall be considered in determining whether a violation of Section 12-0802 exists shall include, but shall not be limited, to the following:

1. The volume of the noise.
2. The intensity of the noise.
3. Whether the nature of the noise is usual or unusual.
4. Whether the origin of the noise is natural or unnatural.
5. The volume and intensity of the background noise, if any.

12-0804. **MOTORIZED VEHICLES.** It shall be unlawful to operate a motorized vehicle within the city limits which creates a noise or sound which exceeds the noise level limits set out in Table 1, as follows:

TABLE 1. LIMITING NOISE LEVELS FOR MOTOR VEHICLES

1. Trucks, buses, construction equipment, or any motor vehicle with a gross weight rating of ten thousand (10,000) pounds or more:

Maximum allowable limit: 88 dB(A) measured at or corrected to 25 feet.

2. Passenger cars, pickups, vans, motorcycles, snowmobiles, or any motor vehicle with a gross weight rating less than ten thousand (10,000) pounds:
Maximum allowable limit: 80 dB(A) measured at or corrected to 25 feet.
3. Interstate Motor Carrier:
Maximum allowable limit:
 - a. 92 dB(A) measured at or corrected to 25 feet when traveling on roadways with speed limits of 35 mph or less.
 - b. 92 dB(A) measured at or corrected to 25 feet when traveling on roadways with speed limits of more than 35 mph.

12-0805. **AIRCRAFT.** It shall be unlawful for any person to operate or cause to be operated any type of aircraft over the city which produces noise levels exceeding eighty-eight (88) dB(A) within the city.

12-0806. **EXEMPTIONS.** The following uses and activities shall be exempt from noise level regulations:

1. Noises of safety signals, warning devices, and emergency relief valves.
2. Noises resulting from any authorized emergency vehicles, when responding to an emergency call or acting in time of emergency.
3. Noises resulting from emergency work as defined in Section 12-0801.9.
4. Any construction or maintenance activities at the construction or maintenance site.
5. Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the city in accordance with Section 12-0806.
6. Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control instruction used pursuant to and with the duly

adopted federal air regulations shall be exempt from the provisions of Section 12-0805 as well as other regulations of this Section. Any aircraft operating under technical difficulties, in any kind of distress, under emergency orders of aid traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations shall also be exempt from the provisions of Section 12-0805 as well as the other regulations of this Section.

7. Any regulation of railroad noise will be subject to the following:

Title 40, Code of Federal Regulations, part 201:

1. 201.1 (c), (m), (p) , (t), (aa), (dd), (ee)
2. 201.10
3. 201.11 (a), (b)
4. 201.12 (a), (b)
5. 201.13
6. 201.22, 201.23, 201.24

12-0807. **APPLICATION FOR SPECIAL PERMIT.** Applications for a permit for relief from the noise level designated in this Section on the basis of undue hardship may be made to the city engineer or his duly authorized representative. Any permit granted by the city engineer hereunder shall contain all conditions upon which said permit has been granted and shall specify a reasonable time that the permit shall be effective. The city engineer, or his duly authorized representative, may grant the relief as applied for if he finds:

1. That additional time is necessary for the applicant to alter or modify his activity or operation to comply with this Section; or
2. The activity, operation or noise source will be of temporary duration, and cannot be done in a manner that would comply with other subsections of this Section; and
3. That no other reasonable alternative is available to the applicant; and
4. The city engineer may prescribe any conditions or requirements he deems necessary to minimize adverse effects upon the community or the surrounding neighborhood.

12-0808. **ENFORCEMENT.** Whenever any peace officer determines that there has been a violation of the provisions of this chapter, and the violation involves a gathering of people at a premise, the officer may order all persons present, other than the owner or tenant of the premise where the disturbance is occurring, to disburse immediately. Any person refusing to leave the premises after being ordered to do so by the peace officer is subject to the penalty provisions of this chapter. The officer shall cite, if present, the owner of the premises, or the tenant of such premises, or in the absence of the above two, any person in charge of the premises for violation of the provisions of this chapter. This Section, in no way limits the authority of an officer to cite other persons for violation of the provisions of this chapter.

12-0809. **PENALTY.** Any person violating any section of this chapter shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such violation continues shall be considered a separate offense.

12-0810. **SEVERABILITY.** Should any part or provision of this ordinance be declared by a 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.

CHAPTER 12-09

POSSESSION OF MARIJUANA

SECTIONS:

- 12-0901. Definitions.
 - 12-0902. Possession of Marijuana.
 - 12-0903. Jurisdiction.
 - 12-0904. Burden of Proof.
 - 12-0905. Penalty.
 - 12-0906. Procedure to Expunge Record of Conviction.
-

12-0901. **DEFINITIONS.**

1. "Marijuana" means all parts of the plant cannabis whether growing or not; the seeds thereof; the resinous product of the combustion of the plant cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

12-0902. **POSSESSION OF MARIJUANA.** It shall be unlawful to possess marijuana within the jurisdiction of the City of Kindred, North Dakota. For purposes of this section, possession includes actual or constructive possession. Constructive possession shall mean the power and capability to exercise dominion and control over the marijuana.

12-0903. **JURISDICTION.** The Municipal Court of the City of Kindred shall have jurisdiction over persons possessing not more than one-half (1/2) ounce (14.175 grams) of marijuana, as defined in this chapter, and who are not operating a motor vehicle.

12-0904. **BURDEN OF PROOF.** In all prosecutions under this chapter involving the analysis of a substance or sample thereof, a certified copy of the analytical report signed by the state toxicologist or the state laboratories director shall be accepted as prima facie evidence of the results of the analytical findings.

12-0905. PENALTY. Every person, firm or corporation violating any of the provisions of this article shall upon conviction be punished by a fine not to exceed \$1,500 or by imprisonment not to exceed thirty days, or both such fine and imprisonment, in the discretion of the court; and the court to have power to suspend said sentence and to revoke the suspension thereof.

Source: Ord. 2014-56, Sec. 10 (2015)

12-0906. **PROCEDURE TO EXPUNGE RECORD OF CONVICTION.** Whenever a person pleads guilty or is found guilty of a first offense regarding the violation of this chapter, the court, upon motion, shall expunge that conviction from the record if that person is not subsequently convicted within two (2) years of the further violation of this chapter and has not been convicted of any other criminal offense.

CHAPTER 12-10

PURCHASE OF ALCOHOLIC BEVERAGES BY PERSONS
UNDER 21 YEARS OF AGE

SECTIONS:

- 12-1001. Persons Under 21 Years of Age Prohibited from Purchasing, Consuming or Possessing Alcoholic Beverages.
- 12-1002. Purchasing or Procuring for Persons Under 21 Years of Age Prohibited.
- 12-1003. Furnishing Money by Persons Under 21 Years of Age for Alcoholic Beverages Prohibited.
- 12-1004. Misrepresentation of Age to Gain Admission or to Purchase Alcoholic Beverages Prohibited.
- 12-1005. Penalty.

12-1001. **PERSONS UNDER 21 YEARS OF AGE PROHIBITED FROM PURCHASING, CONSUMING OR POSSESSING ALCOHOLIC BEVERAGES.** It shall be unlawful for any person under the age of twenty-one (21) years to purchase, attempt to purchase, consume or have in his or her possession alcoholic beverages as defined in Section 10-0101 of the Revised Ordinances of 2004 of the City of Kindred, North Dakota. This Section shall not apply to a person 19 years of age or older who is serving alcoholic beverages in a restaurant pursuant to the provisions and restrictions set out in Section 10-0116.5 of the Revised Ordinances of 2004 of the City of Kindred, North Dakota. For purposes of this section, possession includes actual or constructive possession. Constructive possession shall mean the power and capability to exercise dominion and control over the alcoholic beverage.

12-1002. **PURCHASING OR PROCURING FOR A PERSON UNDER 21 YEARS OF AGE PROHIBITED.** It shall be unlawful for any person to purchase or procure for any person under the age of twenty-one (21) years any alcoholic beverages as defined in Section 10-0101 of the revised ordinances or to furnish or to deliver such alcoholic beverages as defined in Section 10-0101 of the revised ordinances to any person.

12-1003. **FURNISHING MONEY BY PERSONS UNDER 21 YEARS OF AGE FOR ALCOHOLIC BEVERAGES PROHIBITED.** It shall be unlawful for any person under the age of twenty-one (21) years to furnish money to any other person for the purpose of purchasing alcoholic beverages as defined in Section 10-0101 of the revised ordinances.

12-1004. **MISREPRESENTATION OF AGE TO GAIN ADMISSION OR TO PURCHASE ALCOHOLIC BEVERAGES PROHIBITED.** It shall be unlawful for any person under the age of twenty-one (21) years to make any false statement or to furnish, present, or exhibit any false or fictitious registration card or other document or evidence for the purpose of gaining admission to any place where his or her presence is prohibited or for the purpose of procuring the sale to him or her of any alcoholic beverages as defined in Section 10-0101 of the revised ordinances.

12-1005. Penalty. Any person violating any provision of this chapter shall be subject to a fine of not more than \$1,500 or a jail sentence of not more than 30 days, or both.

Source: Ord. 2014-56, Sec. 11 (2015)

CHAPTER 12-11

POSSESSION OF CIGARETTES AND
TOBACCO PRODUCTS

SECTIONS:

- 12-1101. Definitions.
- 12-1102. Sale of Cigarettes and Tobacco Products to Minors Prohibited.
- 12-1103. Possession and Use of Cigarettes and Tobacco Products by Minors Prohibited.

12-1101. **DEFINITIONS** Source: Ord. 2014-50, Sec. 2 (2014)

1. "Cigarette and tobacco products" means any product that is made from or derived from tobacco, which contains nicotine or a similar substance, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, e-cigarette, electronic cigarette, or an electronic smoking device. Tobacco product also includes pipes and rolling papers, but does not include any product specifically approved by the U.S. Food and Drug Administration for legal sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.
2. "Constructive possession" means the power and capability to exercise dominion and control over cigarette and tobacco products.
3. "Sell," includes dispensing from a vending machine under the control of the actor.

12-1102. **SALE OF CIGARETTES AND TOBACCO PRODUCTS TO MINORS PROHIBITED.** It is a class B misdemeanor for any person to sell or furnish to a minor or procure for a minor cigarettes and tobacco products.

12-1103. **POSSESSION AND USE OF CIGARETTES AND TOBACCO PRODUCTS BY MINORS PROHIBITED.** It is a class B misdemeanor for a minor to smoke, use, or possess cigarette and tobacco products. Possession shall, for purposes of this section, include actual and constructive possession. A person under eighteen (18) years of age who purchases or attempts to purchase tobacco-related products while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes which have been approved by the City Auditor or his/her designee will not be subject to a criminal penalty.

Source: Ord. 2014-50, Sec. 3 (2014)

CHAPTER 12-12
CURFEW FOR MINORS

SECTIONS:

- 12-1201. Definitions
- 12-1202. Restrictions
- 12-1203. Exceptions.
- 12-1204. Enforcement.
- 12-1205. REPEALED.
- 12-1206. Severability.

12-1201. **DEFINITIONS.** In this section:

1. CURFEW HOURS means:
 - (a) 11:00 p.m. until 6:00 a.m. every day of the week.
2. EMERGENCY means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.
3. ESTABLISHMENT means any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.
4. GUARDIAN means:
 - (a) a person who, under court order, is the guardian of the person of a minor; or
 - (b) a public or private agency with whom a minor has been placed by a court.
5. MINOR means any person under 16 years of age.
6. OPERATOR means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.
7. PARENT means a person who is:
 - (a) a natural parent, adoptive parent, or step-parent of another person; or

- (b) at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.
- 8. PUBLIC PLACE means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.
- 9. REMAIN means to:
 - (a) linger or stay; or
 - (b) fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.
- 10. SERIOUS BODILY INJURY means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

12-1202. **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 which 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.

12-1203. **EXCEPTIONS.**

- 1. The following shall constitute valid exceptions to the operation of the curfew. That the minor was:
 - (a) accompanied by the minor's parent or guardian;
 - (b) on an errand at the direction of the minor's parent or guardian, without any detour or stop;

- (c) in a motor vehicle involved in interstate travel;
- (d) engaged in an employment activity, or going or returning home from an 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 a law enforcement officer about the minor's presence;
- (g) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Kindred, 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, an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Kindred, a civic organization, or another similar entity that takes responsibility for the minor;
- (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 a defense to prosecution under Section 12-1202 that the owner, operator or employee of an establishment promptly notified a law enforcement officer that a minor was present on the premises of the establishment during curfew hours and refused to leave.

12-1204. **ENFORCEMENT.** Before taking any enforcement action under this section, a peace officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not 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 12-1203 is present.

12-1205. **REPEALED.** Source: Ord. 2014-56, Sec. 14 (2015)

12-1206. **SEVERABILITY.** If any provision of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

It is intended that the curfew ordinance be held inapplicable in such cases, if any, where its application would be unconstitutional.

TITLE XIII.

TRAFFIC

CHAPTERS:

- 13-01. Definitions.
- 13-02. RESERVED FOR FUTURE USE.
- 13-03. Enforcement and Obedience to Traffic Regulations.
- 13-04. Traffic Control Devices.
- 13-05. Streets.
- 13-06. Operation of Vehicle.
- 13-07. Criminal Violation.
- 13-08. Miscellaneous Regulations.
- 13-09. General Rules of the Road.
- 13-10. Miscellaneous Driving Rules.
- 13-11. Speed.
- 13-12. Turning Movements.
- 13-13. Pedestrians.
- 13-14. Accidents.
- 13-15. Equipment of Vehicles - size, weight, height and load restrictions.
- 13-16. Parking.
- 13-17. Railroad cars and crossings.
- 13-18. Bicycles.
- 13-19. Transportation by Motor Vehicles of Explosives Within City.
- 13-20. Off-Highway Vehicles.
- 13-21. Arrest Procedure.
- 13-22. Classification and Disposition of Traffic Offenses.

CHAPTER 13-01

DEFINITIONS

SECTIONS:

13-0101 Definitions.

13-0101. **DEFINITIONS.** The following words and phrases, when used in this title, shall have the meanings respectively ascribed to them except in those instances where the context clearly indicates a different meaning:

13-0101. DEFINITIONS. The following words and phrases, when used in this title, shall have the meanings respectively ascribed to them except in those instances where the context clearly indicates a different meaning:

1. "Authorized Emergency Vehicles." Source: Ord. 2014-56, Sec. 12 (2015)

a. "Class A" authorized emergency vehicles means:

- (1) Vehicles of a governmentally owned fire department;
- (2) Vehicles when operated by or under the control of a police officer having authority to enforce the provisions of this title or by a salaried employee of a municipal police department within the municipality or by a sheriff or deputy sheriff not including special deputy sheriffs, or by the director of the department of corrections and rehabilitation and the director's authorized agents who have successfully completed training in the operation of class A authorized emergency vehicles;
- (3) Vehicles clearly identifiable as property of the Department of Corrections and Rehabilitation when operated or under the control of the Director of the Department of Corrections and Rehabilitation.
- (4) Ambulances;
- (5) Vehicles operated by or under the control of the Director, District Deputy Director, or a

District Deputy Game Warden of the Game and Fish Department;

- (6) Vehicles owned or leased by the United States and used for law enforcement purposes.
 - (7) Vehicles designated for the use of the Adjutant General and Assistant Adjutant General in cases of emergency;
 - (8) Vehicles operated by or under the control of the Director of the Parks and Recreation Department.
 - (9) Vehicles operated by or under the control of a licensed railroad police officer and used for law enforcement purposes.
 - (10) Vehicles operated by or under the control of the state forester.
 - (11) Vehicles operated by or under the control of the Bureau of Criminal Investigation and used for law enforcement purposes.
- b. "Class B" authorized emergency vehicles means wreckers and such other emergency vehicles as are authorized by the local authorities.
- c. "Class C" authorized emergency vehicles means:
- (1) Vehicles used by the State Division of Homeland Security or local division of emergency management organizations.
 - (2) Vehicles used by volunteer firefighters while performing their assigned disaster and emergency responsibilities.
 - (3) Vehicles, other than ambulances, used by emergency medical services personnel.
2. "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 (20) inches in diameter.
3. "Bus" shall mean every motor vehicle designed for carrying more than ten (10) passengers and used for the transportation of persons, and every motor vehicle, other than a taxi cab, designed and used for the transportation of persons for compensation.

4. "Business District" shall mean the territory contiguous to a highway when fifty percent (50%) or more of the frontage thereon or a distance of three hundred (300) feet or more is occupied by buildings in use for business; and the term "business district" shall in all cases include that portion of the City lying within the fire limits now established or to be hereafter established in the City of Kindred, together with all streets or alleys constituting the boundaries thereof.
5. "Commercial Freighting" shall mean the carriage of things other than passengers, for hire, except that such terms shall not include:
 - a. Carriage by local dray lines, baggage or goods to or from a railroad station, from or to places in the City or in the immediate vicinity thereof, not to exceed two miles from the corporate or recognized limits of the City; or
 - b. Hauling done by farmers for their neighbors in transporting agricultural products to or from market.
6. "Commercial Vehicle" shall mean a vehicle designed, maintained, or used primarily for the transportation of property for hire.
7. "Controlled-Access Highway" shall mean every highway, street, or road-way in respect to owners or occupants of abutting lands and other persons have no legal right or access to or from the same except at such points only and in such manner as may be determined by the City Council.
8. "Cross Walk" shall mean that part of a road-way at an intersection included within the connections of the lateral lines of the sidewalk on opposite sides of the highway measured from the 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.
9. "Curb" shall mean the boundary of that portion of the street open to the use of the public from that from the use of vehicles.
10. "Curb Loading Zone" shall mean a space adjacent to a curb reserved for the exclusive use of vehicles for the loading and unloading of passengers or materials.

11. "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 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 locations in the City shall be considered a separate dealer in each such location.
12. "Driver" shall mean every person who drives or is in actual physical control of a vehicle, and shall include the rider or driver of any animal.
13. "Essential Parts" shall mean all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type or mode of operation.
14. "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 or combustible units or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing sudden destructive effects on contiguous objects or by destroying life or limb.
15. "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.
16. "Flammable Liquid" shall mean any liquid which has a flash point of seventy degrees Fahrenheit, or less, as determined by a tagliabue or equivalent closedcup test device.
17. "Freight Curb Loading Zone" shall mean a space adjacent to a curb for the exclusive use of vehicles during a loading or unloading of freight.
18. "Guest" shall mean a person who accepts a ride in any vehicle without giving compensation therefore.
19. "Gross Weight" shall mean the weight of a vehicle without load plus the weight of any load thereon.

20. "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.
21. "Implement of Husbandry" shall mean every vehicle designed or 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 if used upon the highway.
22. "Intersection" shall mean the area embraced within the prolongation or connection of the lateral curb line, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle become in conflict, whether or not one such street crosses the other. Where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.
23. "Intoxicating Liquor" shall mean and include any beverage containing alcohol.
24. "Laned Roadway" shall mean a roadway which is divided into two or more clearly marked lanes for vehicular traffic.
25. "Legal Owner" shall mean a person who holds the legal title to the vehicle.
26. "Local Authorities" shall include every individual, local board, or body having authority to adopt local police regulations under the ordinances of this municipality.
27. "Mail" shall mean to deposit mail properly addressed with postage prepaid with the United States Postal Service.
28. "Manufacturer" shall mean any person engaged in the business of manufacturing motor vehicles or trailers.

29. "Metal Tires" shall include all tires the surface of which in contact with the highway is wholly or partly of metal or other hard, non-resilient material.
30. "Motor Vehicle" shall include any vehicle which is self-propelled.
31. "Motorcycle" shall mean every motor vehicle having a seat or saddle for the use of the rider designed to travel on not more than three wheels in contact with the ground, but excluding implements of husbandry.
32. "Non-Resident" shall mean any person who is not a resident of this municipality.
33. "Official Time Standard" shall mean whenever certain hours are named herein they shall mean standard time or daylight savings time as may be in current use in this City.
34. "Official Traffic-Control Devices" shall mean all signs, signals, markings and devices not inconsistent with this chapter, placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.
35. "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.
36. "Owner" shall mean the person holding legal title to a vehicle, or 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 condition stated in the agreement, and with an immediate right of possession vested in the conditional vendee or lessee, or if the 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 title.
37. "Park or Parking" shall mean the standing of a vehicle, occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.
38. "Passenger Curb Loading Zone" shall mean a place adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers.
39. "Pedestrian" shall mean any person afoot.

40. "Person" shall include every natural person, firm, partnership, association or corporation.
41. "Pneumatic Tires" shall include all tires inflated with compressed air.
42. "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.
43. "Police Officer" shall mean every officer authorized to direct and regulate traffic or to make arrests for violations of traffic regulations.
44. "Private Road or Driveway" shall mean every way or place in private ownership in use for vehicular travel by the owner and those having expressed or implied permission from the owner, but not by other persons.
45. "Public Building" shall mean any theater, moving picture house, hospital, church, school, city building, state building, federal building, public library or post office.
46. "Railroad" shall mean a carrier of persons or property on cars, other than street cars, operated upon stationary rails.
47. "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 the presence of railroad tracks or the approach of a railroad train.
48. "Residence District" shall mean all of that territory within the City of Kindred outside the district known and designated as the fire limits, and not comprising a part of the business district.
49. "Revocation" means that the driver's license and the privilege to drive a motor vehicle on the public streets are terminated and shall not be renewed or restored except that an application for a new license may be presented and acted upon by the proper authorities after

the expiration of the period of revocation, which period shall not be less than thirty (30) days.

50. "Right-of-Way" shall mean the privilege of the immediate use of a roadway.
51. "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 such roadway separately but not to all such roadways collectively.
52. "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.
53. "School bus" shall mean every motor vehicle owned by a public 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.
54. "School Zone" shall mean the area or space of any public street or alley, any part of which abuts or lies opposite any public or private property used exclusively for school purposes, where any children of the age of sixteen (16) years or less receive educational training, and shall include public play grounds.
55. "Semi-Trailer" shall include any 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 another motor vehicle.
56. "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 use of pedestrians.
57. "Solid Tires" shall include every tire made of rubber or other material other than a pneumatic tire.
58. "Stand or Standing" shall mean the halting of vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.
59. "Stop" when required, shall mean complete cessation from movement.

60. "Stop or Stopping" when prohibited, this means 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 a traffic control sign or signal.
61. "Street" shall mean the entire width between the legal lines of every way publicly maintained when any part thereof is open to the public for the purposes of vehicular travel. Said term shall include and mean public and private parking lots.
62. "Suspension" means that the driver's license and privilege to drive a motor vehicle on the streets are temporarily withdrawn, but only during the period of such suspension.
63. "Through Highway or Street" shall mean every highway street which is described as a principal arterial, minor arterial, or collector street in the City of Kindred.
64. "Traffic" shall mean pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances either singly or together while using any highway for purposes of travel.
65. "Traffic Control Signal" shall mean any device whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.
66. "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.
67. "Tricycle" shall mean every device propelled by human power upon which any person may ride, having three wheels any of which is more than twenty (20) inches in diameter.
68. "Truck" shall include every motor vehicle designed, used, or maintained primarily for transportation of property.
69. "Truck Tractor" shall include every motor vehicle designed and used primarily for drawing other vehicles and not so constructed to carry a load other than a part of the weight of the vehicle and load so drawn.
70. "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 100 feet for a distance of a quarter of a mile or more.

71. "Vehicle" shall mean every device in, upon, or by which any person or property is, or may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks. A bicycle, tricycle or a ridden animal shall be deemed a vehicle.

CHAPTER 13-02

RESERVED FOR FUTURE USE

CHAPTER 13-03

ENFORCEMENT AND OBEDIENCE TO TRAFFIC REGULATIONS

SECTIONS:

- 13-0301. Authority of Fire Department Officials.
- 13-0302. Obedience to Police and Fire Department Officials.
- 13-0303. Public Employees When Subject to Provisions of this Title.
- 13-0304. Rights of Owners of Real Property Used for Roadway to Make Regulations for Same.

13-0301. **AUTHORITY OF FIRE DEPARTMENT OFFICIALS.**

1. 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.

13-0302. **OBEDIENCE TO POLICE AND FIRE DEPARTMENT OFFICIALS.** No person shall willfully fail or refuse to comply with any lawful order or direction of any peace officer certified by the State of North Dakota or any fire department official.

13-0303. **PUBLIC EMPLOYEES WHEN SUBJECT TO PROVISIONS OF THIS TITLE.** The provisions of this title shall apply to the driver of any vehicle owned by or used in the service of the United States government, the State of North Dakota, this County, City, District or other political subdivisions of the State, and it shall be unlawful for any said driver to violate any of the provisions of this title subject to exceptions as are set forth in this title or in the State Vehicle Code. The provisions of this title shall not apply to persons, teams, motor vehicles or other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles while traveling to or from work.

13-0304. **RIGHTS OF OWNERS OF REAL PROPERTY USED FOR ROADWAY TO MAKE REGULATIONS FOR SAME.** Nothing in this title shall be construed to prevent the owner of real property used by the public for the purposes of vehicular travel by permission of the owner and not as a matter of right, from prohibiting such use nor from requiring other or different or additional conditions than those specified in this title or otherwise regulating such use as may seem best to such owner.

CHAPTER 13-04

TRAFFIC CONTROL DEVICES

SECTIONS:

- 13-0401. Authority to Install Traffic Control Devices.
- 13-0402. Manual and Specifications for Traffic-Control Devices.
- 13-0403. Obedience to Official Traffic-Control Devices.
- 13-0404. Traffic-Control Signal Legend.
- 13-0405. Pedestrian Control Signals.
- 13-0406. Flashing Signals.
- 13-0407. Designates Crosswalks and Establishes Every Safety Zone and Traffic Lane.
- 13-0408. RESERVED FOR FUTURE USE.
- 13-0409. Intersection Where Yield is Required.
- 13-0410. Interference with Official Traffic-Control Devices or Railroad Signs or Signals.
- 13-0411. Display of Unauthorized Signs, Signals or Markings.

13-0401. **AUTHORITY TO INSTALL TRAFFIC CONTROL DEVICES.**

1. The City Council may place and maintain such traffic control devices as may be necessary to regulate traffic under the traffic ordinances of this City or under State law or to guide or warn traffic.

13-0402. **MANUAL AND SPECIFICATIONS FOR TRAFFIC-CONTROL DEVICES.** All traffic-control signs, signals, and devices shall conform to the specifications approved by the State Highway Commissioner pursuant to North Dakota Century Code Section 39-13-06. All signs and signals required hereunder for a particular purpose shall so far as practicable be uniform as to type and location throughout the City. All traffic-control devices so erected and not inconsistent with the provisions of State law or this article shall be official traffic-control devices.

13-0403. **OBEDIENCE TO OFFICIAL TRAFFIC-CONTROL DEVICES.** The provisions of N.D. Cent. Code § 39-10-04 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0404. **TRAFFIC-CONTROL SIGNAL LEGEND.** The provisions of North Dakota Century Code 39-10-05 and all subsequent amendments shall be, and are, hereby incorporated by reference in this ordinance.

13-0405. **PEDESTRIAN CONTROL SIGNALS.** The provisions of N.D. Cent. Code § 39-10-06 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0406. **FLASHING SIGNALS.** The provisions of N.D. Cent. Code § 39-10-07 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0407. **DESIGNATES CROSSWALKS AND ESTABLISHES EVERY SAFETY ZONE AND LANE.** The City Council may:

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

13-0408. **RESERVED FOR FUTURE USE.**

13-0409. **INTERSECTION WHERE YIELD IS REQUIRED.** The City Council may determine and designate intersections where particular hazard exists upon other than through streets and may determine:

1. Whether vehicles shall stop at one or more entrances to any such intersection, in which event it shall cause to be erected a stop sign at every such place where stop is required subject to the approval of the City Council;
2. Whether vehicles shall yield right-of-way to vehicles on a different street at such intersection in which event it shall cause to be erected a yield sign at every place where obedience thereto is required.

13-0410. **INTERFERENCE WITH OFFICIAL TRAFFIC-CONTROL DEVICES OR RAILROAD SIGNS OR SIGNALS.** The provisions of N.D. Cent. Code § 39-10-07.3 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0411. **DISPLAY OF UNAUTHORIZED SIGNS, SIGNALS OR MARKINGS.**
The provisions of N.D. Cent. Code § 39-10-07.2 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

CHAPTER 13-05

STREETS

SECTIONS:

- 13-0501. Creation and Extension of Through and One-way Streets.
- 13-0502. Authority to Sign One-way Streets and Alleys.
- 13-0503. One-way Streets and Alleys.
- 13-0504. Authority to Establish Play Streets.
- 13-0505. Play Streets - Driving Restricted.
- 13-0506. Dumping of Snow on City Street Prohibited.

13-0501. **CREATION AND EXTENSION OF THROUGH AND ONE-WAY STREETS.** The City Council may create, extend or discontinue through streets and may create one-way streets.

13-0502. **AUTHORITY TO SIGN ONE-WAY STREETS AND ALLEYS.** Whenever any ordinance of the City designates any one-way street or alley, the City shall place and maintain signs giving notice thereof, and no such regulations shall be effective unless such signs are in place. Signs indicating the direction of lawful traffic movement shall be placed at every intersection where movement of traffic in the opposite direction is prohibited.

