

TITLE IX.

WATER AND SEWER SERVICES

CHAPTERS:

- 9-01. Municipal Utility Operation.
- 9-02. Water Service.
- 9-03. Sewer Service.
- 9-04. Storm Water Management.
- 9-05. Drought and Water System Response Measures.

CHAPTER 9-01

MUNICIPAL UTILITY OPERATION

SECTIONS:

- 9-0101. Acquisition of Utility.
- 9-0102. Self-Supporting Nature.
- 9-0103. Municipal Utilities Fund.
- 9-0104. Use of Municipal Utilities Fund.
- 9-0105. *Repealed by Ord. 1062*
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9-0101. ACQUISITION OF UTILITY. The City of West Fargo has heretofore acquired, and now owns and operates a complete water supply and distribution system and system for collection and treatment of sewage. The operation of those systems as a combined municipal utility is hereby confirmed and the systems shall henceforth be operated and maintained as a combined municipal water and sewer utility, hereinafter referred to as "the utility," pursuant to the provisions of Section 40-22-16, and Chapters 40-33 and 40-35, North Dakota Century Code. The utility shall include all plants, systems, works, equipment, materials, supplies, land, easements, interest or rights in land, mains, connections, water rights, contract rights, franchises, approaches, dams, reservoirs, filtration or treatment works, pumping stations, lift stations, and all other appurtenances, contrivances or structures used or useful in connection with obtaining a water supply, conservation, treatment and distribution of water for public and private uses, and collection, treatment and disposal of sewage as now owned or hereafter owned, improved or extended.

9-0102. SELF-SUPPORTING NATURE. The utility shall at all times be so operated and maintained, and rates and charges for its services, facilities, products and by-products shall be such as to make the utility self-supporting and self-perpetuating. Such charges from time to time imposed and collected shall be made and kept adequate to pay promptly as incurred all costs of the operation and maintenance of the utility and to establish and maintain reasonable operating reserves; to produce net revenues which shall be sufficient at all times to pay promptly all principal and interest due on all obligations incurred by the City for the improvement, extension and enlargement of the utility to the extent that such obligations are, according to their terms, payable from such net revenues, and to establish and maintain

adequate reserves for the security of such obligations in accordance with the ordinances or resolutions authorizing the issuance thereof; and to produce additional or surplus net revenue, over and above current principal, interest and reserve requirements, in amounts sufficient to provide a reasonable allowance for depreciation and replacement of the utility plus a reasonable return on the capital investment of the City in the facility, which surplus net revenues, when actually on hand, and to the extent not required for operation, maintenance, debt service and reserves for such purposes and for depreciation and replacement, may from time to time be appropriated by the Board to pay or contribute to the cost of any other City functions, subject to the limitations now or hereafter prescribed by law, including Sections 40-33-11 and 40-33-12, NDCC, as amended. This appropriation of revenues derived from operation of the utility shall not, however, be deemed or construed to preclude the City from defraying any part of all of the cost of any improvement, enlargement or extension of the utility by the levy of special assessments or ad valorem taxes or by the issuance of improvement warrants, refunding improvement warrants or bonds, or general obligation bonds of the City, whenever and to the extent that such action is deemed fair and equitable by the Board of City Commissioners and is authorized in the manner provided by law.

9-0103. MUNICIPAL UTILITIES FUND. All moneys received by the City with respect to the services, facilities, products and by-products furnished and made available by the utility, as it now exists and may hereafter be enlarged, improved or extended (except collections of special assessments and taxes appropriated to improvement district funds and moneys borrowed for capital improvements) and all moneys, receipts and returns received from any investments of such earnings, shall be paid into the treasury of the City and kept in a fund entitled Municipal Utilities Fund which shall be permanently maintained on the books of the City, in accordance with Section 40-33-10 NDCC. All receipts and disbursements of money on account of or in connection with the utility shall be entered and reflected in the records of said Fund, and the moneys from time to time on hand therein shall always constitute public municipal funds and shall be deposited, and their safekeeping secured, in the same manner as other funds of the City.

9-0104. USE OF MUNICIPAL UTILITIES FUND. The City can use and disburse funds from the Municipal Utilities Fund only for the purposes, and in the manner set out in Chapter 40-33-11 NDCC and 40-33-12 NDCC in effect at the date of this ordinance, and as they may be amended in the future. From the Municipal Utilities Fund there shall be transferred, to all special funds or accounts which are maintained for security of obligations payable in whole or in part from net revenues of the utility such amounts as are required by the provisions of the ordinances or resolutions authorizing the issuance of such obligations, at the times and in the manner prescribed by such ordinances and resolutions. If at any time the

