

CHAPTER SIX  
WATER AND SEWER

ARTICLE 1 - Utility Established

- 6.0101 Water And Sewer Department Established
- 6.0102 City Water and Sewer Department to be Independent Agency
- 6.0103 Scope of Utility
- 6.0104 Service Charges - Use of
- 6.0105 Policy on Improvements - Extensions
- 6.0106 Utility Fund - Separate Accounts
- 6.0107 Provisions for Financing Capital Improvements
- 6.0108 Agreements with Bond and Warrant Purchasers

ARTICLE 2 - Water Service

- 6.0201 Water System
- 6.0202 Superintendent of City Water and Sewer Department
- 6.0203 Same: Reports
- 6.0204 Application for Water Service and Service Connection Charge
- 6.0205 Subsequent Connection to Premises
- 6.0206 Separate Connections for each Premise - Exception
- 6.0207 Water Service - Construction of - Maintenance of by Owner
- 6.0208 Water Meters - Checked – Fees
- 6.0209 Water Meters – Damage To
- 6.0210 Water Meters - Interference
- 6.0211 Unlawful to Use Water Not Metered - Unlawful to Tamper with Curb Cock
- 6.0212 Defective Service - Consumers Duty to Report
- 6.0213 Users Consent to Regulations
- 6.0214 Regulations Governing Service
- 6.0215 Connection to be Supervised by City Employees
- 6.0216 Service Pipes Specifications
- 6.0217 Curb Cock Specifications
- 6.0218 Check Valves Required When Necessary
- 6.0219 Use of Water During Fire - Unlawful
- 6.0220 Waterworks Customers May Lay Larger Pipes with Hydrants - When
- 6.0221 Water Purchase Agreement
- 6.0222 Rates and Charges - Liability for
- 6.0223 Duty to Report to Auditor
- 6.0224 Excavators
- 6.0225 Restriction of Use of Water

ARTICLE 3 – Creation of Special Water Main Improvement District No. 5

- 6.0301 Creation of District

ARTICLE 4 - Regulation of Sewer Use

- 6.0401 Purpose
- 6.0402 Definitions
- 6.0403 Use of Public Sewers Required
- 6.0404 When Private Sewage Disposal Permitted
- 6.0405 Building Sewers and Connections
- 6.0406 Use of Public Sewers

- 6.0407 Damage to Sewer Works Prohibited
- 6.0408 Powers and Authority of Inspectors
- 6.0409 Hearing Board
- 6.0410 Penalties
- 6.0411 Validity

ARTICLE 5 - Sewer Surcharge

- 6.0501.1 Repeal of Ordinances 6.0501 – 6.0508
- 6.0501 Purpose
- 6.0502 Determining the Total Annual Cost of Operation and Maintenance
- 6.0503 Surcharge Rates
- 6.0504 Surcharge Dedicated to Payment of Revenue Bonds for Sewer Improvement Project No.
- 6.0505 Payment of the User's Wastewater Service Charge and Penalties
- 6.0506 Review of Each User's Wastewater Service Charge
- 6.0507 Notification
- 6.0508 Wastes Prohibited from Being Discharged to the Wastewater System

ARTICLE 6 - Adoption of State Plumbing Code

- 6.0601 Adoption
- 6.0602 Plumbing Code - Enforcement of Provisions
- 6.0603 Plumbing Code - Changes in Existing Installations
- 6.0604 Plumbing Code - New Installations

ARTICLE 7 - General Penalty Provisions

- 6.0701 Penalty for Violation of Chapter

Appendix A

Surcharge Rate Schedule for Above Normal Strength Wastes

CHAPTER SIX  
WATER AND SEWER

ARTICLE 1 - Utility Established

6.0101 Water and Sewer Department Established

There is hereby established and created within the City a department to be known as the City Water and Sewer Department. The department shall have general charge of all plants, systems, works, instrumentalities, equipment, materials, supplies, sewage disposal plants, lagoons, intercepting sewer, trunk connections, sewer and water mains, filtration works, pumping stations and all parts and appurtenances of the foregoing which are used or useful in connection with the collection, treatment and disposal of sewage, waste and storm sewers for the inhabitants of this City, subject to all ordinances, rules and regulations.

6.0102 City Water and Sewer Department to be Independent Agency

All of the business affairs of the said City Water and Sewer Department shall be conducted, insofar as is possible within the ordinances of the City, as a completely separate and distinct division of the City. Separate and distinct accounts shall be set up on the books of the City Auditor. These accounts shall at all times reflect the true condition of the Water and Sewer Department, as distinct from the remaining business of the City and shall be so devised as to disclose the annual profit or loss of the department. The funds of the department shall be held in the custody of the City Auditor and disbursed upon warrant in the same manner as other funds, but the Water and Sewer Department shall be given credit upon the books of the City for any and all funds paid by it into the City Treasury and shall be charged on the books of the City with all payments made by the City on its behalf. Transfers from the Water and Sewer Department to the General Fund or any other fund of the City shall not be made except upon order of the City Council (Source: North Dakota Century Code Section 40-33-12) nor shall transfer be made from City funds to the Water and Sewer Department without like order. Where bonds have now been, or may hereafter be issued against any water works improvement or sewage improvement, which constitute a general obligation of the City, the taxes levied for the payment of such bonds and interest shall be levied and expended for such purpose in the manner provided by law, until such time as it may be possible out of the proceeds of the Water and Sewer Department, after setting up a reasonable reserve for depreciation and new construction, to make payment of the bond requirements from the profits of the Water and Sewer Department. It is expressly declared to be the purpose of this section that as soon as the same can be accomplished without undue burden to the water users of this City, the Water and Sewer Department shall be placed upon an entirely independent basis as a separate business enterprise.

6.0103 Scope of Utility

The properties of the City Water and Sewer Department and all future improvements, extensions and enlargements thereof, together with all cash and other assets held in the City's Water and Sewer Utility Fund and all moneys to be derived thereafter from the services, facilities, products and by-products of said utility, shall be and are hereby appropriated and dedicated to the purpose of insuring the public health, safety and welfare by furnishing and making available water and sewerage service to the City and its inhabitants and industries. Said utility shall at all times be under the management and control of the City Council 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.

#### 6.0104 Service Charges - Use of

The City Water and Sewer Department shall at all times be so operated and maintained, and rates and charges for its services, facilities, products and by-products shall be such, as to make the utility self-supporting and self-perpetuating. Such charges from time to time imposed and collected shall be made and kept adequate to pay as incurred all costs of operation and maintenance of said utility and to establish and maintain reasonable operating reserves; to produce net revenues which shall be sufficient at all times to pay promptly the principal and interest due on all obligations of the City incurred for the improvement, extension and enlargement of said utility, to the extent that such obligations are according to their terms payable from said net revenues, and to establish and maintain adequate reserves for the security of said obligations. Charges may be set to produce surplus net revenues, over and above current principal, interest and reserve requirements, in amounts sufficient to provide reasonable allowances for depreciation and replacement of the utility plus a reasonable return on the City's capital investment therein which surplus net revenues, when actually on hand, and to the extent that they are not required as a reserve for depreciation and replacement, may from time to time be appropriated by the City Council to pay or contribute to the cost of any other City functions, subject to the limitations now or hereafter prescribed by law.

The foregoing appropriations shall not, however, be deemed or construed to preclude the City from defraying any part or all of the expense of any improvement, enlargement or extension of the water and sewer utility by the levy of special assessments or taxes or the issuance of general obligation bonds, whenever and to the extent that such action is authorized in the manner provided by law and is deemed fair and equitable by the City Council.

##### 6.0104.1 Annual Rate Adjustment Ordinance-Pertaining to Water and Sewer Rates

Unless the City of Ellendale specifically determines otherwise, on the first day of each fiscal year starting on the first day of the fiscal year of 2016, and until the first day of the fiscal year of 2021, all minimum charges, unit charges and fees for water and sewer will be increased two (2%) percent over the then current rates and fees in order to account for anticipated inflation and to maintain adequate operating, equipment replacement, capital improvement, emergency and debt coverage reserves and the like. This ordinance and these increases are in addition to and do not effect or limit in any manner any power(s) of the City Council set forth in Chapter 6 of the Ellendale Revised Ordinances. This automatic rate adjustment is intended to sunset in 2021 and is intended to further the following principals which are recited only as an indication of general intent and are not intended to be binding upon the city:

1. It will put ratepayers on notice that the current rate increase is not a one-time event. Cost will go up and therefore, rates must continue to go up too.
2. It will relieve future city councils and staff from having to do detailed rate analyses for every rate increase for a few years if no big changes are affecting the system and rates just need to track with inflation.
3. It will make it much harder for future councils to "back slide" on raising rates to keep up with inflation and the like because in order to keep the rates where they are now they will have to pass an ordinance or resolution to stop the scheduled future rate increases until the sunset of this ordinance.
4. It will give ratepayers assurance that the city is actually maintaining various reserves for the utility because that is the stated reason for the automatic increases. This helps to prevent future councils from "back sliding" if they are tempted to use funds from the utility reserves for other purposes.