13-0503. **ONE-WAY STREETS AND ALLEYS.** Upon one-way streets and alleys, vehicular traffic shall move only in the indicated direction when signs indicating the direction of traffic are erected and maintained.

13-0504. **AUTHORITY TO ESTABLISH PLAY STREETS.** The City Council may declare any street or part thereof a play street and to place appropriate signs or devices in the roadway indicating and helping to protect the same.

13-0505. **PLAY STREETS - DRIVING RESTRICTED.** Whenever authorized signs are erected indicating any street or part thereof as a play street, no person shall drive a vehicle upon any such street or portion thereof except drivers of vehicles having business or whose residences are within such closed area, and then any said driver shall exercise the greatest care in driving upon any such street or portion thereof.

13-0506. **DUMPING OF SNOW ON CITY STREETS AND PUBLIC PROPERTY PROHIBITED.** It shall be unlawful for any person, association, partnership, corporation, or other entity to deposit, place or dump, or permit or authorize the depositing, placing or dumping of

any snow removed from parking lots, from filling station areas, or from other private property upon any City street, public property, and public right-of-way, including public road ditches, other than a City berm immediately adjacent to private property.

CHAPTER 13-06

OPERATOR OF VEHICLE

SECTIONS:

- 13-0601. Care Required in Operating Vehicle.
- 13-0602. Operation of Motor Vehicles by Certain Minors Forbidden.
- 13-0603. Registration Card to be Carried in or on Vehicle: Inspection of Card.
- 13-0604. Proper Display of License Upon Vehicle.
- 13-0605. Driver's License.
- 13-0606. Restricted Licenses.
- 13-0607. Unlawful Use of License.
- 13-0608. Registration Number Prima Facie Evidence.
- 13-0609. Open Bottle Law-Penalty.
- 13-0610. Careless Driving.
- 13-0611. Exhibition Driving and Racing - Definitions -Penalty.

13-0601. **CARE REQUIRED IN OPERATING MOTOR VEHICLE.** The provisions of N.D. Cent. Code § 39-09-01.1 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0602. **OPERATION OF MOTOR VEHICLE BY CERTAIN MINORS FORBIDDEN.**

1. The driving or operation of any automobile within the City limits of Kindred by any person under the age of fourteen (14) years is prohibited. The driving or operation of other motor vehicles, including motorcycles, motor-driven cycles, taxi-cabs, trucks and delivery cars, within the limits of Kindred by any person under the age of sixteen (16) years is prohibited.
2. Any owner or other person having charge of or having within his control or supervision, a motor vehicle, and who knowingly allows or permits such motor vehicle to be driven or operated within the City of Kindred by a minor under the age of fourteen (14), shall be guilty of a misdemeanor and shall be deemed to have violated the provisions of this chapter and shall upon conviction thereof be subject to the penalty provided by this title.

13-0603. **REGISTRATION CARD TO BE CARRIED IN OR ON VEHICLE: INSPECTION OF CARD.** The registration card issued for a vehicle

shall be carried in the driver's compartment of the vehicle or, in the case of a house trailer or mobile home or trailer or semi-trailer, regardless of when such vehicle was acquired, inside or on the vehicle, at all times when the vehicle is being operated upon the streets of the City. Such card shall be subject to inspection by any peace officer. Any person violating this section must be assessed a fee of Twenty Dollars (\$20). However, a person cited for violation of this ordinance may not be found to have committed the violation if the person, within forty-eight (48) hours after being cited, produces and displays to any peace officer, or to the hearing official before whom the person was to appear, a registration card valid at the time the person was cited. A peace officer, upon citing a person for violating this person, shall inform the person that a violation will be considered as not having occurred if the person produces and displays a valid registration card in the manner provided in this section. A peace officer receiving evidence of the existence of a valid registration card as herein provided shall notify the hearing official of the appropriate jurisdiction of that fact.

13-0604. **PROPER DISPLAY OF LICENSE UPON VEHICLE.** It shall be unlawful for any person to commit any of the following acts:

1. To operate, or for the owner of the vehicle to knowingly permit anyone to operate, upon a highway any vehicle, the registration of which has been canceled or revoked, or which is not registered, or which does not have attached thereto and displayed thereon a current number plate, plates, or validation tabs assigned thereto by the Registrar of the Motor Vehicle Department of the State of North Dakota, or his appropriate counterpart from another state, subject to the exemptions allowed in this chapter;
2. To display or cause to be displayed, or to have in possession any registration card, registration number plate, or validation tabs knowing the same to be fictitious or to have been canceled, revoked, suspended, or altered; and
3. To lend any registration number plate, registration card, or validation tabs to any person not entitled thereto, or knowingly permit the use of any registration number plate or registration card by any person not entitled thereto.

13-0605. **DRIVER'S LICENSE.**

1. A person, unless exempted by state law, may not drive any motor vehicle on a public or private area to which the public has the right of access for vehicular use in the City unless the person has a valid license as an operator under the provisions of Chapter 39-06 of the North Dakota

Century Code, or a temporary operator's permit issued under Chapter 39-20 of the North Dakota Century Code.

2. Every licensee shall have his operator's license or permit in his immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of any court, police patrolman, peace officer or a field deputy or inspector of the Highway Department. However, no person charged with violating this section shall be convicted if he produces in court or the office of the arresting officer, an operator's license or permit heretofore issued to him and valid at the time of his arrest.

13-0606. **RESTRICTED LICENSES.** No person shall operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him.

13-0607. **UNLAWFUL USE OF LICENSE.** It shall be unlawful for any person:

1. To display, or cause, or permit to be displayed or have in his possession any canceled, revoked, suspended, fictitious, or fraudulently altered operator's or chauffeur's license;
2. To lend his operator's or chauffeur's license to any other person or knowingly permit the use thereof by another;
3. To display or represent as one's own any operator's or chauffeur's license not issued to him;
4. To fail or refuse to surrender to the State upon lawful demand any operator's or chauffeur's license which has been suspended, revoked or canceled;
5. To permit any unlawful use of an operator's or chauffeur's license issued to him.

13-0608. **REGISTRATION NUMBER PRIMA FACIE EVIDENCE.** In any proceeding for a violation of the provisions of this title or any local ordinance, rule or regulation, the registration plate displayed on such vehicle or tractor shall be prima facie evidence that the owner of such vehicle or tractor was then operating the same. If in any hearing or proceeding, the owner shall testify, under an oath or affirmation, that he was not operating the said vehicle or tractor at the time of the alleged violation of this title or any local ordinance, rule or regulation, and shall submit

himself to an examination as to who at that time was operating such a vehicle or tractor, and reveal the name of the person, if known to him or, if the information is made in a county other than that of his own residence, shall forward to the magistrate an affidavit setting forth these facts, then the prima facie evidence arising from the registration plate shall be overcome and removed and the burden of proof shifted.

13-0609. **OPEN BOTTLE LAW-PENALTY.** The provisions of N.D. Cent. Code § 39-08-18 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0610. **CARELESS DRIVING.** The provisions of N.D. Cent. Code § 39-09-01 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0611. **EXHIBITION DRIVING AND DRAG RACING - DEFINITIONS - PENALTY.** The provisions of N.D. Cent. Code § 39-08-03.1 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

CHAPTER 13-07

CRIMINAL VIOLATIONS

SECTIONS:

- 13-0701. Reckless Driving.
- 13-0702. Driving While License Suspended or Revoked.
- 13-0703. Persons Under the Influence of Intoxicating Liquor or Narcotic Drugs not to Operate Vehicle: Declaring What Constitutes Being Under the Influence of Intoxicating Liquor or Narcotic Drugs - Penalty.
- 13-0704. Accidents Involving Damage to Vehicle - Penalty.
- 13-0705. Duty Upon Striking Highway Fixtures or Other Property.
- 13-0706. Operating a Snowmobile in a Reckless or Careless Manner.
- 13-0707. Persons Under the Influence of Intoxicating Liquor or Narcotic Drugs Not to Operate Snowmobile.
- 13-0708. Harassment of Domestic Animals.
- 13-0709. Driving Without Liability Insurance Prohibited.

13-0701. **RECKLESS DRIVING.** The provisions of N.D. Cent. Code § 39-08-03 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0702. **DRIVING WHILE LICENSE SUSPENDED OR REVOKED.** The provisions of N.D. Cent. Code § 39-06-42 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0703. **PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR NARCOTIC DRUGS NOT TO OPERATE VEHICLE: DECLARING WHAT CONSTITUTES BEING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR NARCOTIC DRUGS - PENALTY.** The provisions of N.D. Cent. Code § 39-08-01 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0704. **ACCIDENTS INVOLVING DAMAGE TO VEHICLE - PENALTY.** The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirement of giving information and aid as set out by state law.

13-0705. **DUTY UPON STRIKING HIGHWAY FIXTURES OR OTHER PROPERTY.** The driver of any vehicle involved in an accident resulting only in damage to highway fixtures or other property shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's or chauffeur's license and shall make report of such accident when and as required by state law.

13-0706. **OPERATING A SNOWMOBILE IN A RECKLESS OR CARELESS MANNER.** The provisions of N.D. Cent. Code § 39-24-09(5)(b) and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0707. **PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR NARCOTIC DRUGS NOT TO OPERATE SNOWMOBILE.** The provisions of N.D. Cent. Code § 39-24-09(5)(c) and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0708. **HARASSMENT OF DOMESTIC ANIMALS.** The provisions of N.D. Cent. Code § 39-08-19 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0709. **DRIVING WITHOUT LIABILITY INSURANCE PROHIBITED.** Provisions of N.D. Cent. Code § 39-08-20, and all subsequent amendments thereto shall be and hereby are incorporated by this reference.

CHAPTER 13-08

MISCELLANEOUS REGULATIONS

SECTIONS:

- 13-0801. Operation of Motor Vehicle, Tractor or Other Vehicle Prohibited on Flood Protective Works: Exception.
- 13-0802. Driving on Inclines and Under Viaducts.
- 13-0803. When Permits Required for Parades and Processions.
- 13-0804. Renting Motor Vehicle: License of Renter.
- 13-0805. Renting Motor Vehicle: License Inspection.
- 13-0806. Renting Motor Vehicle: Records.
- 13-0807. Clinging to Vehicles.
- 13-0808. Persons Propelling Push Carts or Riding Animals to Obey Traffic Regulations.
- 13-0809. Use of Coasters, Roller Skates and Similar Devices Restricted.
- 13-0810. Garbage, Glass, Etc. on Highways Prohibited.

13-0801. **OPERATION OF MOTOR VEHICLE, TRACTOR OR OTHER VEHICLE PROHIBITED ON FLOOD PROTECTIVE WORKS: EXCEPTION.** 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 dike or flood protective works constructed by a state or federal agency, or by a municipality or local subdivision of the state. Any person violating the provisions of this section shall be liable to the city municipality or political subdivision suffering injury for the full amount sustained thereby and in addition thereto shall be guilty of a misdemeanor.

13-0802. **DRIVING ON INCLINES AND UNDER VIADUCTS.** The driver of a motor vehicle traversing any incline or curve or proceeding under any viaduct or bridge shall hold such motor vehicle under control and as near the right-hand side of the highway as reasonably possible and upon approaching any curve or point where the view is obstructed along the highway shall give audible warning with a horn or other warning device.

13-0803. **WHEN PERMITS REQUIRED FOR PARADES AND PROCESSIONS.** No processions or parade containing fifty or more persons or twenty or more vehicles, except for the forces of the United States Army or Navy, the military forces of this state, the forces of the police and fire department, shall occupy, march or proceed along any street except in accordance with a permit issued by the City Council and other pertinent regulations, statutes and ordinances.

13-0804. **RENTING MOTOR VEHICLE: LICENSE OF RENTER.** No person shall rent a motor vehicle to any other person unless the latter person is then duly licensed hereunder or, in the case of a non-resident, then duly licensed under the laws of the state or country of his residence, or unless the renter certifies that the vehicle shall be driven by a duly licensed driver.

13-0805. **RENTING MOTOR VEHICLE: LICENSE INSPECTION.** No person shall rent a motor vehicle to another unless he has inspected the operator's or chauffeur's license of the person to whom the vehicle is to be rented, or of the person by whom the vehicle shall be driven, and compared and verified the signature thereon with the signature of such person written in his presence.

13-0806. **RENTING MOTOR VEHICLE: RECORDS.** Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, the number of the license of said latter person, or, his certified driver, and the date and place when and where said license was issued. Such record shall be open to inspection by any police officer.

13-0807. **CLINGING TO VEHICLES.** No person riding upon any vehicle, coaster, skis, roller skates, sled, toboggan or toy vehicle shall attach the same or himself, with or without any of the aforementioned items, to any vehicle upon any roadway.

13-0808. **PERSONS PROPELLING PUSH CARTS OR RIDING ANIMALS TO OBEY TRAFFIC REGULATIONS.** Every person propelling any push cart or riding an animal upon a roadway, and every person driving any animal-drawn vehicle, shall be subject to the provisions of this title applicable to the driver of any vehicle, except those provisions of this title which by their very nature can have no application.

13-0809. **USE OF COASTERS, ROLLER SKATES AND SIMILAR DEVICES RESTRICTED.** No person upon roller skates, or riding in or by means of any coaster, toy vehicle, or similar device, shall go upon any roadway except while crossing a street on a crosswalk and when so crossing, such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians.

13-0810. **GARBAGE, GLASS, ETC. ON HIGHWAYS PROHIBITED.** The provisions of N.D. Cent. Code § 39-10-59 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

CHAPTER 13-09

GENERAL RULES OF THE ROAD

SECTION:

- 13-0901. Following Too Closely.
- 13-0902. Right of Way.
- 13-0903. Exception to the Right of Way Rule.
- 13-0904. Vehicle Entering Through Street or Stop Intersection.
- 13-0905. Vehicle Entering Yield Intersection.
- 13-0906. Driving on Divided Street or Highway.
- 13-0907. Restricted Access.
- 13-0908. Restrictions on Use of Controlled-Access Roadways.
- 13-0909. Drive on Right Side of Roadway: Exceptions.
- 13-0910. Passing Vehicles Proceeding in Opposite Directions.
- 13-0911. Dimming of Headlights on Meeting Another Vehicle.
- 13-0912. Overtaking a Vehicle on the Left.
- 13-0913. When Overtaking on the Right is Permitted.
- 13-0914. Limitations on Overtaking on the Left.
- 13-0915. Further Limitations of Driving to Left of Center of Roadway.
- 13-0916. No Passing Zones.
- 13-0917. Driving on Roadways Laned for Traffic.
- 13-0918. Stopping on Street.
- 13-0919. Emerging from Alley, Driveway or Building.
- 13-0920. Authorized Emergency Vehicles.
- 13-0921. Operation of Vehicles on approach of Authorized Emergency Vehicles.

13-0901. **FOLLOWING TOO CLOSELY.** The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon and the condition of the street, and in no event more closely than would permit the driver of the vehicle following another to stop within the space between the two vehicles in case the first vehicle stops upon the street.

13-0902. **RIGHT OF WAY.** The following rules shall be applicable to the right of way of vehicles:

1. When two vehicles approach or enter an intersection at approximately the same time and there is a reasonable probability of a collision unless one gives way, the driver of the vehicle on the left has the greater duty to maintain a fair margin of safety and shall yield the

right of way to the vehicle on the right except as otherwise provided in this title.

2. The driver of any vehicle traveling at an unlawful speed shall forfeit any right of way which he might otherwise have hereunder.
3. The driver of a vehicle which is backing up shall yield the right of way to other vehicles.

13-0903. **EXCEPTION TO THE RIGHT OF WAY RULE.** The following shall be exceptions to the right of way rules:

1. The driver of a vehicle entering a public street or highway from a private road or drive shall yield the right of way to all vehicles approaching or on such public street or highway; and
2. The driver of a vehicle upon the streets or highways of this city shall yield the right of way to a Class A authorized emergency vehicle when the driver of any said vehicle sounds audible signal by horn, bell, siren or exhaust whistle as may be reasonably necessary, or when the vehicle is equipped with at least one lighted lamp displaying a red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle except that an authorized emergency vehicle operated as a police vehicle need not be equipped with nor display a red light visible from in front of the vehicle, right of way shall be yielded to such authorized emergency vehicle, regardless of traffic signals, lights or signs. This provision shall not operate to relieve the driver of such authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the streets or highways, nor shall it protect the driver of any such vehicle from the consequences of his reckless disregard for the safety of others.

13-0904. **VEHICLE ENTERING THROUGH STREET OR STOP INTERSECTION.**

1. The driver of a vehicle shall come to a complete stop before entering or crossing any through street or highway and shall use special care and caution in crossing the intersection of or intercepting the lines of traffic on, such through highways or streets, until his way is clear of such through traffic; provided that when the traffic at any intersection of such through street or highway is regulated or controlled by traffic lights, or by a member of the police department on duty, the driver of any

vehicle shall be regulated and controlled thereby and shall act in accordance with the directions and regulations of such traffic lights or such traffic policemen, and in accordance with any traffic signs therein placed affecting such traffic;

2. The driver of a vehicle shall likewise come to a complete stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through street or highway shall use special care and caution in crossing the intersection of, or intercepting the line of traffic on, such stop intersection, until his way is clear of such traffic; provided that when the traffic at any intersection is regulated or controlled by traffic lights, or by a member of the police department on duty, the driver of any vehicle shall be regulated and controlled thereby, and shall act in accordance with the directions and regulations of such traffic lights or such traffic policeman, and in accordance with any traffic signs there in place affecting such traffic;
3. Every driver approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection, or in the event there is not a crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersection roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection except when directed to proceed by police officer or a traffic-control signal.

13-0905. **VEHICLE ENTERING YIELD INTERSECTION.**

1. The driver of a vehicle approaching a yield right-of-way sign shall in obedience to such sign slow down to a speed reasonable for the existing condition or shall stop, if necessary, and shall yield the right-of-way to any pedestrian legally crossing the roadway on which he is driving and to any vehicle in the intersection or approaching on another street or highway so closely as to constitute an immediate hazard. A driver who enters a yield intersection without stopping or has or causes a collision with a pedestrian in a crosswalk or a vehicle in the intersection shall prima facie be considered not to have yielded as required herein. The foregoing shall not relieve the drivers of other vehicles approaching the intersection at such distance as not to constitute an

immediate hazard from the duty to drive with due care to avoid a collision.

2. The driver of a vehicle approaching a yield sign if required for safety to stop shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, at a clearly marked stop line, but if not, then at a point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.

13-0906. **DRIVING ON DIVIDED STREET OR HIGHWAY.** Whenever any street or highway has been divided into two 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 and no vehicle shall be over, across, or within any such dividing space, barrier, or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection established by public authority.

13-0907. **RESTRICTED ACCESS.** No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

13-0908. **RESTRICTIONS ON USE OF CONTROLLED-ACCESS ROADWAYS.** The provisions of N.D. Cent. Code § 39-10-21 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0909. **DRIVE ON RIGHT SIDE OF ROADWAY: EXCEPTIONS.** The provisions of N.D. Cent. Code § 39-10-08 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0910. **PASSING VEHICLES PROCEEDING IN OPPOSITE DIRECTIONS.** The provisions of N.D. Cent. Code § 39-10-09 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0911. **DIMMING OF HEADLIGHTS ON MEETING ANOTHER VEHICLE.** Whenever a driver of a vehicle approaches an oncoming vehicle during a time specified in Section 13-1510 of these ordinances, the driver of each vehicle shall dim his headlamps so that under normal atmospheric conditions, such lamps shall throw a beam not more than one hundred feet ahead of such vehicle.

13-0912. **OVERTAKING A VEHICLE ON THE LEFT.** The provisions of N.D. Cent. Code § 39-10-11 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0913. **WHEN OVERTAKING ON THE RIGHT IS PERMITTED.** The provisions of N.D. Cent. Code § 39-10-12 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0914. **LIMITATIONS ON OVERTAKING ON THE LEFT.** The provisions of N.D. Cent. Code § 39-10-13 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0915. **FURTHER LIMITATIONS ON DRIVING TO LEFT OF CENTER OF ROADWAY.** The provisions of N.D. Cent. Code § 39-10-14 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0916. **NO PASSING ZONES.** The provisions of N.D. Cent. Code § 39-10-15 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0917. **DRIVING ON ROADWAYS LANED FOR TRAFFIC.** The provisions of N.D. Cent. Code § 39-10-17 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-0918. **STOPPING ON STREET.** The following rules shall be applicable stopping and parking vehicles on streets:

1. No person shall park or leave standing any vehicle, whether attended or unattended, upon the main traveled portion of any street when it is practicable to park or leave such vehicle standing off the main traveled portion of the street; provided in no case shall any person park or leave standing attended or unattended, upon any street, a vehicle unless a clear and unobstructed width of not less than fifteen feet shall be left free for the passage of other vehicles thereon, and unless a clear view of such vehicle may be obtained from a distance of two hundred feet in both directions upon such streets;
2. No driver of any vehicle shall stop the same on any street, avenue, lane or alley of the city in such manner as to prevent or hinder other vehicles or persons from passing at all times, unless in case of absolute necessity, nor shall any driver of any vehicle stop the same at any regular crossing of said street, alley, lane or avenue so as to prevent the free passage of persons traveling or passing on foot.

3. Whenever any peace officer shall find a vehicle standing upon a street or highway in violation of the provisions of this section, he is hereby authorized to move such vehicle, or require the driver or person in charge of such vehicle to move such vehicle, to a position permitted under this section, or to impound it at the expense of the owner or driver.
4. Provisions of this section shall not apply to the driver of any vehicle which is disabled while upon the main traveled portion of a street in such manner and to such extent that it is impossible to avoid stopping temporarily leaving such vehicle in such position.

13-0919. **EMERGING FROM ALLEY, DRIVEWAY OR BUILDING.** The driver of a vehicle emerging from an alley, driveway, private road, or building within a business or resident district shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across such alley, building entrance, road, or driveway, or in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where the driver has a view of approaching traffic thereon. Such driver entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

13-0920. **AUTHORIZED EMERGENCY VEHICLES.** The provisions of N.D. Cent. Code §§ 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.

13-0921. **OPERATION OF VEHICLES ON APPROACH OF AUTHORIZED EMERGENCY VEHICLES.** The provisions of N.D. Cent. Code § 39-10-26 and all subsequent amendments shall be and are incorporated by reference in this ordinance.

CHAPTER 13-10

MISCELLANEOUS DRIVING RULES

SECTIONS:

- 13-1001. Following Fire Apparatus Prohibited, Parking Within Block Where Fire Apparatus Used Prohibited: Driving Over Fire Hose or Through Street Barricade Prohibited.
- 13-1002. Driving Through Parade, Funeral or Procession.
- 13-1003. Drivers in a Procession.
- 13-1004. Vehicle Shall Not Be Driver on a Sidewalk.
- 13-1005. Limitations on Backing.
- 13-1006. Opening and Closing Vehicle Doors.
- 13-1007. Motorcycles - Helmet.
- 13-1008. Starting Parked Vehicles.
- 13-1009. Boarding or Alighting From Vehicles.
- 13-1010. Unlawful Riding.
- 13-1011. Cruising About Streets Forbidden.
- 13-1012. Towing Sleds and Carts.
- 13-1013. Obstruction to Driver's View or Driving Mechanism.
- 13-1014. Coasting Prohibited.
- 13-1015. Child Restraint Devices - Penalty - Evidence.
- 13-1016. Overtaking and Passing of School Bus.
- 13-1017. Use of Safety Belts Required in Certain Motor Vehicles.

13-1001. **FOLLOWING FIRE APPARATUS PROHIBITED, PARKING WITHIN BLOCK WHERE FIRE APPARATUS USED PROHIBITED: DRIVING OVER FIRE HOSE OR THROUGH STREET BARRICADE PROHIBITED.** It shall be unlawful for the driver of any vehicle other than one on official business:

1. To follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet;
2. To drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm;
3. To drive over any fire hose without the consent of the fire department official in command;
4. To drive through or around any street barricade.

13-1002. **DRIVING THROUGH PARADE, FUNERAL OR PROCESSION.** No vehicle except an authorized emergency vehicle as defined in Section 13-0101(1)(a) may drive through any parade, funeral or

procession except with the permission or upon the signal of a police officer.

13-1003. **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. The headlights of all vehicles shall be turned on so that identification of vehicles in such procession is easily established.

13-1004. **VEHICLE SHALL NOT BE DRIVEN ON A SIDEWALK.** The driver of a vehicle shall not drive on or within any sidewalk area except at a permanent or temporary driveway.

13-1005. **LIMITATIONS ON BACKING.**

1. The driver of a vehicle shall not back the same unless such 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.

13-1006. **OPENING AND CLOSING VEHICLE DOORS.** No person shall open a 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.

13-1007. **MOTORCYCLES - HELMET.**

1. No person under the age of eighteen (18) years shall operate or ride upon a motorcycle unless protective headgear, which complies with standards established by the North Dakota Highway Department, is being worn on the head of the operator and rider, except when participating in a lawful parade. If the operator of a motorcycle is required to wear protective headgear, any passenger must also wear protective headgear regardless of the age of the passenger.
2. This section shall not apply to persons riding within an enclosed cab or on a golf cart.
3. No person shall operate a motorcycle if a person under the age of eighteen (18) years is a passenger upon that motorcycle and is not wearing protective headgear as provided in subsection 1.

13-1008. **STARTING PARKED VEHICLES.** The provisions of N.D. Cent. Code § 39-10-37 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-1009. **BOARDING OR ALIGHTING FROM VEHICLES.** No person shall board or alight from any vehicle while such vehicle is in motion.

13-1010. **UNLAWFUL RIDING.** No person shall ride on any vehicle or any portion thereof not designated or intended for the use of passengers. This provision shall not apply to an employee engaged in the necessary discharge of a duty or to persons riding within truck bodies in space intended for merchandise.

13-1011. **CRUISING ABOUT STREETS FORBIDDEN.** No common carrier of freight or passengers shall cruise about the streets to solicit business.

13-1012. **TOWING SLEDS AND CARTS.** No driver or operator shall tow or permit the towing by any vehicle on the streets of the City of Kindred of any sleigh, wagon, cart, toboggan, skis or any other device which creates a traffic hazard.

13-1013. **OBSTRUCTION TO DRIVERS' VIEW OR DRIVING MECHANISM.** The provisions of N.D. Cent. Code § 39-10-54 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-1014. **COASTING PROHIBITED.** The provisions of N.D. Cent. Code § 39-10-56 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-1015. **CHILD RESTRAINT DEVICES - PENALTY - EVIDENCE.** The provisions of N.D. Cent. Code § 39-21-41.2 and all subsequent amendments shall be and are hereby incorporated by this reference.

13-1016. **OVERTAKING AND PASSING OF SCHOOL BUS.**

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 such school bus when there is in operation on said school bus the, flashing red lights specified in Section 39-21-18, N.D. Cent. Code, and said driver shall not proceed until such school bus resumes motion or he is signaled by the school bus driver to proceed or the flashing red lights are no longer actuated.
2. Every school bus shall bear upon the front and rear thereof plainly visible signs containing the word "SCHOOL

BUS" in letters not less than eight inches [20.32 centimeters] 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. The operator of a school bus equipped with amber caution lights may activate those lights at a distance of not less than three hundred feet [91.44 meters] nor more than five hundred feet [152.4 meters] from the point where school children are to be received or discharged from the bus.
4. Every school bus shall be equipped with red visual signals meeting the requirements of Section 39-21-18, N.D. Cent. Code, which may be actuated by the driver of said school bus whenever, but only whenever, such vehicle is stopped on the highway for the purpose of receiving or discharging school children. A school bus driver shall not actuate said 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 of police officers; or
 - c. In designated school bus loading areas where the bus is entirely off the roadway.
5. The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

The provisions of N.D. Cent. Code § 39-10-46 and all subsequent amendments shall be and are hereby incorporated by this reference.

13-1017. **USE OF SAFETY BELTS REQUIRED IN CERTAIN MOTOR VEHICLES.** The provisions of N.D. Cent. Code §§ 39-21-41.4 and 39-21-41.5 of the North Dakota Century Code, and all subsequent amendments thereto, shall be and hereby are incorporated by reference in this ordinance.

CHAPTER 13-11

SPEED

SECTIONS:

- 13-1101. Speed Limitations.
- 13-1102. Speed Limitations Inapplicable to Whom: Liability of Exempt Driver for Reckless Driving.
- 13-1103. Increase or Decrease of Speed Limits.
- 13-1104. Impeding Traffic.
- 13-1105. Radar Evidence in Speed Violations.

13-1101. **SPEED LIMITATIONS.** Except in instances where a lower speed is specified in this Title or by the laws of this state, it shall be prima facie lawful for the driver of a vehicle to drive the same at a speed not exceeding:

1. Twenty-five miles per hour on all streets and avenues of this city unless otherwise posted.
2. Twenty miles an hour when passing a school which is in session or while children are going to or leaving school during opening or closing hours.
3. Twenty miles an hour in traversing or going around curves or traversing a grade upon a highway or street when the driver's view is obstructed within a distance of one hundred feet along such street in a direction in which he is proceeding; or at any intersection.
4. Twenty miles per hour when passing any public playground, park, swimming pool, tennis court, or other similar recreational area during the hours when said facility is in use.