balance on hand in the Municipal Utilities Fund is not sufficient to permit the transfer to all such special funds or accounts the full amounts then required by the terms of the authorizing ordinances and resolutions, such balance shall be distributed as follows: There shall first be transferred to each fund or account maintained for the payment of obligations constituting a first lien and charge upon said net revenues an amount sufficient, with other moneys then on hand in such funds or accounts, to pay all interest then due or past due on such obligations; and if said balance shall be insufficient for the payment of all such interest on such first lien obligations in full, it shall be distributed to such funds and accounts for first lien obligations in proportion to the amount of such interest payable therefrom, respectively. Any balance remaining in the Municipal Utilities Fund after providing for payment of all such interest shall be distributed among such first lien obligation funds or accounts. in sequence as required, with any other money then held therein, to pay the principal amount of such obligations then due or past due in order of their maturity dates, the earliest maturing obligations to be paid first, and in the case of obligations payable on the same date, the balance available for their payment shall be distributed among such funds or accounts in amounts proportionate to the principal amount payable from each fund or account, in excess of moneys then on hand therein. Any balance then remaining in the Municipal Utilities Fund shall be transferred to each fund or account maintained for payment of obligations constituting a subordinate lien and charge upon said net revenues, in the same manner and in the same order as specified with respect to provision for first lien obligations. Nothing herein shall be deemed to require at any time the return to the Municipal Utilities Fund of any moneys therefor paid into any fund or account as a reserve for the security of obligations payable therefrom, but in the event that the balance in the Municipal Utilities Fund at any subsequent date is not sufficient to permit the transfer of additional sums required, such reserves shall be used for the payment of said obligations and interest thereon before such fund or account may share in the allocation of the balance in the Municipal Utilities Fund, so long as such insufficiency continues. No funds shall be transferred to any fund or account created for payment and security of obligations constituting a subordinate lien upon said Municipal Utilities Fund unless all amounts then and theretofore required to be provided from the Municipal Utilities Fund for payment and security of first lien obligations have been transferred to the funds or accounts from which such first lien obligations are payable, but no moneys properly transferred to a fund or account of payment and security of obligations constituting a subordinate lien as herein provided shall thereafter be required to be returned to the Municipal Utilities Fund.

9-0105. RESERVED FOR FUTURE USE.

(Repealed by Ord. 1062, Sec. 12 (2016))

9-0106. CITY COVENANTS - SUIT BY BONDHOLDERS. The City covenants and agrees with the original purchaser and with each holder from time to time of any obligation issued and made payable from the net revenues of the Municipal Utilities Fund that it will comply promptly and fully with all provisions of the resolutions authorizing the issuance of such obligations and, except and to the extent which may be otherwise provided in such resolutions, with the provisions of this Section, and preceding sections of this chapter.

1. It will complete all improvements financed by the issuance of such obligations with the greatest diligence and economy consistent with good workmanship and efficient operation, and without creating or permitting the creation of any liens or encumbrances on the utility or on the revenues thereof other than those created for the security of such obligations.
2. Until all obligations incurred with respect to the utility are fully paid or otherwise discharged in accordance with the resolutions authorizing the same, the City will continue to own and to operate such utility in an efficient and economical manner and will not authorize or enfranchise the furnishing of similar service by others to any premises within its corporate limits for which the service of such utility is reasonably available.
3. It will revise the schedule of rates, charges and rentals for all services, facilities, commodities and benefits furnished by the utility whenever and as often as needed to comply with Section 9-0102 of this chapter, and will include in each annual budget and pay from other funds a fair and equitable amount for any and all services, facilities, commodities and benefits furnished by the utility to the City or any of its other departments, to be accounted for as part of the revenues.
4. It will at all times maintain books of account adequate to show all receipts and disbursements of funds by the City with respect to the utility, and the segregation and application of such receipts in the accounts of the utility as provided for in this chapter, which books of account shall be made available for inspection during all reasonable business hours by the holder of any obligation for which net revenues of the utility have been pledged, or by his agent or attorney.
5. 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 Municipal Utilities Fund and of the other accounts established by this chapter during each fiscal year, and will furnish a copy of such statement, upon request, to the original purchaser of each issue of bonds or warrants for which net revenues of the utility have been pledged.

6. Upon written demand of the holders of twenty percent (20%) or more of the outstanding bonds or warrants of any issue for which net revenues of the utility have been pledged, the City will cause an audit of the books of account of that utility to be made by a certified public accountant satisfactory to the holders of such obligations, and will pay the cost thereof as an operating expense of the utility, and will furnish a copy of the report of each such audit to such party as shall be designated in such demand.
7. It will at all times keep the properties of the utility insured in the amounts and against the risks for which similar properties are customarily insured by prudent owners thereof, and will maintain such a balance in the Water and Sewer Replacement and Depreciation Fund as will in the reasonable judgment of the Board of City Commissioners be sufficient, with the proceeds of such insurance, to restore any loss or damage, and will carry public liability insurance in an amount adequate to protect against any claim of personal injury or property damage which is or might become a charge against the revenues of the utility, and will cause all persons handling funds of the utility to be bonded in amounts sufficient for the protection of the City and the holders of all such obligations. Such insurance and bonds shall be carried with the State Fire and Tornado Fund or such other reputable and responsible insurers as shall be selected by the Board of City Commissioners, and the expense thereof shall be paid as an operating cost of the utility, and the City will use the proceeds of all such insurance and bonds to restore the loss or damage compensated thereby.
8. The City and its governing body and each and all of its officers and employees will perform fully and promptly all duties with reference to the utility and its revenues and the obligations for which such revenues are pledged, which are imposed by law or by the ordinances and resolutions of the City, including this chapter, in force on the date upon which any such obligations are issued, and all provisions of the Constitution and laws of the State and of such ordinances and resolutions which provide security for the holders of such obligations are acknowledged to be a part of the City's contract with the holders thereof from time to time; provided that nothing

herein shall prevent the amendment of the rates and charges for utility service, to the extent consistent with other provisions of this chapter.

9. The holders of twenty percent (20%) or more of the outstanding principal amount of each issue of bonds or warrants payable in whole or in part from the net revenues of the utility shall be empowered to institute and maintain, in behalf of the holders of all outstanding obligations of the same issue, any suit or proceedings at law or in equity for the protection and enforcement of any covenant, agreement or stipulation made herein or in the resolution authorizing such obligations, whether or not any of such obligations are then in default as to principal or interest, and each and all of the rights and remedies specified in Sections 40-35-15 to 40-35-19 of the North Dakota Century Code are acknowledged to be available to the holders of such obligations. The parties to any such suit or proceeding holding a majority in principal amount of the warrants or bonds held by all such parties shall have power to determine the method of prosecution, compromise or satisfaction thereof. Nothing herein shall prevent the institution of action by any holder of a warrant or bond for the recovery of principal or interest in default.