5. The sunset language assures ratepayers that they will not be indefinitely subject to inflationary increases. By the sunset date, the council must re-address the system's rate needs and readjust rates to keep rates adequate and fair.

#### 6.0105 Policy on Improvements - Extensions

It is hereby declared to be the policy of the City, subject to such modifications as shall be deemed by the City Council to be required by special circumstances in individual cases, and subject to such modifications as may hereafter be made by ordinance amendatory hereof or supplemental hereto, that the cost of capital improvements, enlargements and extensions of said utility shall be paid in the following manner:

1. Where water mains not exceeding six inches or sanitary sewer mains not exceeding eight inches in diameter are installed adjacent to residential properties, and where water mains not exceeding eight inches or sewer mains not exceeding ten inches in diameter are installed adjacent to commercial properties, the total cost thereof shall be assessed against the properties abutting on such improvements, in sums proportionate to and not exceeding the total benefits determined to be derived therefrom by the respective properties. Water and sewer mains of the dimensions above described are referred to herein as "lateral" mains and other mains are referred to as "trunk" mains.
2. Where a trunk main is installed, the City Council upon advice of the City engineer shall estimate the probable cost of construction of a lateral main at the same time and place and such estimated cost shall be assessed against the properties abutting on such main and in the manner above provided.
3. Twenty percent (20%) of the cost of any sanitary sewer in excess of the estimated cost of a lateral sewer at the same time and place shall be assessed against all properties determined by the City Council to require the immediate construction of such main as a trunk sewer, including properties abutting thereon and properties served or capable of being served by lateral sewers connected thereto, in amounts proportionate to and not exceeding the benefits determined to be derived by said respective properties from such trunk sewer.
4. The total cost of storm sewers shall be assessed against properties within the area determined to be benefited thereby, in amounts proportionate to and not exceeding the benefits determined to be derived therefrom by the respective properties.
5. Where a portion of the benefits of any of the foregoing improvements is deemed to accrue primarily to the City at large, a portion not exceeding twenty percent (20%) of the cost thereof, as determined by the City Council, may be paid by the levy of ad valorem taxes upon all property within the City over the same period as the levies of assessments for such improvements, or any portion or all of such cost may be paid out of current funds duly provided in the budget, or from the proceeds of general obligation bonds duly authorized by the electors.
6. Such portion of the cost of any improvement, extension or addition to the utility as is not paid by special assessments and taxes levied and actually collected in respect thereof shall be paid from the net revenues of the utility.

7. Where due to any error or omissions or to any special circumstances a special assessment is not levied against any property benefited by an improvement at the time of the construction thereof in accordance with the program described in this section, the City reserves the right to levy a supplemental special assessment upon such property or to impose and collect a special charge for the connection of such property with the utility system in such amount as shall be required to pay its just share of the assessable cost of such improvement.

#### 6.0106 Utility Fund - Separate Accounts

All moneys received by the City in respect of the services, facilities, products and by-products furnished and made available by the City Water and Sewer Department, except collections of special assessments and taxes appropriated to improvement district funds and moneys borrowed for capital improvements, and all money, receipt and returns received from any investments of such earnings, shall be paid into the treasury of the City and kept in a special fund which shall be permanently maintained on the books of the City, separate and distinct from other funds, and designated as the Water and Sewer Utility Fund. In the records of this fund, all receipts and disbursements of money on account of or in connection with the utility shall be entered and reflected; but the moneys from time to time on hand therein shall always constitute public municipal funds and shall be deposited and their safekeeping secured like other City funds. Separate accounts within the Water and Sewer Utility Fund shall be permanently maintained for the purpose of segregating the revenues required to meet the several expenses and obligations of the utility, as provided below, and such revenues shall be administered and accounted for as follows:

1. Operation and Maintenance Account. There shall be credited at least once in each calendar month to the Operation and Maintenance Account of said fund, as a first lien and charge on the gross revenues of the utility such sum as shall be needed, over and above any credit balance then held therein, to pay all claims due which by accepted accounting practices constitute normal, reasonable and current expenses of operation and maintenance of the utility, and to pay such expenses estimated to accrue for a period of approximately one month, and to maintain a reasonable reserve for contingencies. Moneys in said account shall be used only to pay expenses of the foregoing type, and not for repairs or replacements or for capital improvements properly chargeable to replacement and depreciation reserves or surplus funds.
2. Revenue Bond Account. The net revenues of the utility are herein defined as the aggregate of all sums on hand in the Water and Sewer Utility Fund from time to time in excess of the current requirements defined in (1) and (2) above. The entirety of the said net revenues shall be credited each month to the Revenue Bond Account of the Water and Sewer Fund until there shall have been credited within said account, and thereafter so much of the net revenues as shall be necessary to maintain at all times, a reserve in an amount at least equal to the sum of the principal and interest payments due within each next succeeding twelve-month period upon all revenue bonds of the City heretofore or hereafter issued and made payable from said accounts. After this reserve has been created, there shall continue to be credited out of the net revenues to the Revenue Bond Account each month, over and above sums required to maintain such reserve, an amount not less than one-twelfth (1/12) of the sum of the principal and interest to

become due on all such revenue bonds within the then next succeeding twelve months. Moneys in said account shall be used only for the payment of principal and interest as it becomes due on said revenue bonds, and the reserve shall be used for such purpose only when other moneys in the account are insufficient. All revenue bonds heretofore and hereafter issued and made payable from said account, subject to the limitations upon such issuance contained in Section (6) hereof, shall constitute a first lien and charge on the net revenues of said utility without preference or priority of one bond over any other. However, if at any time the moneys in the Revenue Bond Account should be insufficient to make all payments of principal and interest due on such revenue bonds, and cannot be made sufficient by transfer of moneys from the other accounts described below, the moneys available shall be first used to pay interest then accrued on all bonds payable from said account, and any excess moneys available shall be used to pay matured principal of such bonds in order of their maturity dates, provided that moneys available for payment of bonds maturing on the same date shall be prorated equally among such bonds.

3. Improvement Warrant Account. There shall also be maintained in said fund an Improvement Warrant Account, for the purpose of segregating net revenues required for the payment of any portion of the cost of improvements hereafter instituted, for which such revenues have been pledged in accordance with the provisions of Chapter 40-22 of the North Dakota Century Code. There shall be transferred from said account as required, to the fund of each improvement district for which such pledge has been made, sums sufficient, together with tax and assessment collections held in such funds, to pay when due the principal and interest on all improvement warrants drawn upon such funds for the financing of such improvements. Moneys sufficient for the requirements of said improvement district funds shall be credited and paid into the Improvement Warrant Account out of the net revenues remaining from time to time after provision for the current requirements of the Revenue Bond Account, and the lien and charge on said net revenues in favor improvement warrants for the payment of which such pledges have been made shall be subordinate only to the lien and charge on said net revenues in favor of revenue bonds payable from the Revenue Bond Account. In the event that moneys in the Improvement Warrant Account shall be insufficient for the making of all transfers required to be made to the several improvement district funds to which such pledges have been made, and cannot be made sufficient by the transfer of funds from the remaining accounts described below, the available moneys shall be apportioned first to the several improvement district funds in sums sufficient to pay interest then accrued on all warrants drawn on such district funds, and any remainder shall be applied in payment of matured principal of such warrants in order of the maturity dates thereof. As among warrants maturing on the same date, such available moneys shall be applied to the warrants of the several issues in proportion to the matured principal amount thereof for the payment of which taxes and assessments in the respective improvement funds are insufficient.
4. Replacement and Depreciation Account. There shall be maintained a Replacement and Depreciation Account, into which there shall be credited and paid as received, except as otherwise stated below, all net revenues in excess of the current requirements of the other accounts above described. In said account there shall be maintained such balances as the City Council shall from time to

time determine to constitute an adequate reserve for depreciation and replacement of the utility, which reserve may be used to redeem prior to maturity obligations payable from the net revenues as and when the same become pre-payable according to their terms, or to replace worn out or obsolete properties of the utility, or to make extensions, enlargements or improvements thereto. Any moneys in said account determined to be surplus to the immediate requirements therefore may be invested or may be transferred to other City funds in the discretion of the Board, in the manner and subject to the limitations set forth in Section 40-33-12 of the North Dakota Century Code; and any acts amendatory thereof or supplemental thereto.

