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CHAPTER THREE
PUBLIC PLACES AND PROPERTY

ARTICLE 1 - Construction and Repair

3.0101 Supervision

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

3.0102 Construction and Repair - Permits

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

3.0103 Bond

Each applicant shall file a bond in the amount of \$10,000.00 with surety to be approved by the City Council conditioned to indemnify the City for any loss or damage resulting from the work undertaken or the manner of doing the same.

3.0104 Specifications

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

3.0105 Duty of Owner to Maintain

It shall be the duty of the owner of any property along which a sidewalk has been constructed to maintain the same in good repair and safe condition. Should any such owner fail so to maintain such sidewalks, the City public works director shall direct him to make such repairs as may be necessary to restore such sidewalk to a safe condition. Should he fail, within a reasonable time, to follow the directions of the City public works director, the City public works director shall report the facts to the City Council, which shall then proceed as provided in Chapter 40-29 of the North Dakota Century Code.

3.0106 Application for Permit

An applicant for a permit hereunder shall file with the City Auditor an application showing:

1. Name and address of the owner, or agent in charge, of the property abutting the proposed work area.
2. Name and address of the party doing the work.

3. Location of the work area.
4. Attached plans or sufficient sketches showing details of the proposed alterations.
5. Estimated cost of the alterations.
6. Such other information as the City engineer or street commissioner shall find reasonably necessary to the determination whether a permit should be issued hereunder.

3.0107 Standards for Issuance of Permit

The City Auditor shall issue a permit hereunder when it is determined:

1. That the work will be done according to the standard specifications of the City for public work of like character.
2. That the operation will not unreasonably interfere with vehicular and pedestrian traffic, the demand and necessity for parking spaces, and the means of ingress and egress to and from the property affected and adjacent properties.
3. That the health, welfare and safety of the public will not be unreasonably impaired.

3.0108 Sidewalks Built to Grade Specifications

All sidewalks shall be constructed in accordance with the elevations and grade therefore to be furnished by the City public works director and shall be constructed under his direction and supervision. All sidewalks shall meet the following requirements:

1. All sidewalks shall be constructed of concrete.
2. All sidewalks in residential areas shall be constructed not less than five (5) feet in width and shall have a minimum slope one-fourth (1/4) inch per foot from the inside edge toward the street.
3. All sidewalks shall be of concrete and of at least four (4) inches in thickness.
4. All sidewalks shall be laid out as follows:
 - a. In locations where the right-of-way is sixty (60) feet or less the sidewalks shall be constructed on the property line.
 - b. In locations where the right-of-way is greater than sixty (60) feet the sidewalk shall be constructed eighteen (18) inches out from the property line.
 - c. In no case in the residential district shall the sidewalk be constructed adjacent to the curb unless right-of-way and topographic features require it.

- d. Notwithstanding any other provision herein all sidewalks shall be set out so that they are in conformity with existing sidewalks to which they may attaché.
5. All sidewalks in commercial and/or industrial districts shall be constructed from the property line to the back of the curb and the width of sidewalk shall be governed by the width of street section; provided however, in areas where commercial development is not complete the entire sidewalk need not be constructed, a section six (6) feet in width adjacent to the curb shall be constructed thus leaving an area for structural foundations.

3.0109 Materials and Manner of Construction

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

3.0110 City Contractor

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

All sidewalks, driveways, curb and gutter and alley returns lying between the property line and the abutting street hereafter constructed within the City must conform to this chapter, and the specifications filed with the City public works director, and approved by the City Council must specify the details with respect thereto. When any contract for the construction of sidewalks, driveways, curb and gutter, relaying of block walks and paving repairs is about to be entered into by the City in accordance with the provisions of the laws of this state, the contractor to whom any such contract shall be awarded shall be required, before such contract is entered into, to give in addition to the contract bond required by the laws of the state of North Dakota, an additional bond in an amount to be determined by the City Council, running to the City, conditioned that said contractor shall maintain and keep in good repair, for a period of two (2) years from date of final acceptance all sidewalks, driveways, curb and gutter and paving repairs so constructed by such contractor under the terms of such contract, and that in case of default under the part of such contractor to so maintain and keep such improvements in good repair made by him for the said period of two (2) years, or in case they shall within said time begin to crumble or disintegrate or become cracked or broken to such extent that, in the opinion of the City public works director, the same is not a satisfactory compliance with the specifications for the construction thereof, then the City public works director may direct that such sidewalks, driveways, curb and gutters or paving repairs be immediately repaired or re-laid in whole or in part as he shall deem best, and the contractor shall immediately cause the same to be repaired or failure so to repair or to relay the same, the City at any time within said two (2) year period or thereafter, may cause the same to be repaired or re-laid, and the cost thereof whether done by the City directly or through a contract, may be recovered against said contractor and the surety upon such bond.