9-0107. WATER AND SEWAGE SERVICE CHARGES: BILLING BY CITY AUDITOR. The City Auditor shall render a statement on or before the fifth day of each month setting forth separately the charges for water and for sewage service for the preceding month to each premise connected with the water or sewage system.

9-0108. WHEN BILL DUE: FAILURE TO PAY. All bills for water service, sewage service, charges and rentals, and water deliveries and labor and materials furnished each month shall be due and payable on the 15th day of the month at the office of the City Auditor. A monthly late fee, in an amount set by resolution of the City Commission, will be assessed for all payments received after the 15th day of the month. If such bills, or any part thereof, are not paid on or before the 15th day of the succeeding month, the supply of water to the premises for which the bill is rendered may be shut off by the Public Works Director and shall not be turned on again until the entire balance has been paid, together with an amount as set by resolution of the City Commission for recontinuing the service. A fee will also be charged for all returned checks and returned ACH payments, as set by resolution of the City Commission.

Source: Ord. 652, Sec. 1 (2002); Ord. 1062, Sec. 1 (2015)

9-0109. LIABILITY OF OWNERS AND OCCUPANTS FOR SERVICES. The owner and occupant of each premises shall be jointly and severally liable for all charges for water and sewage service and garbage during the period of their respective ownership or occupancy. No

water shall be furnished to any property which is indebted to the Board of City Commissioners.

Source: Ord. 874, Sec. 1 (2010).

9-0110. VALIDITY. All ordinances or parts of ordinances in conflict herewith are hereby repealed. The invalidity of any section, clause, sentence, or provision of this ordinance shall not affect the validity of any other part of this ordinance which can be given effect without such invalid part of parts.

CHAPTER 9-02

WATER SERVICE

SECTIONS:

- 9-0201. Water Service Connection - Application.
- 9-0201.1 Permit Fee
- 9-0202. Illegal Connections. Source: Ord. 1062, Sec. 13 (2016)
- 9-0203. Corporation Cock - Curb Stop.
- 9-0204. Stop and Valve - Gate Valve.
- 9-0205. Service Connections.
- 9-0206. Tap Size.
- 9-0207. One Building Per Service.
- 9-0208. Minimum Depth of Service.
- 9-0209. Curb Cock.
- 9-0210. Curb Box Under City Control - Exception.
- 9-0211. Stop Box.
- 9-0212. Plumbers to Close Curb Shut-off.
- 9-0213. Installation and Maintenance Water Service Lines.
- 9-0214. Owner's Responsibility for Supply Line if Location of Leak Uncertain.
- 9-0215. Disconnection.
- 9-0216. Meters May be Required.
- 9-0216.1 RESERVED FOR FUTURE USE.
- 9-0217. One Meter Per Service.
- 9-0218. Meter Repair - Consumer's Duty.
- 9-0219. RESERVED FOR FUTURE USE.
- 9-0220. Duplexes.
- 9-0221. RESERVED FOR FUTURE USE.
- 9-0222. Meter Seals.
- 9-0223. Freezing - Hot Water - Owner's Duty.
- 9-0224. Interference with Water System.
- 9-0225. Approval of City Required Before Use.
- 9-0226. RESERVED FOR FUTURE USE.
- 9-0227. New Pipe Diameter.
- 9-0228. Free Access for Inspection and Reading.
- 9-0229. Solder Not Used in Copper Lines.
- 9-0230. Water Rates and Charges.

9-0201. WATER SERVICE CONNECTION - APPLICATION. Application for Water Service Connections must be made to the City Engineer on forms to be provided by him in writing by the owner or agent of the property to be served, and shall state the following:

1. Location by legal description of the property to be served;
2. The size and kind of pipe proposed to be used;
3. The size of the tap for the water main desired;

4. The approximate course of the water pipe from the place of connection with the water main until it enters the structure proposed to be served;
5. The name of the plumber who will do the work.

Said application shall be accompanied by a fee in an amount set by resolution of the City Commission as the fee for tapping into said water main.

Source: Ord. 966, Sec. 1 (2013)

9-0201.1. PERMIT FEE. No water service connection permit shall be issued by the City Engineer until a fee in the amount set by resolution of the City Commission for each connection shall have been paid for such permit. Such fee shall include the cost of a water meter.

Source: Ord. 966, Sec. 2 (2013)

9-0202. ILLEGAL CONNECTIONS. If the utility finds evidence of willful or intentional bypassing, tampering, or unauthorized metering, a penalty will be imposed in an amount as set by resolution of the City Commission, plus all reasonable expenses and costs incurred on account of the bypassing, tampering, or unauthorized metering. Reasonable expenses and costs include expenses and costs for investigation, disconnection, reconnection, service calls, employees and equipment, expert witnesses, costs of the suit, and reasonable attorneys' fees.

Source: Ord 1062, Sec. 13 (2016)

9-0203. CORPORATION COCK - CURB STOP.

1. The Corporation Cock shall be Mueller or equal.
2. The Curb Stop shall be Mueller or equal.

9-0204. STOP AND VALVE - GATE VALVE. Every service pipe must have a standard compression stop and valve placed adjacent to and on street side of meter and be kept in working order at all times so that the water may be shut off by the occupant of the premises; there shall also be a gate valve placed on the outlet side of any water meter larger than five-eighths (5/8) of an inch and not more than three (3) feet from the meter, so that the meter can be taken out or replaced without draining the pipe system in the building.