5. Moneys on Hand. The moneys on hand in any of the accounts of the Water and Sewer Utility Fund shall at all times be available and shall be used to the extent necessary to restore any deficiency in the funds on hand in any of the preceding accounts, in the order listed above, for the fulfillment of the requirements of such preceding accounts as herein defined.
6. Additional Accounts. The City also reserves the right to create additional accounts within the Water and Sewer Utility Fund for the purpose of segregating any surplus net revenues which may be pledged and appropriated to the payment of obligations hereafter issued to finance improvements, enlargements or extensions of said utility, other than the obligations made payable from the Revenue Bond Account and the Improvement Warrant Account, pursuant to the authority for such issuance reserved in Section 6.0107 hereof. Moneys on hand in any such account shall at all times be available for and used to the extent necessary to meet the current requirements of all of the foregoing accounts except the Replacement and Depreciation Account.

#### 6.0107 Provisions for Financing Capital Improvements

In borrowing money for capital improvements, extensions or additions to said utility the following provisions shall at all times be observed:

1. For the purpose of this section, whenever the net revenues of the utility hereinabove appropriated to the Improvement Warrant Account are pledged to pay a portion of the cost of any improvement to be financed by improvement warrants, such warrants and the interest accruing thereon shall be deemed to be payable from said net revenues in the same proportion as that part of the cost payable from said net revenues bears to the principal amount of such warrants. The portion of costs payable from net revenues shall be deemed equal to the principal amount of the warrants less the principal amount of the taxes and assessments agreed to be levied for the payment thereof.
2. Except as provided in parts (3) and (4) below, no obligations shall be issued and made payable from the Revenue Bond Account or the Improvement Warrant Account at any time unless the net revenues of the utility, as defined in Section 6.0106 (3) hereof, received during the then next preceding fiscal year, shall have been in an aggregate amount at least equal to 125% of the average annual principal and interest payments due on all bonds payable from the Revenue Bond Account which are then outstanding or then to be issued, plus such percentage of the average of the annual principal and interest payments due on each issue of

improvement warrants then outstanding or then to be issued as shall be payable from said net revenues, which averages shall be computed on the basis of the principal and interest payments due in the fiscal years of the then remaining term of all such revenue bonds and improvement warrants then outstanding. For the purpose of such computation, whenever rates for water and sewerage service have been changed in the course of any fiscal year, the net revenues for such year shall be deemed to be those which would have been received if such amended rates had been in effect during the entirety of such year, based upon the actual quantities of service furnished to each class of customers and the actual expenses of the utility during such year; provided that in no case shall the net revenues so computed be deemed to exceed 125% of the net revenues actually received during such year.

3. Refunding revenue bonds may be issued for the purpose of prepaying and refunding bonds payable from the Revenue Bond Account when and as they become pre-payable according to their terms, in the manner and to the extent permitted by law, provided that such refunding revenue bonds shall be subject to the requirements set forth in part (2) hereof, as applied to the past net revenues and future principal and interest requirements as of the date of the issuance of such refunding revenue bonds. However, the City shall and does hereby also reserve the right and privilege of issuing refunding revenue bonds, when permitted by law, for the maturities of any bonds payable from the Revenue Bond Account which have matured and for the payment of which the moneys in the Revenue Bond Account are insufficient, and cannot be made sufficient by transfer of moneys from other accounts, and such refunding revenue bonds shall be payable from the Revenue Bond Account on a parity as to interest with all then outstanding bonds payable therefrom, but the maturities of such refunding revenue bonds shall be subsequent to the maturities of all such outstanding bonds. Nothing herein shall be deemed to require the holder of any revenue bond to accept a refunding revenue bond in exchange therefore.
4. The City also reserves the right and privilege of issuing refunding improvement warrants in the manner and to the extent provided in Chapter 40-27 of the North Dakota Century Code and acts amendatory thereof and supplemental thereto. The lien and charge of such refunding warrants on the net revenues appropriated to the Improvement Warrant Account shall be the same as that in favor of the improvement warrants refunded thereby; provided that for the purpose of the computations directed to be made in this section, the maturities and the rate or rates of interest payable on such refunding warrants shall be substituted for the maturities and interest rates of the improvement warrants refunded thereby.
5. Nothing herein shall be deemed to affect the obligation of the City, under the laws of the State of North Dakota, to levy ad valorem taxes upon all taxable property within its corporate limits for the purpose of paying a deficiency, if any, in the fund of any improvement district, at the time of the maturity of the last warrant drawn thereon, or at such earlier time as may be hereafter directed by such laws; provided that it shall be the policy of the City that the amounts of any deficiency tax levies so made shall be restored to the General Fund of the City out of any surplus net revenues thereafter received, over and above the requirements of the several accounts of the Water and Sewer Utility Fund as stated in Section 6.0106 hereof.

6. Except as hereinbefore authorized, no obligation of any kind shall be issued and made payable from said net revenues unless the lien thereof is expressly made subordinate and junior to the lien and charge on said net revenues in favor of all revenue bonds and improvement warrants payable from the Revenue Bond Account and the Improvement Warrant Account.

#### 6.0108 Agreements with Bond and Warrant Purchasers

The City shall and does hereby covenant and agree with the original purchaser and each holder from time to time of each bond or warrant issued and made payable from the Revenue Bond Account or the Improvement Warrant Account, as follows:

1. It will complete all improvements financed by the issuance of such obligations with due diligence and with the greatest economy consistent with good workmanship and efficient results, and will do so without creating or permitting the creation of any liens or encumbrances on said utility or on the revenues thereof other than the liens and charges of said revenues expressly authorized in this article.
2. As long as any obligations payable from said accounts are outstanding, it will continue to own and operate said utility as a municipal utility, free from all competitions as to the services thereby provided and in good and efficient operating condition.
3. It will at all times maintain a schedule of rates, charges and rentals for all services, facilities, commodities and benefits furnished by said utility and will impose and collect the same in amounts at least sufficient to make the minimum payments into the respective accounts of the Water and Sewer Utility Fund as specified in Section 6.0106 hereof, and will revise such schedules in such manner and as often as needed to perform this covenant.
4. Under each such schedule, the City shall be obligated to pay and will pay from its other funds to the Water and Sewer Utility Fund a fair and equitable amount for any and all services, facilities, commodities and benefits furnished to the City or any of its departments by the utility.
5. It will at all times maintain books of account adequate to show all receipts and disbursements of the City respecting the utility, and application of such receipts to the purposes of the several accounts described in Section 6.0106 hereof, which books of account shall be open to inspection by the holder of any obligation payable from the Revenue Bond Account or the Improvement Warrant Account at any reasonable time. The City will furnish a certified transcript therefrom of any information which any such bond or warrant holder may request, upon payment of a reasonable fee therefore.
6. It will cause the annual financial statement of the City required by the provisions of Section 40-16-05 of the North Dakota Century Code to include a statement as to the financial condition and the receipts and disbursements of the Water and Sewer Utility Fund and of its several accounts during each fiscal year, and will furnish a copy of such statement to the original purchaser of each issue of bonds

or warrants upon request.

7. Upon written demand of the holder of twenty percent (20%) or more of the bonds or warrants of any issue payable from the Revenue Bond Account or Improvement Warrant Account and then outstanding, it will cause an audit of the books of account of the utility to be made by a certified public accountant satisfactory to the holders of such obligations, the cost thereof to be paid as an operating expense of the utility and will furnish a copy of the report of any such audit to such party as shall be designated in such demand.
8. It will at all times keep the properties of said utility insured in reasonable amounts against loss or damage by fire, tornado and other risks for which similar properties are customarily insured by prudent owners, and will carry adequate public liability insurance, insuring against any claim of personal injury of property damage which is or may become a charge against the revenues of the utility. The City will also cause all persons handling funds of the utility to be bonded in suitable amounts for the protection of the City and the holders of obligations of the utility, and the expense of all such insurance and bonds shall be accounted for as an operating cost of the utility. The City will use the proceeds of any such insurance and bonds to restore the loss or damage compensated thereby.
9. The City and its City Council and each and all of its officers will punctually perform all duties with reference to said utility and the revenues thereof and the obligations issued hereunder which are imposed by the ordinances and resolutions of the City in force on the date upon which any such obligations are issued. All provisions of the Constitution and laws and of such ordinances and resolutions which are provide security for the holders of bonds issued hereunder are acknowledged to be a part of the City's contract with the holders of such obligations; provided that nothing herein shall be deemed to preclude the City from modifying the policies set forth in Section 6.0105 hereof with reference to any improvements constructed and financed after the effective date of such modification.
10. The holders of twenty percent (20%) or more in principal amount of each issue of bonds or warrants payable from the Revenue Bond Account or the Improvement Warrant Account and at the time outstanding shall be privileged, and are hereby empowered, to institute and maintain, on behalf of the holders of all outstanding obligations of the same issue, any suit or proceeding at law or in equity for the protection and enforcement of any covenant, agreement or stipulation herein provided to be performed or observed by the City or its City Council or any of its officers, whether or not any such obligations are then in default as to principal and interest. Each and all of the rights and remedies provided by Sections 40-35-15 and 40-35-19 of the North Dakota Century Code are hereby acknowledged to be available to the holders of such obligations.