ARTICLE 2 - Use and Care of Streets, Sidewalks and Public Places

3.0201 Obstructions - Penalty

It shall be unlawful for any person, firm or corporation to cause, create or maintain any obstruction of any street, alley, sidewalk or other public way, except as may be specified by ordinance or by permission of the City.

Any person violating the provisions of this section shall be guilty of an infraction and upon conviction thereof, shall be fined as set forth in Section 1.0104 herein.

3.0202 Destruction of City Property - Prohibited - Penalty

It shall be unlawful for any firm, person or corporation to willfully and without just cause or excuse, to injure, deface or destroy any property owned by the City or held by the City for public use. Any person violating the provisions of this section shall be guilty of a Class B Misdemeanor and be fined not more than one thousand five hundred dollars (\$1,500.00).

3.0203 Encroachments

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

3.0204 Openings

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

3.0205 Wires

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

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

3.0206 Littering - Prohibited

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

3.0207 Burning

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

3.0208 Distributing Hand Bills, Etc.

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

3.0209 Heavy Vehicles

No person, firm or corporation shall move, or cause to be moved over the paved streets, sidewalks, crosswalks, culverts, bridges and viaducts within the City any engine, tractor, wagon, truck or other vehicle, object or thing which will tend to injure the paving, sidewalks, crosswalks, culverts, bridges or viaducts over which the same are transported, or which exceeds in weight, 16,000 pounds per axle and exceeds 750 pounds per inch of tire widths, or any vehicle to the wheels of which are attached spurs, bars, angle irons or cleats which will tend to mar or deface the paving, sidewalks, crosswalks, culverts, bridges or viaducts, except under the direction and permission of the City Council and, in addition thereto, shall pay or cause to be paid to said City, upon demand, any and all damages done to the paving, sidewalks, crosswalks, culverts, bridges or viaducts, provided that when the specified load limits herein contained will cause damage to the City's paved streets, the City Council by resolution adopted, and made public, may lower said load limits for such period of time it may deem necessary. The provisions of this section shall not apply to state and federal highways through the City.

3.0210 Removal of Snow and Ice from Sidewalk

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

WE, THE CITY COUNCIL OF THE CITY OF ELLENDALE, NORTH DAKOTA, do hereby amend Chapter 3 by adding article 3.0210.1 to read as follows:

3.0210.1 No Throwing of Snow

Unless otherwise specified in this ordinance, no person nor any entity shall throw, place or deposit snow or ice into or on any public streets, public sidewalk, public boulevard, nor public way, nor shall any person nor any entity throw, place or deposit snow or ice into or on any private property belonging to another person without the express consent of the private property owner. The activity of a person or entity hired to remove snow and/or ice shall be deemed to be the activity of the hiring person or entity. Prior to city public works snow removal on city public ways, snow and ice may be shoveled or removed from any sidewalk or private driveway located adjacent to any city street right-of-way and such removed snow and ice may be deposited upon the boulevard, provided there is a sidewalk-less (e.g. grass) boulevard adjacent thereto; if there is no sidewalk-less (e.g. all sidewalk in commercial area) adjacent boulevard, then such snow may be deposited on the actual street area itself. Regardless of location of snow or ice placement/piling the snow/ice shall not be piled in such a manner as to interfere with public snow

removal operations nor in such a manner as to create a traffic hazard or to interfere in any manner with the vision or view of a driver of a motor vehicle at or near street intersections. It shall be unlawful to deposit or dump any snow or ice removed from parking lots, fuel filling station areas, or from any other non-single-family-residential private property, other than from sidewalks and driveways as limited above, upon any public or city property or city street, including boulevards or any other part of the street right-of-way. It shall be unlawful to deposit any snow or ice contrary to the provisions of this paragraph. The city and its employees and agents acting in the furtherance of their public duties are exempt from this ordinance.