9-0205. SERVICE CONNECTIONS. Service connections shall be made with the following kinds of pipe:

"K" type copper, or equivalent service connection as determined by the City Engineer, with the following exceptions:

That where pipe already under the surface of the ground is proposed to be used, that such portion of

said pipe left remaining under the surface of the ground may be used even though said pipe may be of material other than "K" type copper; except that "K" type copper pipe, or equivalent service connection as determined by the City Engineer, must be used between the water main and the curb cock.

Source: Ord. 1062, Sec. 2 (2016)

9-0206. TAP SIZE. No tap shall be smaller than one (1) inch except that where a tapping sleeve is used, a tap of not larger than two (2) inches may be used.

9-0207. ONE BUILDING PER SERVICE. No new service shall be constructed and no existing service shall be changed in such manner that more than one (1) occupied building shall be on the same service. Outbuilding may not have a separate service.

Source: Ord. 966, Sec. 3 (2013)

9-0208. MINIMUM DEPTH OF SERVICE. All services shall have a minimum depth of six (6) feet below finished grade.

9-0209. CURB COCK. Each service shall have a curb cock fitted with a valve box of not less than one and one-half (1½) inches in diameter at standard location six (6) inches outside of and at the same grade as the sidewalk.

9-0210. CURB BOX UNDER CITY CONTROL - EXCEPTION. The curb box used shall be under the sole control of the City and its employees and no one except an employee or person especially authorized by the City shall open the cover of such box or turn water on or off; provided, however, that licensed plumbers may turn water on or off to test plumbing or make repairs but whenever so used the shut off must be left closed if found closed and open if found open by the plumber who uses it.

9-0211 STOP BOX. The stop box on every service must be kept flush with the surrounding ground or sidewalk surface and must be visible from the sidewalk and must be kept in good condition and ready to use at all times, by the owner. Should the owner neglect to maintain such box and shut off in proper condition to be used, the City shall have the right to clean or repair the same without giving notice and charge the cost thereof to the owner; and if payment is refused may turn off the water in the service until the same is paid.

9-0212. PLUMBERS TO CLOSE CURB SHUT-OFF. Plumbers installing water service pipes shall close the curb shut-off and leave it closed upon completion of their work, and when pipes are laid to the curb only, they shall close the end of the pipe or fitting with a tight metal plug or cap.

9-0213. INSTALLATION AND MAINTENANCE OF WATER SERVICE LINES. All water service pipes and fixtures from the street main to the premises, including the corporation cock and curb stop shall be installed by and at the expense of the owners, unless the City has previously installed all or part of the service pipe and fixtures. The City will be responsible for maintenance and repair of any leaks or other defects of the water service line and fixtures from the point of connection with the street main through and including the curb cock. The owner of the property of such service line shall be responsible for the maintenance of the service pipes from the curb cock to the premises. If there is not a curb cock for that property, the City will be responsible for maintenance of the service pipes from the main, including corporation cocks, to the property line, and the property owner will be responsible from the property line to the premises. If there is a leak that is the responsibility of the owner to repair and the repair is not promptly made, the City may turn off the water until such repairs have been made, and the expense incurred in shutting off the water shall be charged against such owner and must be paid before water will be turned on again.

Source: Ord. 517, Sec. 2 (1997).

9-0214. OWNER'S RESPONSIBILITY FOR SUPPLY LINE IF LOCATION OF LEAK UNCERTAIN. Where there is a leak in a water supply line and it is uncertain whether such leak is on that part of the line that is the responsibility of the owner or the City, the City may make the necessary excavation, and if such leak is found to be in the service pipe that is the responsibility of the owner to maintain, the property owner shall immediately repair such leak, refill such excavation, and pay the City for the cost of making the excavation. The City may shut off the water to the property if the owner fails or neglects to repair such leak or fails to pay the cost of such excavation.

Source: Ord. 517, Sec. 3 (1997).

9-0215. DISCONNECTION. No plumber or owner of property shall disconnect or remove water supply fixtures or piping from any premise served by City water or alter the same in such a way as to make the service connection unnecessary for the premises without permanently closing off the connection and reporting the same to the City.

9-0216. METERS REQUIRED. Any person, firm or corporation taking water from the water mains is required to use a meter furnished by the City at the expense of the consumer to measure the water used by such consumer. The City shall either install the meter or authorize another person deemed qualified by the City to install the meter. The location of the water meter must be approved by the City.

Source: Ord. 966, Sec. 5 (2013)

9-0216.1. RESERVED FOR FUTURE USE.
(Repealed by Ord. 966, Sec. 6 (2013))

9-0217. ONE METER PER SERVICE. One meter only shall be installed and read on each service.

9-0218. METER REPAIR OR REPLACEMENT. After the initial meter is installed, the City will be responsible for the repair and replacement of the meter.

Source: Ord. 966, Sec. 5 (2013)

9-0219. RESERVED FOR FUTURE USE.
(Repealed by Ord. 966, Sec. 7 (2013))

9-0220. DUPLEXES. For a duplex dwelling there shall be a separate meter and a separate shut-off in the street for each part of the building.

9-0221. RESERVED FOR FUTURE USE.
(Repealed by Ord. 966, Sec. 8 (2013))

9-0222. METER SEALS. Meters shall be sealed and seals not be broken. Meters shall be removed only by employees of the City.