## ARTICLE 2 - Water Service

### 6.0201 Water System

All land, buildings, machinery, equipment, tools and apparatus, water mains, hydrants,

service connections and all other property used for the purpose of furnishing a water supply to this City, and the inhabitants thereof, now owned or to be owned by this City, whether acquired by the issue of general obligation bonds, special assessment warrants or other obligations of this City, shall constitute and be known as the waterworks system.

#### 6.0202 Superintendent of City Water and Sewer Department

A water and sewer utility superintendent shall be appointed by the City Council. If the superintendent is a part-time employee and is also a City employee in some other capacity, only those services respecting the utility shall be an operating charge of the system. It shall be the duty of the superintendent to exercise control and management of the operation of the utility system. He shall have power and authority to employ, subject to the approval of the City Council, all such engineers, filter plant operators, meter readers, laborers and other employees, as may be necessary to the operation of the utility system. All such employees shall be subject to his orders and directions, and he shall be responsible for their acts. He shall have power and authority to purchase such materials, supplies and repairs for the water-sewer system, with the approval of the City Council, as shall be reasonably necessary for the operation of such system. He shall keep such books and records of matters pertaining to the operation of the system, as are necessary to show the operation and condition thereof. He shall at all times be subject to the supervision and direction of the City Council. He shall perform such other duties and have such other powers and authority as are hereinafter provided for.

#### 6.0203 Same: Reports

The water and sewer utility superintendent shall make monthly reports to the City Council concerning the operation of the department.

#### 6.0204 Application for Water Service and Service Connection Charge

WE, THE CITY COUNCIL OF THE CITY OF ELLENDALE, NORTH DAKOTA, do hereby amend Chapter 6 by amending section 6.0204 to read as follows:

The owners of all houses, buildings or properties used for human occupancy, employment, recreation, or other purposes in the City and abutting any street, alley, or right-of-way in which there is now located, or may in the future be located, a public water connection to the City, are hereby required, unless the building is for storage only, at the owner's expense, to connect to such water facility within sixty days after official notice to do so, provided that said public service is within 200 feet of the site of service and any such owner required to connect to such water facility is also required to simultaneously connect to the city sewer system. Any private wells existing at the time of the enactment of this ordinance may continue to exist and shall not be permitted to connect into the city water system unless an emergency should occur and at that time the Mayor may grant written approval to allow temporary connection to the city water system. The requirements of this ordinance are subject to all applicable federal and state laws governing rural water districts' jurisdiction to provide water serve.

Residents shall apply for Water Service and pay Service Connection Charges. Any party obtaining water and sewer service from said utility for premises not heretofore connected with the system, shall apply for a connection on a form provided by the City. Such application shall state an exact description of the premises to be served, and the uses, both general and special, to which the water is to be put, the nature of sewage to be discharged, and the estimated amount of water to be used for a quarter-annual period. Such application shall be filed with the City Auditor, and the

applicant shall thereupon pay to the City Auditor, as a connection charge, a sum set by resolution of the City Council for a residential building, commercial building or multiple dwelling.

#### 6.0205 Subsequent Connection to Premises

Any party, other than the original applicant, desiring service for premises where a connection has been made pursuant to Sections 6.0204 hereof shall make written application therefore as in cases described in Section 6.0204 hereof, and if the connection charge for such premises has not been fully paid at such time, the applicant shall pay or agree to pay the remainder thereof in like manner and time as described in Section 6.0204 hereof.

#### 6.0206 Separate Connections for each Premise - Exception

Unless special permission is granted by the City Council, each premise shall have a separate and distinct water service connection and sewer service connection, and where permission is granted for branch service systems, each unit on the branch shall pay the fees as set in 6.0221.

#### 6.0207 Water Service - Construction of - Maintenance of by Owner

The cost of original installation of all plumbing between the main and any service devices maintained by the consumer and all extensions made to such plumbing, as well as all repairs, shall be borne entirely by the consumer, although such plumbing and services as well as the meters shall at all reasonable times be subject to inspection by duly authorized representatives of the City. Any repairs found to be necessary by such representatives shall be made within 24 hours, or the City 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. Services means the service line running from the point of connection with the City main to owner's premises.

#### 6.0208 Water Meters - Checked - Fees

Every consumer of water shall provide a suitable place where a water meter can be installed and each consumer shall supply, maintain and change when necessary, the same, and if at any time the consumer desires to have the meter tested for accuracy, the same shall be done by the City and a fee set by the City Council shall be charged therefore to the consumer if the meter registers 98% or more accurate. If the meter registers less than 98% accurate, it shall be replaced and the fee refunded.

#### 6.0209 Water Meters – Damage To

Should a water meter become damaged by the act or neglect of owner or occupant of premises or his agent or servant, or in use it is injured by freezing, then the cost of repairing or replacing shall be paid by owner or occupant of premises where meter is installed. In the case of neglect or refusal to pay the same on demand, the water supply shall be turned off, and shall not again be turned on until such costs, together with a reconnection fee, are paid.

The City of Ellendale will not be responsible for damages caused by the breaking of a meter or from any accident from variations in water pressure or the ram of the water in the mains.

6.0210 Water Meters – Interference.

Any individual, corporation or other entity that breaks the seal on any water meter installed by the City of Ellendale, without the authority by the City Auditor, or who shall obstruct, alter, injure, or prevent the action of any water meter, or who shall make any connection by means of pipe or otherwise, with any main or pipe used for the delivery of water to a consumer, in such manner as to take water from said main or pipe without it passing through the meter, or shall use any water so obtained, or who shall, with intent to defraud, make any connections or reconnections with such main or pipe, or turn water on or off, or in any manner interfere with any valve, stop cock, or other appliance connected therewith, shall be fined a maximum of \$100.00, with a possible maximum fine of \$500.00.

6.0211 Unlawful to Use Water Not Metered - Unlawful to Tamper with Curb Cock

It shall be unlawful for any person to use water from any premises without the consent of the owner or to use water from the City water system except when drawn through a meter installed by the City. No person except an authorized representative of the City shall turn on or off or tamper with any curb cock.

6.0212 Defective Service - Consumers Duty to Report

All claims for defective service shall be made in writing and filed with the City Auditor on or before the fifteenth day of the month next succeeding such defective service, or be deemed waived by the claimant. It shall be the duty of the City public works director to investigate the facts alleged in each claim and determine the amount, if any, which should be refunded to a claimant by reason of defective service and report such determination to the City Council. If a claim is approved by the City Council, such amount shall be allowed as credit on the following bill or paid as other claims, but no claim shall be made against the City for any fire or any injuries to the person or property of any consumer of water or sewer service under the provisions hereof.

6.0213 Users Consent to Regulations

Every person applying for water and sewer service from the municipal system, and every owner of property for which such application is made, shall be deemed by such application to consent to all the rules, regulations and rates contained in the resolution or ordinances of the City and to any modification thereof and to all new rules, regulations or rates duly adopted.

6.0214 Regulations Governing Service

The following rules and regulations shall be considered a part of the contract with every person who takes water and/or sewer service supplied by the City through the City waterworks system and every such person who takes such service shall be considered to be bound thereby.

1. Shutting Off Water - Who Authorized. No person except an authorized employee of the water department shall shut off or turn off the water at the curb cock to any premises without first obtaining permission from the water department.