In the event that any person, firm or corporation violates Section 3.0210.1, they shall be subject to a fine not to exceed \$100 for each and every offense, and every day that a violation of this ordinance exists or continues shall be considered a separate offense. Any fine assessed against a person and any costs for removal of snow or ice that is involved pursuant to this section shall be collected from the violating person or charged against the abutting property by special assessment in the manner prescribed by law if the abutting property is owned, rented or occupied by the violating person.

3.0211 Removal of Snow and Ice by City

In case the owner of any lot in the City refuses or neglects to remove such ice from such sidewalk in front of or along a lot therein, the ice or snow therefrom within the same time above stated or refuses to sprinkle ashes or sand on the same within the time specified for removal in such manner as to make such sidewalk safe for travel of pedestrians thereon, the same may be removed by or under the direction of the City public works director, or ashes or sand sprinkled thereon, and the necessary expenses shall be charged against the abutting property by special assessment in the manner prescribed by law.

3.0212 Assessments by Street Commissioner When Work is Done by City

Whenever City employees shall, pursuant to Section 3.0211 of this article, remove or cause to be removed any snow or ice from any sidewalk or sidewalks along or in front of any building, grounds or premises, he shall assess the cost of the same against said property, and on or before the first day of May in each year, make and file in the office of the City Auditor a list of the property chargeable with such expense, the actual cost and expense of such removal and a description of the lot, lots or parcels of land along or in front of which is the sidewalk or sidewalks from which snow or ice has been removed. (Source: North Dakota Century Code Section 40-29-18)

3.0213 Snow and Ice Removal Assessments, Publication by Auditor, Hearing by City Council

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

the North Dakota Century Code. (Source: North Dakota Century Code Section 40-29-19, 20)

**Amendment of Chapter 3
Ellendale Revised Ordinances
Amendment of Article 2
Sections 3.0214 and 3.0215**

WE, THE CITY COUNCIL OF THE CITY OF ELLENDALE, NORTH DAKOTA, do hereby amend Chapter 3 of the Ellendale Ordinances as follows:

Be it ordained by the City Council of the City of Ellendale, Dickey County, North Dakota, that the Ordinances be amended by amending article Chapter 3 regarding snow removal as follows:

3.0214 - Snow Removal

1. Whenever the mayor finds, on the basis or threat of falling or blowing snow, sleet or freezing rain, or on the basis of a forecast by the U.S. Weather Bureau or other weather service, of snow, sleet or freezing rain that weather conditions will make it necessary that motor vehicle traffic will be expedited and that parking on city streets, alleys or public ways be prohibited or restricted for snow plowing and other purposes, he or she shall put into effect a parking prohibition as necessary by declaring it in a manner prescribed by this Article.
2. Once in effect, a prohibition under this section shall remain in effect until terminated by announcement of the mayor in accordance with this Article, except that any street area which has become substantially clear of snow and ice from curb to curb for the length of entire block shall be automatically excluded therefrom. While the prohibition is in effect, no person shall park or allow to remain parked any truck, pickup, automobile, machinery or any other vehicle or equipment on any portion of a snow emergency route, street, alley OR public way to which the prohibition applies. However, nothing in this section shall be construed to permit parking at any time or place where it is forbidden by any other provision of law.
3. Unless otherwise announced, all roadways designated as snow emergency routes by the Ellendale City Council will be cleared first. Thereafter, the City will use its best efforts to start clearing any roadway designated as a street by 7 A.M. or such other time as is feasible, with any roadway designated as an avenue being cleared last.
4. Snow Emergency Routes
 - a. Snow Emergency Routes shall be as designated by resolution of the Ellendale City Council.
 - b. Signs to mark Snow Emergency Routes. On each street designated by resolution as a snow emergency route, there shall be posted appropriate signs at intervals not exceeding 1,320 feet. Signs posted in accordance with this section shall be distinctive and uniform in appearance and shall be plainly visible and readable to persons traveling on the streets or highway.
5. Violations - Traffic Citation or Complaint. Whenever any vehicle is found stopped or parked contrary to the provisions of this Article, the owner of such vehicle may be charged with a

violation of this Article. Prosecution may be instituted by traffic citation or complaint in the same manner as a violation of any other ordinance.