In any case when the speed limitation provided for in the foregoing subsection shall be unsafe, it shall be unlawful to operate a motor vehicle at such speed. It shall be unlawful for any person to exceed any such foregoing speed limitations except as otherwise provided in this Title.

13-1102. **SPEED LIMITATIONS INAPPLICABLE TO WHOM: LIABILITY OF EXEMPT DRIVER FOR RECKLESS DRIVING.** The speed limitations provided for in this Title shall not apply to operators of vehicles designated in Section 13-0920 while in the performance of their

duties. The exemption provided for in this section shall not protect the driver of any such vehicle from the consequences of reckless disregard of the safety of others.

13-1103. **INCREASE OR DECREASE OF SPEED LIMITS.** The City Council, by resolution, may increase or decrease the speed limits as set by Section 13-1101 above, providing signs giving notice of such changes are properly placed and maintained.

13-1104. **IMPEDING TRAFFIC.** Except when necessary for safe operation or to comply with some other provisions of this Title, no person shall drive a motor vehicle at a rate of speed or in such a manner, so slow as to block or impede the normal and reasonable flow of traffic.

13-1105. **RADAR EVIDENCE IN SPEED VIOLATIONS.** The speed of any motor may be checked by the use of radio microwaves or other electrical device. The results of such checks shall be accepted as prima facie evidence of the speed of such motor vehicle in any court or legal proceedings where the speed of the motor vehicle is at issue. The driver of any such motor vehicle may be arrested without a warrant under this section, provided the arresting officer is in uniform or displays his badge of authority and provided that such officer has observed the record of the speed of such motor vehicle by the radio microwave 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 microwave or other electrical device.

CHAPTER 13-12

TURNING MOVEMENTS

SECTIONS:

- 13-1201. Required Position and Method of Turning at Intersections.
- 13-1202. Turning Movements and Required Signals.
- 13-1203. Vehicle Turning Left at Intersection
- 13-1204. Authority to Place Restricted Turn Signs.
- 13-1205. Obedience to No-turn Signs.
- 13-1206. Limitations on Turning Around.
- 13-1207. Authority to Place and Obedience to Turning Markers.

13-1201. **REQUIRED POSITION AND METHOD OF TURNING AT INTERSECTIONS.** The driver of a vehicle intending to turn at an intersection shall do as follows:

1. Right turn. Both 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 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 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 the vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the

left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered; and

4. The City may cause marker, buttons, or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when markers, buttons, or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons or signs.

13-1202. TURNING MOVEMENTS AND REQUIRED SIGNALS.

1. No person shall turn a vehicle or move right or left upon a roadway unless or until such movement can be made with reasonable safety without giving an appropriate signal in the manner hereinafter provided.
2. A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning. Signal either by an approved mechanical or electrical device or by means of hand and arm in the manner hereinafter specified. Whenever the signal is given by means of hand and arm, the driver shall indicate his intention to turn left by extending the hand and arm horizontally; to indicate a right turn by extending the forearm and hand upward and to indicate a stop by extending the arm outward and down; in each case, from and beyond the left side of the vehicle.
3. No person shall stop or suddenly decrease the speed of the vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

13-1203. VEHICLE TURNING LEFT AT INTERSECTION. The driver of a vehicle intending to turn 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. Said driver shall use special care and caution in entering the intersection and completing the left turn.

13-1204. AUTHORITY TO PLACE RESTRICTED TURN SIGNS. The City Council shall determine those intersections at which drivers of vehicles shall not make a right, left or "U" turn, and shall place proper signs at such intersections. The making of such turns may be prohibited between certain hours of any day and permitted at

other hours, in which event the same shall be plainly indicated on the signs or they may be removed when such turns are permitted.

13-1205. **OBEDIENCE TO NO-TURN SIGNS.** Whenever authorized signs are erected indicating that no right or left or "U" turn is permitted, no driver of a vehicle shall disobey a direction of any such sign.

13-1206. **LIMITATIONS ON TURNING AROUND.**

1. No "U" turn shall be made at any mid-block location or at any signalized intersection in the City. The City Council may by means of signs forbid "U" turns.
2. No vehicle shall be turned so as to proceed in the opposite direction upon any curve, whereupon the approach to or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet.

13-1207. **AUTHORITY TO PLACE AND OBEDIENCE TO TURNING MARKERS.** The City Council may cause markers, buttons or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by the vehicles turning at an intersection, and when markers, buttons or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons or signs.

CHAPTER 13-13

PEDESTRIANS

SECTIONS:

- 13-1301. Pedestrians Subject to Traffic-Control Signals.
- 13-1302. Right-of-way of Pedestrians When Intersection is Regulated.
- 13-1303. Right-of-way of Pedestrians When an Intersection is not Regulated.
- 13-1304. Crossing at Other than Crosswalks.
- 13-1305. Pedestrians to Use Right Half of Crosswalk.
- 13-1306. Blind Persons Right-of-Way.
- 13-1307. Obedience of Pedestrians to Railroad Signals.
- 13-1308. Pedestrians Walking Along Roadways.
- 13-1309. Pedestrians Soliciting Rides or Business.
- 13-1310. Blocking Traffic of Pedestrians.
- 13-1311. Pedestrians not to Obstruct Traffic.
- 13-1312. Right to Cross Street Safely: Interference with Vehicles.
- 13-1313. Playing on Streets Prohibited.
- 13-1314. Drivers to Exercise Due Care.

13-1301. **PEDESTRIANS SUBJECT TO TRAFFIC-CONTROL SIGNALS.** Pedestrians shall be subject to traffic-control signals and heretofore declared in Section 13-0404 and 13-0405 of this title, but at all other places pedestrians shall have those rights and be subject to the restrictions stated in this title.

13-1302. **RIGHT-OF-WAY OF PEDESTRIANS WHEN INTERSECTION IS REGULATED.** No vehicle shall cross a crosswalk where traffic is regulated by a peace officer or a system of traffic control signals until pedestrians who have properly commenced to cross the street have completed their passage across in front of such vehicles, and any vehicle permitted to turn to either right or left shall yield the right-of-way to all pedestrians who are proceeding on crosswalks in a direction authorized by the officer or traffic signal, and failure to yield such right-of-way shall be a violation of this section.

13-1303. **RIGHT-OF-WAY OF PEDESTRIANS WHEN AN INTERSECTION IS NOT REGULATED.**

1. Where traffic control signals are not in place or in operation, the driver of a vehicle shall yield the

right-of-way, slowing down or stopping if need be to yield to a pedestrian crossing a roadway within a crosswalk when the pedestrian is upon the half of the roadway 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 that it is impossible for the driver to yield.
3. Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake or pass such stopped vehicle.

13-1304. CROSSING AT OTHER THAN CROSSWALKS.

1. Every pedestrian crossing a roadway at any point other than within a marked or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles on the roadway.
2. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead crossing has been provided shall yield the right-of-way to all vehicles on 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 pedestrians shall cross a roadway other than on a crosswalk in any business district in the City of Kindred.
5. No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements.

13-1305. **PEDESTRIANS TO USE RIGHT HALF OF CROSSWALK.** The provisions of N.D. Cent. Code § 39-10-32 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-1306. **BLIND PERSONS RIGHT-OF-WAY.** The driver of any vehicle shall yield the right-of-way to any blind pedestrian carrying a clearly visible white cane or accompanied by a guide dog.

Blind pedestrians, when carrying a white cane or stick, by holding out horizontally such white cane or stick in the direction they desire to travel over any crosswalks on any street, avenue, alley or other public highway in the City of Kindred, shall have the right-of-way over all other pedestrians and vehicles, except those vehicles as are defined in Section 13-0101(1) (a), except that all blind persons at intersections governed by traffic control devices shall be subject to the same rules as apply to other pedestrians.

Any driver of a vehicle, operator of a motor-driven vehicle, or pedestrian who is not blind who approaches or comes in contact with a blind person on the streets of the City of Kindred, or any blind person carrying such white cane or stick, shall, if conditions of traffic or safety of any blind person shall require, immediately stop and take such precaution before proceeding, as may be necessary to avoid accident or injury or be necessary to protect the blind person.

The words "blind pedestrian" or "blind person" as used in this section shall mean persons wholly or so partially blind as to require mechanical, human, or other aid in the use of the streets of the City of Kindred.

13-1307. **OBEDIENCE OF PEDESTRIANS TO RAILROAD SIGNALS.** The provisions of N.D. Cent. Code § 39-10-33.5 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-1308. **PEDESTRIANS WALKING ALONG ROADWAYS.**

1. Where a sidewalk is provided and its use practicable, it shall be unlawful for any pedestrian to walk along or upon an adjacent roadway.
2. Where a sidewalk is not available, any pedestrian walking along or upon a highway shall walk only on a shoulder facing traffic which may approach from the opposite direction, 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 the outside edge of the roadway, and, if on a two-way roadway, shall walk only the left side of the roadway.

4. Except as otherwise provided for in this Chapter, any pedestrian upon a roadway shall yield the right-of-way to all vehicles upon the roadway.

13-1309. **PEDESTRIANS SOLICITING RIDES OR BUSINESS.** The provisions of N.D. Cent. Code § 39-10-34 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-1310. **BLOCKING TRAFFIC OF PEDESTRIANS.** Vehicles shall not stop on cross walk so as to interfere with the passage of pedestrians.

13-1311. **PEDESTRIANS NOT TO OBSTRUCT TRAFFIC.** No persons shall singly or together stand in any street, or any footwalk, sidewalk, or alley, in the City of Kindred so as to obstruct the free passage for pedestrians or vehicles; and any person or persons so standing shall move immediately and cease to obstruct said walk or street after being requested to do so by any peace officer.

13-1312. **RIGHT TO CROSS STREET SAFELY: INTERFERENCE WITH VEHICLES.** The roadbeds of streets are primarily intended for vehicles, but pedestrians have the right to cross them in safety, and all drivers of vehicles shall exercise all proper care not to injure pedestrians. The driver of a vehicle shall yield the right-of-way to any pedestrian on a sidewalk. Pedestrians when crossing a street shall not carelessly or maliciously interfere with the passing of vehicles.

13-1313. **PLAYING ON STREETS PROHIBITED.** No person shall play upon the streets, avenues or alleys or public grounds of the City of Kindred except on such grounds or streets, as may be provided for such purposes, and this section shall apply to both business and residential areas.

13-1314. **DRIVERS TO EXERCISE DUE CARE.** 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.

CHAPTER 13-14

ACCIDENTS

SECTIONS:

- 13-1401. Immediate Notice of Accidents.
- 13-1402. Written Report of Accident to City.
- 13-1403. Written Report of an Accident to State.
- 13-1404. Officer to Report.
- 13-1405. When Driver Unable to Report.
- 13-1406. Garages to Report.
- 13-1407. False Reports.

13-1401. **IMMEDIATE NOTICE OF ACCIDENTS.** The provisions of N.D. Cent. Code § 39-08-09 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-1402. **WRITTEN REPORT OF ACCIDENT TO CITY.** The driver of a vehicle which is in any manner involved in an accident resulting in bodily injury to or death of any person or accident shall forward a written report of such accident to the Sheriff of Cass County on forms provided by Cass County. The provisions of this section shall not be applicable when the accident has been investigated at the scene by a peace officer while such officer was present thereat.

13-1403. **WRITTEN REPORT OF AN ACCIDENT TO STATE.** The provisions of N.D. Cent. Code § 39-08-09 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-1404. **OFFICER TO REPORT.** Every law enforcement officer who in the regular course of duty investigates a motor vehicle accident either at the time or at the scene of the accident or thereafter by interviewing the participants, or witnesses, shall promptly make a written report. Said officer upon completion of investigation shall issue and affix to each of the cars involved a "damaged car release sticker".

13-1405. **WHEN DRIVER UNABLE TO REPORT.** The provisions of N.D. Cent. Code § 39-08-11 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-1406. **GARAGES TO REPORT.** The person in charge of any garage or repair shop located in the City of Kindred to which is

brought any motor vehicle which shows evidence of being involved in a reportable accident as provided in Section 13-0801 of this title or of being struck by any bullet, if said vehicle does not have a "damaged car release sticker" attached thereto or if said vehicle has a bullet hole therein, shall immediately make a report to the Sheriff of Cass County. Said report shall include the license plate number and the name and address of owner or operator of such vehicle. If said vehicle does have a "damaged car release sticker" attached thereto no report is necessary. Stickers on such vehicles are not to be removed until repairs are completed but must be removed before the vehicle is released to the owner or operator.

13-1407. **FALSE REPORTS.** No person shall give information reports as required in Sections 13-1401, 13-1404, 13-1406, 13-0704 and 13-0705 of this Chapter knowing or having reason to believe that such information is false.

CHAPTER 13-15

EQUIPMENT OF VEHICLES - SIZE, WEIGHT, HEIGHT
AND LOAD RESTRICTIONS

SECTIONS:

- 13-1501. Lamp or flag on projecting load.
- 13-1502. Restrictions as to tire equipment.
- 13-1503. Horns and warning devices.
- 13-1504. Brakes on Motor Vehicles and Motorcycles:
Requirements.
- 13-1505. Mirrors.
- 13-1506. Windshields Must Be Unobstructed and Equipped With
Wipers.
- 13-1507. Mufflers Required.
- 13-1508. Vehicle to be Constructed to Prevent Sifting or
Leaking Loads.
- 13-1509. Lamps and Lights must Conform to State Law.
- 13-1510. Front and Rear Lamps to be Lighted at Certain Times.
- 13-1511. Arrest for Improperly Adjusted Headlamps -
Certificate of Conformance a Defense.
- 13-1512. Spot Lamps: Limitations on Number and Use.
- 13-1513. Trailers and Towed Vehicles.
- 13-1514. Trailer to be Equipped with Reflectors or Tail
Lights.
- 13-1515. Flashing Lights, Prohibition.
- 13-1516. Red, Green or Yellow Lights Visible from in Front of
Vehicle Prohibited: Exceptions.
- 13-1517. Proper Equipment Required on Vehicles.
- 13-1518. General Regulations as to Loading of Motor Vehicles.
- 13-1519. Size, Weight and Load Restrictions of Vehicles
Operated within the City.
- 13-1520. Regulating Movement of Tractors, Heavy Vehicles and
Long Vehicles on Pavement.
- 13-1521. Permits for Excessive Size and Weight.
- 13-1522. Trucks Prohibited on Certain Streets - Truck Routes
Established - Maps and Signs Required.
- 13-1523. Restricted Use of Streets and Highways.
- 13-1524. Peace Officer or Other Agent may Weigh Vehicle and
Require Removal of Excess Load.

Subsections:

- 13-1524.1. Impounding Overweight Vehicle
- 13-1524.2. Impounding Receipt - Information
- 13-1524.3. Impounding Notice - Perishables
- 13-1524.4. Civil Complaint
- 13-1524.5. Voluntary Statement of Extraordinary Road
Use Fee Charges
- 13-1524.6. Mailing Complaint

- 13-1524.7. Cash Bond - Holding
- 13-1524.8. Trial - Charges
- 13-1524.9. Payment of Charges - Confiscation - Sale
- 13-1524.10 Payment - Effect
- 13-1524.11 Proceeds of Sale
- 13-1525. Restrictions Upon the Use of Streets by Certain Vehicles.
- 13-1526. Load Restrictions Upon Vehicles Using Certain Highways.
- 13-1527. Modification of Motor Vehicle.

13-1501. **LAMP OR FLAG ON PROJECTING LOAD.** The provisions of N.D. Cent. Code § 39-21-13 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-1502. **RESTRICTIONS AS TO TIRE EQUIPMENT.** Every tire on a vehicle moved on any street or highway within the City of Kindred shall have rubber on its entire traction surface.

No tire, wheel, or track on a vehicle moved on a street or highway shall have on its periphery any block, stud, flange, pleat or spike, or any other protuberance of any material other than rubber, or other material approved by the City Engineer, which projects beyond the tread of the traction surface of the tire, wheel or track, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the street or highway, and except also that it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice or other conditions. It shall also be permissible to use, from October 15 to April 15, pneumatic tires which have metal studs which do not project more than one-sixteenth of an inch beyond the tread of the traction surface of the tire.

13-1503. **HORNS AND WARNING DEVICES.** Every motor vehicle when operative upon a street or highway shall be equipped with a horn in good working order capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet; and it shall be unlawful except as otherwise provided in this section, for any vehicle equipped with, or for any person to use upon a vehicle a siren, exhaust, compression or plug whistle or for any person, at any time, to use a horn otherwise and as a reasonable warning, or to make unnecessary or unreasonable loud or harsh sounds by means of a horn or other warning device.

Every law enforcement or fire department, and fire patrol vehicle and every ambulance used for emergency calls shall be equipped with a bell, siren or an exhaust whistle.

13-1504. **BRAKES ON MOTOR VEHICLES AND MOTORCYCLES: REQUIREMENTS.** Every motor vehicle, when operated upon a street, shall be equipped with brakes adequate to control the movement and to stop and to hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels, and shall be so constructed that no part which is liable to failure shall be common to the two. A motorcycle need be equipped with only one brake. All such brakes shall be maintained in good working order.

13-1505. **MIRRORS.** The provisions of N.D. Cent. Code § 39-21-38 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-1506. **WINDSHIELDS MUST BE UNOBSTRUCTED AND EQUIPPED WITH WIPERS.**

1. No person shall drive a motor vehicle with any sign, poster, frost, condensation, or other nontransparent material upon or in place of the front windshield, sidewings, side or rear windows of such motor vehicle, other than a certificate or other paper required to be so displayed by law.
2. The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.
3. Every windshield wiper upon a motor vehicle shall be maintained in good working order.

13-1507. **MUFFLERS REQUIRED. PREVENTION OF NOISE.** The provisions of N.D. Cent. Code § 39-21-37 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-1508. **VEHICLE TO BE CONSTRUCTED TO PREVENT SIFTING OR LEAKING LOADS.** The provisions of N.D. Cent. Code § 39-21-44.1 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-1509. **LAMPS AND LIGHTS MUST CONFORM TO STATE LAW.** It shall be unlawful for any person to operate any motor vehicle within the City of Kindred, unless such motor vehicle is properly equipped with lamps and lights as prescribed by the laws of this State.

13-1510. **FRONT AND REAR LAMPS TO BE LIGHTED AT CERTAIN TIMES.** The provisions of N.D. Cent. Code § 39-21-01 and all subsequent

amendments shall be and are hereby incorporated by reference in this ordinance.

13-1511. **ARREST FOR IMPROPERLY ADJUSTED HEADLAMPS - CERTIFICATE OF CONFORMANCE A DEFENSE.** The provisions of N.D. Cent. Code § 39-21-24 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-1512. **SPOT LAMPS: LIMITATIONS ON NUMBER AND USE.** Any motor vehicle may be equipped with not to exceed two spot lamps. Every lighted spot lamp shall be aimed and used upon approaching another vehicle so that no part of the beam will be directed to the left of the center of the street or highway nor more than one hundred feet ahead of the vehicle.

13-1513. **TRAILERS AND TOWED VEHICLES.** The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a street or highway, shall not exceed fifteen feet in length from any vehicle to the other. Whenever such connection consists of a chain, rope, or cable, there shall be displayed upon such connection a red flag or other signal or cloth not less than twelve inches square.

13-1514. **TRAILER TO BE EQUIPPED WITH REFLECTORS OR TAIL LIGHTS.** No trailer or semi-trailer shall be transported or operated in the City of Kindred unless it is equipped with approved reflectors not less than three inches in diameter or with tail lights.

13-1515. **FLASHING LIGHTS, PROHIBITION.** Flashing lights are prohibited except on an authorized emergency vehicle, school bus, snow removal equipment or on any vehicle as a means of indicating a right or left turn, or the presence of a vehicular traffic hazard requiring unusual care in approaching, overtaking or passing.

13-1516. **RED, GREEN OR YELLOW LIGHTS VISIBLE FROM IN FRONT OF VEHICLE PROHIBITED: EXCEPTIONS.** No person shall drive or move any vehicle upon any street or highway with any red, green or yellow light thereon visible from directly in front thereof. This section shall not apply to vehicles defined in Section 13-0101 and Section 13-0916.

13-1517. **PROPER EQUIPMENT REQUIRED ON VEHICLES.** It is an infraction, which shall subject the violator to the penalties set forth in Section 1-0211, for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or the North Dakota Century Code, or which is equipped in any manner in violation of this chapter, or any

provision of the North Dakota Century Code, or for any person to do any act forbidden or fail to perform any act required under this chapter, or under the North Dakota Century Code.

13-1518. GENERAL REGULATIONS AS TO LOADING OF MOTOR VEHICLES.

No person shall:

1. Ride or stand upon the running board or exterior of any moving vehicle. This provision shall not apply to police officers, firemen or other City employees, while in performance of their duties.
2. Drive a vehicle containing more passengers than the seating capacity of such vehicle.
3. Allow any part of the body to protrude beyond the limits of the vehicle while the vehicle is in motion, except to signal change of direction as provided in this title.
4. Drive a vehicle loaded with iron or other material likely to produce an annoying sound without using proper precautions to minimize such annoying sound.

13-1519. SIZE, WEIGHT AND LOAD RESTRICTIONS OF VEHICLES OPERATED WITHIN THE CITY. Provisions of N.D. Cent. Code §§ 39-12-04 and 39-12-05.3 and all subsequent amendments thereto shall be and hereby are incorporated by reference in this ordinance, except where more stringent limitations are set forth otherwise in these ordinances, or in a resolution adopted by the City Council. Such resolution, in addition to the size and weight restrictions, may set forth other restrictions and guidelines, as well as a fee schedule for permits for overweight and oversized vehicles.

13-1520. REGULATING MOVEMENT OF TRACTORS, HEAVY VEHICLES, AND LONG VEHICLES ON PAVEMENT. No person, firm or corporation shall move, or cause to be moved, over the paved streets, sidewalks, crosswalks, culverts, bridges and viaducts, within the City of Kindred, any motor vehicle or object drawn by motor vehicle which is in violation of Sections 13-1502, 13-1519 through 13-1523, or in violation of any restrictions set forth in a resolution passed by the City Council pursuant to Section 13-1519, except under the direction and written permission of the City Council of the City of Kindred or the City Agent, as provided in Section 13-1521. Any violators shall pay or cause to be paid to said City, upon demand, any and all damages done to the paving, sidewalks, crosswalks, culverts, bridges and viaducts.

13-1521. PERMITS FOR EXCESSIVE SIZE AND WEIGHT. The City Agent may, under such policies as the City may establish by resolution or ordinance, upon application in writing and good cause

being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle of a size and weight exceeding the maximum specified in this title upon any street or highway under the jurisdiction of and for the maintenance of which the body granting permit is responsible. Every such permit shall be issued for a single trip and may designate the route to be traversed and contain other restrictions or conditions deemed necessary by the body granting such permit. Every such permit shall be carried in the vehicle to which it refers and shall be opened to inspection by any peace officer, and it shall be unlawful for any person to violate any of the terms and conditions of such special permit. The fees for such special permit shall be established by resolution by the City Council.

13-1522. TRUCKS PROHIBITED ON CERTAIN STREETS - TRUCK ROUTES ESTABLISHED - MAPS AND SIGNS REQUIRED.

1. No truck or commercial vehicle exceeding in weight ten thousand pounds per axle, or total weight of eighty thousand pounds shall be operated in the City of Kindred, except upon truck routes designated as hereinafter provided in subsection 2 of this section; provided, that this ordinance shall not prohibit:
 - a. Such vehicles from operating upon other City streets when delivering or picking up materials or merchandise, provided entrance or exit to or from such street is made at the nearest intersection; through streets as established elsewhere in the City Ordinances shall be considered as secondary truck routes and must be used in preference to other streets whenever possible.
 - b. The operation of trucks owned or operated by the City of Kindred; trucks owned or operated by power companies and telephone companies franchised in or trucks owned and operated by any contractor or material supplier while under contract with the City and engaged in the repair, maintenance or construction of streets, street improvements or street utilities within the City.
 - c. The operation of class A emergency vehicles, as defined in the traffic ordinances of the City of Kindred, upon any street in the City.
 - d. Trucks making more than one delivery on any one trip may take the most direct route between one delivery and the next.
2. Truck routes shall be established by resolution of the City Council, after notice and hearing. The notice shall be by one publication in the official newspaper of the City at least 10 days prior to the date of the hearing.

The truck routes, as established by the City Council, shall be stated in the resolution and on an official map which shall be kept and maintained in the office of the City Auditor and shall be available for public inspection.

3. On each street or avenue designated as a truck route in accordance with subsection 2 above, such street or avenue shall be posted with appropriate signs.

13-1523. **RESTRICTED USE OF STREETS AND HIGHWAYS.** Notwithstanding Sections 13-1519 through 13-1522, the City Agent of the City of Kindred may prohibit the operation of vehicles upon any street or highway or impose restrictions as to the weight of vehicles when operated upon any street or highway under the jurisdiction of and for the maintenance of which the City is responsible, whenever any said street or highway by reason of deterioration, stage of construction, rain, snow or other conditions could be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weights allowed thereon reduced. The City Agent shall have the authority to impose such restrictions at any time when in the discretion of the City Agent such limitations are needed. The prohibitions or restrictions and the lifting thereof shall be done in a writing which shall be filed with the City Auditor and mailed to all City Council members. In addition, the City Agent, when exercising any such authority, shall erect or cause to be erected and maintained, signs designating the weight restrictions or prohibition of use at each end of that portion of any street or highway affected by the restrictions or prohibitions, and the restrictions or prohibitions shall not be effective until or unless such signs are erected and maintained. Once such restrictions are in place and posted, such restrictions or prohibitions shall remain in effect until lifted by the City Agent, or until they are removed or altered by action of the City Council of the City of Kindred. The City Council shall also have the authority, by resolution, to prohibit the use, or place weight restrictions on any street or highway under the jurisdiction of the City, which prohibitions and restrictions shall be designated by appropriate signs placed at each end of that portion of any street or highway affected thereby.

In addition, the City, will set weight restrictions by resolution which will automatically apply City-wide when Cass County imposes its spring weight limit road restrictions. These restrictions shall be posted at the main entrances to the City at the discretion of the City Agent.

13-1524. **PEACE OFFICER OR OTHER AGENT MAY WEIGH VEHICLE AND REQUIRE REMOVAL OF EXCESS LOAD.** Any peace officer or designated agent of the City or City-designated personnel having reason to believe that the weight or size of a vehicle and load is unlawful

is authorized to weigh or measure the same, either by means of portable or stationary scales, and may require that such vehicle be driven to the nearest scale. The officer or other designated person may then require the driver to unload immediately such portion of the load as may be necessary to decrease the gross weight of such vehicle to the maximum therefor by such authority.

13-1524.1. **IMPOUNDING OVERWEIGHT VEHICLE.** Any vehicle found to have been moved or used upon any highway, street, alley or other public way within the City at a weight exceeding the limitations as specified in any ordinance or resolution adopted by the City may be impounded by any peace officer, designated agent of City, or City-designated personnel and taken to a warehouse, garage or other facility for storage.

13-1524.2. **IMPOUNDING RECEIPT - INFORMATION.** A receipt must be given by the peace officer or other person impounding the vehicle, to the driver or person in charge of such vehicle. Such receipt must identify as nearly as possible, the owner of the vehicle and cargo, the driver or person in charge of such vehicle, the cargo, the place vehicle is to be stored during impoundment, the weight of the loaded vehicle and the name and address of the impounding officer. Information as to the owner of the vehicle and cargo must be obtained from the driver or person in charge of the vehicle.

13-1524.3. **IMPOUNDING NOTICE - PERISHABLES.** The impounding officer shall notify the owner or owners, if they can be found, by wire or telephone, of the impoundment and charges involved. If the cargo consists of perishables, the impounding officer shall use reasonable diligence in assisting the operator or owner in finding suitable storage facilities for such perishables, but all risk of loss or damage to such perishables must be upon the owner, operator, or lessee of such vehicle.

13-1524.4. **CIVIL COMPLAINT.** The City Attorney of the City shall, if no settlement is made under the next succeeding section, immediately prepare and file a civil complaint on behalf of the City for the purpose of recovering charges for the extraordinary use of the highways, streets, alleys or other public roadways of the City.

13-1524.5. **VOLUNTARY SETTLEMENT OF EXTRAORDINARY ROAD USE FEE CHARGES.** Before the complaint is issued pursuant to the preceding section, the owner, or the owner's driver or agent, may voluntarily pay the amount of the extraordinary road use fee, or may provide proof of surety coverage to ensure payment of the extraordinary road use fee, provided under Section 13-1524.7, plus any towing or storage costs. Any settlement, whether made by the owner, or the owner's driver or agent, must be presumed to be of a voluntary nature. A peace officer or a peace officer's designee is authorized to receive the settlement payment on behalf of the City.

The extraordinary road use fees must be remitted to the City Auditor's office.

13-1524.6. **MAILING COMPLAINT.** A copy of the complaint must be served upon the driver or person in charge of the vehicle and a copy must be sent by registered or certified mail to the owner of the vehicle, if the address of such owner is known.