1. City Reserves Right to Shut Off Water - Notice. In the case of making repairs or constructing new work, the City reserves the right to shut off the water at once and keep the same shut off as long as may be necessary to accomplish such purposes. Service may also be discontinued for nonpayment of bills or for disregard of rules and regulations affecting the service.
3. Non-liability of City for Deficient Supply or Quality of Water. It is expressly provided that the City shall in no event be or become liable to any consumer of water for a deficiency in the supply of water or the quality thereof, whether by shutting off the same to make repairs or to construct new work or for any other cause whatsoever.
4. Shutting Off Water - Charge for. The water department shall make a charge, which fee shall be set by the City Council, each for shutting off or turning on services.
5. Entrance and Access to Premises by Waterworks Employees. Authorized employees of the water and sewer department shall have free access to any premises supplied with water, at proper times, to inspect and ascertain the condition of the meters and fixtures, or for reading meters, and no owner or occupant shall refuse such employees such access. The water department shall have the right to enter any premises and remove the meter for the purpose of examination and test after first notifying the owner or occupant, and to shut off the water to premises where free access is prevented.
6. Fire Hydrants - Who May Open. No person except City employees in the performance of their official duties shall open or cause to be opened any fire hydrant without the written permission of a City employee.

#### 6.0215 Connection to be Supervised by City Employees

In installing water and sewer service, all taps shall be driven, street excavations made, corporation cocks inserted, pipes installed from the main and the curb cock installed in an iron box to which the service is to be connected by the individual, his agent or employee under the supervision, direction and control of the water and sewer department. Ten feet spacing shall be allowed between all water and sewer lines in new connections to service. Failure to comply with this section shall be considered a disregard of the rules of the department and service to the affected property can be withheld or discontinued as the case may be.

#### 6.0216 Service Pipes Specifications

All service pipes connected with the water and sewer utility shall be laid as low as the street mains. All water and sewer pipes shall be of a material approved by the utility superintendent.

#### 6.0217 Curb Cock Specifications

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 house plumbing entirely drained. There shall be another such stop and waste cock in the pipe on the house side of the meter.

#### 6.0218 Check Valves Required When Necessary

Check valves are hereby required on all water connections to steam boilers or any other connection deemed by the utility superintendent to require one. Safety and release valves shall be placed on all boilers or other steam apparatus connection with the water system where the steam pressure may be raised in excess of fifty pounds per square inch.

#### 6.0219 Use of Water During Fire - Unlawful

It is hereby declared to be unlawful for any person in this City or any person owning or occupying premises connected to the utility to use or allow to be used during a fire any water from said utility except for the purpose of extinguishing said fire; and upon the sounding of a fire alarm, it shall be the duty of every such person to see that all water services are tightly closed and that no water is used, except for necessary household purposes during said fire.

#### 6.0220 Waterworks Customers May Lay Larger Pipes with Hydrants - When

Whenever proprietors of lumber yards, manufactories, halls, stores, hotels, public buildings or regular customers from the water works wish to lay larger pipes with hydrants and hose couplings, to be used only in case of fire, they will be permitted to connect with the street main at their own expense, upon application for a permit to the City Auditor, and under the direction of the City Council will be allowed the use of water, for fire purposes only, free of charge. No standpipe will be allowed on the premises where the water is not taken for other than fire purposes.

#### 6.0221 Water Purchase Agreement

The City of Ellendale shall enter into a Water Purchase Agreement to purchase water from the Dickey Rural Water Users Association, Inc. in amounts and terms to be established and to maintain rates and charges for supplying to its inhabitants. The rates shall be sufficient to produce income to meet the terms of the Water Purchase Agreement during the life of the contract. The term of the Water Purchase Agreement may not exceed 40 years from the date of enactment on November 7, 1994.

#### 6.0222 Rates and Charges - Liability for

The owner or owners of all real property in the City furnished water or sewer service or service line repairs shall be responsible for the payment of any and all such charges regardless of who the occupant or tenant may be. Owners of premises where water or sewer service is supplied shall notify the water or sewer department or the City Auditor in case any tenant moves from said premises, prior to such moving. On request of the owner or owners, the City Auditor will bill or cause to be billed the occupant or tenant for such charges, but if such charges are not paid when due by the occupant or tenant, the owner or owners shall be responsible for such charges and they shall be assessed to the property served, and water service will be shut off. It shall be the duty of the City Auditor to certify to the County Auditor such unpaid water or service charges that are

unpaid in the same manner and at the same time as other assessments are certified, and they shall be assessed and collected in the same manner.

#### 6.0223 Duty to Report to Auditor

Every owner or operator of a multiple dwelling unit shall file with the City Auditor a report indicating the total number of units under his control. Every owner or operator of a mobile home park shall file with the City Auditor a report indicating the total number of units in the park and shall further notify the City Auditor of any changes in the number of units in the park if the number increases or decreases.

#### 6.0224 Excavators

No person, firm or corporation shall excavate in or on any street, alley or other public place for the purpose of installing any water and/or sewer connection until they have complied with the provisions of Sections 3.0220 through 3.0227 of Chapter 3 of these ordinances.

#### 6.0225 Restriction of Use of Water

The City Council may from time to time declare that water may not be used for specific purposes or may only be used in certain parts of the City on certain days for certain purposes. The City shall have the right to prohibit the watering of lawns and gardens, the washing of cars or such other uses of the water as may be necessary to preserve for the general public an adequate supply of water for consumption and use by the general public.

ARTICLE 3 - Creation of Special Water Main Improvement District No. 5 **DELETED**

ARTICLE 4 - Regulation of Sewer Use

#### 6.0401 Purpose

It is the purpose of this article to provide ordinances regulating the use of public and private sewers and drains, private sewage disposal, the installation and connection of building sewers and the discharge of waters and wastes into the public sewer system and to provide penalties for violations thereof.

#### 6.0402 Definitions

Unless the context specifically indicates otherwise, the meaning of the terms used in the article shall be as follows:

1. "BOD" (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20 degrees Centigrade, expressed in milligrams per liter.
2. "Building Drain" shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.

3. "Building Sewer" shall mean the extension from the building drain to the public sewer or other place of disposal, also called house connection.
4. "Combined Sewer" shall mean a sewer intended to receive both wastewater and storm or surface water.
5. "Easement" shall mean an acquired legal right for the specific use of land owned by others.
6. "Floatable Oil" is oil, fat or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection system.
7. "Garbage" shall mean the animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.
8. "Industrial Wastes" shall mean the wastewater from industrial processes, trade or businesses as distinct from domestic or sanitary wastes.
9. "Natural Outlet" shall mean any outlet, including storm sewers and combined sewer overflows, into a watercourse pond, ditch, lake or other body of surface or groundwater.
10. "May" is permissive (see "shall," Sec. 18).
11. "Person" shall mean any individual, firm, company, association, society, corporation or group.
12. "pH" shall mean the logarithm of the reciprocal of the hydrogen-ion concentration. The concentration is the weight of hydrogen ions, in grams, per liter of solution. Neutral water, for example, has pH value of 7 and a hydrogen-ion concentration of  $10^{-7}$ .
13. "Properly Shredded Garbage" shall mean the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than  $\frac{1}{2}$  inch (1.27 centimeters) in any dimension.
14. "Public Sewer" shall mean a common sewer controlled by a governmental agency or public utility.
15. "Sanitary Sewer" shall mean a sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters that are not admitted intentionally.
16. "Sewage" is the spent water of a community. The preferred term is "wastewater," Sec. 24.

17. "Sewer" shall mean a pipe or conduit that carries wastewater or drainage water.
18. "Shall" is mandatory (see "may," Sec. 10).
19. "Slug" shall mean any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration or flows during normal operation and shall adversely affect the collection system and/or performance of the wastewater treatment works.
20. "Storm Drain" (sometimes termed "storm sewer") shall mean a drain or sewer for conveying water, groundwater, subsurface water or unpolluted water from any source.
21. "Superintendent" shall mean the superintendent of wastewater facilities, and/or of wastewater treatment works, and/or of water pollution control of the City or an authorized deputy, agent or representative.
22. "Suspended Solids" shall mean total suspended matter that either floats on the surface of, or is in suspension in water, wastewater or other liquids, and that is removable by laboratory filtering as prescribed in "Standard Methods for the Examination of Water and Wastewater" and referred to as nonfilterable residue.
23. "Unpolluted Water" is water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.
24. "Wastewater" shall mean the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and storm water that may be present.
25. "Wastewater Facilities" shall mean the structures, equipment and processes required to collect, carry away and treat domestic and industrial wastes and dispose of the effluent.
26. "Wastewater Treatment Works" shall mean an arrangement of devices and structures for treating wastewater, industrial wastes and sludge. Sometimes used as synonymous with "waste treatment plant" or "wastewater treatment plant" or "water pollution control plant."
27. "Watercourse" shall mean a natural or artificial channel for the passage of water either continuously or intermittently.
28. "Hearing Board" shall mean that board appointed according to the provisions of Section 6.0409.