6. Evidence Related to Violation of Article. In any prosecution with regard to a truck, pickup, automobile, machinery or any other vehicle or equipment parked or left in a place or in a condition in violation of any provision of this Article, proof that the particular vehicle described in the complaint was parked or left in a violation of a provision of this Article, together with proof that the defendant named in the complaint was at the time the registered owner of such vehicle, shall constitute prima facie evidence that the defendant was the person who parked or left the vehicle in violation of this Article.

7. Penalty. The owner of any truck, pickup, automobile, machinery or any other vehicle or equipment, violating any of Section 3.0214 shall be subject to a \$25.00 fine for each offense. The owner of the vehicle shall be presumed to be the person who violated Section 3.0214. See N.D.C.C. §39-10-50 and §24-12-02(2). The snow season shall be defined as beginning October 1st of each year and ending September 30th of the subsequent year.

3.0215. Declarations of the Mayor

1. The mayor shall cause each declaration made by him pursuant to this Article to be publicly announced by means of television or radio broadcasts from stations with a normal operating range covering the city and by publication on the official city website, and he may cause such declaration to be further announced in newspapers of general circulation when feasible. Each announcement shall describe the action taken by the mayor including the time it became or will become effective, and shall specify the areas affected.
2. The mayor shall make or cause to be made a record of each time and date when any declaration is announced to the public in accordance with this Section.
3. Whenever the mayor shall find that some or all of the conditions which give rise to a parking prohibition effect pursuant to this Article no longer exist, he may declare the prohibition terminated, in whole or in part, in a manner prescribed by this Article, effective immediately upon announcement.
4. Any provision of this Article which becomes effective by declaration of the mayor upon the occurrence of certain weather conditions shall, while temporarily in effect, take precedence over other conflicting provisions of law normally in effect, except that it shall not take precedence over provisions of law relating to traffic accidents, emergency travel of authorized emergency vehicles or emergency traffic directions by a police officer.

3.0216. Street Cleaning

1. Whenever it becomes necessary to suspend parking to sweep and clean streets or to mark streets for traffic purposes in the city there shall be designated by the City engineer, public works director or street commissioner the areas and streets to be cleaned as aforesaid and the time during which such street cleaning and marking of streets shall be done and posting of such information in the area affected.

2. Violations - Traffic Citation or Complaint. Whenever a vehicle is found stopped or parked contrary to the provisions of this Article, the owner of such vehicle may be charged with a violation of this Article. Prosecution may be instituted by traffic citation or complaint in the same manner as a violation of any other ordinance.

3. Evidence Related to Violation of Article. In any prosecution in regard to a truck, pickup, automobile, machinery or any other vehicle or equipment parked or left in a place or in a condition in violation of any provision of this Article, proof that the particular vehicle described in the complaint was parked or left in violation of a provision of this Article, together with proof that the defendant named in the complaint was at the time the registered owner of such vehicle, shall constitute prima facie evidence that the defendant was the person who parked or left the vehicle in violation of this Article.

4. Penalty. The owner of any truck, pickup, automobile, machinery or any other equipment, violating any of section 3.0216 shall be subject to a \$20.00 fine

3.0217. Blocking Streets

1. No driver of any vehicle shall stop the same on any street, avenue, lane or alley of the City in such a manner as to hinder or prevent other vehicles or persons from passing at all times, unless in case of absolute necessity, or 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.

2. Violations - Citation or Complaint. Whenever any vehicle is found stopped or parked contrary to the provisions of this Article, the owner of such vehicle may be charged with a violation of this Article. Prosecution may be instituted by traffic citation or complaint in the same manner as a violation of any other ordinance.