9-0223. FREEZING - HOT WATER - OWNER'S DUTY. Owner or occupant of premises where a meter is installed shall be responsible for its care and protection from freezing and from hot water, and shall give notice when repair is needed.

9-0224. INTERFERENCE WITH WATER SYSTEM. No person shall tamper with or by any cause whatsoever damage, destroy or temporarily place out of service any City water main, gate, valve, stop cock, hydrant or other water system connection or machinery or in any manner interfere with the same anywhere in the City. Nor shall any person in any manner obstruct the access to any stop cock, hydrant or valve connected with any water pipe within the City by means of any timber, brick, building materials or other article, thing or hindrance whatsoever. Nor shall any person open any hydrant within the City without permission of the Superintendent of Waterworks or the permission of the commanding officer of the Fire Department.

9-0225. APPROVAL OF CITY REQUIRED BEFORE USE. All water connections must be approved and inspected by the City or its authorized agent before the water can be turned on and used.

9-0226. RESERVED FOR FUTURE USE.
Source: Repealed by Ord. 652, Sec. 2 (2002)

9-0227. NEW PIPE DIAMETER. New pipe being installed must be at least one (1) inch in diameter.

9-0228. FREE ACCESS FOR INSPECTION AND READING. Authorized employees of the waterworks 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.

9-0229. SOLDER NOT USED IN COPPER LINES. No type of solder shall be used in copper water service lines.

9-0230. WATER RATES AND CHARGES. Water charges shall be on a monthly basis covering the respective monthly periods each year. The term "residential" as used herein shall include all premises occupied and used exclusively as a home by not more than two (2) families. The term "commercial" shall include all other premises. When a charge is determined by metered water consumption, the amount of water on which the charge is based shall be that multiple of One Hundred (100) gallons closest to the actual meter reading.

The owner or occupant of each residential or commercial premises connected with the water works system of the City shall pay for all water used and consumed, a minimum service charge will be charged for distribution and maintenance. Said service charge shall be as set by resolution of the City Commission.

Such rates and charges shall always yield gross revenues at least adequate to pay all current costs of operation and maintenance of such system and produce net revenues sufficient for the prompt and full payment of all amounts payable by the City in respect to money borrowed for the improvement of the water system.

In addition, a surcharge, as set by resolution of the City Commission, shall be added to all water bills. The proceeds of such surcharge shall be placed into a special vector control fund and be used only for purposes of funding the City's vector control program.

An additional surcharge, as set by resolution of the City Commission, will be added to all water bills. The proceeds of this surcharge shall be placed into a special forestry fund and be used only for purposes of funding grass and tree maintenance on public property, including public rights-of-way, in the City.

Source: Ord 417, Sec. 1 (1991); Ord. 627, Sec. 1 (2001); Ord. 683, Sec. 1 (2003); Ord. 724, Sec. 1 (2004); Ord. 764, Sec. 1 (2005); Ord. 810, Sec. 1 (2007); Ord. 834, Sec. 1 (2008); Ord. 874, Sec. 2 (2010); Ord. 1062, Sec. 3 (2016); Ord. 1113, Sec. 1 (2019)

CHAPTER 9-03

SEWER SERVICE

SECTIONS:

- 9-0301. RESERVED FOR FUTURE USE.
- 9-0302. RESERVED FOR FUTURE USE.
- 9-0303. RESERVED FOR FUTURE USE.
- 9-0304. RESERVED FOR FUTURE USE.
- 9-0305. Sewage Rates.
- 9-0306. Surcharge Rate Schedule.
- 9-0307. RESERVED FOR FUTURE USE.
- 9-0308. Sewage Rentals - Rates to Those Having Private Water Supply.
- 9-0309. Sewage Rentals - Exceptions.
- 9-0310. Review of Each User's Wastewater Service Charge.
- 9-0311. Administrative Penalties.
- 9-0312. RESERVED FOR FUTURE USE.
- 9-0313. Use of Public Sewers Required.
- 9-0314. Private Wastewater Disposal.
- 9-0315. Out of City Sewer Connection - Construction and Maintenance.
- 9-0316. Out of City Sewer Connection - Inspection of - Fee.
- 9-0317. Out of City Sewer Connections - Rentals.
- 9-0318. Definitions.
- 9-0319. Sanitary Sewer, Building Sewers and Connections.
- 9-0319.1 Maintenance of Sewer Lines from Sewer Main to Premises
- 9-0320. Use of Pubic Sewers.
- 9-0321. Prohibitions and Limitations on Wastewater Discharges.
- 9-0322. Testing Methods.
- 9-0323. Enforcement Procedures.
- 9-0324. Protection from Damage.
- 9-0325. Power and Authority of Inspectors.
- 9-0326. Penalties.
- 9-0327. Savings Clause - Conflict.
- 9-0328. Inspection and Surcharge Authority Regarding Improper Connection to Sewer System

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- 9-0301. RESERVED FOR FUTURE USE.
 - 9-0302. RESERVED FOR FUTURE USE.
 - 9-0303. RESERVED FOR FUTURE USE.
 - 9-0304. RESERVED FOR FUTURE USE.

9-0305. SEWAGE RATES. Sewer charges shall be on a monthly basis covering the respective monthly periods each year. The term "residential" as used herein shall include all premises occupied

and used exclusively as a home by not more than two (2) families. The term "non-residential" shall include all other premises. When a charge is determined by metered water consumption, the amount of water on which the charge is based shall be that multiple of one thousand (1,000) gallons closest to the actual meter reading.

The owner or occupant of each residential or non-residential premises connected with the sewer system of the City shall pay a minimum service charge per month as set by resolution of the City Commission.