13-1524.7. **CASH BOND - HOLDING.** Unless a cash bond is furnished in an amount sufficient to cover the charge for extraordinary use of highways, streets, alleys or other public roadway, as provided in the next succeeding section, together with the costs which may be collectible under any subsequent settlement made pursuant to this section, said vehicle must be held until a trial of the case can be held before the district court.

13-1524.8. **TRIAL - CHARGES.** At the trial of the action, the court shall hear testimony concerning the facts, and if it is found that such vehicle or vehicles were moved upon the highways, streets, alleys or other public roadways of the City at a weight in excess of the limitations imposed under the provisions of this section, charges for the extraordinary use of the highways, streets, alleys, or roadways must be assessed as follows:

1. The storage charges and costs of the action must be assessed; and
2. An additional charge for excess weight must be assessed as follows:

1 to 1,000 lbs [.45 to 453.59 kg]	\$ 20.00
1,001 to 2000 lbs [454.05 to 907.18 kg]	40
2,001 to 3,000 lbs [907.64 to 1,360.78 kg]	60
3,001 to 4,000 lbs [1,361.23 to 1,814.37 kg]	140
4,001 to 5,000 lbs [1,814.82 to 2,267.96 kg]	220
5,001 to 6,000 lbs [2,268.41 to 2,721.55 kg]	305
6,001 to 7,000 lbs [2,722.01 to 3,175.14 kg]	380
7,001 to 8,000 lbs [3,175.60 to 3,628.74 kg]	495
8,001 to 9,000 lbs [3,629.19 to 4,082.33 kg]	575

9,001 to 10,000 lbs [4,082.78 to 4,535.92 kg]	655
10,001 to 11,000 lbs [4,536.37 to 4,989.51 kg]	1100
11,001 to 12,000 lbs [4,989.97 to 5,443.10 kg]	1200
12,001 to 13,000 lbs [5,443.56 to 5,896.70 kg]	1300
13,001 to 14,000 lbs [5,897.15 to 6,350.29 kg]	1680
14,001 to 15,000 lbs [6,350.74 to 6,803.88 kg]	1800
15,001 to 16,000 lbs [6,804.33 to 7,257.47 kg]	1920
16,001 to 17,000 lbs [7,257.93 to 7,711.06 kg]	2550
17,001 to 18,000 lbs [7,711.52 to 8,164.66 kg]	2700
18,001 to 19,000 lbs [8,165.11 to 8,618.25 kg]	2850
19,001 to 20,000 lbs [8,618.70 to 9,071.84 kg]	3000
20,001 to 21,000 lbs [9,072.29 to 9,525.43 kg]	4200
21,001 to 22,000 lbs [9,525.89 to 9,979.02 kg]	4400
22,001 to 23,000 lbs [9,979.48 to 10,432.62 kg]	4600
23,001 to 24,000 lbs [10,433.07 to 10,886.21 kg]	4800
24,001 to 25,000 lbs [10,886.66 to 11,339.80 kg]	5000
25,001 to 26,000 lbs [11,340.25 to 11,793.40 kg]	5200
26,001 to 27,000 lbs [11,793.86 to 12,246.99 kg]	5400
27,001 to 28,000 lbs [12,247.45 to 12,700.59 kg]	5600
28,001 to 29,000 lbs [12,701.04 to 13,154.18 kg]	5800

29,001 to 30,000 lbs [13,154.63 to
13,607.77 kg]

6000

An additional charge of \$200 for every 1,000-lb
[453.59 kg] increase over 30,000 lbs [13,607.77
kg] consistent with the above formula.

Source: Ord. 2006-7, Sec. 1 (2006)

13-1524.9. **PAYMENT OF CHARGES - CONFISCATION - SALE.** If the charges and costs as provided in the preceding section are not paid immediately from a cash bond previously posted or other cash payment, the judge shall order the vehicle confiscated and sold by the sheriff of the county at a public sale to the highest bidder and the proceeds applied to the payment of the charges and costs assessed under the provisions of this section.

13-1524.10. **PAYMENT - EFFECT.** The payment of charges may not be construed as a payment for the future use of highways, streets, alleys and other public roadways of the City by vehicles carrying excess loads.

13-1524.11. **PROCEEDS OF SALE.** The proceeds of sale must be applied first to the payment of the costs of the proceeding, including any allowable attorney's and witness fees and costs, and next to the payment of the charges assessed. Such charges must be remitted to the City Auditor to be credited to the City general fund. The balance of the proceeds of any sale after the payment of costs and charges must be paid over by the sheriff to the person entitled thereto as determined by the court, or must be deposited with the clerk of the court for such payment.

13-1525. **RESTRICTIONS UPON THE USE OF STREETS BY CERTAIN VEHICLES.** The City Auditor or police department is hereby authorized, subject to a resolution of approval by the City Council, to determine and designate those heavily traveled streets upon which shall be prohibited the use of the roadway by bicycles, horsedrawn vehicles or other non-motorized traffic and shall erect appropriate signs giving notice thereof. A disobedience of any restriction and any sign so posted shall be a violation of this title.

13-1526. **LOAD RESTRICTIONS UPON VEHICLES USING CERTAIN HIGHWAYS.** When signs are erected giving notice thereof, no person shall operate any vehicle with a gross weight in excess of the amount specified on said sign at any time upon any of the streets or parts of streets so posted.

13-1527. **MODIFICATION OF MOTOR VEHICLE.** Provisions of N.D. Cent. Code § 39-21-45.1 and all subsequent amendments shall be and hereby are incorporated by reference in this ordinance.

CHAPTER 13-16

PARKING

SECTIONS:

- 13-1601. Parallel Parking and Diagonal Parking.
- 13-1602. Obedience to Angle Parking Signs or Markings.
- 13-1603. Stopping, Standing or Parking Prohibited in Specified Places.
- 13-1604. Parking of Trucks, Delivery Cars and Service Cars Regulated.
- 13-1605. Loading and Unloading Regulations for Trucks.
- 13-1606. Parking Limits.
- 13-1607. City Council May Designate Ten Minute Parking Areas.
- 13-1608. RESERVED FOR FUTURE USE.
- 13-1609. Parking in Area Designated for Mobility Impaired Without Certificate.
- 13-1610. Motor Vehicle Left Unattended, Brakes to be Set.
- 13-1611. Unlawful to Park on Private Property.
- 13-1612. Restricted Parking in Recreation Areas.
- 13-1613. Parking Not to Obstruct Traffic.
- 13-1614. Parking for Certain Purposes Prohibited.
- 13-1615. No Stopping, Standing or Parking Near Hazardous or Congested Places.
- 13-1616. Stopping, Standing and Parking of Buses and Taxi Cabs Regulated.
- 13-1617. Restricted Use of Bus and Taxi Cab Stands.
- 13-1618. Parking Prohibited During Certain Hours on Certain Streets.
- 13-1619. Parking Prohibited on Sidewalks or Boulevards.
- 13-1620. Parking Signs Required.
- 13-1621. Application of Chapter.
- 13-1622. Parking Privileges for Mobility Impaired - Certificate Revocation.
- 13-1623. Regulations Not Exclusive.
- 13-1624. Penalty.
- 13-1625. Delinquent Tickets -- Impoundment of Vehicle.

13-1601. **PARALLEL PARKING AND DIAGONAL PARKING.** The owner, driver or person operating or in charge of any vehicle shall not permit the same to stand or be parked upon any street where there are adjacent curbs unless such vehicle is parallel with the street and the inside wheels not to exceed 18 inches from the right-hand curb or street line. Vehicles must be so parked as to economize parking space for all cases and be so placed as to form, where possible, continuous lines. The City may, by signs, markers, paint

or other devices, limit the parking area, and no vehicle shall be parked wholly or partly outside the indicated and permitted parking area; provided that all vehicles shall be parked diagonally to the curb or any street or avenue if said street or avenue is posted or marked for said diagonal parking.

Where parking is permitted on one-way street the above regulations shall apply except that vehicles parking on the left side of the one-way street shall park parallel to the street and with the wheels on the left side of the automobile not to exceed 18 inches from the left curb or street line.

13-1602. **OBEDIENCE TO ANGLE PARKING SIGNS OR MARKINGS.** On those streets which have been signed or marked by the City for angle parking, no person shall park or stand a vehicle other than at the angle to the curb or edge of roadway indicated by such sign or marking.

13-1603. **STOPPING, STANDING OR PARKING PROHIBITED IN SPECIFIED PLACES.** No person shall stop, stand or park a vehicle except when necessary to avoid conflict with other traffic and in compliance with the law or the direction of a police officer or traffic-control device, in any of the following places:

1. On a sidewalk;
2. Within an intersection;
3. In front of a public or private driveway;
4. Within ten feet of a fire hydrant;
5. On a crosswalk;
6. Within ten feet of a crosswalk at an intersection, except on through streets where it shall not be within 20 feet of a crosswalk;
7. Within 20 feet upon the approach to any flashing beacon, stop sign or traffic-control signal located at the side of the roadway;
8. Between a safety zone and the adjacent curb or within 15 feet of points immediately opposite the ends of a safety zone, unless the State Highway Department or local authority indicates a different length by signs or markings;
9. Within 15 feet of the nearest rail of a railroad crossing;

10. Within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of said entrance when proper sign posted;
11. Along side 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 street or highway or within a street or highway tunnel;
14. At any place where official signs prohibit stopping.

13-1604. PARKING OF TRUCKS, TRUCK TRACTOR, OR SEMI-TRAILER - REGULATED; AND PROHIBITION OF DOLLYING DOWN OF SEMI-TRAILERS.

1. No truck, truck tractor, or semi-trailer shall be parked on any street, boulevard, or alley in any residential district of the City of Kindred for a longer period than one hour; nor shall any such vehicle be parked overnight on any street, avenue, boulevard, or alley in any residential district of the City, or within 100 feet of any residence, condominium, or apartment building; provided, however, that such vehicles loading or unloading cargo may be parked on the streets or alleys long enough to complete their loading or unloading; and provided further that such restrictions shall not apply to any vehicle in use on any repair, maintenance, or construction project in progress on any such street, boulevard, or alley.
2. No semi-trailer shall be dollied down, or detached from the truck tractor on any street, avenue, boulevard, or alley in any district of the City of Kindred.

13-1605. LOADING AND UNLOADING REGULATIONS FOR TRUCKS. A vehicle may be allowed to double-park for the purpose of loading or discharging passengers, or for unloading freight when there is no alley for such purpose and no other parking space available and the freight to be unloaded is of heavy or bulky nature, but only for such length of time as is absolutely necessary for such loading and unloading, except that no merchandise or freight pick-ups or deliveries whatsoever shall be made from doubleparked vehicles between the hours of 4:00 p.m. and 6:00 p.m. on any day except on

Sundays and legal holidays and no vehicle shall double-park for such purposes between such hours.

Any person owning, driving, operating or having under his control any vehicle shall not permit the same to stand or be parked in any alley except while loading or unloading freight or merchandise. If any vehicle is left parked or standing in any alley during such loading or unloading operations it shall be located so that it does not block the alley and as close to the edge of the alley as possible.

If the alley is so narrow that it will be blocked even though the vehicle engaged in the loading or unloading operation is parked so close to the edge of the alley as possible, then, in that event such vehicle shall not be left unattended at any time.

It shall be unlawful to load or unload automobile transport trailers on any street, boulevard or public property of the City of Kindred.

It shall be unlawful to park or permit any vehicle to stand so that it is backed against the curb except when actually loading or unloading freight or merchandise, and if the vehicle is a semi-trailer combination, the motor vehicle or tractor unit thereof must stand parallel to the curb and be headed in the direction of the traffic. No vehicle shall stand so backed up that it interferes with or interrupts the passage of traffic.

In any case it shall be unlawful to load or unload freight or merchandise from a semi-trailer backed into the curb unless the owner operator of the unit involved shall have first secured a written permit to do so from the City; such a written permit must also be secured before any semi-trailer unit may be driven across the center line of the street in order to back the same into a loading stall, and such permit may be issued for reasonable periods of time, not to exceed one year.

It shall be unlawful for any person, firm or corporation to drive or permit to be driven any semi-trailer or truck of more than one ton capacity by backing the same into a curb, unless such person, firm or corporation shall provide a person or arrange with some person, in addition to the driver, to act as flagman during all operations, and said flagman shall station himself in such a position so that he can warn both pedestrians and moving traffic and so that the driver can back the vehicle in a safe manner.

13-1606. **PARKING LIMITS.** Parking is prohibited on Elm Street between 4th and 5th Avenue in the City of Kindred between the hours of 2:30 a.m. through 6:00 a.m. Violation of this ordinance shall be punishable by a fine of not more than \$25.00 for each violation. Further, and subject to the provisions of Section 13-1625 of these ordinances (with the exception of the provisions of that ordinance which deals with pre-impoundment notice and hearing), vehicles

which have not been removed within twenty-four (24) hours of the issuance of a notice of violation may be impounded at owner's expense.

Source: Ord. 2015-63, Sec. 1

13-1607. **CITY COUNCIL MAY DESIGNATE TEN MINUTE PARKING AREAS.** The City Council may designate ten minute parking areas in the business or residential district of the City, and may also extend, change or adjust any of the present ten minute zone now in existence. Each ten minute period during which any vehicle is parked in such area shall constitute a separate and additional violation provided such areas shall be properly posted or marked.

13-1608. **REMOVAL OF VEHICLES AFTER WINTER STORM.** No person may park or leave a vehicle upon any roadway or highway during or subsequent to a winter storm or snowfall event so as to hinder or obstruct snow removal activities. Any public safety officer is hereby authorized to remove or cause to be removed to the nearest garage, or other place of safety, any vehicle found in violation of this section, and the owner thereof will be liable for all costs of such removal and impoundment and, in addition, may be punished by a fine of not more than \$25.

Source: Ord. 2015-63, Sec. 2

13-1609. **PARKING IN AREA DESIGNATED FOR MOBILITY IMPAIRED WITHOUT CERTIFICATE.** No person may stop, stand, or park any vehicle in any designated parking space that is reserved for the mobility impaired unless the vehicle displays a mobility impaired identification certificate issued by the state to a mobility impaired person. Provided, a vehicle may temporarily use a space reserved for mobility impaired persons without a mobility impaired certificate for the purpose of loading and unloading mobility impaired persons. Violation of this section is an infraction for which a fine up to the limit set by the state may be imposed by the City.

13-1610. **MOTOR VEHICLE LEFT UNATTENDED, BRAKES TO BE SET.** No person having control or charge of a motor vehicle shall allow such vehicle to stand on any street or alley unattended without first effectively setting the brakes thereon, and, when standing upon any grade, shall turn the front wheels of such vehicle to the curb or side of the street or highway.

13-1611. **UNLAWFUL TO PARK ON PRIVATE PROPERTY.** It shall be unlawful to trespass upon, drive or park a motor vehicle or trailer or vehicle of any kind upon private property within the city limits of the City of Kindred, where there is displayed permission in writing from the owner or lessee thereof.

13-1612. **RESTRICTED PARKING IN RECREATION AREAS.** Vehicles shall not be parked upon any public street or alley within any playground, swimming pool, tennis courts or any recreation areas, when said street, alley or area is designated or posted against parking.

13-1613. **PARKING NOT TO OBSTRUCT TRAFFIC.** No person shall park any vehicle upon a street, other than an alley in such manner or under such conditions as to leave available less than 15 feet of the width of the roadway for free movement of vehicular traffic.

13-1614. **PARKING FOR CERTAIN PURPOSES PROHIBITED.** No person shall park a vehicle upon a roadway for the principal purpose of:

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

13-1615. **NO STOPPING, STANDING OR PARKING NEAR HAZARDOUS OR CONGESTED PLACES.** The City Council may determine and designate, by having signs placed, places not exceeding one hundred feet in length in which the stopping, standing or parking 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 such designated place.

The City Council may determine the location of passenger and freight loading zones and shall place and maintain appropriate signs indicating the same.

No person shall stop, stand or park a vehicle for any purpose or period of time other than for the expeditious loading or unloading of passengers in any place marked as a passenger curb loading zone and then only for a period long enough to complete such loading.

No persons shall stop, stand or park a vehicle for any purpose or length of time other than for expeditious loading and delivery or pick-up and loading of materials in any place marked as a freight curb loading zone. In no case shall the stop for unloading and loading of materials be longer than that needed to complete such loading and unloading.

13-1616. **STOPPING, STANDING AND PARKING OF BUSES AND TAXI CABS REGULATED.** The operator of a bus shall not stand or park such vehicle upon any street at any place other than a bus stand so designated as provided herein. The operator of a bus shall not

stop such vehicle upon any street at any place for the purpose of loading or unloading passengers or their baggage other than at a bus stop, bus stand or passenger loading zone so designated as provided herein, except in case of an emergency.

The operator of a bus shall enter a bus stop, bus stand or passenger loading zone on a public street in such a manner that the bus when stopped to load or unload passengers or baggage shall be in a position with the right front wheel of such vehicle not further than 18 inches from the curb and the bus approximately parallel to the curb so as not to unduly impede the movement of other vehicular traffic.

The operator of a taxi cab shall not stand or park such vehicle upon any street at any place other than in a taxi cab stand so designated as provided herein. This provision shall not prevent the operator of a taxi cab from temporarily stopping in accordance with other stopping or parking regulations at any place for the purpose of and while actually engaged in the expeditious loading or unloading of passengers.

13-1617. **RESTRICTED USE OF BUS AND TAXI CAB STANDS.** No person shall stop, stand or park a vehicle other than a bus in a bus stop or other than a taxi cab in a taxi cab stand when any such stop or stand has been officially designated and appropriately assigned except that the driver of a passenger vehicle may temporarily stop therein for the purpose of and while actually engaged in loading or unloading passengers when such stopping does not interfere with any bus.

13-1618 **PARKING PROHIBITED DURING CERTAIN HOURS ON CERTAIN STREETS.** When signs are erected in each block giving notice thereof, no person shall park a vehicle between the hours specified on the sign, on any day except Sundays, and public holidays upon any of the streets so posted.

13-1619. **PARKING PROHIBITED ON SIDEWALKS OR BOULEVARDS.** No person shall stop, stand or park any automobile, truck or other vehicle, whether attended or unattended, on a sidewalk or on any boulevard or berm between the sidewalk and the roadway in the City of Kindred.

13-1620. **PARKING SIGNS REQUIRED.** With the exception of Section 13-1606, whenever by this title, or any ordinance of this City, any parking time limit is imposed or parking is prohibited on designated streets, it shall be the duty of the City to erect appropriate signs giving notice thereof, and no such regulations shall be effective unless such signs are erected and in place at

the time of any alleged offense, subject to specific exceptions as stated in this title.

13-1621. **APPLICATION OF CHAPTER.** The provisions of this Chapter prohibiting the standing or parking of a vehicle shall apply at all time or at those times herein specified or as indicated on official signs except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer of official traffic-control device.

13-1622. **PARKING PRIVILEGES FOR MOBILITY IMPAIRED -CERTIFICATE - REVOCATION.** The provisions of Section 39-01-15 of the North Dakota Century Code, and all subsequent amendments thereto, shall be and are hereby incorporated by reference in this ordinance.

13-1623. **REGULATIONS NOT EXCLUSIVE.** The provisions of this Chapter imposing a time limit on parking shall not relieve any person from the duty to observe other and more restrictive provisions prohibiting or limiting the stopping, standing or parking of vehicles in specified places or at specified times.

13-1624. **PENALTY.** Violations of the provisions of this chapter shall be a fine of Eight Dollars (\$8), unless a specific section provides for another penalty. If the parking violation is not paid within five (5) days of the issuance of the ticket, the penalty shall be Ten Dollars (\$10).

13-1625. **DELINQUENT TICKETS -- IMPOUNDMENT OF VEHICLE.** Any vehicle found unoccupied on any public way, public property or property to which the general public has a right of access, and against the registered owner of which vehicle there are three (3) or more unsettled traffic violation notices, warrants for such violations, or parking tickets, is subject to the following procedure:

1. Notice of Pending Impoundment. The City Auditor, or his designated agent, shall mail written notice to the last known address of the registered owner of the vehicle (as determined by the address on file with the Registrar of Motor Vehicles of the State of North Dakota, or other similarly situated person for vehicles licensed in a state other than North Dakota) of the fact that there are three (3) or more unsettled traffic violation notices, warrants for such violations, or parking tickets outstanding, and of the pending impoundment of the vehicle. Additionally, this written notice must include a description of the right of the registered owner to request a hearing on the propriety of the impoundment, as

set forth in subsection 3 below. Notice is hereby deemed effective and complete by being placed in the mail.

2. Impoundment. After five (5) days from mailing the notice of pending impoundment, and unless the owner of the vehicle has complied with subsection 3(A) herein, the vehicle may be towed and impounded. Unless the Judge of the Municipal Court of the City of Kindred determines the impoundment to be unwarranted, as provided in subsection 3(B) herein, all impoundment and storage fees and costs shall be paid prior to the release of the vehicle. Within twenty-four (24) hours after the vehicle is impounded, the City Auditor, or a person designated by the City Auditor, shall mail written notice to the last known address of the registered owner of the vehicle (as determined by the address on file with the Registrar of Motor Vehicles of the State of North Dakota, or other similarly situated person for vehicles licensed in a state other than North Dakota) of the fact that the vehicle has been impounded, the reasons why the vehicle has been impounded, the method for releasing the vehicle, and where and when the person may obtain a hearing to contest the propriety of the impoundment of the vehicle. Notice is hereby deemed effective and complete by being placed in the mail.
3. Hearing to Determine Propriety of Impoundment.
 - A. Prior to Impoundment. Any person receiving a notice pursuant to subsection 1 of this section may request a hearing on the propriety of the pending impoundment of his vehicle within five (5) days from the date of the mailing of the notice. The scope of such a hearing shall be limited to whether or not the owner of the vehicle has the minimum number of unsettled traffic violation notices, warrants for such violations, or parking tickets as set forth herein. The hearing shall not be determinative of, nor adjudicate, any citations issued to the vehicle or its owner. The hearing shall be conducted by the Judge of the Municipal Court of Kindred, North Dakota.
 - B. Subsequent to Impoundment. Any person whose vehicle has been impounded may request a hearing on the propriety of the impoundment of the vehicle. The hearing shall not be determinative of, nor adjudicate, any citations issued to the vehicle or its owner. The hearing must be requested within fifteen (15) days after the vehicle is impounded.

The hearing shall be conducted by the Judge of Municipal Court of Kindred, North Dakota.

4. Release of Impounded Vehicle. A vehicle impounded pursuant to this section shall be released to the registered owner, or any other authorized person, only upon the occurrence of one of the following circumstances:
 - A. The Judge of Municipal Court of Kindred, North Dakota, determines, in a hearing pursuant to subsection 3 above, that the impoundment is not warranted; or
 - B. The registered owner of the vehicle, or other authorized person, pays all outstanding fines, fees, penalties, costs and surcharges for all outstanding or otherwise unsettled traffic violations and parking tickets, and either pays or posts bond pending a hearing as described in subsection 3 above, all fees and costs relating to the impoundment of the vehicle, as set forth in the schedule contained below; or
 - C. The registered owner of the vehicle, or other authorized person, posts bond or deposits collateral to ensure appearance in Municipal Court to answer for each violation, and either pays or posts bond pending a hearing as described in subsection 3 above, all fees and costs relating to the impoundment of the vehicle as set forth in the schedule contained below.
5. Schedule of Fees. The following fees shall be applicable for purposes of this section:
 - A. Impoundment Fees. The fee for the impoundment of a vehicle shall be an additional Twenty-five and no/100 Dollars (\$25.00).
 - B. The owner, or any other authorized person of a vehicle shall be responsible for all costs of towing and/or storage of a vehicle.

CHAPTER 13-17

RAILROAD CARS AND CROSSINGS

SECTIONS:

- 13-1701. Crossing Intersections of Railroads.
- 13-1702. Obedience to Signal Indicating Approach of Train.
- 13-1703. All Vehicles Must Stop at Certain Railroad Grade Crossings.
- 13-1704. Certain Vehicles Must Stop at All Railroad Grade Crossings.

13-1701. **CROSSING INTERSECTIONS OF RAILROADS.** In crossing an intersection of a street or the intersection of a street by a railroad right-of-way the driver of a vehicle shall at all times cause such vehicle to travel on the right half of the street unless such right half is obstructed or impassable or unless there are two lanes of traffic going in the same direction.

13-1702. **OBEDIENCE TO SIGNAL INDICATING APPROACH OF TRAIN.**

1. Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirement shall apply when:
 - a. A clearly visible electric or mechanical 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 within approximately 1,320 feet of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard; or
 - d. An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

2. No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed. No person shall drive any vehicle past any human flagman at a railroad crossing until the flagman signals that the way is clear to proceed.

13-1703. **ALL VEHICLES MUST STOP AT CERTAIN RAILROAD GRADE CROSSINGS.** The City Council, with respect to highways under its jurisdiction, may designate particularly dangerous highway grade crossings of railroads and cause to be erected stop signs thereat. When such stop signs are erected, the driver of any vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall proceed only upon exercising due care.

13-1704. **CERTAIN VEHICLES MUST STOP AT ALL RAILROAD GRADE CROSSINGS.**

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 200 degrees F., 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 which must have the following placards: "Explosives," "Poison," "Flammable Oxidizers," "Compressed Gas," "Corrosives," "Flammable Gas," "Radioactive," or "Dangerous," before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty feet but not less than fifteen feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so, the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for manually changing gears while traversing such crossing, and the driver shall not manually shift gears while crossing the track or tracks.
2. No stop need be made at any such crossing at which traffic is controlled by a peace officer. For the purposes of this Section, a United States marshal shall be considered a peace officer.

CHAPTER 13-18

BICYCLES

SECTIONS:

- 13-1801. Effective Regulations.
- 13-1802. **Reserved for Future Use.**
- 13-1803. **Reserved for Future Use.**
- 13-1804. **Reserved for Future Use.**
- 13-1805. **Reserved for Future Use.**
- 13-1806. **Reserved for Future Use.**
- 13-1807. **Reserved for Future Use.**
- 13-1808. **Reserved for Future Use.**
- 13-1809. **Reserved for Future Use.**
- 13-1810. Traffic Laws Apply to Persons Riding Bicycle or Tricycle.
- 13-1811. Traffic - Control Devices: Obedience to.
- 13-1812. Riding on Bicycles.
- 13-1813. Riding on Roadways and Bicycle Paths.
- 13-1814. Speed.
- 13-1815. Emerging from Alley or Driveway.
- 13-1816. Carrying Articles.
- 13-1817. Parking.
- 13-1818. Riding on Sidewalks.
- 13-1819. Lamps and Other Equipment on Bicycles.
- 13-1820. **Reserved for Future Use.**
- 13-1821. Bicycle Accidents.

13-1801. **EFFECTIVE REGULATIONS.**

1. It is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this title.
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 provisions of this title.
3. These regulations are applicable to bicycles and tricycles shall apply whenever a bicycle or tricycle is operated upon any street or highway or upon any path set aside for the exclusive use of bicycles or tricycles subject to those exceptions stated herein.

13-1802. **RESERVED FOR FUTURE USE.**

13-1803. **RESERVED FOR FUTURE USE.**

13-1804. **RESERVED FOR FUTURE USE.**

13-1805. **RESERVED FOR FUTURE USE.**

13-1806. **RESERVED FOR FUTURE USE.**

13-1807. **RESERVED FOR FUTURE USE.**

13-1808. **RESERVED FOR FUTURE USE.**

13-1809. **RESERVED FOR FUTURE USE.**

13-1810. **TRAFFIC LAWS APPLY TO PERSONS RIDING BICYCLE OR TRICYCLE.** Every person riding a bicycle or tricycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by the laws of this state, declaring rules of the road applicable to vehicle or by the traffic ordinances of this city applicable to the driver of a vehicle, except as to special regulations in this chapter and exempt as to those provisions of laws and ordinances which by their nature have no application.

13-1811. **TRAFFIC - CONTROL DEVICES: OBEDIENCE TO.**

1. Any person operating a bicycle or tricycle shall obey the instructions of the official traffic-control signals, signs and other 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 or tricycle shall disobey the direction of any sign, except where such person dismounts from the bicycle or tricycle to make any such turn, in which event such person shall then obey the regulations applicable to pedestrians.

13-1812. **RIDING ON BICYCLES.**

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

13-1813. **RIDING ON ROADWAYS AND BICYCLE PATHS.**

1. Every person operating a bicycle or tricycle 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 or tricycles 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 or tricycles;
3. Wherever a usable path for bicycles or tricycles has been provided adjacent to a roadway, bicycle or tricycle riders shall use such path and shall not use the roadway.

13-1814. **SPEED.** No person shall operate a bicycle at a speed greater than is reasonable and prudent under the conditions then existing.

13-1815. **EMERGING FROM ALLEY OR DRIVEWAY.** The operator of a bicycle emerging from an alley, driveway or building, upon approaching a sidewalk or the pedestrians approaching on said sidewalk or sidewalk area, and upon entering the roadway, shall yield right-of-way to all vehicles approaching on said roadway.