3. Evidence Related to Violation of Article. . In any prosecution in regard to truck, pickup, automobile, machinery or any other vehicle or equipment parked or left in a place or in a condition in violation of any provision of this Article, proof that the particular vehicle described in the complaint was parked or left in violation of a provision of this Article, together with proof that the defendant named in the complaint was at the time the registered owner of such vehicle, shall constitute prima facie evidence that the defendant was the person who parked or left the vehicle in violation of this Article.

4. Penalty. The owner of any truck, pickup, automobile, machinery or any other equipment, violating any of section 3.0217 shall be subject to a \$20.00 fine.

3.0218. Impounding Vehicles

Whenever any parked automobile, truck, machinery vehicle or equipment shall be found in any place prohibited by this Article, and during the hours as provided therein, the same shall be impounded by the City at a place to be provided and it shall be unlawful for any person, firm or corporation to remove or attempt to remove any truck, automobile, machinery, vehicle or equipment from the place where impounded without first paying the cost of such impounding and the cost of storage. Any payments required by this section shall not be construed as a penalty so as to preclude prosecution for violation of any of the provisions of this Article,

3.0219. Reserved for Future Use

3.0220 Excavations - Permit

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

3.0221 Guarding or Excavations and Openings

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

3.0222 Application for Excavation Permits

Applications for excavation permits shall be made to the City Auditor, and shall describe the location of the intended excavation or tunnel, the size thereof, the purpose therefore, and the person, firm or corporation doing the actual excavating work and the name of the person, firm or corporation for whom or which the work is being done, a statement of how applicant intends to backfill the excavation, and shall contain an agreement that the applicant will comply with all ordinances and laws relating to the work to be done. A separate permit need not be obtained when the excavation is noted on a building permit.

3.0223 Fees for Excavation Permits

The fee for excavation permits shall be set by the City Council.

3.0224 Bond - Excavations

No excavation permit shall be issued unless and until the applicant therefore has filed with the City Auditor a bond in the sum of ten thousand dollars (\$10,000.00), conditioned to indemnify the City for any loss, liability or damage that may result or accrue from or because of the making, existence or manner of guarding or constructing any such tunnel or excavations. Such bond shall have as surety a corporation licensed to do business in the state as a surety company.

3.0225 Deposit - Excavations

No such permit shall be issued unless and until the applicant therefore has deposited with the City Auditor a cash deposit or bond in the sum of \$10,000.00 to insure the proper restoration of the ground and laying of the pavement if any. From this deposit shall be deducted the expense to the City of relaying the surface of the ground or pavement and of making the refill if this is done by the City or at its expense, and the balance shall be returned to the applicant without interest after the tunnel or excavation is completely refilled and the surface or pavement is restored.

3.0226 Making Excavations - Notice

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

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

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

3.0227 Restoration of Excavations

So that the street is returned to its original condition, any backfilling must achieve a compaction rate of 98%. It is further required that all wet material must be removed from the excavation prior to backfilling. The City crews will replace the asphalt, with the applicant to pay the costs of the asphalt replacement. All costs must be assessed and received prior to approval of the permit.

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

Failure to obtain a permit as required by this Section may result in a fine not to exceed \$500.00.

3.0228 Supervision of Excavation Work

The City public works director shall from time to time inspect or cause to be inspected, all excavations and tunnels being made in or under any public street, alley or other public place in the City to see to the enforcement of the provisions of this article. Notice shall be given to him at least ten (10) hours before the work of refilling any such tunnel or excavation commences.

3.0229 City Buildings, Equipment and Vehicles - Smoking

Smoking is not permitted in City buildings, equipment and vehicles, except in designated smoking areas. The public official having general supervisory authority over any City buildings, equipment or vehicles may designate a smoking area by posting a sign in the smoking area which states "Designated Smoking Area." Any designated smoking area in a place of public assembly may not occupy more than fifty percent of the total area available to the public and must be situated to minimize smoke drift. (Source: North Dakota Century Code Section 23-12-10)

3.0230 Surcharge for the Operation and Maintenance of the Street Light System

1. PURPOSE: The purpose of this article shall be to generate sufficient revenue to

pay all costs for the operation and maintenance of the street light system in the City of Ellendale. The costs shall be distributed to all residents within the City limits of Ellendale.