In addition to the minimum service charge, all residential premises shall pay an additional charge as set by resolution of the City Commission per 1,000 gallons for flows greater than 10,000 gallons of water per month.

In addition to the minimum service charge, all non-residential premises shall pay an additional charge as set by resolution of the City Commission per 1,000 gallons for all flows greater than 1,000 gallons of water per month.

The City Commission shall set, by resolution, all charges for users of the West Fargo sewer treatment works that are located outside the city limits of the City of West Fargo and discharge more than 1,000,000 gallons per month into the sewage treatment facilities of the City.

Source: Ord. 313, Sec. 5 (1982); Ord. 379, Sec. 2 (1987); Ord. 417, Sec. 2 (1991);
Ord. 528, Sec. 1 (1998); Ord. 627, Sec. 2 (2001); Ord. 724, Sec. 2 (2004);
Ord. 1062, Sec. 4 (2016)

9-0306. SURCHARGE RATE SCHEDULE. Any non-residential user with a 5-day Biochemical Oxygen Demand (BOD5) greater than 250 mg/l BODs and Total Suspended Solids (TSS) greater than 300 mg/l TSS will be assessed a surcharge as set by resolution of the City Commission.

Source: Ord. 313, Sec. 6 (1982); Ord. 417, Sec. 3 (1991); Ord. 515, Sec. 2 (1997);
Ord. 1062, Sec. 5 (2016)

9-0307. RESERVED FOR FUTURE USE.

9-0308. SEWAGE RENTALS - RATES TO THOSE HAVING PRIVATE WATER SUPPLY. All cooling water and other water disposed of into the sewage system after usage for cooling or other purposes coming from private wells or other sources than the City distribution system, shall be subject to a sewage service charge in accordance with the rates hereinbefore set forth just the same as if the source of water supply were from the City distribution system. The user and/or consumer of such private water supply shall meter the water taken from such private water supply and the meter shall be subject to the inspection, testing, approval and seal of the Superintendent of the Water and Sewage System in the same manner as if the supply were taken and purchased from the City, and a monthly service charge, as set by resolution of the City Commission, shall be

collected by the City in the same manner as if the water was furnished by the City, to the said users or consumers.

Source: Ord. 313, Sec. 8 (1982); Ord. 1062, Sec. 6 (2016)

9-0309. SEWAGE RENTALS - EXCEPTIONS. No sewage rental shall be charged or collected upon water meter readings for water which is carried out of the City for use. This section shall not be construed as exempting from sewage charges water which is used for processing purposes within the City though the product thereof is carried outside of the City for use but shall apply only to water users actually hauling or carrying the water beyond the City limits for use. The City Commissioner having the water and sewage portfolio, the Superintendent of the Water and Sewage System and the City Engineer are hereby designated as a Board of Adjustment who shall have the power to advise and agree with the consumers as to the proper methods and basis for determining what proportion of any consumer's water is actually carried out of the City for use and may bind the City by such agreement until such time as the facts concerning such use have changed.

9-0310. REVIEW OF EACH USER'S WASTEWATER SERVICE CHARGE. The City shall review the total annual cost of operation and maintenance as well as each user's Wastewater Contribution Percentages on an annual basis and will revise the system as necessary to assure equity of the service charge system established herein and to assure that sufficient funds are obtained to adequately operate and maintain the wastewater system. If a significant user, such as an industry, has completed in-plant modifications which would change that user's Wastewater Contribution Percentages, the user can present at a regularly scheduled meeting of the governing body such factual information and the City shall then determine if the user's Wastewater Contribution Percentages are to be changed. The City shall notify the user of its findings as soon as possible. Each user will be notified, at least annually, in conjunction with the regular billing, of the rate and that portion of the user charges which are attributed to Wastewater Treatment Services.

9-0311. ADMINISTRATIVE PENALTIES. The City shall have the authority to levy an administrative penalty upon any User whose discharge into the sewer sanitation system violates any provision of Title IX, Chapter 9-03 or who commits a nuisance as defined in Section 15-0317(1) of these ordinances (relating to objectionable odorous air contaminants).

The administrative penalty shall be up to \$1,000 per day for each day there is a violation. The Public Works Director shall notify any industrial user, in writing, of any administrative penalty to be assessed each month, which notice shall set forth the number of days in violation and the total amount of the administrative penalty which will be added to the utility bill of the industrial user on the next billing. Such notice shall be sent

by certified or registered mail. The industrial user who is informed of the administrative penalty shall have seven (7) days from the date the certified or registered letter was mailed in which to request, in writing, a hearing on the issue of whether or not it committed the violation(s) set forth in the letter received from the Public Works Director. Such letter must be filed with the City Auditor of the City of West Fargo. Upon receipt of such a letter, in a timely fashion the City Auditor shall set the matter for hearing at the next City Commission meeting. The industrial user claiming that the basis for the penalty is incorrect shall have the burden at that hearing to establish that the violation(s) set forth by the Public Works Director in his letter are incorrect. The City Commission shall either confirm the determination of violation by the Public Works Director or modify or eliminate the penalty if the evidence is such that it establishes that there was a lesser or no violation. The City Commission shall have the option to continue the hearing to the next City Commission meeting to obtain additional evidence if the Commission deems that necessary. Payment of the administrative penalty shall be stayed until the City Commission has acted on any appeal.

Such administrative penalty shall not preclude the Public Works Director from bringing a show cause hearing pursuant to Section 9-0323 for violation of permits in regard to violations set out above if the Public Works Director deems that the violation is serious and that other enforcement actions in addition to the administrative penalty may be necessary.