#### 6.0403 Use of Public Sewers Required

1. It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the City or in any area under the jurisdiction of the City any human or animal excrement, garbage or other objectionable waste.
2. It shall be unlawful to discharge to any natural outlet within the City or in any area under the jurisdiction of the City any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this section.
3. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage.
4. The owner of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the City, and abutting on any street, alley or right-of-way in which there is now located or may in the future be located a public sanitary sewer, is hereby required at the owner's expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this section, within ninety (90) days after date of official notice to do so, provided that said public sewer is within 200 feet (61 meters) according to the North Dakota plumbing code of the property line. This shall also apply to water connections.
5. Buildings which are not habitable, as determined by the City Building Official, shall not be connected to the city water and sewerage systems and no person shall be permitted to reside or otherwise utilize such building(s).
  - a. The Building Official shall maintain and notify the City Council of any houses on such list which are not habitable and considered to be substandard.
  - b. The City Council shall issue no permit for connection to sewer and water for any structure on such list as being an uninhabitable structure.

#### 6.0404 When Private Sewage Disposal Permitted

1. Where a public sanitary or combined sewer is not available under the provisions of Section 6.0403 (4), the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this article.
2. Before commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit signed by the superintendent. The application for such permit shall be made on a form furnished by the City, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the superintendent. A permit and inspection fee of \$50.00 shall be paid to the City at the time the application is filed. Said permit and inspection fee may be refundable upon satisfactory compliance with the regulations of this article.

3. A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the superintendent. The superintendent shall be allowed to inspect the work at any stage of construction, and in any event, the applicant for the permit shall notify the superintendent when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within seventy-two (72) hours of the receipt of notice by the superintendent.
4. The type, capacities, location and layout of a private wastewater disposal system shall comply with all recommendations and/or regulations of the North Dakota State Department of Health. No permit shall be issued for any private wastewater disposal system not meeting these conditions. No septic tank or cesspool shall be permitted to discharge to any natural outlet or to the ground surface.
5. At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in Section 6.0403 (4), a direct connection shall be made to the public sewer within sixty (60) days in compliance with this section, and any septic tanks, cesspools and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.
6. The owner shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the City. All sludge or solids, to be disposed of from a septic tank, cesspool or other individual method of disposal shall be disposed of by a licensed septic tank pumper in accordance with Section 23-19-01 of the North Dakota Century Code.
7. No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the local health officer.

#### 6.0405 Building Sewers and Connections

1. No unauthorized person shall uncover, make any connection with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the superintendent.
2. There shall be two (2) classes of building sewer permits: (a) for residential and commercial service, and (b) for service to establishments producing industrial wastes. In either case, the owner or his agent, shall make application on a special form furnished by the City. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the superintendent. A permit and inspection fee of \$50.00 for a residential or commercial building sewer permit and \$100.00 for an industrial building sewer permit shall be paid to the City at the time the application is filed.
3. All costs and expense incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

4. A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer. The City does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection.
5. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the superintendent, to meet all requirements of this section.
6. The size, slope alignment, materials of construction of all sanitary sewers including building sewers, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City. In the absence of suitable code provisions, specifications of the state building and plumbing codes shall apply.
7. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.
8. No person shall make connection of roof downspouts, foundation drains, areaway drains or other sources of surface runoff or groundwater to a building sewer, or building drain which in turn is connected directly or indirectly to a public sanitary sewer unless such connection is approved by the superintendent and the North Dakota State Department of Health.
9. The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City. All such connections shall be made gastight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the superintendent before installation.
10. The applicant for the building sewer permit shall notify the superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the superintendent or his representative.
11. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.
12. In the event of a public sewer backup which causes damage to a City resident's

property, the City may, from time to time and upon approval of the City Council pay the homeowner's insurance policy deductible.

#### 6.0406 Use of Public Sewers

1. No person shall discharge or cause to be discharged any unpolluted waters such as storm water, surface water, groundwater, roof runoff, subsurface drainage or cooling water to any building drain or sewer which in turn is connected directly or indirectly to the sanitary sewer unless such connection is approved by the superintendent and the North Dakota State Department of Health.
2. Storm water other than that exempted under Section 6.0406 (1) and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the superintendent and the North Dakota State Department of Health.
3. No person shall discharge or cause to be discharged any of the following described water or wastes to any public sewers:
  - a. Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.
  - b. Any waters containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the wastewater treatment plant.
  - c. Any waters or wastes having a pH lower than 5.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the wastewater works.
  - d. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers or other interference with the proper operation of the wastewater facilities such as, but not limited to ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc. either whole or ground by garbage grinders.
4. The following described substances, materials, waters or waste shall be limited in discharges to City systems to concentrations or quantities which will not harm either the sewers, wastewater treatment process or equipment, will not have an adverse effect on the receiving stream, or will not otherwise endanger lives, limb, public property or constitute a nuisance. The superintendent may set limitations lower than the limitations established in the regulations below if in his opinion such more severe limitations are necessary to meet the above objectives. In forming his opinion as to the acceptability, the superintendent will give consideration to such factors as the quantity of subject waste in relation to flows and velocities in the sewers, materials of construction of the sewers, the wastewater treatment process employed, capacity of the wastewater treatment

plant, degree of treatability of the waste in the wastewater treatment plant and other pertinent factors. The limitations or restrictions on materials or characteristics of waste or wastewaters discharged to the sanitary sewer which shall not be violated without approval of the superintendent are as follows:

- a. Wastewater having a temperature higher than 150 degrees Fahrenheit (65 degrees Celsius).
  - b. Wastewater containing more than 25 milligrams per liter of petroleum oil non-biodegradable cutting oils or product of mineral oil origin.
  - c. Wastewater from industrial plants containing floatable oils, fat or grease.
  - d. Any garbage that has not been properly shredded (see Section 6.0402 (13). Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers.
  - e. Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances to such degree that any such material received in the composite wastewater at the wastewater treatment works exceeds the limits established by the superintendent for such materials.
  - f. Any waters or wastes containing odor-producing substances exceeding limits which may be established by the superintendent.
  - g. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the superintendent in compliance with applicable state or federal regulations.
  - h. Quantities of flow, concentrations or both which constitute a "slug" as defined herein.
  - i. Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only to such a degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
  - j. Any water or wastes which, by interaction with other water or wastes in the public sewer system, release obnoxious gases, form suspended solids which interfere with the collection system or create a condition deleterious to structures and treatment processes.
5. If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in 6.0406 (4), and which in the judgment of the superintendent, may have a deleterious effect upon the wastewater facilities, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public

nuisance, the superintendent may:

- a. Reject the wastes;
- b. Require pretreatment to an acceptable condition for discharge to the public sewers;
- c. Require control over the quantities and rates of discharge; and/or
- d. Require payment to cover the added costs of handling and treating the wastes not covered by sewer charges under the provisions of 6.0406 (11).

If the superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the superintendent and the North Dakota State Department of Health.

6. Grease, oil and sand interceptors shall be required when, in the opinion of the superintendent, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts as specified in 6.0406 (4) (c), or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the North Dakota Plumbing Code and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors the owner shall be responsible for the proper removal and disposal by appropriate means of the captivated material and shall maintain records of the dates, and means of disposal which are subject to review by the superintendent. Any removal and having of the collected materials not performed by owner personnel must be performed by currently licensed waste disposal firms.
7. Where pretreatment or flow-equalizing facilities are provided or required by any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.
8. When required by the superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such structures, when required, shall be accessibly and safely located and shall be constructed in accordance with plans approved by the superintendent. The structure shall be installed by the owner at his expense and shall be maintained by the owner so as to be safe and accessible at all times.
9. The superintendent may require a use of sewer services to provide information needed to determine compliance with this section. These requirements may include:
  - a. Wastewaters discharge peak rate and volume over a specified time period.
  - b. Chemical analyses of wastewaters.

- c. Information on raw materials, processes and products affecting wastewater volume and quality.
  - d. Quantity and disposition of specific liquid, sludge, oil, solvent or other materials important to sewer use control.
  - e. A plot plan of sewers of the user's property showing sewer and pre-treatment facility location.
  - f. Details of wastewater pretreatment facilities.
  - g. Details of systems to prevent and control the losses of materials through spills to the City sewer.
10. All measurements, test and analyses of the characteristics of waters and wastes to which reference is made in this section shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association. Sampling methods, location, times, durations and frequencies are to be determined on an individual basis by the superintendent.
11. No statement contained in this section shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment.