2. DETERMINING THE TOTAL ANNUAL COST OF OPERATION AND MAINTENANCE: The City shall determine the total annual costs of operation and maintenance of the street light system. The total annual cost of operation and maintenance shall include, but need not be limited to, labor, repairs, equipment replacement, maintenance, necessary modifications, bracket rentals, pole rentals, and KWH charges.

3. SURCHARGE RATES: Surcharge rates shall be set from time to time by resolution of the City Council.

4. SURCHARGE DEDICATED TO OPERATION AND MAINTENANCE OF THE STREET LIGHT SYSTEM: A surcharge shall be added to the city utility billings of the residents of the City of Ellendale. This surcharge shall be dedicated to the payment of light pole rentals, bracket rentals, KWH charges, and other costs associated with the operation and maintenance of the street light system.

In the event the surcharge herein created is insufficient, the city council, by resolution, shall raise the surcharge to meet the costs of operating and maintaining the street light system.

5. NOTIFICATION: Each user will be notified on their regular monthly city utility billing of the rate and that portion of the user charges which are attributable to the operation and maintenance of the street light system.

ARTICLE 4 Park District

3.0401 Creation of Park District

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

3.0402 Board of Park Commissioners

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

3.0403 City Parks - Hours

All City parks shall have established hours of public access. The hours shall be from 8:00 a.m. to 11:00 p.m. each day. Notice of the same may be published in the official newspaper or posted at the public parks. Any variance from the above hours of use shall be under special permission granted by the Board of Park Commissioners.

ARTICLE 5. Unclaimed and Abandoned Property

3.0501 Unclaimed and Abandoned Property - Defined

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

3.0502 Seizure of Unclaimed or Abandoned Property

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

3.0503 Holding of Personal Property - Notice of Sale

Abandoned personal property shall be held by the City for a period of not less than sixty (60) days after its seizure as provided herein, and after the expiration of said sixty (60) days the City Auditor shall cause notice to be published in the official newspaper of said City, said notice specifying and stating the description of the property so seized and held, the location of the place where the same was seized or taken by said City, and a further notice that said property will be sold at public auction, to the highest bidder for cash, not less than ten (10) days from and after the date of the publication of such notice and the hour, date and place where said sale will be held. If prior approval is obtained from the City Council, such unclaimed or abandoned property may be sold at a community auction provided that a police officer shall be responsible for the notice and reporting requirements of this article.

3.0504 Report of Abandoned Property Sale

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

3.0505 Bill of Sale - Abandoned Property

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

3.0506 Proceeds of Sale - Abandoned Property

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

3.0507 Redemption of Personal Property

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

3.0508 Annual Report - Unclaimed and Abandoned Property

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

ARTICLE 6 - Building and Structure Numbering

3.0601 Building and Structure Numbering Required

All lots, buildings and structures in the City shall be numbered in accordance with a plan as approved by the city council by resolution.

3.0602 Numbers of Building and Structure

It shall be the duty of the owner and occupants of every building and structure in the City to have placed thereon, in a place visible from the street, figures at least two and one-half (2½) inches high, showing the number of the building and structure.

ARTICLE 7 – Planting, Maintenance and Removal of Trees and Shrubs

3.0701 Purpose

It is declared the public policy of the City of Ellendale that orderly planning and compliance with uniform standards regarding the planting, maintenance, and removal of trees and shrubs within its jurisdiction is necessary for the health, safety, and welfare of its residents. It is the purpose, therefore, of this article to ensure that trees and shrubs are planted and maintained in a manner that enhances the visual appeal of the City, traffic safety, and property values.

3.0702 Definitions

As used herein the following definitions apply:

“Master List” – a listing of varieties of trees and shrubs determined by the City Council as acceptable for planting in the City.

“Street” – means the traffic roadway and adjacent boulevards and berms.