13-1816. **CARRYING ARTICLES.** No person operating a bicycle shall carry a package, bundle or article which prevents the rider from keeping at least one hand upon the handlebars, or carry any package, bundle or article which prevents the forward vision of the operator.

13-1817. **PARKING.** No person shall park a bicycle upon a street other than upon the roadway against the curb or upon the sidewalk in a rack to support the bicycle or against a building or at the curb, in such manner as to afford the least obstruction to pedestrian traffic.

13-1818. **RIDING ON SIDEWALKS.**

1. No person shall ride a bicycle upon a sidewalk within a business district;
2. No person 12 or more years of age shall ride any bicycle upon any sidewalk in any district, except those persons engaged in delivering newspapers may ride their bicycle upon a sidewalk outside the business district during

working hours only in order to complete delivery of their newspapers;

3. No person shall ride a bicycle upon a sidewalk which is within or part of an underpass;
4. Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give audible signal before over-taking and passing such pedestrian.

13-1819. **LAMPS AND OTHER EQUIPMENT ON BICYCLES.**

1. Every bicycle when in use at night time shall be equipped with a lamp on the front of 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 Motor Vehicle Department. A lamp emitting red light visible from a distance of five hundred feet to the rear may be used in addition to the red reflector.
2. Every bicycle shall be equipped with a brake which will enable the operator make the braked wheel skid on dry, level and clean pavement.

13-1820. **RESERVED FOR FUTURE USE.** (Repealed by Ord. 2015-61)

13-1821. **BICYCLE ACCIDENTS.** A driver of a bicycle involved in an accident with another bicycle, motor vehicle or with a pedestrian shall immediately stop such bicycle, motor vehicle or with a pedestrian shall immediately stop such bicycle at the scene of the accident and shall give his name, age and address to other person or persons involved. He shall also give immediate notice of the accident and shall file a report regarding the accident. In the event said accident is investigated at the scene, then it is not necessary for the driver to file an individual report.

CHAPTER 13-19

TRANSPORTATION BY MOTOR VEHICLES OF EXPLOSIVES WITHIN CITY

SECTIONS:

- 13-1901. Application.
- 13-1902. Declared a Hazard.
- 13-1903. Permit Required
- 13-1904. Conditions of Permit.
- 13-1905. Type of Escorts Permitted.
- 13-1906. Charge for Escort Vehicles or Drivers.

13-1901. **APPLICATION.** This chapter shall apply to all owners and operators of motor vehicles transporting any explosives, munitions, dynamite, ammunition (except small arms ammunition and shot-gun shells), gunpowder, T.N.T., dynamite caps or detonating caps in the City of Kindred.

13-1902. **DECLARED A HAZARD.** The transportation by motor vehicle in the City of Kindred of any of the commodities or things mentioned in Section 13-1901 of this chapter, is hereby declared to be a menace and a hazard to the safety of the people of the City of Kindred and their property.

13-1903. **PERMIT REQUIRED.** It shall be unlawful for any person, partnership, association or corporation who owns, leases or operates any motor vehicle hauling any of the commodities or things mentioned in Section 13-1901 of this chapter to use or operate the same for the transportation of such commodities or things upon the streets of the City of Kindred without first having obtained a permit to do so from the City Auditor of the City of Kindred. A violation of any of the conditions or provisions of the permit shall be a violation of this chapter.

13-1904. **CONDITIONS OF PERMIT.** A permit shall be required for each vehicle but not for each separate movement through the City and all permits issued shall contain the following conditions and provisions:

1. The route through the City of Kindred which will be followed;
2. The time of the movement of hauling and the type of escort to be provided;

3. The name of the driver of the vehicle, a description of the vehicle, and the name of the owner or lessor of the vehicle.

13-1905. **TYPE OF ESCORTS PERMITTED.** Each and every motor vehicle transporting any of the things or commodities mentioned in Section 13-1901 of this chapter on the streets of the City of Kindred must, after obtaining a permit as above required be escorted and protected both front and rear by an official highway department, sheriff's, police or fire department vehicle driven by:

1. A North Dakota State Highway Patrolman; or
2. A police officer of the , North Dakota; or
3. A fireman from the City of Kindred, North Dakota; or
4. A sheriff or authorized deputy from Cass County, North Dakota.

13-1906. **CHARGE FOR ESCORT VEHICLES OR DRIVERS.** If Police Department or Fire Department vehicles or drivers are to be used as escorts, a fee of \$5.00 for each vehicle, or each escort driver, or each vehicle and escort driver furnished shall first be paid, provided that in no case shall any one truck, or semi-trailer be required to pay more than a total of \$10.00 per trip through the City for escort vehicles and escort drivers.

CHAPTER 13-20

OFF-HIGHWAY VEHICLES

Source: Ord. 2006-13, Sec. 1 (2007)

SECTIONS:

- 13-2001. Definitions.
- 13-2002. General Rules of Operation.
- 13-2003. Severability.

13-2001. **DEFINITIONS.**

- 1. Snowmobile. For purposes of this chapter the definition of "snowmobile" shall be as set forth in Section 39-24-01 of the North Dakota Century Code, and subsequent amendments thereto, and shall be and is hereby incorporated by reference in this ordinance.
- 2. All-Terrain Vehicle. For purposes of this chapter, "all-terrain vehicle" shall mean a self-propelled vehicle which is less than 50 inches in width, travels on three or more low-pressure tires, has a saddle designed to be straddled by the operator, and has handlebars for steering control.

13-2002 **GENERAL RULES OF OPERATION.** The provisions Sections 39-24-09 and 39-29-09 of the North Dakota Century Code, and all subsequent amendments thereto, relating to the operation of snowmobiles and all-terrain vehicles, shall be and are hereby incorporated by reference in this ordinance. These provisions shall apply to the operation of snowmobiles and all-terrain vehicles within city limits.

- 1. Snowmobiles and all-terrain vehicles are permitted to be operated within the city limits of the City of Kindred only from the residence of the registered owner to the city limits, taking the shortest route practicable.
- 2. Snowmobiles and all-terrain vehicles are permitted to be operated, for commercial purposes, within the city limits of the City of Kindred, provided that the operator of the snowmobile or all-terrain vehicle has obtained the appropriate registration and permit from the State of North Dakota.
- 3. Snowmobiles and all-terrain vehicles must display the appropriate registration and permit identification provided by the State of North Dakota.

13-2003. **SEVERABILITY.** Invalidity of any section clause, sentence or any provision of this chapter shall not affect the

validity of any part of this ordinance which can be given effect without such invalid part or parts.

CHAPTER 13-21

ARREST PROCEDURE

SECTIONS:

- 13-2101. Halting Person for Violating Traffic Regulations: Duty of Officer Halting.
- 13-2102. Hearing - Time - Promise of Defendant to Appear - Failure to Appear Penalty.
- 13-2103. Offenses Under Which Person Halted May Not be Entitled to Release Upon Promise to Appear.
- 13-2104. Arrest of Non-resident Traffic Violator.
- 13-2105. Fines and Forfeitures, Disposition of.
- 13-2106. Tagging Motor Vehicles.
- 13-2107. Reports Kept by Municipal Judge.
- 13-2108. When Copy of Citation Shall be Deemed a Lawful Complaint.
- 13-2109. Failure to Comply with Traffic Citation Attached to Parked Vehicle.
- 13-2110. Presumption in Reference to Illegal Parking.
- 13-2111. When Warrant to be Issued.

13-2101. **HALTING PERSON FOR VIOLATING TRAFFIC REGULATIONS: DUTY OF OFFICER HALTING.** The provisions of N.D. Cent. Code § 39-07-07 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-2102. **HEARING - TIME - PROMISE OF DEFENDANT TO APPEAR - FAILURE TO APPEAR - PENALTY.** The provisions of N.D. Cent. Code § 39-07-08 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-2103. **OFFENSES UNDER WHICH PERSON HALTED MAY NOT BE ENTITLED TO RELEASE UPON PROMISE TO APPEAR.** The provisions of N.D. Cent. Code § 39-07-09 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-2104. **ARREST OF NON-RESIDENT TRAFFIC VIOLATOR.** A police officer at the scene of a traffic accident may arrest without a warrant any driver of a vehicle who is a non-resident of this State and who is involved in the accident when based upon personal investigation, the officer has reasonable and probable grounds to believe that the person has committed any offense under the provisions of this title in connection with the accident, and if the officer has reasonable and probable grounds to believe the person will disregard a written promise to appear in Court.

Whenever any person is arrested under the provisions of this section, he shall be taken without unnecessary delay before the proper magistrate.

13-2105. **FINES AND FORFEITURES, DISPOSITION OF.** All fines or forfeitures collected upon conviction, or upon forfeiture of bail of any person charged with the violation of any provision of this title shall be disposed of as provided by law. The municipal judge shall file with the City Auditor a schedule in writing, subscribed by the municipal judge, indicating the amount of bail fixed by such municipal judge for the release of persons arrested or charged with any violation of this title and based on the offense charged, which schedule shall be applicable for the bail to be furnished in his absence from the municipal court, and any person who pays or delivers such bail to the arresting officer or the appropriate law enforcement agency, but during the absence of the municipal judge in municipal court, shall be immediately released from custody. Provided, that the payment of delivery of such bail shall be immediately released from custody. Provided, that the payment of delivery of such bail shall be a waiver of any defect or irregularity or any previous defect or irregularity in such proceedings, including the arrest of such person; and provided further, that the municipal judge may in all cases where he is present in municipal court fix bail in such amount whereupon such conditions as may be provided by law, and within his discretion and without regard to the bail schedule provided and applicable in his absence from municipal court.

13-2106. **TAGGING MOTOR VEHICLES.** Any peace officer who finds any motor vehicle located within the City in a place or in a condition which is at the time in violation of this title, may affix a tag to any prominent portion of such motor vehicle giving notice in writing requiring the owner or person in possession thereof to appear before the municipal judge at a time as provided in Section 13-2101 of this chapter. This shall constitute legal and sufficient notice requiring the owner or person in possession of said motor vehicle to appear before the municipal judge at the time or within the time specified on said tag. In the event the owner or person in possession of said motor vehicle shall fail to respond to said notice to appear before the municipal judge, at the time or within the time specified on such tag, and he may be arrested at any subsequent time and prosecuted for violation of this section.

13-2107. **REPORTS KEPT BY MUNICIPAL JUDGE.** The municipal judge shall keep and file a report of every case in which a person is charged with violation of any provision of this title.

13-2108. **WHEN COPY OF CITATION SHALL BE DEEMED A LAWFUL COMPLAINT.** In the event the form of citation includes information and is sworn to as required under the general laws of this State in respect to a complaint charging commission of the offense alleged

in said citation to have been committed, then such citation when filed with a Court having jurisdiction shall be deemed to be a lawful complaint for the purpose of prosecution under this title.

13-2109. **FAILURE TO COMPLY WITH TRAFFIC CITATION ATTACHED TO PARKED VEHICLE.** If a violator on the restrictions of stopping, standing or parking under the traffic laws or ordinances does not appear in response to a traffic citation affixed to such motor vehicle within a period of five days, the peace officer shall send to the owner of the motor vehicle to which the traffic citation was fixed, a letter informing him of the violation and warning him in the event such letter is disregarded for a period of five days, a warrant of arrest will be issued.

13-2110. **PRESUMPTION IN REFERENCE TO ILLEGAL PARKING.** In any prosecution charging a violation of any law or regulation governing the standing or parking of a vehicle, proof that the particular vehicle described in the complaint was parked in violation of any such law or regulation, together with proof that the defendant named in the complaint was at the time of such parking, the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle, was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

13-2111. **WHEN WARRANT TO BE ISSUED.** In the event any person fails to comply with a traffic citation given to such person or attached to a vehicle or fails to make appearance pursuant to a summons directing an appearance in the municipal court, or if any person fails to or refuses to deposit bail as required and within the time permitted by this article, the municipal judge may issue, upon application, a warrant for his arrest.

CHAPTER 13-22

CLASSIFICATION AND DISPOSITION OF TRAFFIC OFFENSES.

SECTIONS:

- 13-2201. Definitions.
- 13-2202. Judicial Procedure - Criminal.
- 13-2203. Classification of Traffic Offenses.
- 13-2204. Traffic Violations Non-Criminal - Exceptions - Procedures.
- 13-2205. Notification of Parent or Guardian of Juvenile Traffic Offenders.
- 13-2206. Administrative Hearing - Procedures - Appeals - State Orders.
- 13-2207. Failure to Appear, Pay Statutory Fee, Post Bond - Procedure.
- 13-2208. Offenses Excepted.
- 13-2209. Amount of Statutory Fee.

13-2201. **DEFINITIONS.** The provisions of N.D. Cent. Code § 39-06.1-01 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-2202. **JUDICIAL PROCEDURE - CRIMINAL.** Disposition of traffic offenses designated as criminal, herein Section 13-2203, shall be in accordance with Title 29 North Dakota Century Code, JUDICIAL PROCEDURE, CRIMINAL, with appeals therefrom to the District Court or County Courts of Increased Jurisdiction in accordance with the statute providing therefore.

13-2203. **CLASSIFICATION OF TRAFFIC OFFENSES.** Violation of any city ordinance regulating traffic and providing penalties for Violation thereof are classified as criminal if contained in Chapter 13-07 or which are listed as criminal traffic offenses in Section 39-06.1-10 of the North Dakota Century Code. If there is a conflict between Chapter 13-07 and Section 39-06.1-10 of the North Dakota Century Code, the Century Code provision shall prevail. All other traffic violations for which the municipal court has jurisdiction shall be deemed to be non-criminal offenses unless a separate penalty clause providing criminal penalties is provided in the ordinance establishing the offense.

13-2204. **TRAFFIC VIOLATIONS NON-CRIMINAL - EXCEPTIONS - PROCEDURES.** The provisions of N.D. Cent. Code § 39-06.1-02 and all subsequent amendments shall be and are hereby incorporated by reference and all sections of the North Dakota Century Code

referred to therein and all subsequent amendments thereto shall be and are hereby incorporated by reference in this ordinance.

13-2205. **NOTIFICATION OF PARENT OR GUARDIAN OF JUVENILE TRAFFIC OFFENDERS.** The provisions of N.D. Cent. Code § 39-06.1-02.1 and all subsequent amendments shall be and are hereby incorporated by reference in this ordinance.

13-2206. **ADMINISTRATIVE HEARING - PROCEDURES - APPEALS - STATE ORDERS.** The provisions of North Dakota Century Code § 39-06.1-03 and all subsequent amendments shall be and are hereby incorporated by reference and all sections of the North Dakota Century Code referred to therein and all subsequent amendments thereto shall be and are hereby incorporated by reference in this ordinance.

13-2207. **FAILURE TO APPEAR, PAY STATUTORY FEE, POST BOND - PROCEDURE.** The provisions of N.D. Cent. Code § 39-06.1-04 and all subsequent amendments shall be and are hereby incorporated by reference and all sections of the North Dakota Century Code referred to therein and all subsequent amendments thereto shall be and are hereby incorporated by reference in this ordinance.

13-2208. **OFFENSES EXCEPTED.** The provisions of N.D. Cent. Code § 39-06.1-05 and all subsequent amendments shall be and are hereby incorporated by reference and all sections of the North Dakota Century Code referred to therein and all subsequent amendments thereto shall be and are hereby incorporated by reference in this ordinance.

13-2209. **AMOUNT OF STATUTORY FEE.** The provisions of N.D. Cent. Code § 39-06.1-06 and all subsequent amendments shall be and are hereby incorporated by reference and all sections of the North Dakota Century Code referred to therein and all subsequent amendments thereto shall be and are hereby incorporated by reference in this ordinance.

TITLE XIV.

FRANCHISES

CHAPTERS:

- 14-01. Cable Television Franchise.
- 14-02. Otter Tail Power Company - Electrical.
- 14-03. Montana-Dakota Utilities Co. - Gas
- 14-04. Cass County Electric - Electrical

CHAPTER 14-01.

CABLE TELEVISION FRANCHISE.

SECTIONS:

- 14-0101. Title.
- 14-0102. Definitions.
- 14-0103. Grant of Non-Exclusive Authority.
- 14-0104. Compliance with Applicable Laws and Ordinances.
- 14-0105. Territorial Area Involved.
- 14-0106. Liability and Indemnification.
- 14-0107. General System Specifications.
- 14-0108. Technical Standards.
- 14-0109. Operation and Maintenance of System.
- 14-0110. Service to Schools and City.
- 14-0111. Emergency Use of Facilities.
- 14-0112. Safety Requirements.
- 14-0113. Limitations on Rights Granted.
- 14-0114. Ownership and Removal of Facilities.
- 14-0115. Assignment of Ordinance.
- 14-0116. Payment to City.
- 14-0117. Duration and Renewal of Ordinance.
- 14-0118. Erection, Removal and Common Use of Poles.
- 14-0119. Rates.
- 14-0120. Miscellaneous.
- 14-0121. Modification of Obligations.
- 14-0122. Severability.
- 14-0123. Effective Date and Ordinance Repealed.

14-0101. **TITLE.** This Ordinance shall be known and may be cited as the "Community Antenna Television Ordinance."

14-0102. **DEFINITIONS.** For the purposes of this ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

1. "Basic Cable Service" means the service tier which includes the retransmission of local broadcast signals.
2. "City" is the City of Kindred, North Dakota.
3. "Council" is the City Council of the City of Kindred, North Dakota.

4. "Cable Television System" or "Cable System" is a system utilizing certain electronic and other components which deliver to subscribing members of the public various communications services.
5. "Cable Television Reception Service" means the delivery by the Grantee to television receivers (or any other suitable type of electronic terminal or receiver of the electronic signals and other communications services carried over said system.
6. "FCC" shall mean Federal Communications Commission.
7. "Person" is any person, firm partnership, association, corporation or organization of any kind and any other legally recognized entity.
8. "Grantee" is the cable service provider selected by resolution by the City Council.
9. "Subscribers" are those persons contracting to receive cable television reception services furnished under this Ordinance by Grantee.

14-0103. **GRANT OF NON-EXCLUSIVE AUTHORITY.**

1. There is hereby granted by the City to the Grantee, and to its successors, assigns or designees, the non-exclusive right to erect, maintain and operate in, under, over, along, across, and upon the present and future streets, lanes, avenues, sidewalks, alleys, bridges, highways, easements dedicated for compatible uses and other public places in the City of Kindred, lines, cables, wires, manholes and all other fixtures and equipment necessary for the maintenance and operation in the City of Kindred a cable television system, for the purpose of transmission and distribution of audio, visual, electronic and electric impulses in order to furnish television and radio programs and various other communications services to the public by what is commonly called a Community Antenna Television System, for a period ending October 15, 2011, commencing from and after the effective date of this Ordinance.
2. The right to use and occupy said streets, alleys, public ways and places for the purpose herein set forth shall not be exclusive.

14-0104. **COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.** The Grantee shall, during the term hereof, except in those area which have been preempted by the Cable Communications Policy Act of 1984 or which are regulated by the Federal Communications Commission, be

subject to all lawful exercise of the regulating and police powers of the City.

14-0105. **TERRITORIAL AREA INVOLVED.** This Ordinance relates to the present territorial limits of the City and to any area annexed thereto during the term of this Ordinance. Grantee shall not be required to service residents of newly annexed areas of the City or areas within the City limits that are beyond four hundred feet (400') from existing distribution lines except upon payment by such residents of the capital costs incurred by the Grantee in bringing service to such residents. Grantee may, but shall not be required to, serve areas or individual homes adjoining, but outside the City limits, that may be served from its existing facilities. Grantee may negotiate directly with such customers the amount to be charged for the bringing of the service to the customer.

14-0106. **LIABILITY AND INDEMNIFICATION.** Grantee shall, at all times, keep in effect the following types of insurance coverage:

1. Workmen's Compensation upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the City of Kindred, North Dakota.
2. Property Damage Liability insurance to the extent of Two Hundred Fifty Thousand Dollars (\$250,000.00) as to each occurrence and Two Hundred Fifty Thousand Dollars (\$250,000.00) aggregate, and personal injury liability insurance to the extent of Five Hundred Thousand Dollars (\$500,000.00) as to each occurrence and Five Hundred Thousand Dollars (\$500,000.00) aggregate. Excess bodily injury and property damage of One Million Dollars (\$1,000,000.00) each occurrence and One Million Dollars (\$1,000,000.00) aggregate. Automobile bodily injury and property damage liability combined One Million Dollars (\$1,000,000.00) each occurrence.

Grantee shall indemnify, protect, and save harmless the City from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any Workman's Compensation law which may arise out of their reaction maintenance, use or removal of said attachments of poles within the City, or by any other act of Grantee, its agents or employees. Grantee shall carry insurance in the above described amounts to protect the parties hereto from and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. Grantee shall also carry such insurance as it deems necessary to protect it from all claims under the Workmen's Compensation laws in effect that may be applicable to Grantee. All insurance required shall be and remain in full force and effect

form the entire life of the rights granted hereunder. Insurance certificates evidencing such insurance coverage shall be deposited with and kept on file by the City.

These damages or penalties shall include, but shall not be limited to, damages arising out of copyright, infringements, and all other damages arising out of the installation, operation, or maintenance of the Cable Television System authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance.

14-0107. **GENERAL SYSTEM SPECIFICATIONS.** The facilities used by the Grantee shall have a minimum capacity of 35 channels. The facilities shall also be capable of distributing color television signals, and when the signals the Grantee distributes are received in color, they shall be distributed in color where technically feasible.

14-0108. **TECHNICAL STANDARDS.** Grantee shall be governed by technical standards established by the FCC.

14-0109. **OPERATION AND MAINTENANCE OF SYSTEM.**

1. The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest possible time. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.
2. All service requests and complaints should be responded to within 24 hours of receipt.

14-0110. **SERVICE TO SCHOOLS AND CITY.** The Grantee shall, subject to the line extension provisions of Section 14-0105, provide basic cable service at no cost to public and parochial elementary and secondary schools within the City, at one terminal junction for educational purposes upon request of the school system.

Grantee shall, subject to the line extension provisions of Section 14-0105, also provide to the City without charge, at one City owned building other than a hospital, nursing home, apartment or building at the airport, to be selected by the Council of Kindred, one junction terminal to said building and shall also furnish to the building, without charge, basic service to all sets connected within such building to the terminal junction.

The Grantee shall allocate one channel to the City as a public, educational or governmental access channel. Until such time as the City files a written request with Grantee for full-time use of the channel, Grantee shall have the right to use that portion of the channel capacity that is not being used by the City. Grantee shall

have a reasonable period of time after notification to vacate its use of the channel. Grantee shall assist the City in obtaining the necessary licenses and frequency clearance to enable the City to use said channel.

14-0111. **EMERGENCY USE OF FACILITIES.** In the case of any emergency or disaster, the Grantee shall, upon request of the City Council, make available its facilities to the City for emergency use during the emergency or disaster. If the City wishes to operate a Civil Emergency Alert System on a plan that is mutually acceptable to the City and Grantee and provides Grantee with the necessary equipment for such system, Grantee will permit the system to be used on the cable system.

14-0112. **SAFETY REQUIREMENTS.** The Grantee shall, at all times, employ ordinary care and shall use and maintain commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries or nuisances to the public.

14-0113. **LIMITATIONS ON RIGHTS GRANTED.**

1. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places, and said poles or towers shall be removed by Grantee whenever the City Public Works Superintendent or Engineer reasonably finds that the same restrict or obstruct the operation or location of any future streets or public places in the City of Kindred, North Dakota.
2. Construction and maintenance of the transmission distribution system shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, and such applicable ordinances and regulations of the City of Kindred, North Dakota, affecting electrical installation, which may be presently in effect, or changed by future ordinances.
3. 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 Public Works Superintendent or Engineer, replace and restore such street, sidewalk, alley, public way, or

paved areas in as good a condition as before the work involving such disturbance was done. Grantee shall not be required to pay a fee for street openings.

4. If at any time during the period of this Ordinance the City shall lawfully elect to alter, or change the grade 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 telephone or other fixtures at its own expense.
5. The Grantee shall, on the request of any person holding a building moving permit issued by the City or any person who wishes to remove trees or structures from their property, temporarily raise or lower its wires to permit the moving of buildings or tree removal. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.
6. The Grantee shall have the authority to trim trees that are overhanging the streets, alleys, sidewalks, and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the Grantee.
7. Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate on the same street, alley or public place, or remove from the street, alley or public place, any property of Grantee when required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishments of street grade, installation of sewers, drains, waterpipes, power lines, signal lines, and tracks or any other types of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity, or other structure of public improvement; provided, however, that Grantee shall in all cases have the privileges and be subject to the obligations to abandon any property of Grantee in place as hereinafter provided.
8. In all sections of the City where the City designates an area where all presently above ground services are to be placed underground, the Grantee shall place its wires

underground on the same time schedule and on the same conditions that are applicable to the providers of other above ground services in the designated areas.

9. In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such systems or property has been installed in any street or public place without complying with the requirements of this ordinance, or the rights granted hereunder have been terminated, canceled or have expired, Grantee shall, subject to the rights of the City to acquire or transfer the system as specified in Section 14-0118, promptly remove from the streets, or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City.
10. Any property of Grantee to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property.

14-0114. **OWNERSHIP AND REMOVAL OF FACILITIES.** All cable and passive equipment for cable television reception service installed by Grantee at a subscriber's location shall remain the property of Grantee and Grantee shall have the right to remove said cable and equipment. Upon termination of service to any subscriber, the Grantee shall promptly remove all its above-ground facilities and equipment from the premises of such subscriber upon his request.

14-0115. **ASSIGNMENT OF ORDINANCE.** The Grantee shall not assign this ordinance to any other person without prior approval of the City Council, which approval shall not be unreasonably withheld.

14-0116. **PAYMENT TO THE CITY.** After five (5) years from start-up, the City and Grantee shall negotiate a franchise payment to be made to the City by the Grantee, not to exceed three percent (3%) of the monthly basic service charge, such payments to be made semi-annually, with the first such payment to be made within thirty (30) days after the conclusion of the first six month period following date of commencement of customer service and continuing each six months thereafter. Gross basic service revenues shall not include revenues received from premium pay services or as installation charges, and fees for reconnections, inspections,

repairs or modifications of any installation, and all State and Federal Taxes relating thereto.

The payments that Grantee makes to the City shall be in lieu of any occupation tax, license tax, or similar levy by the City.

This amount payable by the Grantee to the City shall be the sole amount payable for all of its rights under this ordinance including, but not limited to, the use of the streets and other facilities of the City in the operation of the Cable System and for the municipal supervision thereof and shall be in lieu of any other occupational tax or franchise fee.

Notwithstanding the annual gross revenue fee or tax payable hereunder, if the Grantee is legally obligated to collect or pay any sales tax or other taxes, the Grantee shall have the right to charge the subscribers an additional amount equal to such tax.

14-0117. **DURATION AND RENEWAL OF ORDINANCE.** The rights granted to Grantee herein shall, except as provided in this Section, terminate on July 31, 2028; however, this Ordinance shall be subject to renewal pursuant to the provisions of the Cable Communications Policy Act of 1984 applicable to new ordinances that are in the nature of a franchise. Pending final completion of renewal proceedings, the ordinance shall remain in effect even if the original term has expired. If this ordinance is not renewed or if it is revoked for cause by the City, the transfer of Grantee's system shall be governed by Section 627 of the Cable Communications Policy Act of 1984.

Source: Ord. 2013-48, Sec. 1 (2013)

14-0118. **ERECTION, REMOVAL AND COMMON USE OF POLES.**

1. No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the designated representative of the City Council with regard to locations, height, type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire-holding structure of the Grantee shall be vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City Council or its designated representative determines that the public convenience would be enhanced thereby.

2. Where poles or other wire-holding structures already existing in use in serving the City are available for use by Grantee, but it does not make arrangements for such use, the City Council may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.

3. Where the City or a public utility serving the City desires to make use of poles or other wire-holding structures of the Grantee but agreement therefore with the Grantee cannot be reached, the City Council may require the Grantee to permit such use for such consideration as is just and reasonable and upon such terms as the Council determines the use would enhance the public convenience and would not unduly interfere with the Grantee's operations.

14-0119. **RATES.**

1. Grantee shall at all times maintain on file with the City Auditor a schedule setting forth all rates and charges to be made to subscribers for basic cable service, including installation charges.

2. During the term hereof, the City may regulate rates only if authorized to do so by Federal Communications Commission regulations and then such regulation shall only be in accordance with the provisions of such regulations.

a. Before making any changes in the rates and charges to subscribers for basic cable service, Grantee shall file in writing with the City Auditor a new proposed rate change at least thirty (30) days in advance of the proposed effective date for such rate change. If the City takes no action to set the proposed rate change for hearing, said proposed rate changes shall become effective upon the expiration of the 30-day notice period. Appeal from the Council's action may be made to the appropriate judicial or administrative forum.

b. If the Council wishes to hold a hearing on the proposed rate increase, the hearing shall be held within forty-five (45) days of the filing of the proposed rate increase by Grantee. Following the hearing, the Council shall take final action on the proposed increase within thirty (30) days.