#### 6.0407 Damage to Sewer Works Prohibited

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the wastewater facilities. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

#### 6.0408 Powers and Authority of Inspectors

- 1. The superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing pertinent to discharge to the community system in accordance with the provisions of this section.
- 2. The superintendent or other duly authorized employees of the City are authorized to obtain information concerning industrial processes that have a direct bearing on the kind and source of discharge to the wastewater collection system. The industry may withhold information considered confidential. The industry must establish that the revelation to the public of the information in question might result in an advantage to competitors.
- 3. While performing the necessary work on private properties referred to in Section 6.0408 (1), above, the superintendent or duly authorized employees of the City

shall observe all safety rules applicable to the premises established by the company, and the company shall be held harmless for injury or death to the City employees, and the City shall indemnify the company against loss or damage to its property by City employees and against liability claims and demands for personal injury or property damage asserted against the company growing out of the gauging and sampling operation, except such as may be caused by negligence or failure of the company to maintain safe conditions as required in Section 6.0406 (8).

4. The superintendent and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the wastewater facilities lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

#### 6.0409 Hearing Board

1. A hearing board, consisting of three (3) members, shall be selected as needed for arbitration of differences between the superintendent and sewer users on matters concerning interpretation and execution of the provisions of this section by the superintendent.
2. One member of the board shall be selected to represent the City, one member shall be selected to represent the sewer user involved in the arbitration and the third member shall be acceptable to both parties and shall serve as the chairman in the arbitration.

#### 6.0410 Penalties

1. Any person found to be violating any provision of this article except Section 6.0407 shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.
2. Any person who shall continue any violation beyond the time limit provided for in Section 6.0410 (1), shall be guilty of a misdemeanor, and on conviction thereof shall be fined in the amount not exceeding \$1,500.00 for each violation. Each day in which any such violation shall continue shall be deemed a separate offense.
3. Any person violating any of the provisions of this section shall become liable to the City for any expense, loss or damage occasioned the City by reason of such violation.

#### 6.0411 Validity

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

The validity of any section, clause, sentence or provision of this article shall not affect the validity of any other part of this section which can be given effect without such invalid part or parts.

ARTICLE 5 - Sewer Surcharge

AN ORDINANCE REPEALING ORDINANCES NUMBERED 6.0501 THROUGH 6.0508 OF CHAPTER SIX, ARTICLE FIVE OF THE REVISED ORDINANCES OF THE CITY OF ELLENDALE ESTABLISHING A SEWER SURCHARGE.

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

**THAT ORDINANCES NOS. 6.0501 THROUGH 6.0508 BE AND THE SAME ARE HEREBY REPEALED. SAID ORDINANCES ARE BEING REPEALED AS THE CITY OF ELLENDALE DOES NOT CURRENTLY HAVE A SEWER SURCHARGE ESTABLISHED AS CONTEMPLATED BY THIS CHAPTER AND ARTICLE. THIS SHALL NOT AFFECT AND IS NO WAY INTENDED TO REPEAL ANY SPECIAL ASSESSMENTS OR OTHER SEWER SURCHARGES ESTABLISHED BY OTHER ORDINANCE OR RESOLUTION OF THE CITY OF ELLENDALE.**

**SAID ORDINANCE NUMBERS SHALL BE RESERVED FOR FUTURE USE.**

**THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT AFTER ITS SECOND APPROVAL OF THE CITY COUNCIL OF ELLENDALE AND PUBLICATION IN THE CITY NEWSPAPER.**

- 6.0501 Purpose **REPEALED**
- 6.0502 Determining the Total Annual Cost of Operation and Maintenance **REPEALED**
- 6.0503 Surcharge Rates **REPEALED**
- 6.0504 Surcharge Dedicated to Payment of Revenue Bonds for Sewer Improvement  
Project No. 7 **REPEALED**
- 6.0505 Payment of the User's Wastewater Service Charge and Penalties **REPEALED**
- 6.0506 Review of Each User's Wastewater Service Charge **REPEALED**
- 6.0507 Notification **REPEALED**
- 6.0508 Wastes Prohibited from Being Discharged to the Wastewater System **REPEALED**

ARTICLE 6 - Adoption of State Plumbing Code

6.0601 Adoption

To promote the protect the public health there is hereby adopted the State Plumbing Code, which has been adopted by the State Plumbing Board and approved by the State Health Department, consisting of rules and regulations governing plumbing work, and the whole thereof, of which not less than on (1) copy is on file in the office of the City Auditor, and the same is hereby adopted as fully as if set out at length herein and all plumbing work in the City shall

comply with said code.

#### 6.0602 Plumbing Code - Enforcement of Provisions

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

#### 6.0603 Plumbing Code - Changes in Existing Installations

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

#### 6.0604 Plumbing Code - New Installations

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

### ARTICLE 7 - General Penalty Provision

#### 6.0701 Penalty for Violation of Chapter

Any person, firm or corporation violating any of the provisions of this chapter shall be guilty of an infraction and, upon conviction thereof by a court of competent jurisdiction, shall be subject to a fine as set forth in Section 1.0104 herein.

## RESOLUTION ESTABLISHING WATER AND SEWER SERVICE CHARGES

### APPENDIX A

#### SURCHARGE RATE SCHEDULE FOR ABOVE-NORMAL STRENGTH WASTES

The City or its engineer has determined that the average total suspended solids (TSS) and 5-day biochemical oxygen demand (BOD5) daily loadings for the average residential user are 200 mg/1 BOD5 and 250 mg/1 TSS. The City or its engineer has assessed a surcharge rate for all non-residential users discharging wastes with BOD and TSS strengths greater than the average residential user. The surcharge will be sufficient to cover the costs of treating such user's above-normal strength wastes. Such users will pay an additional service charge to be set from time to time by resolution of the City Council.

**Amendment of Chapter 6  
Ellendale Revised Ordinances  
Amendment by Addition of Article  
6.0226**

WE, THE CITY COUNCIL OF THE CITY OF ELLENDALE, NORTH DAKOTA, do hereby amend Chapter 6 of the Ellendale Ordinances by addition of new Article 6.0226 regarding water backflow prevention and cross connection control,

Be it ordained by the City Council of the City of Ellendale, Dickey County, North Dakota, that the Ordinances be amended by adding Article 6.0226 to read as follows:

(1) Purpose

The purpose of this Ordinance is to protect the public water system from contaminants or pollutants that could enter the distribution system by backflow from a customer's water supply system through the service connection.

(2) Authority

The authority to implement this program is contained in the following documents:

- a. North Dakota Administrative Code 33.1-17-01-19 Protection of Public Water Systems
- b. 2018 North Dakota Plumbing Code
- c. 2018 Uniform Plumbing Code

The public water system shall have the authority to survey all service connections within the distribution system to determine if the connection is a cross-connection. The public water system shall have the authority to control all service connections within the distribution system if the connection is a cross-connection. The public water system may control any service connections within the distribution system in lieu of a survey if the service connection is controlled with an air gap or reduced pressure zone backflow prevention assembly. The public water system may collect fees for the administration of this program.

The public water system shall maintain records of cross-connection surveys and the installation, testing and repair of all backflow prevention assemblies installed for containment and containment by isolation purposes. Except as otherwise provided herein, the public water system shall administer, implement and enforce the provisions of this Ordinance.

(3) Applicability

This Ordinance applies to all commercial, industrial and multi-family residential service connections within the public water system and to any persons outside the City who are, by contract or agreement with the public water system, users of the public water system. This Ordinance does not apply to single-family-residential service connections unless the public water system becomes aware of a cross connection at the single-family connection.

(4) Definitions

- a. "ACTIVE DATE" means the first day that a backflow prevention assembly or backflow prevention method is used to control a cross-connection in each calendar year.
- b. "AIR GAP" is a physical separation between the free-flowing discharge end of a potable water supply pipeline and an open or non-pressure receiving vessel installed in accordance with standard ASME A112.1.2.
- c. "BACKFLOW" means the undesirable reversal of flow of water or mixtures of water and other liquids, gases or other substances into the public water systems distribution system from any source or sources other than its intended source.
- d. "BACKFLOW CONTAMINATION EVENT" means backflow into a public water system from an uncontrolled cross connection such that the water quality no longer meets the North Dakota Primary Drinking Water Regulations or presents an immediate health and/or safety risk to the public.
- e. "BACKFLOW PREVENTION ASSEMBLY" means any mechanical assembly installed at a water service line or at a plumbing fixture to prevent a backflow contamination event, provided that the mechanical assembly is appropriate for the identified contaminant at the cross connection and is an in-line field-testable assembly.
- f. "BACKFLOW PREVENTION METHOD" means any method and/or non-testable device installed at a water service line or at a plumbing fixture to prevent a backflow contamination event, provided that the method or non-testable device is appropriate for the identified contaminant at the cross connection.
- g. "CERTIFIED CROSS-CONNECTION CONTROL TESTER OR REPAIRER" means a person who possesses a valid Backflow Prevention Assembly Tester certification from one of the following approved organizations: American Society of Sanitary Engineering (ASSE) or the American Backflow Prevention Association (ABPA). If a certification has expired, the certification is invalid.
- h. "CONTAINMENT" means the installation of a backflow prevention assembly or a backflow prevention method at any connection to the public water system that supplies an auxiliary water system, location, facility, or area such that backflow from a cross connection into the public water system is prevented.
- i. "CONTAINMENT BY ISOLATION" means the installation of backflow prevention assemblies or backflow prevention methods at all cross connections identified within a customer's water system such that backflow from a cross connection into the public water system is prevented.
- j. "CONTROLLED" means having a properly installed, maintained, and tested or inspected backflow prevention assembly or backflow prevention method that prevents backflow through a cross connection.