SOURCE: Ord. 515, Sec. 3 (1997); Ord. 528, Sec. 2 (1998); Ord 699, Sec. 1 (2004)

9-0312. RESERVED FOR FUTURE USE.

9-0313. USE OF PUBLIC SEWERS REQUIRED. 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 of West Fargo, or in any area under the jurisdiction of said City, any human or animal excrement, garbage, or other objectionable waste.

It shall be unlawful to discharge to any natural outlet within the City of West Fargo, or in any area under the jurisdiction of said City, any sewage or other polluted waters except where suitable treatment has been provided in accordance with subsequent provisions of this ordinance.

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 wastewater.

The owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, 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 or combined sewer of the City, 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 ordinance, within 60 days after date of official notice to do so, provided that said public sewer is within 200 feet (61 meters) of the property line.

9-0314. PRIVATE WASTEWATER DISPOSAL. Where a public sanitary or combined sewer is not available under the provisions of Section 13, the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this Section.

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 as set by resolution of the City Commission shall be paid to the City at the time application is filed.

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 24 hours of the receipt of notice by the Superintendent.

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.

At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in this Section, a direct connection shall be made to the public sewer within sixty (60) days in compliance with this ordinance, and any septic tanks, cesspools, and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.

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 the North Dakota State Health Department Regulation 23-19-01.

No statement contained in this Section shall be construed to interfere with any additional requirements that may be imposed by the local Health Officer.

Source: Ord. 313, Sec. 14 (1982); Ord. 1062, Sec. 7 (2016)

9-0315. OUT OF CITY SEWER CONNECTION - CONSTRUCTION AND MAINTENANCE. No sewer service shall be connected to the systems of the City of West Fargo, North Dakota, to serve property lying outside of the corporate limits of the City unless and until such persons, firm or corporation desiring to so connect shall first enter into an agreement with the City that he will construct and maintain in good repair at his own expense under the direction and supervision and according to the instruction of the City Engineer, the necessary service pipe to serve his premises, all in compliance with all ordinances and shall guarantee for himself and his successors in interest to construct, maintain and repair any and all manholes which may be required on the service sewer. Provided further that no sewer service shall be connected to the systems of the City of West Fargo, North Dakota, to serve property lying outside of the corporate limits of the City unless and until such person, firm or corporation desiring to so connect shall first enter into an agreement with the City that he will construct and maintain all buildings and structures located on said property in accordance with the building, plumbing and electrical codes of the City of West Fargo, North Dakota, and that he will submit to inspections by the proper and appropriate inspectors for said City to determine and certify compliance with said building, plumbing and electrical codes.

9-0316. OUT OF CITY SEWER CONNECTION - INSPECTION OF - FEE. Such person, firm or corporation shall comply with all ordinances relating to the proper installations of sewer and water pipe, traps, fixtures, soil pipe, and stacks. Inspection shall be made by the City plumbing inspector to observe that all ordinances pertaining thereto are complied with and for this additional service of inspection an additional fee as set by resolution of the City Commission shall be paid to the City to cover the costs of inspection. Said fee shall accompany the application for sewer service connection.

Source: Ord. 313, Sec. 16 (1982); Ord. 1062, Sec. 8 (2016)

9-0317. OUT OF CITY SEWER CONNECTIONS - RENTALS. Such person, firm or corporation shall pay to the City of West Fargo the monthly sewage rental and service charge at the rates above set forth, and shall guarantee for himself and his successors in

interest the payment of such charges imposed by this title or any amendments thereto, whether incurred by the owner or by any other persons occupying said premises during his ownership thereof. Such charges shall be collected with the water rentals of the City and shall become due and delinquent upon the same dates as the water bills upon which the same are charged; upon the failure to pay the said sewage rental and/or service charge the Superintendent of the Water and Sewer System shall have the same authority to shut off the water and he shall refuse to reconnect the same as is herein provided in case of default in the payment of sewage bills for those living inside of the City. Whenever the Superintendent of the Water and Sewage System shall have shut off water services provided herein for the failure of the owner or occupant to pay the sewage rental and/or service charge, such service shall not be reinstated until all of the past due bills for sewage service are paid in full.

9-0318. Definitions. The following words, terms, and phrases are hereby defined and shall be interpreted as such throughout this chapter. Terms not herein defined shall have the meaning customarily assigned to them:

1. "Approval Authority" shall mean the Director in an NPDES state with an approved state pretreatment program and the appropriate EPA Regional Administrator in a non-NPDES state or NPDES state without an approved State pretreatment program.
2. "BOD (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 twenty (20) degrees Celsius expressed in milligrams per liter.
3. "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 interface of the building wall.
4. "Building sewer (also house connection or service sewer)" shall mean the extension from the building drain to the public sewer or other place of disposal.
5. "Chapter" shall mean Chapter 9-03 of the Revised Ordinances of the City of West Fargo, North Dakota.
6. "City" shall mean the City of West Fargo, a municipal corporation of the State of North Dakota.