3. Any rate subject to regulation under the above provisions may be increased without the approval of the City, at the discretion of Grantee by an amount not to exceed five percent (5%) per calendar year. In addition, Grantee shall have the right to pass along to subscribers state and local sales taxes, vendor's programming cost increases and copyright fee increases.

4. The monthly rate set forth in subsection 1 above shall be payable in advance.

5. The Grantee shall not discriminate in rates between customers of the same category except to the extent permitted by the Cable Communications Policy Act of 1984 and Federal Communications Commission regulations.

Section 14-0120. **MISCELLANEOUS.**

1. Grantee's legal, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements, if any, have been approved by the Council after consideration in a full public proceeding affording due process to all interested parties.

2. Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to Grantee's office. Should Grantee fail to satisfy a complaint, it may then be directed to the Auditor for investigation. The complaining party and Grantee shall be afforded a reasonable opportunity to present written statements of their position. The Auditor shall attempt to resolve the complaints and, if this cannot be achieved, he or she shall submit a recommendation to the City Council, which shall either (1) dismiss the complaint, or (2) specify corrective steps to be taken by Grantee. Appeal from the Council's action may be made to the appropriate judicial or administrative forum.

14-0121. **MODIFICATION OF OBLIGATIONS.** In addition to any other remedies provided by law or regulation, Grantee's obligations under this ordinance may be modified, at its request, in accordance with Section 625 of Cable Communications Policy Act of 1984 as it now exists, or as hereafter amended.

14-0122. **SEVERABILITY.** 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, or is superseded or preempted by Federal Communications Commission regulation, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

14-0123. **EFFECTIVE DATE AND ORDINANCE REPEALED.** Upon the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed, including the prior ordinance and any amendments thereto granting a cable television franchise to Cable Communications, Inc.

CHAPTER 14-02

OTTER TAIL POWER COMPANY - ELECTRICAL

SECTIONS:

- 14-0201. Grant of Authority.
- 14-0202. Compliance with Applicable Regulations.
- 14-0203. Obstruction of Roadways to be Minimized.
- 14-0204. Construction of Facilities.
- 14-0205. Rights to Trim Trees.
- 14-0206. Limitation of Liability.
- 14-0207. Deposits.
- 14-0208. Rates.
- 14-0209. Contracts Subject to Applicable Regulations.
- 14-0210. Prior Franchise Ineffective.
- 14-0211. Grantee Subject to Police Power Regulations.
- 14-0212. Effective Date.

14-0201. **GRANT OF AUTHORITY.** There is hereby granted to Otter Tail Power Company, a Minnesota corporation, its successors and assigns, hereinafter called the Grantee, for a period of twenty (20) years from and after the passage and approval of this ordinance and during all of said time, subject to the conditions and requirements hereinafter set forth, permission to construct, install and maintain an electric light and power system and transmission line and to operate and maintain the same within and through the City and to transmit electricity to and from other towns or cities for the purpose of light, power and heat and to erect, construct, install and maintain conduits, poles, wires, pipes and other necessary fixtures and attachments upon and under the streets, alleys, bridges and public grounds of said City for the purpose of furnishing and selling electricity for light, heat and power and such other purposes for which electricity may be used by the inhabitants for said City, said permission and franchise to become operative and continue under the conditions hereinafter set forth.

14-0202. **COMPLIANCE WITH APPLICABLE REGULATIONS.** Said Grantee shall use poles, wires, crossarms, equipment and devices to conform with the standards of construction adopted by the National Electrical Safety Code of the United States, Department of Commerce, and all apparatus connected therewith shall be located so as not to obstruct the avenues, streets, and alleys of said City or to endanger persons or property or to hinder or to obstruct the use of said avenues, streets, and alleys or public places by the inhabitants of said City, or public in general, or to interfere with any sidewalk, street, curb, gutter or park improvements that

the city may deem proper to make along the lines of said avenues, streets and public places.

14-0203. **OBSTRUCTION OF ROADWAYS TO BE MINIMIZED.** all conduits, poles, wires and pipes installed by virtue of this ordinance shall be erected in such places and in such manner as not unnecessarily to encroach upon streets, alleys, bridges or public grounds of said City, and so as not to unnecessarily obstruct the use thereof for the ordinary purpose of travel thereon, and the erection thereof shall be subject to the reasonable supervision and direction of the City Council of the said City. Whenever practicable, all poles shall be set in alleys, and poles now in position upon or along the streets whenever practicable shall be removed, and the location of all of said poles shall be designated by the Mayor under the supervision of the City Council of said City.

All poles where set in alleys shall be set at or near the boundary line thereof and where set in streets shall be located at such distances as shall be directed by the City from the property line of the abutting owner, and shall be placed so as not to interfere with the construction or placing of any waterpipes, sewers, or drains or the flow of water therefrom which has been or may be placed by authority of said City. In the event that said Grantee shall make any unnecessary obstructions of said streets, alleys, public grounds or places not designated by the City Council, the City may cause the removal of such obstructions and charge and collect from such Grantee the actual cost of such removals.

14-0204. **CONSTRUCTION OF FACILITIES.** During the construction, maintenance or enlargement of any part of said electric light and power system, said Grantee shall not unnecessarily impede or block travel in said streets and highways in said City and shall leave all streets, highways, alleys, sidewalks, curbs, lanes and public places and all grounds disturbed by said construction in good condition upon the completion of said work.

Whenever the said Grantee is erecting, constructing and maintaining said lines or poles, shall take up any of the pavements, sidewalks, crossings or curbs on any of the avenues, streets and alleys, or public places in said City or shall make any excavations thereon, such excavations shall be refilled and the sidewalk, crossing or curb replaced under the direction of the City and any excavation so made shall be properly lighted at night during the construction, and in case of the failure to do so on the part of the said Grantee, then the City may do the same at the expense of said Grantee and said Grantee agrees to pay said City for the reasonable cost or value of said work. Said Grantee shall be liable for all loss or damage caused by the negligence of Grantee, which may result to persons or property within the said City, caused by it, or its agents, servants, or employees in

erecting, operating and maintaining the said electric system within said City and shall at all times save the City harmless from any and all damages to persons or property in erecting, operating or maintaining said electric system.

14-0205. **RIGHTS TO TRIM TREES.** There is granted to said Grantee, its successors and assigns, during the term hereof, permission and authority to trim all trees in alleys, streets and public grounds of said City so as to remove all parts of said trees interfering with the proper erection, maintenance and operation of poles, cables, wires, masts or other fixtures, or appliances installed or to be installed pursuant to authority hereby granted.

Said Grantee shall have full right and authority to assign to any person, persons, firm or corporation all the rights that are given it by this ordinance, provided, that the assignee of such rights by accepting such assignment shall become subject to the terms and conditions of this ordinance.

14-0206. **LIMITATION OF LIABILITY.** The Grantee shall use due diligence and care in furnishing electric service as herein provided but shall not be liable for any loss or damage which may arise from failure of the service, either partial or total, but this shall not be construed to exempt said Grantee from liability for negligence.

14-0207. **DEPOSITS.** The Grantee shall have the right to require any person to whom electric service is furnished to make a deposit to insure the payment of bills for service to be rendered. The Company shall issue a receipt for such deposit and shall return same whenever the customer shall discontinue the use of electric service, provided all bills are then paid. The Grantee may apply all or any portion of the deposit to any unpaid bills and shall thereupon mail to the customer a receipt for such amount.

14-0208. **CONTRACTS SUBJECT TO APPLICABLE REGULATIONS.** The rates to be charged by said Grantee in the said City shall be filed with the Public Service Commission of the State of North Dakota, and no increase or decrease in said rates shall be made except in accordance with the rules and regulations of the Public Service Commission.

14-0209. **PRIOR FRANCHISE INEFFECTIVE.** The contract shall be subject to any present or future laws of a regulatory nature enacted by the State of North Dakota, or any amendment or addition to such laws, and further shall be subject to the rules and regulations laid down by the Public Service Commission of the State of North Dakota.

14-0210. **PRIOR FRANCHISE INEFFECTIVE.** It is further expressly and specifically provided that all permits, licenses and franchises heretofore granted by the City giving or purporting to give permission to any person, persons or corporation to construct, install or maintain an electrical line or system in, upon or through the streets, alleys or public grounds of the City for the purpose of furnishing light, heat and power to the City or its inhabitants, be, and the same hereby are in all respects revoked, canceled and annulled.

14-0211. **GRANTEE SUBJECT TO POLICE POWER REGULATIONS.** The City reserves the right to make and adopt, and the rights and privileges hereby granted shall at all times be and remain subject to such reasonable regulations of a police nature as it may deem necessary for the best interests of the City, but the City will not by any such regulations or by acts of its own or agents do anything to prevent or interfere with the Grantee carrying on its business in accordance with the franchise hereby granted.

14-0212. **EFFECTIVE DATE.** This ordinance shall take effect and be in full force from and after its passage and approval by the City Council. The said Grantee shall specify its acceptance of this franchise in writing, to be filed with the City Auditor and in no event shall this ordinance be binding on said Grantee until the filing of such acceptance.

CHAPTER 14-03

MONTANA-DAKOTA UTILITIES CO. - GAS

(Source: Ord. 2021-91, Sec. 1)

SECTIONS:

- 14-0301. Parties.
- 14-0302. Grant of Franchise.
- 14-0303. Distribution System.
- 14-0304. Non-Exclusive Franchise.
- 14-0305. Rights Reserved.
- 14-0306. Right to Trim Trees.
- 14-0307. Indemnification.
- 14-0308. Assignment of Franchise.
- 14-0309. Written Acceptance.
- 14-0310. Term.

14-0301. **PARTIES.** For convenience, herein, said municipal corporation is designated and referred to as "Municipality" and Montana-Dakota Utilities Co. is designated and referred to as "Grantee." Any reference to either includes their respective successors and assigns.

14-0302. **GRANT OF FRANCHISE.** There is hereby granted to Montana-Dakota Utilities Co., a corporation, Grantee, its successors and assigns, subject to the limitations herein stated, the right and franchise to occupy now and use the streets, alleys and public grounds of the Municipality as now, or hereafter constituted, for the purpose of constructing, maintaining, and operating, within, upon, in and under the same, a gas distribution system for transmitting and distributing natural or manufactured gas, or a mixture of both, for public and private use.

14-0303. **DISTRIBUTION SYSTEM.** Grantee shall maintain an efficient distribution system for furnishing natural or manufactured gas, or a mixture of both, for public and private use at such reasonable rates as may be approved by the Public Service Commission of the State of North Dakota and under such orders, rules or regulations as may be issued by a federal or state agency having jurisdiction thereof.

14-0304. **NON-EXCLUSIVE FRANCHISE.** This franchise shall not be exclusive and shall not be construed to prevent the Municipality from granting to any other party the right to use the streets, alleys, and public grounds of the Municipality for like purposes.

14-0305. **RIGHTS RESERVED.** The Municipality reserves any right

it may have, under its police power, or otherwise, to control or regulate the use of said streets, alleys, and public grounds by Grantee. The Municipality will give Grantee reasonable notice of plans for improvements of streets, alleys and public grounds where the Municipality has reason to believe Grantee's gas distribution system may be affected by the improvement. If during the period of this franchise the Municipality shall lawfully elect to alter, or change the grade of any street, alley or public grounds, Grantee, upon reasonable notice by the Municipality, at its own expense may remove, relocate or rearrange its gas distribution facilities that would be a substantial interference with the change to the street, alley or public grounds, provided, however, if relocation, removal or rearrangement of any gas distribution facility is made necessary to accommodate construction of a project on a federal aid highway or extension thereof within the Municipality, Grantee shall be paid the costs of the relocation, removal or rearrangement in accordance with the laws of the State of North Dakota.

14-0306. **RIGHT TO TRIM TREES.** Unless otherwise provided in any permit or regulation of the Municipality under separate ordinance, Grantee may trim trees and shrubs in and over the streets, alleys and public grounds to the extent Grantee determines is necessary to avoid interference with the construction, operation, maintenance and repair of the gas distribution facilities, provided Grantee shall hold the Municipality harmless from any liability arising therefrom.

14-0307. **INDEMNIFICATION.** Grantee shall indemnify and save and hold the Municipality harmless from any loss or damage due to the construction, installation, and maintenance of its distribution system, and its use of the streets, alleys, and public grounds of the Municipality.

14-0308. **ASSIGNMENT OF FRANCHISE.** Grantee shall have the right to assign this franchise to any party, or corporation, but all obligations of Grantee hereunder shall be binding upon its successors and assigns. Grantee must provide written notice of assignment to the Municipality.

14-0309. **WRITTEN ACCEPTANCE.** Within thirty (30) days after Grantee is notified of passage and final approval of this Ordinance, Grantee shall file with the clerk or auditor of the Municipality its written acceptance of this franchise.

14-0310. **TERM.** This franchise shall continue and remain in full force and effect for a period of twenty (20) years from the date upon which this ordinance shall become effective as provided by law.

CHAPTER 14-04.

CASS COUNTY ELECTRIC - ELECTRICAL

(Source: Ord. 2022-95, Sec. 1)

SECTIONS:

- 14-0401. Grant of Franchise.
- 14-0402. Franchise Fee.
- 14-0403. Eminent Domain.
- 14-0404. Municipal Electric Distribution System.
- 14-0405. Right to Trim Trees.
- 14-0406. Vacation of Public Way.
- 14-0407. Public Right of Way.
- 14-0408. Nonexclusive Franchise.
- 14-0409. Assignment.
- 14-0410. Written Acceptance.
- 14-0411. Governing Law.
- 14-0412. Default.
- 14-0413. Prior Franchise Ineffective.

14-0401. **GRANT OF FRANCHISE.** There is hereby granted to Cass County Electric Cooperative, Inc., a North Dakota corporation, its successors and assigns, hereinafter referred to as "Company," during the period of 20 years from July 1, 2022, the right and privilege of constructing, operating, repairing, and maintaining, in, on, over, under, and across the streets, alleys, and public grounds of said City, an electric distribution system and electric transmission lines, including all poles, pole lines, and fixtures and appurtenances, usually, conveniently, or necessarily used in connection therewith, for the purpose of transmitting and furnishing electric energy for light, heat, power, and other purposes for public and private use in and to said City and the inhabitants thereof, and others, and for the purpose of transmitting into and through said City such electric energy, provided that such electric distribution system and transmission lines shall be so located as in no way to interfere with the safety and convenience of ordinary travel along and over said streets, alleys, and public grounds, and provided that Company in the construction, operation, repair and maintenance of such poles, pole lines and fixtures and appurtenances, shall be subject to such conditions, restrictions and regulations as may be imposed by the governing body of the City of Kindred.

14-0402. **FRANCHISE FEE.** During the term of the franchise hereby granted, and in lieu of any permit or other fees or any tax being imposed on the Company, the City may impose on the Company a franchise fee. The franchise fee shall be imposed by a separate

ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least 90 days after written notice enclosing such proposed ordinance has been served upon the Company by certified mail. The fee shall not become effective until at least 90 days after written notice enclosing such adopted ordinance has been served upon the Company by certified mail. No action by the City to implement a separate ordinance will commence until this ordinance is effective. A separate ordinance which does not impose a uniform franchise fee on all revenues within the definition of gross revenues shall not be effective against the Company.

The term "gross revenues" means all sums, excluding any surcharge or similar addition to the Company's charges to customers for the purpose of reimbursing the Company for the cost resulting from the franchise fee, received by the Company from the sale of electricity to its retail customers within the corporate limits of the City.

The franchise fee shall be payable based on the gross revenues of the Company during complete billing months during the period for which payment is to be made. The payment shall be due the last business day of the month following the period for which the payment is made. Such fee shall not exceed any amount which the Company may legally charge to its customers prior to payment to the City by imposing a surcharge equivalent to such fee in its rates for electric service. The Company shall pay the City the fee based upon the surcharge billed subject to subsequent reductions to account for uncollectables or customer refunds. The Company agrees to make its gross revenues records available for inspection by the City at reasonable times.

The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes and the City annually or more often collects a fee or tax of the same or greater percentage on the receipts from sales of energy within the City by any other electric supplier, provided that, as to such a supplier, the City has the authority to require a franchise fee or to impose a tax. The franchise fee or tax shall be applicable to energy sales for any energy use related to heating, cooling, or lighting, as well as to the supply of energy needed to run machinery and appliances on premises located within or adjacent to the City, but shall not apply to energy sales for the purpose of providing fuel for vehicles.

The franchise fee referred to herein shall be based on the Company's gross revenues as hereinafter defined and shall be not more than two percent thereof, or such other amount which may be in excess of two percent which has been imposed in other North Dakota communities with which the Company has franchises authorizing the fees imposed.

14-0403. **EMINENT DOMAIN.** The granting of this franchise by the City of Kindred, shall in no way be construed to limit or restrict the right of the City to exercise the powers of eminent domain as set forth in Chapter 32-15 of the North Dakota Century Code and any other applicable laws of the State of North Dakota.

14-0404. **MUNICIPAL ELECTRIC DISTRIBUTION SYSTEM.** The granting of this franchise by the City of Kindred shall in no way be construed to limit or restrict the right of the City to establish a municipal electric distribution system in accordance with Chapter 40-33 of the North Dakota Century Code and any other applicable laws of the State of North Dakota.

14-0405. **RIGHT TO TRIM TREES.** There is also granted to Company, during the term hereof, permission and authority to trim all trees and shrubs in the streets, alleys, and public grounds of said City interfering with the proper construction, operation repair and maintenance of any poles, pole lines, and fixtures or appurtenances, installed in pursuance of the authority hereby granted, provided that Company shall save said City harmless from any liability in the premises, and provided the Company shall comply with all ordinances of the City relating thereto.

14-0406. **VACATION OF PUBLIC WAY.** The City shall give the Company at least two weeks prior written notice of a proposed vacation of a public way. Except where required solely for a City improvement project, the vacation of any public way, after the installation of electric facilities, shall not operate to deprive Company of its rights to operate and maintain such electric facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company.

14-0407. **PUBLIC RIGHT OF WAY.** Nothing in this Ordinance contained shall be construed as giving to Company any exclusive privilege in, on, under, or across the streets, alleys or public grounds of said City.

14-0408. **NONEXCLUSIVE FRANCHISE.** Nothing in this Ordinance shall be construed as granting Company an exclusive franchise to provide electric service to all users located within the corporate limits of the City of Kindred.

14-0409. **ASSIGNMENT.** Company shall have full right and authority to assign to any person, persons, firm or corporation all the rights conferred upon it by this Ordinance, provided that the assignment is authorized by applicable laws and regulations and that the assignee of said rights, by accepting such assignment shall become subject to the terms and provisions of this Ordinance.

14-0410. **WRITTEN ACCEPTANCE.** Company shall, if it accepts this Ordinance and the rights herein granted file a written acceptance of the rights hereby granted with the City Auditor within 90 days from the final passage of this Ordinance.

14-0411. **GOVERNING LAW.** The rights and privileges hereby granted shall at all times be subject to and exercised solely according to the provisions of the present and future laws of the State of North Dakota.

14-0412. **DEFAULT.** If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. If the dispute is not resolved within thirty (30) days of the written notice, either party may commence an action in District court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

14-0413. **PRIOR FRANCHISE INEFFECTIVE.** All ordinances and parts of ordinances in conflict herewith are hereby repealed.

TITLE XV.

HEALTH

CHAPTERS:

- 15-01. Board of Health and Health Officer.
- 15-02. Garbage.
- 15-03. Public Nuisances.
- 15-04. Swimming and Wading Pools.

CHAPTER 15-01

BOARD OF HEALTH AND HEALTH OFFICER.

SECTIONS:

- 15-0101. Board of Health; Members; Powers; City Health Officer and Assistants.
- 15-0102. Duties of Health Officer, Assistants.
- 15-0103. City Health Officer, Assistants: Appointment.
- 15-0104. Regulations, Notice of.
- 15-0105. Power to Enter Building.

15-0101. **BOARD OF HEALTH; MEMBERS; POWERS; CITY HEALTH OFFICER AND ASSISTANTS.** The Board of Health shall be the City Council. The Board of Health shall have and exercise all powers under the law. The City Health Officer shall be the executive officer of such board. The City Council may appoint one or more assistant City Health Officers to aid the City Health Officer in the performance of his duty.

15-0102. **DUTIES OF HEALTH OFFICER, ASSISTANTS.** The City Health Officer and his assistants, if any, shall have the following powers and duties:

1. He shall see that the health ordinances of the City, the rules and regulations of the Board of Health and the regulations of the State Board of Health and the health laws of the State are fully complied with throughout his jurisdiction and he is charged with the strict enforcement of the same.
2. Make such recommendations to the Board of Health as to him shall appear necessary for the preservation of public health.
3. Exercise all other powers and duties granted or imposed under the laws of the State of North Dakota and the ordinances of the City of Kindred.

15-0103. **CITY HEALTH OFFICER, ASSISTANTS: APPOINTMENT.** The City Council shall appoint a City Health Officer for the City of Kindred in the manner and for the term provided for the appointment of other officers by the City Council. The City Council may appoint one or more Assistant City Health Officers for the City of Kindred, and if any such appointment is made, it shall be for the term provided for the appointment of other officers by the City Council.

15-0104. **REGULATIONS: NOTICE OF.** The Board of Health shall give notice, as provided by the laws of the State of North Dakota, of all general orders and regulations made by such Board, by publishing the same in the official newspaper within the jurisdiction of the Board, which publication shall be deemed a legal notice to all persons.

15-0105. **POWER TO ENTER BUILDING.** Whenever the Health Officer of the City of Kindred, or his assistant, or the City Council shall deem it necessary for the preservation of the health of the inhabitants within the City, to enter any building within the City of Kindred for the purpose of examining into and destroying, removing or preventing any nuisance, source of filth or cause of sickness, and shall be refused entrance, the City Health Officer or his assistant or any member of the City Council may make complaint under oath to the Municipal Judge of the City of Kindred, stating the facts in the case, so far as he has knowledge thereof. Such Municipal Judge shall promptly review such complaint and if such complaint is reasonably based in fact shall thereupon issue a writ of entry directed to the Chief of Police of the City of Kindred, sheriff or other peace officer, authorizing him to take sufficient aid and, accompanied by the City Health Officer or his assistant, or by at least one (1) member of the City Council of Kindred, between the hours of sunrise and sunset, enter said building to have such nuisances, sources of filth, or cause of sickness destroyed, removed or prevented under the direction of the City Health Officer or his assistant, or such member of the City Council as accompanied him.

CHAPTER 15-02

GARBAGE

SECTIONS:

- 15-0201. Definition of Terms.
- 15-0202. Garbage Cans - Required - Capacity - Construction.
- 15-0203. Garbage to be Wrapped - Substances to be Placed in Garbage Can.
- 15-0204. Garbage Can to be Emptied: When.
- 15-0205. Who May Remove Contents of Garbage Can.
- 15-0206. Removal of Garbage Not to be Interfered With.
- 15-0207. Garbage Collection Fees.
- 15-0208. Collection by City Employees or by Contract.
- 15-0209. Garbage Contract - Advertising for Bids - Awarding - Bond Required.
- 15-0210. Garbage Not Meeting Specifications.
- 15-0211. Duty of City Sanitation Superintendent.
- 15-0212. Other Garbage Haulers.
- 15-0213. Enclosure for Garbage Vessels.
- 15-0214. Penalty.
- 15-0215. Separability of Provisions of Article.

15-0201. **DEFINITION OF TERMS.** The following definitions shall apply in the interpretation and enforcement of this chapter.

1. Garbage. The term garbage as herein used shall mean every refuse accumulation of animals, fruit, or vegetable matter, liquid or otherwise, that attends the preparation, use, cooking, dealing in, or storing of meat, fish, fruit, or vegetables.
2. Rubbish. The term rubbish as herein used shall mean all refuse not included in garbage and ashes. It includes tin cans, bottles, glass, scraps of iron, tin, wire, or other metals, rags, old clothing, unflattened paper containers, paper not used in preparation of food and drinks, old rubber, pieces of wood, boxes, barrels, crates, feathers, weeds, grass, lawn clippings, tree limbs, provided they are bundled or boxed and under two inches in diameter and not more than two feet in length, and similar refuse of every character collected or accumulated within the City of Kindred.
3. Ashes. Ashes are the residue from burning of wood, coal, coke, or other combustible materials for the purpose of heating, cooking, and disposing of waste and combustible materials.

15-0202. **GARBAGE CANS - REQUIRED - CAPACITY - CONSTRUCTION.** Every owner or occupant of any house, hotel, restaurant, building, flat, apartment, tenement, commercial building, tourist court or mobile home park unit in this City, where persons reside, board or lodge, or where animal or vegetable food is accumulated, kept for sale, prepared or served, shall provide for such house, hotel, restaurant, building, flat, apartment, tenement, commercial building, tourist court or mobile home park unit, and at all times maintain in good order a vessel or vessels for garbage.

For each flat, apartment, tenement, building or mobile home park unit, one (1) such vessel for each living unit shall be provided.

Such vessel for garbage shall be watertight and made of metal or plastic with a close-fitting metal or plastic cover, and shall have a capacity of not less than ten (10) nor more than thirty-three (33) gallons. However, one (1) or more larger containers of such size and type as is approved by the City Agent may be used if such City Agent determines the same to be necessary. Garbage receptacles should be placed on the premises, under the direction of the City Agent as to be easily accessible to the garbage collectors.

15-0203. **GARBAGE TO BE WRAPPED - SUBSTANCES TO BE PLACED IN GARBAGE CAN.** All garbage must be wrapped in a reasonable manner before being placed in any garbage receptacle or vessel. It shall be unlawful for any person or persons to place garbage in a vessel or receptacle in a loose or unwrapped condition.

Rubbish and ashes may be wrapped and placed in said garbage receptacle or it may be wrapped and placed in a separate container no larger than twenty-four (24) inches by thirty-six (36) inches.

15-0204. **GARBAGE CAN TO BE EMPTIED: WHEN.** All garbage receptacles shall be emptied on the following schedule: In the case of private residences, said garbage collection shall be made at least once each week; and for all other places of business garbage collection shall be made as often as deemed necessary to prevent excessive accumulations thereof.

15-0205. **WHO MAY REMOVE CONTENTS OF GARBAGE CAN.** It shall be unlawful for any person, firm or corporation, or any agent or employee thereof to haul, carry or convey through, along, or upon any public street, alley or sidewalk within the City of Kindred, any garbage, rubbish, or ashes as classified under this chapter unless employed, licensed or permitted by the City of Kindred, to carry or convey garbage.

15-0206. **REMOVAL OF GARBAGE NOT TO BE INTERFERED WITH.** No person shall obstruct, delay or interfere with any garbage collector engaged in collecting or removing garbage, rubbish, or ashes who is under the employ, license, and permit of the City of Kindred.

15-0207. **GARBAGE COLLECTION FEES.** The fees for garbage collection shall be set by resolution of the City Council.

The payment in all cases for garbage service pickup collection and disposal shall be made directly to the City of Kindred.

Notwithstanding any other provisions of this ordinance, any person receiving a reduction in the assessment or assessed valuation of their homestead in accordance with Section 57-02-08.1 of the North Dakota Century Code shall pay a fee of \$2.25 per month for garbage collection.

15-0208. **COLLECTION BY CITY EMPLOYEES OR BY CONTRACT.** The City either may purchase, maintain, or lease and operate equipment for the removal and disposal by City employees of all or any part of the garbage, rubbish, and ashes within the City of Kindred or may provide for the collection, removal, or disposal thereof, in whole or in part, by any person, firm, or corporation with whom the City now has, or hereinafter may have, duly contracted as hereinafter provided.

15-0209. **GARBAGE CONTRACT - ADVERTISING FOR BIDS - AWARDING - BOND REQUIRED.** If it shall be deemed advisable by the City Council, the City Auditor shall advertise for bids for the removal of garbage, rubbish, and ashes out of the City limits under such conditions as the City Council may designate. Such notice shall be published twice, once each week in the official newspaper of the City of Kindred. Each bid shall be accompanied by a certified check in the sum of Five Hundred Dollars (\$500.00), payable to the order of the City Treasurer, which check shall be forfeited to the City if the successful bidder fails to enter into a contract with the City and give bond as provided below. The contract or contracts, as the case may be, shall be awarded to the lowest responsible bidder or bidders, if to be let by competitive bids. The person or persons obtaining such contract from the City shall execute a bond to the City of Kindred in such sum as the City Council may provide for the full and faithful performance of all the agreements of said contract and a complete compliance with this ordinance.

15-0210. **GARBAGE NOT MEETING SPECIFICATIONS.**

A. The following items shall not be picked up as part of the garbage collection system of the City of Kindred, and it

shall be unlawful to place out for collection any of the following items:

1. Liquids.
 2. Sludges (including sewage sludges, lime sludges, bar screenings and similar materials).
 3. Animal manure.
 4. Septic tank pumpings.
 5. Unrinsed pesticide containers.
 6. Hazardous wastes including:
 - a. Ignitibles (solvents, fuels and similar materials).
 - b. Corrosives (acids, alkalies and similar materials).
 - c. Reactives (hypo chlorites, swimming pool chemicals, cyanides, and similar materials).
 - d. EP toxic (paint sledges containing lead, chrome and similar materials).
 7. Waste oil.
 8. Asbestos.
 9. Infectious wastes.
 10. PCB's.
 11. Large quantities of fly ash, soluble material, such as salt, may be restricted or require special handling.
- B. The following items will be picked up not as part of the regular collection, but for a special fee to be set by the City Agent:
1. Lead acid batteries.
 2. Tires.
 3. Appliances.
 4. Furniture.
 5. Other items with the approval of the City Agent.