3.0703 Public Trees

The City Council shall have control over all trees and shrubs planted or now growing on City owned property and shall be solely responsible to determine the kind and location of such trees, shrubs, and plants. Any elm tree or dead elm wood on property owned by the City which is a public nuisance as defined in this article shall be promptly removed and burned at the expense of the City.

Trees may not be planted within 35 feet of any intersection or within 15 feet of any driveway, alley, or utility pole.

If the planting strip between a sidewalk and a curb is less than seven (7) feet, trees should be planted on the residential side of the sidewalk.

Spacing of trees shall be as follows:

- | | | |
|----|--------------|---------------|
| 1. | Large trees | 40 feet apart |
| 2. | Medium trees | 35 feet apart |
| 3. | Small trees | 25 feet apart |

3.0704 Private Trees

All trees, shrubs, and hedges planted on private property must be at least three (3) feet from all property lines and no tree shall be closer than four (4) feet from any sidewalk or the normal location of any sidewalk from the curb. There may be exceptions to these requirements that would require a greater distance between property lines and sidewalks due to the variety of the tree, shrub or hedge. Any such exceptions shall be listed with that variety on the Master List.

3.0707 Public Safety and Protection of Property – Hazards Defined and Prohibited

All trees and shrubs within the City shall be pruned or removed when such trees or shrubs constitute a hazard to life and property or harbor insects and disease which constitute a threat to other trees and shrubs within the City. Such hazards include:

1. Any tree, shrub, or hedge, or any part of such, which is diseased or over aged and is clearly deteriorating;
2. Any living or standing elm tree (*Ulmus spp.*), or part of any tree, infected to any degree with Dutch Elm Disease fungus (*Ceratocystis ulmi*), or which harbors any of the elm bark beetles capable of transmitting this fungus (*Scolytus multistriatus* or *Hylurgopinus rufipes*);
3. Any dead elm tree or part of any tree, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed and properly disposed of;
4. Any tree, shrub, or hedge, or any part of which is obstructing or shading streetlights, obstructing the passage of pedestrians on sidewalks, obstructing the passage of vehicles on any street or alley, obstructing the vision of traffic signs, or obstructing the view of any street or alley intersection.

3.0708 Removal of Illegal Plantings or Hazards

1. In addition to all other remedies provided, the City Auditor is hereby empowered to order the removal of any trees or shrubs planted or maintained in violation of this article. Stumps of all removed trees shall be cut to at least three (3) inches below the ground, the soil replaced, and the area leveled.
2. The City Auditor shall notify in writing and by registered mail the owners of such trees or shrubs. Pruning or removal shall be done by the owners at their own expense within thirty (30) days after notification.

3.0709 Action of City Upon Noncompliance – Costs

Upon the failure, neglect, or refusal of any owner so notified to prune or remove the specified trees and shrubs, the City Auditor shall have the authority to prune or remove the specified trees or shrubs. When the City Auditor has effected the removal of such hazardous trees or shrubs, or has paid for their removal, the actual cost thereof, if not paid by the property owner, shall be charged and assessed against the property upon which the hazardous trees and shrubs are growing.

3.0710 Certification as Special Assessment

The City Auditor shall keep in his office a book called “Nuisance Abatement, Special Assessment Book” and shall enter the cost of the abatement of a nuisance as declared by the City Council therein as a special assessment against the lot or parcel of land from which the nuisance was abated, with the name of the owner. At the regular meeting of the City Council in September of each year, the City Council shall review all such assessments and hear all complaints against the same and approve the same as finally adjusted, and the City Auditor shall certify to the County Auditor a list of the lots and parcels specially assessed for such purpose, and the sum shall be collected as other City taxes are collected.

3.0711 Penalties

Any person who shall violate any of the provisions of this article shall, upon conviction thereof, be subject to a fine not to exceed \$100.00.

3.0712 Repeal

All articles or parts of articles in conflict herewith are hereby repealed.

3.0713 Severability

It is the intention of the City Council that each separate provision of this article shall be deemed independent of all other provisions herein, and it is further the intention of the City Council that, if any provisions of this article be declared invalid, all other provisions hereof shall remain valid and enforceable.