- k. “CROSS CONNECTION” means any connection that could allow any water, fluid, or gas such that the water quality could present an unacceptable health and/or safety risk to the public, to flow from any pipe, plumbing fixture, or a customer’s water system into a public water system’s distribution system or any other part of the public water system through backflow.
  - l. “MULTI-FAMILY” means a single residential connection to the public water system’s distribution system from which two or more separate dwelling units are supplied water.
  - m. “SINGLE-FAMILY” means:
    - i. A single dwelling which is occupied by a single family and is supplied by a separate service line; or
    - ii. A single dwelling comprised of multiple living units where each living unit is supplied by a separate service line.
  - n. “UNCONTROLLED” means not having a properly installed and maintained and tested or inspected backflow prevention assembly or backflow prevention method, or the backflow prevention assembly or backflow prevention method does not prevent backflow through a cross connection.
  - o. “WATER SUPPLY SYSTEM” means a water distribution system, piping, connection fittings, valves and appurtenances within a building, structure, or premises. Water supply systems are also referred to commonly as premise plumbing systems.
- (5) Requirements
- a. Commercial, industrial and multi-family service connections shall be subject to a survey for cross connections. If a cross connection has been identified an appropriate backflow prevention assembly and or method shall be installed at the customer’s water service connection within 60 days of its discovery. The assembly shall be installed downstream of the water meter or as close to that location as deemed practical by the public water system. If the assembly or method cannot be installed within 60 days the public water system must take action to control or remove the cross connection, suspended service to the cross connection or receive an alternative compliance schedule from the North Dakota Department of Environmental Quality.
  - b. In no case shall it be permissible to have connections or tees between the meter and the containment backflow prevention assembly.
    - i. In instances where a reduced pressure principle backflow preventer cannot be installed, the owner must install approved backflow prevention devices or methods at all cross-connections within the owner’s plumbing system.
  - c. Backflow prevention assemblies and methods shall be installed in a location which provides access for maintenance, testing and repair.
  - d. Reduced pressure principle backflow preventers shall not be installed in a manner subject to flooding.

- e. Provisions shall be made to provide adequate drainage from the discharge of water from reduced pressure principle backflow prevention assemblies. Such discharge shall be conveyed in a manner which does not impact waters of the state.
- f. All assemblies and methods shall be protected to prevent freezing. Those assemblies and methods used for seasonal services may be removed in lieu of being protected from freezing. The assemblies and methods must be reinstalled and then tested by a certified cross-connection control technician upon reinstallation.
- g. Where a backflow prevention assembly or method is installed on a water supply system using storage water heating equipment such that thermal expansion causes an increase in pressure, a device for controlling pressure shall be installed.
- h. All backflow prevention assemblies shall be tested at the time of installation and on an annual schedule thereafter. Such tests must be conducted by a Certified Cross-Connection Control tester or repairer.
- i. The public water system shall require inspection, testing, maintenance and as needed repairs and replacement of all backflow prevention assemblies and methods, and of all required installations within the owner's plumbing system in the cases where containment assemblies and or methods cannot be installed.
- j. All costs for design, installation, maintenance, testing and as needed repair and replacement are to be borne by the customer.
- k. No grandfather clauses exist except for fire sprinkler systems where the installation of a backflow prevention assembly or method will compromise the integrity of the fire sprinkler system.
- l. For new buildings, all building plans must be submitted to the public water system and approved prior to the issuance of water service. Building plans must show:
  - i. Water service type, size and location
  - ii. Meter size and location
  - iii. Backflow prevention assembly size, type and location
  - iv. Fire sprinkler system(s) service line, size and type of backflow prevention assembly.
    - i. All fire sprinkling lines shall have a minimum protection of an approved double check valve assembly for containment of the system.
    - ii. All glycol (ethylene or propylene), or antifreeze systems shall have an approved reduced pressure principle backflow preventer for containment.
    - iii. Dry fire systems shall have an approved double check valve assembly installed upstream of the air pressure valve.
    - iv. In cases where the installation of a backflow prevention assembly or method will compromise the integrity of the fire sprinkler system the public water system can chose to not require the backflow protection. The public water

system will measure chlorine residual at location representative of the service connection once a month and perform periodic bacteriological testing at the site. If the public water system suspects water quality issues the public water system will evaluate the practicability of requiring that the fire sprinkler system be flushed periodically.

(6) Inspection, Testing and Repair

- a. Backflow prevention assemblies or methods shall be tested by a Certified Cross-Connection Control Technician upon installation and tested at least annually, thereafter. The tests shall be made at the expense of the customer.
  - i. Any backflow prevention assemblies or methods that are non-testable, shall be inspected at least once annually by a certified cross-connection control technician. The inspections shall be made at the expense of the customer.
- b. As necessary, backflow prevention assemblies or methods shall be repaired and retested or replaced and tested at the expense of the customer whenever the assemblies or methods are found to be defective.
- c. Testing gauges shall be tested and calibrated for accuracy at least once annually.

(7) Reporting and Recordkeeping

- a. Copies of records of test reports, repairs and retests, or replacements shall be kept by the customer for a minimum of three (3) years.
- b. Copies of records of test reports, repairs and retests shall be submitted to the public water system by mail, facsimile or e-mail by the testing company or testing technician.
- c. Information on test reports shall include, but may not be limited to,
  - i. Assembly or method type
  - ii. Assembly or method location
  - iii. Assembly make, model and serial number
  - iv. Assembly size
  - v. Test date; and
  - vi. Test results including all results that would justify a pass or fail outcome
  - vii. Certified cross-connection control technician certification agency
  - viii. Technician's certification number
  - ix. Technician's certification expiration date
  - x. Test kit manufacturer, model and serial number
  - xi. Test kit calibration date

(8) Right of entry

- a. A properly credentialed representative of the public water system shall have the right of entry to survey all buildings and premises for the presence of cross-connections for possible contamination risk and for determining compliance with this section. This right of entry shall be a condition of water service in order to protect the health, safety and welfare of customers throughout the public water system's distribution system.

- (9) Compliance
  - a. Customers shall cooperate with the installation, inspection, testing, maintenance, and as needed repair and replacement of backflow prevention assemblies and with the survey process. For any identified uncontrolled cross-connections, the public water system shall complete one of the following actions within 120 days of its discovery:
    - i. Control the cross connection
    - ii. Remove the cross connection
    - iii. Suspend service to the cross connection
  - b. The public water system shall give notice in writing to any owner whose plumbing system has been found to present a risk to the public water system's distribution system through an uncontrolled cross connection. The notice and order shall state that the owner must install a backflow prevention assembly or method at each service connection to the owner's premises to contain the water service. The notice and order will give a date by which the owner must comply.
    - i. In instances where a backflow prevention assembly or method cannot be installed, the owner must install approved backflow prevention assemblies or methods at all cross-connections within the owner's water supply system. The notice and order will give a date by which the owner must comply.
- (10) Violations and Penalties.
  - a. Any violation of the provisions of this ordinance, shall, upon conviction be punishable as provided in all applicable statutes, laws, and regulations.
- (11) Conflict with other codes.
  - a. If a dispute or conflict arises between the North Dakota Plumbing Code as adopted herein, and any plumbing, mechanical, building, electrical, fire or other code adopted by the State, then the most stringent provisions of each respective code shall prevail.
- (12) Any portion of this Article 6.0266 that conflicts with requirements set forth in State Statute(s) shall be superseded thereby and the conflicting State Statute shall govern.

Be it so ordained this 14th day of March, 2022.

CITY OF ELLENDALE

By:

\_\_\_\_\_  
Don Flaherty, Acting Mayor

ATTEST:

\_\_\_\_\_  
Candace Middlestead, Auditor

First Reading: 2-16-2022

Second Reading: 3-14-2022

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