15-0211. **DUTY OF CITY SANITATION SUPERINTENDENT.** It shall be the duty of the City Sanitation Superintendent of the City of Kindred to make such rules as he may deem necessary to regulate, enforce and carry out provisions of this chapter.

15-0212. **OTHER GARBAGE HAULERS.** No person, firm, corporation, or other business entity shall engage in the business of removing, collecting, transporting, or disposing of garbage, rubbish, or ashes as defined in Section 15-0201 within the city limits of Kindred without first having obtained a permit therefor from the City Auditor. The fee for such permit shall be \$15. A separate permit shall be required for each entity served in Kindred. The permit for hauling garbage under this chapter shall only be granted when the City Agent, in his discretion, determines that it would not be feasible for the City to haul garbage from a specific commercial or industrial facility because of the quantity or unusual nature of the garbage. Application for such permit shall be made to the City Agent upon forms provided by him, and such application shall contain, among other things, the following information: the name of the hauler, its address and description of vehicle or vehicles in which garbage or recyclable materials are to be hauled in Kindred, and the name and address of the specific commercial or industrial entity to be served. Such permit shall be valid for a one (1) year period, and the applicant must reapply each year thereafter for a new permit. The permit may be revoked by the City Council for violation of any provisions of this chapter. No such revocation shall become effective until notice shall first be given to the holder of the permit by certified mail stating the reasons for such revocation. Such revocation shall become final unless, within seven (7) days from the date of the mailing of such notice, the holder of such permit shall, in writing, request a hearing thereon by the City Council. The hearing shall be held at the next regularly scheduled meeting of the City Council, and the decision of the Council shall be final.

15-0213. **ENCLOSURE FOR GARBAGE VESSELS.** All dwelling units and all commercial establishments shall have approved enclosures for garbage cans which enclosures must meet minimum specifications set forth by the City Council and on file with the City Auditor.

15-0214. **PENALTY.** Any person violating any section of this chapter shall be guilty of an infraction and shall be subject to the penalties set forth in Section 1-0211. Each day such a violation continues shall be considered a separate offense.

15-0215. **SEPARABILITY OF PROVISIONS OF ARTICLE.** It is the intention of the City Council that the separate provisions of this article shall be deemed independent of all other provisions herein, and it is further the intention of said Council that if any

provisions of this article be declared invalid, all other provisions thereof shall remain valid and enforceable.

CHAPTER 15-03

PUBLIC NUISANCES

SECTIONS:

- 15-0301. Nuisances - Defined.
- 15-0302. Nuisances Prohibited.
- 15-0303. Definitions.
- 15-0304. Sanitary Nuisances.
- 15-0305. Noxious Weeds.
- 15-0306. Hedge, Tree or Growth - When a Nuisance.
- 15-0307. Junk Automobile, Building Materials - Storage or Accumulation Contrary to Public Health and Welfare.
- 15-0308. Abandoned Automobiles - Unclaimed Personal Property - Nuisance.
- 15-0309. Snow and Ice Removal - Sidewalks - Nuisance.
- 15-0310. Snow and Ice Removal - Public Streets - Nuisance.
- 15-0311. Dumping - Excavation - Nuisance.
- 15-0312. Notice to Remove Nuisances.
- 15-0313. Failure to Remove - Prosecution.
- 15-0314. Failure to Remove - Civil Penalty.
- 15-0315. Penalty.
- 15-0316. Authorized Persons.
- 15-0317. Odor - Nuisance.

15-0301. **NUISANCES - DEFINED.** In all cases where no specific provision is made defining what is a nuisance and how the same may be removed, abated or prevented, in addition to what may be declared such herein, those offenses which are known to the common law of the land and the statutes of North Dakota as nuisances may, in case the same exist within the City of Kindred, be treated as nuisances, and, in addition to those remedies otherwise provided by law, may be proceeded against as in this chapter, provided or in accordance with any other law which shall give the Court hearing the same jurisdiction.

15-0302. **NUISANCES PROHIBITED - PERSONS DEFINED.** No person, as owner or occupant of any lot or tenement, shall cause or permit any nuisance to be or remain in or upon any such lot or tenement or between the same and the center of the street or alley adjoining. For purposes of this Title, the term "person" includes, where relevant, corporations, unincorporated associations, or other legal entities. For purposes of this Title, words used in the singular include the plural, and the plural, the singular. Words in the masculine gender include the feminine and neuter genders.

15-0303. **DEFINITIONS.** Whenever used in this Title, each of the following words and phrases shall have the meaning ascribed to it:

1. "Garbage" shall mean all manner of kitchen and table refuse and offal, including decayed fruit, animal and vegetable matter, manure, metal cans, bottles, and other foreign waste matter.
2. "Noxious Weeds" shall include noxious vegetation and unhealthful vegetation.
 - (a) The term "noxious vegetation" shall include noxious vegetation, which means any plant propagated by either seed or vegetative parts which is determined by the Commissioner of Agriculture or the Commissioner's designee, after consulting with the North Dakota State University Extension Service, or a County Weed Board after consulting with the County Extension Agent, to be injurious to public health, crops, livestock, land, or other property.
 - (b) The term "unhealthful vegetation" shall mean and include all vegetation which is in such a state of growth as to constitute a health hazard and/or which is conducive to the breeding of disease.
3. "Junk" shall include, without limitation, parts of machinery or motor vehicles, unused furniture, stoves, refrigerators, or other appliances, remnants of wood, metal or any other cast-off material of any kind, whether or not the same could be put to any reasonable use.
4. "Junk automobiles" shall include, without limitation, any motor vehicle which is not licensed for use upon the highways of the State of North Dakota for a period in excess of Sixty (60) days, and shall also include whether licensed or not, any motor vehicle which is inoperative for any reason for a period in excess of sixty (60) days, provided however, that excepted from this definition are unlicensed but operative vehicles which are kept as the stock in trade of a regularly licensed and established new or used automobile dealer.
5. "Abandoned vehicle" shall include, without limitation, 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 a period of forty-eight (48) continuous hours or more after the consent of the owner or occupant has been revoked.

6. "Building materials" shall include, without limitation, lumber, bricks, concrete or cinder blocks, plumbing materials, electric wiring or equipment, heating ducts or equipment, shingles, mortar, concrete or cement, nails, screws, or any other material used in constructing any structure.
7. "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 operations.
8. "Earth material" shall include any rock, gravel, natural soil or fill or any combination thereof.
9. "Hazardous Waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form which (a) because of its quantity, concentration, or physical, chemical, or other characteristic, in the judgment of the North Dakota State Health Department may (1) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, disposed of, or otherwise managed; or (b) is identified by the mechanisms established in this chapter. Such wastes include, but are not limited to, those which exhibit extraction procedure (EP) toxicity, corrosivity, ignitability, or reactivity. The definition of hazardous waste above shall automatically be amended to adopt any amendments to Section 23-20.3-02(5), North Dakota Century Code, and any such amendments shall be of the same force and effect as if fully set out in this Ordinance.
10. "Trash and rubbish" shall include any and all forms of debris not herein otherwise classified.

15-0304. **SANITARY NUISANCES.**

1. PUMPING SEWAGE INTO OPEN GROUND PROHIBITED. It shall be a nuisance and offense for any person to pump the contents of any cesspool or septic tank or privy vault or other receptacle for the disposal of sewage upon the ground or into any open ditch or drainage course or to dispose of sewage in any manner other than by depositing the same in sewers, privy vaults, cesspools, septic

tanks, or similar receptacles or by having said sewage or the contents of any of said receptacles hauled to some place far enough from the platted portions of this City so as not to create any offensive odor or be a menace to health, and there to dispose of the same by the use of fire, chemicals, or other methods best suited to eliminate odor, destroy pathogenic bacteria and flies.

2. PRIVIES AND SEPTIC TANK NUISANCES. It shall be a nuisance and offense for the subsurface contents of any privy to be above the surface or within two (2) feet of the surface of the earth; and all other privies and all septic tanks that are foul and emitting smells and odors.
3. HARBORAGE FOR RATS PROHIBITED. It shall be a nuisance and offense for any person to accumulate on any premises, improved or vacant, and on all open lots and alleys in the City of Kindred, any lumber, boxes, barrels, bricks, stones, or similar materials that may be permitted to remain thereon unless the same shall be placed on open racks that are elevated not less than six (6) inches from the ground, and evenly piled or stacked so that these materials will not afford harborage for rats.
4. DECAYED ANIMAL MATTER NOT TO REMAIN IN CITY. It shall be a nuisance and offense for any person having ownership or control of any animal matter which is unsound or in process of decay within the City of Kindred, to permit the same to be and remain, while in such condition, within said City, or within one (1) mile of the limits thereof, more than twelve (12) hours after such animal matter shall have become unsound, or after the process of decay shall have begun in the same, whether it be at any establishment for the rendering or changing the character thereof, or elsewhere within the said City, or within one (1) mile of the limits thereof.
5. CASTING, THROWING OR DEPOSITING GARBAGE IN PUBLIC PLACES PROHIBITED. It shall be a nuisance and offense for any person to cast, throw, deposit or allow to accumulate in or upon any street, alley or other public place or in any ditch adjacent to any street, alley or other public place, any ashes, tin cans, garbage, rubbish, manure or refuse of any kind.
6. ACCUMULATION OF RUBBISH AND GARBAGE IN CITY LIMITS PROHIBITED. It shall be a nuisance and offense for any person to permit or suffer to accumulate in or about any yard, lot, place or premises, or upon any street, alley, sidewalk or City property, adjacent to or abutting upon any lot, block, place or premises owned or occupied by

him within the City limits, refuse, vegetables, decayed or decaying substances, garbage, paper, rubbish, manure, dead animals or ashes or filth of any kind nor suffer such yard, lot, place or premises to be or in such condition. Provided, however, that such section shall not preclude a person from maintaining a compost heap on property owned or leased by that person from materials obtained from that property and to be used on that property.

7. **STAGNANT WATER, DUTY TO DRAIN.** It shall be a nuisance and offense to allow stagnant water to stand or to remain along the line of any railroad, street, highway, alley, public place or along or upon any land within the City of Kindred. It shall be the duty of all persons having, using, or occupying land, either as owners, tenants, or having control thereof as agents or otherwise, to remove or drain or cause to be removed or drained all stagnant water therefrom, and upon the order of the Building Inspector to take all necessary steps to permanently alleviate that problem, including, but not limited to, filling the area in which the stagnant water is or has been standing.

15-0305. **NOXIOUS WEEDS PROHIBITED.** It shall be a nuisance and offense for any person owning or occupying any lot or tenement in the City of Kindred, to grow or allow to grow thereon any noxious vegetation and/or unhealthful vegetation.

15-0306. **HEDGE, TREE, OR GROWTH - WHEN A NUISANCE.** Any hedge, tree, or growth of any kind or character maintained on any property in the City of Kindred, so located or of such height as to constitute a traffic hazard by obstructing the view of the driver of any vehicle upon the streets of the City to the extent that such driver is unable to readily observe the approach of other vehicles on the streets, alleys, and at intersections, or which is likely, because of its location or height, to cause accidents or injury to any person, is hereby declared a nuisance and offense.

15-0307. **JUNK, JUNK AUTOMOBILES, BUILDING MATERIALS - STORAGE OR ACCUMULATION CONTRARY TO PUBLIC HEALTH AND WELFARE.** It is hereby determined that the storage or accumulation of trash, rubbish, junk, junk automobiles, abandoned vehicles, building materials, upon any private property within the City of Kindred, tends to result in blighted and deteriorated neighborhoods, the increase in criminal activity, the spread of vermin and disease, and is contrary to the public peace, health, and safety and general welfare of the community.

1. UNLAWFUL TO ACCUMULATE ABANDONED VEHICLES AND JUNK. It shall be a nuisance and offense for any person to store or permit the storage or accumulation of trash, rubbish, junk, junk automobiles, or abandoned vehicles on any private property in the City of Kindred except within a completely closed building or upon the business premises of a duly licensed junk dealer, junk buyer, dealer in used auto parts, dealer in secondhand goods, or junk gatherer.
2. UNLAWFUL TO DISMANTLE AUTOMOBILE - EXCEPTION. It shall be a nuisance and offense for any person to dismantle, cut up, remove parts from, or otherwise disassemble any automobile, whether or not the same be a junk automobile, abandoned vehicle or otherwise, or any appliance or machinery except in a completely enclosed building or upon the business premises of a duly licensed junk dealer, junk buyer, dealer in used auto parts, dealer in secondhand goods, or junk gatherer.
3. UNLAWFUL TO STORE BUILDING MATERIALS - EXCEPTION. It shall be a nuisance and offense for any person to store or permit the storage or accumulation of building materials on any private property, except in a completely enclosed building or except where such building materials are part of the stock in trade of a business located in said property, or except when such materials are being used in the construction of a structure on the property in accordance with a valid building permit issued by the City of Kindred, and unless said construction is completed within a reasonable period of time.

15-0308. **ABANDONED AUTOMOBILES - UNCLAIMED PERSONAL PROPERTY - NUISANCE.** Any motor vehicle, animal or other article of personal property, located within the City of Kindred, the use, condition or status of which is in violation of any ordinance of the City of Kindred, or any law of the State of North Dakota, and constitutes an obstruction, hazard or detriment to public traffic, snow removal operations, public safety or public health, or which may be damaged, disabled or otherwise involved in an accident, or in the commission of any violation of any ordinance of the City of Kindred 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 Kindred, is hereby declared to be a nuisance.

1. REMOVAL AND IMPOUND - PEACE OFFICER - DUTY. Any peace officer acting in that capacity within the City limits of the City of Kindred, or such other person as designated by the City Council, shall remove or cause to be removed to City Hall, or other place designated by the City Council, any personal property described in the

immediately preceding paragraph and may impound and retain the same until the expense of removal, storage and impounding fee, if any, is paid, together with the amount of any fine, costs, bail or other claims of the City of Kindred against the owner, or any other person lawfully entitled to the possession thereof the provisions of Section 15-0312 notwithstanding.

2. **IMPOUND PROPERTY; WHEN HELD AND SOLD.** If not reclaimed and redeemed by the true owner or the person lawfully entitled to the possession thereof within a period of sixty (60) days after impounding, any article or personal property described in the first paragraph of this section may be sold and disposed of by the City Auditor of the City of Kindred in the manner set out in Section 1-0703 of the ordinances of the City of Kindred.
3. **REPORT TO CITY AUDITOR, DISPOSITION OF PROCEEDS.** Within thirty (30) days after such sale, the person making the sale shall make out in writing, and file with the City Auditor of , a full report of such sale specifying the property sold, the amount received therefor, the amount of costs and expenses, and the disposition made by him of the proceeds of the sale. The proceeds arising from such sale shall be delivered over to the City Treasurer of and credited to the General Fund.

15-0309. **SNOW AND ICE REMOVAL - SIDEWALKS - NUISANCES.** It shall be a nuisance and offense for any person, as owner or occupant of any lot or tenement, to allow snow or ice to accumulate and remain upon any public sidewalk which abuts such lot or tenement.

15-0310. **SNOW AND ICE REMOVAL - PUBLIC STREETS - NUISANCES.** It shall be a nuisance and offense for any person to allow a motor vehicle or other article of personal property to obstruct, prevent or otherwise hinder the removal of snow and ice from any public street, alley or other roadway customarily used for travel. The provisions of 15-0408 to the extent relevant, shall apply to the removal or abatement of such nuisance.

15-0311. **DUMPING - EXCAVATION - NUISANCE.**

1. Dumping defined - for purposes of this section, dumping shall mean placing, burying or storing on, underneath or upon any land.
2. Within the City limits of Kindred it shall be deemed a nuisance for any person to engage in dumping or any

landowner, tenant or occupant to permit dumping of hazardous wastes except that hazardous wastes may be stored above ground if that person first obtains a permit from the North Dakota Department of Health pursuant to Chapter 23-20.3, North Dakota Century Code.

3. Within the City limits of Kindred it should be deemed a nuisance for any person to engage in dumping or any landowner, tenant or occupant to permit the dumping of garbage, junk, demolition materials, trash and rubbish unless the dumping is at a site for which the Board of Adjustment has granted a conditional use or other permit pursuant to the zoning regulations of the City of Kindred, or unless a permit to use certain material for fill is first obtained from the Building Inspector. It shall not be deemed a nuisance pursuant to this section if the person is in compliance with another section of Chapter 15-02 of the Revised Ordinances of the City of Kindred allowing the storing of materials under certain circumstances, or if the person is in compliance with the regulations for the storage of garbage contained in Chapter 15-02 of the Revised Ordinances of the City of Kindred.
4. Within the city limits of Kindred it shall be deemed a nuisance for any person to engage in dumping or any landowners, tenants, or occupants to permit the dumping of earth material without first obtaining a permit from the Building Inspector. Provided that no permit is necessary where the quantity of earth material is less than 100 cubic yards and the earth material when placed does not exceed 1 foot in depth. Provided further that no permit is needed when the person has first obtained a building permit and the dumping of earth material is connected with the project for which a building permit was granted.
5. Any peace officer acting in that capacity in the City of Kindred is hereby given the authority to prohibit and to stop dumping by any person within the city limits of Kindred unless and until the person or persons stopped from dumping can establish to the satisfaction of said officer that such dumping is permitted under the Revised Ordinances of the City of Kindred. Any person prohibited from dumping by such officer shall within 24 hours be entitled to a hearing before the Building Inspector, or in his absence, a Municipal Judge of the City of Kindred to determine whether or not the dumping is in violation of the ordinances of the City of Kindred.

6. Within the city limits of Kindred it shall be a nuisance if the Building Inspector determines that any existing or future excavation or embankment or cut or fill on private property has become a hazard to life or limb, or endangers property, or adversely affects the safety, use, or stability of a public way or drainage channel or has a significant adverse impact on the drainage of water along its natural course resulting in the creation of stagnate water or the unnatural accumulation of water upon the property of another.
7. The permit from the Building Inspector authorized by Sections 15-0311(3) and (4) shall not be granted unless the following conditions are met:
 - (a) A permit fee in the amount of \$25 is paid to the Building Inspector.
 - (b) No real estate taxes are delinquent on the real property covered by the application.
 - (c) That a drainage plan is provided by the applicant showing the final grade of the real property after the requested dumping and which establishes, to the satisfaction of the City Engineer, that no other property will be adversely affected by the dumping.
 - (d) That a bond or a certified check payable to the City is deposited with the City Auditor in an amount set by the City Council. The bond or certified check shall be for the purpose of cleaning up the site if the conditions of the permit are not followed and if the applicant does not immediately clean up the site. The amount of the bond or certified check shall be based on the City Council's estimated cost to clean up the site if the conditions of the permit are not followed.
8. The permit from the Building Inspector authorized by Sections 15-0311(3) and (4) shall set forth the following conditions:
 - (a) The site where the dumping may occur.
 - (b) What materials may be dumped.
 - (c) That the drainage plan be followed.

- (d) That if concrete or similar materials are permitted to be used as fill, the permit shall state the time period in which such materials may remain uncovered.
- (e) That the permit shall expire one (1) year after issuance.
- (f) Any other condition which the City Council deems advisable in order to control the dumping.

15-0312. **NOTICE TO REMOVE NUISANCES.** Except where otherwise provided in this chapter, if any person within the limits of the City of Kindred shall permit or suffer on his premises or premises of which he may be the occupant, any nuisance, the City Council, any member of the City Council, or such persons authorized by the City Council shall cause notice to be given such person to remove or abate such nuisance. Said notice will be given following receipt by the City of a complaint regarding such nuisance. The notice shall set forth specifically the nuisance to be removed and the period of time in which it must be removed. The time period allowed for abating the nuisance shall not be less than forty-eight (48) hours after notice shall have 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 Kindred. Provided further, that the provisions of this section shall in no way abrogate or 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.

Source: Ord. 2018-72, Sec. 1

15-0313. **FAILURE TO REMOVE - PROSECUTION.** If any person, as owner or occupant of any lot or tenement, after notice as provided in Section 15-0312, 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 offense in the Municipal Court or seek injunctive relief in any courts of the State of North Dakota.

15-0314. **FAILURE TO REMOVE - CIVIL PENALTY.** The City official who sent notice of removal or abatement of a 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 official determines that

the nuisance presents a clear and present danger of injury or death to a person in , that official can direct City officials to abate the nuisance immediately without the need for Council action. Once each year, after written notice to all violators, the City Council shall review all such assessments and hear all complaints against the same and approve the assessments as finally determined by the City Council. Such special assessments shall then be certified to the County Auditor and be placed upon the tax roll for that year and to be collected as other taxes. The decision of the City Council or City official to abate the nuisance in no way relieves the violator of prosecution under the prior section.

15-0315. **PENALTY.** Any person violating any section of this chapter shall be guilty of an infraction and a minimum fine of two hundred and no/100 dollars (\$200.00). Each forty-eight (48) hour period such violation continues shall be considered a separate offense.

Source: Ord. 2018-72, Sec. 2

15-0316. **AUTHORIZED PERSONS.** The following persons are hereby authorized by the City Council to send out notices and take other actions as set out in this chapter to abate nuisances:

1. Any member of the City Council.
2. City Health Officer.
3. Chief of Police.
4. Superintendent of Streets.
5. Chief of the Volunteer Fire Department
6. Building Administrator.
7. City Forester.

15-0317. **ODOR - NUISANCE.**

1. Within the city limits of the City of Kindred it shall be deemed a nuisance if there is a discharge into the ambient air of any objectionable odorous air contaminant which is in excess of two (2) odor concentration units outside the property boundary from which the emissions are being discharged.
2. A Barnebey-Cheney Scentometer properly maintained, or other instrumental method as approved by the State Health

Department, must be used in determination of the intensity of an odor. An odor will be considered objectionable when at least two inspectors which have been certified by the State Health Department deem that odor objectionable if the odor were present in a place of residence. An "odor concentration unit" means the maximum number of standard units of odor-free air diluting a standard unit of odorous air so that the certified inspector can still detect that objectionable odor in the diluted mixture.

3. No person may discharge into ambient air hydrogen sulfide (H₂S) in concentrations that would be objectionable on land owned or leased by the complainant or in areas normally assessed by the general public. It shall be deemed a nuisance if two (2) samples with concentrations greater than 0.05 parts per million (50 parts per billion) are sampled at least 15 minutes apart within a 60-minute period. For measuring emissions of hydrogen sulfide, an ambient air analyzer designed for monitoring hydrogen sulfide must be the method used for determining the concentrations of emissions at the point of measurement, or other instrumental methods as approved by the North Dakota State Health Department.
4. The certified inspectors, in operating the Scentometer, an air analyzer designed for monitoring hydrogen sulfide, or other instrument approved by the State Health Department, must follow North Dakota State Health Department guidelines and procedures in conducting such test.
5. For purposes of this section, if a notice to remove or abate a nuisance is given, the odor nuisance will not be deemed to have been abated unless there are no further violations of Section 15-0317 for a period of thirty (30) consecutive days.

CHAPTER 15-04

SWIMMING AND WADING POOLS

SECTIONS:

- 15-0401. Definitions.
- 14-0402. Health Department Approval of Construction Plans.
- 15-0403. Bathers with Communicable Diseases.
- 15-0404. Sanitation of Premises.
- 15-0405. Cleaning Pool.
- 15-0406. Inspection by Health Department.
- 15-0407. Periodic Inspection and Testing by the Health Department.
- 15-0408. Fees.
- 15-0409. Licenses.

15-0401. **DEFINITIONS.**

1. "Residential Pool" shall mean any body of water in an artificial receptacle or other container located at a private residence and used or intended to be used solely by the owner, operator or lessee thereof and his family, and by friends invited to use it without payment of any fee.
2. "Health Department" shall mean the Fargo Cass Public Heath Department.
3. "Person" shall mean any person, firm, partnership, association, corporation, company or any organization of any kind.
4. "Public or Semi-Public Swimming Pool" shall mean any body of water in an artificial or semi-artificial receptacle or other container whether located indoors or outdoors, exclusive of a residential pool as defined herein, which is used or intended to be used for public, semi-public or private swimming by adults or children, or both adults and children, whether or not any charge or fee is imposed upon such adults or children, operated and maintained by any person as herein defined, whether he be an owner, lessee, operator, licensee or concessionaire. Public and semi-public swimming pools shall include all structures, appurtenances, equipment, appliances and other facilities appurtenant to and intended for the operation and maintenance of a swimming pool. This also includes all public swimming pools operated and maintained in

conjunction with or by clubs, motels and hotels, and all community associations.

15-0402. **HEALTH DEPARTMENT APPROVAL OF CONSTRUCTION PLANS.** Before work is commenced on the construction of a public or semi-public swimming pool or on any alteration, addition, remodeling or other improvement to a swimming pool, the plans and specifications shall have been approved by the health department. Residential swimming pools are exempt from these requirements but must meet fencing requirements set forth by the health department.

15-0403. **BATHERS WITH COMMUNICABLE DISEASES.** No person having any skin eruption or abrasions, sore or infected eyes, a cold, nasal or ear discharge, or any communicable disease shall be permitted to use a public or semi-public swimming pool. Spitting, spouting water, or blowing the nose in the swimming pool shall be strictly prohibited. The operator of a public or semi-public swimming pool shall post suitable placards embodying such personal regulations and instructions.

15-0404. **SANITATION OF PREMISES.** The buildings, grounds, dressing rooms and all other areas of public or semi-public swimming pool facilities shall be kept clean and in a sanitary condition and maintained free from garbage, trash or other refuse.

15-0405. **CLEANING POOL.** Visible dirt on the bottom of public or semi-public swimming pools and visible scum or floating matter on the surface of pools shall be removed at least once daily with an approved type vacuum cleaner or as often as necessary to maintain good sanitary conditions. All public or semi-public swimming pools shall be thoroughly cleansed at least once each week in a manner and by the use of such disinfecting agents or cleansing materials as may be required by the Health Department.

15-0406. **INSPECTION BY HEALTH DEPARTMENT.** The Health Department may inspect or cause to be inspected all public or semi-public swimming pools within the City at such times as it may deem necessary to carry out the intent of this ordinance. Residential pools may also be subject to inspection if it is determined the pool has been neglected or abandoned and may cause a health risk as described in this chapter. The Health Department is hereby authorized to enter upon any premises, private or public, to take such samples of water from such pools at such times as it may deem necessary and to require the owner, proprietor or operator to comply with rules and regulations pertaining to swimming pools promulgated by the Health Department in accordance with this chapter. In the event of the failure of compliance after due notice with the rules and regulations and requirements of the Health Department or the requirements of this ordinance, the Health Department shall have the power to abate or cause a suspension of the use of such public or semi-public swimming pool (or residential

pool) until such time as the same is, in the opinion of the Health Department, no longer a menace or a hazard to health, safety or morals.

15-0407. **PERIODIC INSPECTION AND TESTING BY THE HEALTH DEPARTMENT.** All public or semi-public swimming pools in use shall be sampled and tested at intervals to be determined by the Health Department. Said periodic inspections shall include, but are not necessarily limited to, the following tests:

1. Coliform test.
2. Standard plate count.
3. Chlorine residual.
4. Determination of pH.

The allowable limits and frequency of such tests shall be as determined by the Health Department.

15-0408. **FEES.** The fee for the periodic tests required in Section 15-0407 shall be established by resolution of the Fargo Cass Public Health Department. Any fees for periodic inspection and testing shall be the expense of the pool operator.

15-0409. **LICENSES.** All swimming pools, including spas and whirlpools, except for family pools, must be licensed by the City. The license period shall be on a calendar year with a renewal of license issued each year. The fees shall be set by resolution of the City Council. The City Auditor shall provide the application forms and issue the licenses upon receipt of application and appropriate license fees.

TITLE XVI.

MOBILE HOME PARKS

CHAPTERS:

- 16-01. Definitions.
- 16-02. Permit.
- 16-03. License.
- 16-04. Inspection.
- 16-05. Notice, Hearings and Orders.
- 16-06. Exemptions.
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- 16-15. Fire Protection.
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CHAPTER 16-01

DEFINITIONS

SECTIONS:

16-0101. Definitions.

16-0101. **DEFINITIONS.** As used in this title:

1. Driveway means a minor private way used by vehicles and pedestrians on mobile home lot or used common access to a small group of lots or facilities.
2. Health Authority means the State Department of Health or its authorized representative of the City.
3. License means a written license issued by the Health Authority allowing a person to operate and maintain a mobile home park under the provisions of this title and regulations issued hereunder.
4. Mobile Home means a manufactured transportable, single-family dwelling unit suitable for year-round occupancy and containing water supply, waste disposal and electrical convenience.
5. Mobile Home Lot means a parcel of land for the placement of a single mobile home for the exclusive use of its occupants.
6. Mobile Home Park means a contiguous parcel of land which has been developed for the placement of mobile homes and is owned by an individual, a firm, trust, partnership, public or private association or corporation.
7. Mobile Home Stand means that part of an individual lot which has been reserved for the placement of one mobile home unit.
8. Park Management means the person who owns or has charge, care or control of the mobile home park.
9. Park Street means a private way which affords principal means of access to individual mobile home lots or auxiliary buildings.

10. Permit means a written permit or certification issued by the City Council permitting the construction, alteration and extension of a mobile home park under the provisions of this title and regulations issued hereunder.
11. Person means any individual, firm, trust, partnership, public or private association or corporation.
12. Service Building means a structure housing toilet, lavatory and such other facilities as may be required by this title.
13. Sewer Connection means the connection consisting of all pipes, fittings and appurtenances from the drain outlet of the mobile home to the inlet of the corresponding sewer riser pipe of the sewerage system serving the mobile home park.
14. Sewer Riser Pipe means that portion of the sewer lateral which extends vertically to the ground elevation and terminates at each mobile home lot.
15. Water Connection means the connection consisting of all pipes, fittings and appurtenances from the water riser pipe to the water inlet pipe of the distribution system within the mobile home.
16. Water Riser Pipe means that portion of the water supply system serving the mobile home park which extends vertically to the ground elevation and terminates at a designated point at each mobile home lot.

CHAPTER 16-02

PERMIT

SECTIONS:

- 16-0201. Permits Required.
- 16-0202. Application for Permit.
- 16-0203. Permit Fee.
- 16-0204. City Council Issues Permit.
- 16-0205. Appeal.

16-0201. **PERMITS REQUIRED.** It shall be unlawful for any person to construct, alter or extend any mobile home park within the limits of Kindred unless he holds a valid permit issued by the City Building Inspector in the name of such person for the specific construction, alteration or extension proposed.

16-0202. **APPLICATION FOR PERMIT.** All applications for permits shall contain the following:

1. Name and address of applicant.
2. Location and legal description of mobile home park.
3. Complete engineering plans and specifications of the proposed park showing but not limited to the following:
 - a. The area and dimensions of the tract of land.
 - b. The number, location and size of all mobile home lots.
 - c. The location and width of roadways and walkways.
 - d. The location of water and sewer lines and riser pipes.
 - e. Plans and specifications of the water supply and sewage.
 - f. Plans and specifications of all buildings constructed or to be constructed within the mobile home park.
 - g. The location and details of lighting and electrical systems.

16-0203. **PERMIT FEE.** All applications shall be accompanied by the deposit of a fee as called for in the title covering building permits.

16-0204. **CITY COUNCIL ISSUES PERMIT.** When, upon review of the application, the City Council is satisfied that the proposed plan meets the requirements of this title, a permit shall be issued.

16-0205. **APPEAL.** Any person whose application for a permit under this title has been denied may request and shall be granted a hearing on the matter before the City Council under the procedure provided by Chapter 16-05 of this title.

CHAPTER 16-03

LICENSE

SECTIONS:

- 16-0301. License Required.
- 16-0302. Requirements: Fee: Term.
- 16-0303. Transfer of License: Notice: Fee.
- 16-0304. Suspension of License.

16-0301. **LICENSE REQUIRED.** It shall be unlawful for any person to operate any mobile home park within the limits of Kindred without first procuring a license from the City. Any person who seeks to obtain such a license shall execute under oath, and file with the City Auditor, a written application therefor on a form provided by the City Auditor setting forth the name, citizenship, police record, if any, and place of residence of the applicant, and the legal description of the premises for which the license is sought. The application must show the age of the applicant, and include the names of five (5) character witnesses, if an individual; the name, place of residence, citizenship and age of each partner, if the applicant is a partnership; if the applicant is a corporation, the applicant must show the name and address of each officer, together with the date of the charter.

16-0302. **REQUIREMENTS: FEE: TERM.** No license shall be issued unless the applicant holds a valid license issued by the State Health Department in the name of the person for the specific mobile home park. The City license shall be issued upon approval of the building permit, if such is a new mobile home park or an addition to an existing mobile home park, evidence of the State Health Department license, and payment of a Fifty Dollar (\$50) annual license fee. The term of the license shall be from July 1 to June 30 following. When the original license is approved, the applicant shall pay a fee pro-rated in accordance with the portion of the license year which has expired and the portion of the license year which remains to run.

16-0303. **TRANSFER OF LICENSE: NOTICE: FEE.** Every person holding a license shall give notice in writing to the City Council within five (5) days after having disposed of interest in any mobile home park. Such notice shall include the name and address of the persons succeeding to the ownership of such mobile home park. Upon application in writing for transfer of the license and deposit of a fee of Twenty-five Dollars (\$25), the license shall be

transferred if the mobile home park is in compliance with all applicable provisions of this title.

16-0304. **SUSPENSION OF LICENSE.** Whenever upon inspection of any mobile home park, the Building Inspector finds that conditions or practices exist which are in violation of any provision of this title, the Building Inspector shall give notice in writing in accordance with Section 16-0501 to the person to whom the license was issued that unless such conditions are corrected within a reasonable period of time, specified in the notice, the license shall be suspended. At the end of such period the Building Inspector shall reinspect such mobile home park and, if such conditions or practices have not been corrected, he shall suspend the license and give notice in writing of such suspension to the person to whom the license is issued. Upon receipt of notice of such suspension, such person shall cease operation of such mobile home park except as provided in Section 16-0502.

CHAPTER 16-04

INSPECTION

SECTIONS:

- 16-0401. Inspection by Building Inspector.
- 16-0402. Authority to Enter Premises.
- 16-0403. Authority to Inspect Register.
- 16-0404. Duty of Park Manager.
- 16-0405. Duty of Occupant.

16-0401. **INSPECTION BY BUILDING INSPECTOR.** The City Building Inspector is hereby authorized and directed to make such inspections as are necessary to determine satisfactory compliance with this title.

16-0402. **AUTHORITY TO ENTER PREMISES.** The Building Inspector shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the enforcement of this title.

16-0403. **AUTHORITY TO INSPECT REGISTER.** The City shall have the power to inspect the register containing a record of all residents of the mobile home park.

16-0404. **DUTY OF PARK MANAGER.** It shall be the duty of the park management to give the City free access to all lots at reasonable times for the purpose of inspection.

16-0405. **DUTY OF OCCUPANT.** It shall be the duty of every occupant of a mobile home park to give the owner thereof or his agent or employee access to any part of such mobile home park at a reasonable time for the purpose of making such repairs or alterations as are necessary to effect compliance with this title.

CHAPTER 16-05

NOTICE, HEARINGS AND ORDERS

SECTIONS:

- 16-0501. Notice of Violation.
- 16-0502. Hearing on Notice.
- 16-0503. Order of City Council.
- 16-0504. Appeal.
- 16-0505. Emergency: Power of City Council.

16-0501. **NOTICE OF VIOLATION.** Whenever the City determines that there are reasonable grounds to believe that there has been a violation of any provision of this title, the City shall give notice of such alleged violation to the person to whom the permit or license was issued, as hereinafter provided. Such notice shall:

1. Be in writing.
2. Include a statement of the reasons for its issuance.
3. Allow a reasonable time for the performance of any act it requires.
4. Be served upon the owner or his agent as the case may require. Provided: That such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been sent by registered mail to his last known address, or when he has been served with such notice by any method authorized or required by the laws of this State. Contain an outline of remedial action which, if taken, will effect compliance with the provisions of this title.

16-0502. **HEARING ON NOTICE.** Any person affected by any notice which has been issued in connection with the enforcement of any provisions of this title, may request and shall be granted a hearing on the matter before the City Council. Provided: That such person shall file in the office of the City Auditor a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within ten (10) days after the day the notice was served. The filing of the request for a hearing shall operate as a stay of the notice and of the suspension except in the case of an order issued under Section 16-0505. Upon receipt of such petition the City Council shall set a time and place for such hearing and shall give the petitioner written notice thereof.

At such hearing the petitioner shall be given an opportunity to be heard and to show why such notice should be modified or withdrawn. The hearing shall be commenced not later than ten (10) days after the day on which the petition was filed. Provided: That upon application of the petitioner the City Council may postpone the date of the hearing for a reasonable time beyond such ten (10) day period when in his judgment the petitioner has submitted good and sufficient reasons for such postponement.

16-0503. **ORDER OF CITY COUNCIL.** After such hearing the City Council shall make findings as to compliance with the provisions of this title and shall issue an order in writing sustaining, modifying or withdrawing the notice which shall be served as provided in Section 16-0501. Upon failure to comply with any order sustaining or modifying a notice, the license of the mobile home park affected by the order shall be revoked.

16-0504. **APPEAL.** The proceedings at such a hearing, including the findings and decisions of the City Council and together with a copy of every notice and order related thereto shall be entered as a matter of public record in the office of the Health Authority but the transcript of the proceedings need not be transcribed unless judicial review of the decision is sought as provided by this section. Any person aggrieved by the decision of the City Council may seek relief therefrom in any Court of competent jurisdiction as provided by the laws of this State.

16-0505. **EMERGENCY: POWER OF CITY COUNCIL.** Whenever the City Council finds that an emergency exists which requires immediate action to protect the public health it may without notice or hearing issue an order reciting the existence of such an emergency and requiring that such action be taken as it may deem necessary to meet the emergency including the suspension of the permit or license. Notwithstanding any other provisions of this title, such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately, but upon petition to the City Council shall be afforded a hearing as soon as possible. The provisions of Section 16-0503 and 16-0504 shall be applicable to such hearing and the order issued thereafter.

CHAPTER 16-06

EXEMPTIONS

SECTIONS:

- 16-0601. Exemption: When Granted.
- 16-0602. How Long Exemption Allowed.
- 16-0603. Conformity.
- 16-0604. Additional Exemption.

16-0601. **EXEMPTION: WHEN GRANTED.** Where the City Council finds that compliance with provisions of this title would result in undue hardship, an exemption may be granted by the City Council without impairing the intent and purpose of this title. Deviations from design, construction and installation provisions shall be brought into compliance with this title within a reasonable period of time based on economic feasibility of improvement, nature, significance and extent of deviation, depreciation of material, improvement, and layout in use and other similar factors, within a minimum period not exceeding five (5) years and a maximum period not exceeding twenty-five (25) years.

16-0602. **HOW LONG EXEMPTION ALLOWED.** Such period shall begin after the City Council has given notice of a certain and specific deviation from this title to the person to whom the permit or certification was issued.

16-0603. **CONFORMITY.** Gradual improvements to a higher degree of conformity shall be permissive provided that there shall be complete conformity at the end of a period prescribed by the City Council.

16-0604. **ADDITIONAL EXEMPTION.** Those mobile home parks which are in existence on August 4, 1971, will not be forced to comply with this title, with the exception that any new additions, that result in the increase of the number of trailer spaces available, to the old park, must comply with this title.

CHAPTER 16-07

AREA: STREETS AND SIDEWALKS: PARKING:
ILLUMINATION REGULATIONS

SECTIONS:

- 16-0701. Required Setbacks, Buffer Strips, Screening and Density.
- 16-0702. Park Street System and Car Parking.
- 16-0703. Walks.
- 16-0704. Mobile Home Stands.
- 16-0705. Traffic Regulations.

16-0701. **REQUIRED SETBACKS, BUFFER STRIPS, SCREENING AND DENSITY.**

- 1. All mobile homes shall be located at least twenty-five (25) feet from any park property boundary line abutting upon a public street or highway and at least fifteen (15) feet from other park property boundary lines.
- 2. There shall be a minimum distance of ten (10) feet between the mobile home stand and abutting park street.
- 3. All mobile home parks located adjacent to industrial or commercial land uses shall be provided with screening such as fences or natural growth along the property boundary line separating the park and such adjacent nonresidential uses.
- 4. No acre of land within any mobile home park shall contain more than fourteen (14) mobile home lots.

Source: Ord. 2013-47, Sec. 11 (2013)

16-0702. **PARK STREET SYSTEM AND CAR PARKING.**

- 1. General Requirements. All mobile home parks shall be provided with safe and convenient vehicular access from abutting public streets and roads to each mobile home lot. Such access shall be provided by streets, driveways or other means.

2. Park Entrance. Entrances to mobile home parks shall be designated to minimize congestion and hazards and allow free movement of traffic on adjacent streets.
3. Internal Streets. Surfaced roadways shall be of adequate width to minimum requirements:
 - a. All streets except minor streets..... 24 Feet
(From back of curb to back of curb)
 - b. Minor Streets..... 18 Feet
(Acceptable only if less than Five Hundred (500) feet long and serving less than Twenty-five (25) mobile homes or of any length if mobile home lots abut one side only).
 - c. Dead End Streets shall be limited in length to 1,000 Feet and shall be provided at the closed end with a turn around having an outside roadway diameter of at least Sixty (60) feet.
4. Car Parking. Off-street parking area or off-street parking lanes shall be provided for the use of park occupants and guests. Such areas shall:
 - a. Be furnished at a rate of at least 1.50 car space for each mobile home lot.
 - b. Be located within a distance of Two Hundred (200) feet from the mobile home to be served unless other vehicular access is provided.

The minimum street width requirement under Section 16-0702.3 shall be increased by seven (7) feet if on-street parking is the only type of car parking provided in a mobile home park.

5. Required Illumination of Park Street Systems. All parks shall be furnished with lighting units so spaced and equipped with luminaries placed at such mounting heights as will provide the following average maintained levels of illumination for the safe movement of pedestrians and vehicles at night:
 - a. All parts of the park street systems: 0.6 foot candle, with a minimum of 0.1 foot candle.
 - b. Potentially hazardous locations, such as major street intersections and steps or stepped ramps: Individually illuminated, with a minimum of 0.3 foot candle.

6. Street Construction and Design Standards.

- a. Pavements. All streets shall be provided with a smooth, hard and dense surface which shall be durable and well drained under normal use and weather conditions. Pavement edges shall be protected to prevent raveling of the wearing surface and shifting of the pavement base. Street surfaces shall be maintained free of cracks, holes and other hazards.
- b. Grades. Grades of all streets shall be sufficient to insure adequate surface drainage.
- c. Intersections. Within one hundred (100) feet of an intersection, streets shall be at approximately right angles. A distance of at least one hundred fifty (150) feet shall be maintained between center lines of offset intersecting streets. Intersections of more than two (2) streets at one point shall be avoided.

16-0703. **WALKS.**

1. General Requirements. All parks shall be provided with safe, convenient all-season pedestrian access of adequate width for intended use, durable and convenient to maintain, between individual mobile homes, the park streets and all community facilities provided for park residents. Sudden changes in alignment and gradient shall be avoided.
2. Common Walk System. A common walk system shall be provided and maintained between locations where pedestrian traffic is concentrated. Such common walks shall have a minimum width of three and one-half (3½) feet.
3. Individual Walks. All mobile home stands shall be connected to common walks, to paved streets or to paved driveways or parking spaces connecting to a paved street. Such individual walks shall have a minimum width of two (2) feet.

16-0704. **MOBILE HOME STANDS.** The areas of the mobile home stand shall be improved to provide adequate support for the placement of the mobile home, thereby securing the superstructure against uplift, sliding, rotation and overturning. The mobile home shall not heave, shift or settle unevenly under the weight of the

mobile home due to frost action, inadequate drainage, vibration or other forces acting on the structure.

16-0705. **TRAFFIC REGULATIONS.** The traffic regulations set out in Title XIII of the Revised Ordinances of the City of Kindred shall be in full force and effect and enforced on the streets within a mobile home park, with the exception that the parking regulations of Title XIII shall not be applicable. The speed limit on streets within a mobile home park shall be as set by the City Council of the City of Kindred. The City shall have the right to place speed limit signs, stop signs and other traffic signs as they deem appropriate. Such signs shall not be removed without the permission of the City of Kindred.

CHAPTER 16-08

WATER SUPPLY

SECTIONS:

- 16-0801. Connection With City Mains: Meter.
- 16-0802. Source of Supply.
- 16-0803. Water Distribution.
- 16-0804. Approval of Plans.

16-0801. **CONNECTION WITH CITY MAINS: METER.** The water system shall be connected to the City's Main at a location approved by the City Water Department, and metered in a manner approved by the Water Department. The system shall comply in every way with the City and State Plumbing Codes.

16-0802. **SOURCE OF SUPPLY.** The water supply shall be capable of supplying a minimum of One Hundred Fifty (150) gallons per day per mobile home.

16-0803. **METER DISTRIBUTION.** An individual water connection consisting of a riser terminating in a valved outlet at least four (4) inches above the ground shall be provided at each mobile home stand. Water connections shall be located a safe distance from the sewer connections.

16-0804. **APPROVAL OF PLANS.** Complete plans and specifications shall be submitted to the State Health Department and the City Engineer for approval.

CHAPTER 16-09

SEWAGE DISPOSAL

SECTIONS:

- 16-0901. Requirements.
- 16-0902. Size of Service.
- 16-0903. Service Connection Standards.

16-0901. **REQUIREMENTS.** The entire sewage system shall be connected to the City Sewage System at a location approved by the City Engineer. The system shall comply in every way with the City and State Plumbing Codes.

16-0902. **SIZE OF SERVICE.** A minimum of four (4") inch service shall be provided to each mobile home stand and collection lines shall be approximately sized to handle the normal flow plus a safety factor of two and one-half (2½).

16-0903. **SERVICE CONNECTION STANDARDS.** Any surface sewage connection, including, but not limited to, mobile home drain connections, shall be of hubless cast iron soil pipe or schedule 40 PVC or ABS plastic pipe not less than four (4) inches in size and not less than three (3) inches inside diameter. Drain Connections shall be gas and water tight. Each service to any surface sewage connection, including, but not limited to, mobile home drain connections, not in use shall be equipped with a hubless sewer plug.

CHAPTER 16-10

ELECTRICAL DISTRIBUTION SYSTEM

SECTIONS:

- 16-1001. General Requirements.
- 16-1002. Power Distribution Lines.
- 16-1003. Individual Electrical Connections.
- 16-1004. Required Grounding.

16-1001. **GENERAL REQUIREMENTS.** Every park shall contain an electrical wiring system consisting of wiring, fixtures, equipment and appurtenances which shall be installed and maintained in accordance with applicable codes and regulations governing such systems.

16-1002. **POWER DISTRIBUTION LINES.**

1. Main power lines shall be located underground.
2. All direct conductors or cable shall be buried at least eighteen (18) inches below the ground surface and shall be insulated and specially designed for the purpose. Such conductors shall be located not less than one (1) foot radial distance from water, sewer, gas or communication lines.

16-1003. **INDIVIDUAL ELECTRICAL CONNECTIONS.**

1. Each mobile home lot shall be provided with an approved disconnecting device and over-current protective equipment. The minimum service per outlet shall be 120/124 volts AC, 50 amperes.
2. Outlets (receptacles or pressure connectors) shall be housed in a weatherproof outlet box, and shall be located not more than Twenty-five (25) feet from the over-current protective device in the mobile home. A Three-pole, four-wire grounding type shall be used.
3. Receptacles, if provided, shall be in accordance with American Standard Outlet Receptacle C-73.1.

4. Connectors, if not substituted by more than one (1) receptacle, shall be provided where the calculated load of the mobile home is more than fifty (50) amperes.
5. The mobile home shall be connected to the outlet box by an approved type of flexible supply cord with a male attachment plug or with pressure connectors.

16-1004. **REQUIRED GROUNDING.** All exposed non-current carrying metal parts of mobile homes and all other equipment shall be grounded by means of an approved grounding conductor with branch circuit conductors or other approved method or grounded metallic wiring. The neutral conductor shall not be used as an equipment ground for mobile homes or other equipment.

CHAPTER 16-11

SERVICE BUILDING AND OTHER
COMMUNITY SERVICE FACILITIES

SECTIONS:

- 16-1101. General.
- 16-1102. Structural Requirements for Buildings.
- 16-1103. Barbecue Pits, Fireplaces, Stoves and Incinerators.

16-1101. **GENERAL.** The requirement of this chapter shall apply to service buildings, recreation buildings and other community service facilities such as:

- 1. Management offices, repair shops and storage areas;
- 2. Sanitary facilities;
- 3. Laundry facilities;
- 4. Indoor recreation areas;
- 5. Commercial uses supplying essential goods or services for the exclusive use of park occupants.

16-1102. **STRUCTURAL REQUIREMENTS FOR BUILDINGS.**

- 1. All portions of the structure shall be properly protected from damage by ordinary uses and by decay, corrosion, termites, and other destructive elements. Exterior portions shall be of such materials and be so constructed and protected as to prevent entrance or penetration of moisture and weather.
- 2. All rooms containing sanitary or laundry facilities shall:
 - a. Have sound resistant walls extending to the ceiling between male and female sanitary facilities. Walls and partitions around showers, bathtubs, lavatories, and other plumbing fixtures shall be constructed of dense, non-absorbent, waterproof material or covered with moisture resistant material.
 - b. Have at least one window or skylight facing directly to the outdoors. The minimum, aggregate gross area of

windows for each required room shall be not less than ten percent (10%) of the floor area served by them.

- c. Have at least one (1) window which can be easily opened, or a mechanical device which will adequately ventilate the room.
3. Toilets shall be located in separate compartments equipped with self-closing doors. Shower stalls shall be of the individual type. The roofs shall be screened to prevent direct view of the interior when the exterior doors are open.
4. Illumination levels shall be maintained as follows: (a) general seeing tasks - five (5) footcandles; (b) laundry room work area - forty (40) footcandles; (c) toilet room, in front of mirrors - forty (40) footcandles.
5. Hot and cold water shall be furnished to every lavatory, sink, bathtub, shower and laundry fixture and cold water shall be furnished to every water closet and urinal.

16-1103. **BARBECUE PITS, FIREPLACES, STOVES AND INCINERATORS.** Cooking shelters, barbecue pits, fireplaces, wood-burning stoves and incinerators shall be so located, constructed, maintained and used as to minimize fire hazards and smoke nuisance both on property on which used and on neighboring property.

CHAPTER 16-12

REFUSE HANDLING

SECTIONS:

- 16-1201. General Regulations.
- 16-1202. Storage Containers.
- 16-1203. REPEALED. Source: Ord. 2013-47, Sec. 12 (2013)
- 16-1204. Collection.

16-1201. **GENERAL REGULATIONS.** The storage, collection and disposal of refuse in the mobile home park shall be so conducted as to create no health hazards, rodent harborage, insect breeding areas, accident of fire hazards or air pollution.

16-1202. **STORAGE CONTAINERS.** All refuse shall be stored in fly-tight, watertight, rodent-proof containers, which shall be located not more than One Hundred Fifty (150) feet from any mobile home lot. Containers shall be provided in sufficient number and capacity to properly store all refuse.

16-1203. **REPEALED.**

16-1204. **COLLECTION.** All refuse containing garbage shall be collected at least weekly. Where suitable collection service is not available from municipal or private agencies, the mobile home park operator shall provide this service. All refuse shall be collected and transported in covered vehicles or covered containers.

CHAPTER 16-13

INSECT AND RODENT CONTROL

SECTIONS:

- 16-1301. Grounds, Buildings and Structure Regulation.
- 16-1302. Accumulation of Debris Prohibited.
- 16-1303. Storage Area: Regulation.
- 16-1304. Screening Required.
- 16-1305. Weeds: Regulation.

16-1301. **GROUNDS, BUILDINGS AND STRUCTURE REGULATION.** Grounds, buildings and structures shall be maintained free of insect and rodent harborage and infestation. Extermination methods and other measures to control insects and rodents shall conform with the requirements of the City.

16-1302. **ACCUMULATION OF DEBRIS PROHIBITED.** Parks shall be maintained free of accumulations of debris which may provide rodent harborage or breeding places for flies, mosquitoes and other pests.

16-1303. **STORAGE AREA: REGULATION.** Storage areas shall be so maintained as to prevent rodent harborage; lumber, pipe and other building material shall be stored at least one (1) foot above the ground.

16-1304. **SCREENING REQUIRED.** Where the potential for insect and rodent infestation exists, all exterior openings in or beneath any structure shall be appropriately screened with wire mesh or other suitable materials.

16-1305. **WEEDS: REGULATION.** The growth of brush, weeds and grass shall be controlled to prevent harborage of ticks, chiggers and other noxious insects. Parks shall be so maintained as to prevent the growth of ragweed, poison ivy, poison oak, poison sumac and other noxious weeds considered detrimental to health. Open areas shall be maintained free of heavy undergrowth of any description.

CHAPTER 16-14

FUEL SUPPLY AND STORAGE

SECTIONS:

- 16-1401. Natural Gas System.
- 16-1402. Liquified Petroleum Gas System.
- 16-1403. Fuel Oil Supply.

16-1401. **NATURAL GAS SYSTEM.** The natural gas system shall be installed in accordance with the State and City codes for Natural Gas Systems.

16-1402. **LIQUIFIED PETROLEUM GAS SYSTEM.** All L.P. Gas Systems shall be installed as centralized system. Individual gas tanks will not be allowed. L.P. must be installed with a centralized tank and underground distribution system.

All L.P. gas systems shall be installed in accordance with State and City codes.

16-1403. **FUEL OIL SUPPLY.** All fuel oil supply systems shall be installed as a centralized system. Individual fuel oil tanks will not be allowed. Oil must be installed with a centralized oil tank and underground distribution lines. All fuel oil supply systems shall be installed and maintained in accordance with the State and City codes.

CHAPTER 16-15

FIRE PROTECTION

SECTIONS:

- 16-1501. General Regulations.
- 16-1502. Fire Extinguishers.
- 16-1503. Fire Hydrants.

16-1501. **GENERAL REGULATIONS.** Mobile home parks shall be kept free of litter, rubbish and other flammable materials.

16-1502. **FIRE EXTINGUISHERS.** Portable fire extinguishers rated for classes B and C fires shall be kept in service buildings and at other locations conveniently and readily accessible for use by all occupants and shall be maintained in good operating condition. Their capacity shall not be less than two and one-half (2½) pounds.

16-1503. **FIRE HYDRANTS.**

1. Fire hydrants shall be installed in the park water supply system in accordance, with the following requirements:
 - a. The water supply system shall permit the operation of a minimum of two (2), one and one-half (1½) inch hose streams.
 - b. Each of two (2) nozzles, held four (4) feet above the ground, shall deliver at least two hundred fifty (250) gallons of water per minute at a flowing pressure of at least thirty (30) pounds per square inch at the highest elevation point of the park.
2. Fire hydrants shall be located within Five Hundred (500) feet of any mobile home, service building or other structure in the park.

CHAPTER 16-16

GENERAL REGULATIONS: PENALTY

SECTIONS:

- 16-1601. Responsibilities of the Park Management.
- 16-1602. Responsibilities of Park Occupants.
- 16-1603. Conflicting Ordinances: Standard Adopted.

16-1601. **RESPONSIBILITIES OF THE PARK MANAGEMENT.**

- 1. The person to whom a license for a mobile home park is issued shall operate the park in compliance with this title and shall provide adequate supervision to maintain the park, its facilities and equipment in good repair and in a clean and sanitary condition.
- 2. The park management shall notify park occupants of all applicable provisions of this title and inform them of their duties and responsibilities under this title.
- 3. The park management shall supervise the placement of each mobile home on its mobile home stand which includes securing its stability and installing all utility connections.
- 4. The park management shall maintain a register containing the names of all park occupants identified by lot number or street address. Such register shall be available to any authorized person inspecting the park.
- 5. The park management shall notify the Health Authority immediately of any suspected communicable or contagious disease within the park.

16-1602. **RESPONSIBILITIES OF PARK OCCUPANTS.**

- 1. The park occupant shall comply with all applicable requirements of this title and shall maintain his mobile home lot, its facilities and equipment in good repair and in a clean and sanitary condition.
- 2. The park occupant shall be responsible for proper placement of his mobile home on its mobile home stand and

proper installation of all utility connections in accordance with the instructions of the park management.

3. Pets, if permitted in the park, shall be prohibited to run at large or to commit any nuisance within the limits of any mobile home lot.
4. Skirtings, porches, awnings and other additions shall be installed only if permitted and approved by the park management. Where installed they shall be maintained in good repair. The space immediately underneath a mobile home shall be used for storage only if permitted by the park management. If permitted, the following conditions shall be satisfied:
 - a. The storage area shall be provided with a base of impervious material.
 - b. Stored items shall be located so as not to interfere with the underneath inspection of the mobile home.
 - c. The storage area shall be enclosed by skirting.
5. The park occupant shall store and dispose of all his rubbish and garbage in a clean, sanitary and safe manner. The garbage container shall be rodent-proof, insect-proof and watertight.
6. First aid fire extinguishers for Class B and C fires shall be kept at the premises and maintained in working condition.

16-1603. **CONFLICTING ORDINANCES: STANDARD ADOPTED.** In any case where a provision of this title is found to be in conflict with a provision of any other ordinance or code of the City of Kindred adopted and enacted concurrently herewith, the provision which, in the judgment of the City establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail. In any case where a provision of this title is found to be in conflict with a provision of any other ordinance or code of the City of Kindred adopted and enacted concurrently herewith, which establishes a lower standard for the promotion and protection of the health and safety of the people, the provisions of this title shall be deemed to prevail, and such other ordinances or codes are hereby declared to be repealed to the extent that they may be found in conflict with this title.