7. "Clean Water Act" shall mean the Federal Water Pollution Control Act, Public Law 92-500, also known as the Clean Water Act, including the amendments made by the Clean Water Act of 1977, Public Law 95-217 and any amendments hereafter adopted.
8. "Combined Sewer" shall mean a sewer intended to receive both wastewater and storm or surface water.
9. "Commercial or institutional users" shall mean all nonresidential users which introduce only sanitary sewage or primarily segregated domestic wastes into a building sewer.
10. "Control authority" shall mean the superintendent of wastewater facilities, and/or wastewater treatment works, and/or of water pollution control plant of the city or his authorized deputy, agent, or representative.
11. "Director" shall mean the superintendent of wastewater facilities, and/or wastewater treatment works, and/or of water pollution control plant of the city or his authorized deputy, agent, or representative.
12. "Discharge or Indirect Discharge" shall mean the introduction of pollutants into the City's wastewater facilities from any non-domestic source regulated under Section 307(b) (c) or (d) of the Clean Water Act.
13. "Easement" shall mean an acquired legal right for the specific use of land owned by others.
14. "Floating Oil" shall mean 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 oil if it is properly pretreated and the wastewater does not interfere with the wastewater facilities.
15. "Garbage" shall mean the putrescible animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.
16. "Industrial user or user" shall mean the source of indirect discharge.
17. "Interference" shall mean a Discharge which, alone or in conjunction with a Discharge or Discharges from other sources both:

- (a) Inhibits or disrupts the wastewater facilities, its treatment processes or operations, or its sludge processes, use or disposal; and
 - (b) Therefore is a cause of a violation of any requirement of the wastewater facility's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge, use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act [RCRA]), and including state regulations contained in any state sludge management plan prepared pursuant to subtitle d of the SWDA, the Clean Air Act, the Toxic Substance Control Act, and the Marine Protection Research and Sanctuaries Act.
18. "Industrial waste" shall mean the water-carried wastes from industrial manufacturing or industrial processing as distinct from sanitary sewage. It shall include the trade wastes produced by, but not limited to, food processing and bottling plants, food manufacturing plants, slaughtering plants, tallow works, plating works, disposal services, industrial cleaning plants, fertilizer plants, car and truck washing operations, laundries, Cleaning establishments, cooling plants, industrial plants, factories and chemical treatment installations.
19. "Insignificant industrial users" shall mean those industrial users that discharge only domestic waste, have dry processes, or are considered to have an insignificant impact on the wastewater disposal system.
20. "Letter of intent" shall mean notification from an industrial user to the City of West Fargo of that user's intent to utilize a publicly owned treatment facility for a given period of time.
21. "Natural outlet" shall mean any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake or other body of surface of groundwater.
22. "May" is permissive. (See "Shall").
23. "Significant Noncompliance." An industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

- (a) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all the measurements taken during a six month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;
- (b) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all the measurements for each pollutant parameter taken during a six month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH).
- (c) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of POTW personnel or the general public);
- (d) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under section 9-0323(4) to halt or prevent such a discharge;
- (e) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
- (f) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- (g) Failure to accurately report noncompliance.
- (h) Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

24. "National Pollution Discharge Elimination System or NPDES Permit" shall mean a permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342).

25. "National Pretreatment Standard or Pretreatment Standard" shall mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 403.5 of CRF.
26. "National Prohibitive Discharge Standard or Prohibitive Discharge Standard" shall mean any regulation developed under the authority of Section 307(b) of the Act and the General Pretreatment Regulations (40 CFR 403.5).
27. "New Source" shall mean any building, structure, facility or installation from which there is or may be a Discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:
- (a) The building, structure, facility or installation is constructed at a site at which no other source is located; or
 - (b) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - (c) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent factors such as the extent to which the new facility is integrated with the existing plant and to the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs 26(b), or 26(c) of this section but otherwise alters, replaces, or adds to existing process or production equipment.

Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

- (a) begun or caused to begin as part of a continuous onsite construction program:
 - (i) Any placement, assembly, or installation of facilities or equipment; or
 - (ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 - (b) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.
28. "Owner or occupant" shall mean the persons using the lot, parcel of land, building or premises located to and discharging sewage into the sewage system of the city, and who pays or is legally responsible for the payment of water rates or charges made against the said lot, parcel of land, building or premises, if connected to the sewage system, or who would pay or be legally responsible for such payments.
29. "Pass through" shall mean a Discharge which exits the wastewater facilities into waters of the United States in quantities or concentrations which alone or in conjunction with a discharge or discharges from other sources is a cause of a violation of any requirement of the wastewater facility's NPDES permit (including an increase in the magnitude or duration of a violation).
30. "Person" shall mean any individual, firm, company, association, governmental agency, society, corporation, group or political subdivision.
31. "pH" shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams contained in one liter of solution.
32. "POTW (Publically Owned Treatment Works)" shall mean a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment,

recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plan. The term also means the municipality as defined in section 502(3) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

33. "Premises" shall mean all the parcels or land included in the city in a single assessor's parcel number.
34. "Pretreatment Requirement" shall mean any substantive or procedural requirement related to pretreatment, other than a National Pretreatment Standard, imposed on an industrial user.
35. "Primarily segregated domestic wastes" shall mean that sewage which is introduced into a building sewer and which contains no more than fifty percent (50%) industrial waste, prior to any intentional dilution.
36. "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 one half ($\frac{1}{2}$) inch (one and twenty-seven hundredths (1.27) centimeters) in any dimension.
37. "Public sewer" shall mean a sewer in publicly owned land or easements and controlled by the City of West Fargo.
38. "Sanitary sewage" shall mean the water-carried wastes from residences, hotels, restaurants, eating houses, or from business establishments or premises engaged solely in the sale, storage or repair of goods, wares or merchandise, and which contains garbage, human wastes, or animal wastes.
39. "Sewage": See "Wastewater."
40. "Sewer" shall mean a pipe or conduit for carrying sewage.
41. "Shall" is mandatory. (See "May").
42. "Significant Industrial User" shall mean any industrial user subject to Categorical Pretreatment Standards; or
 - (a) Any other industrial user that discharges an average of 25,000 gallons per day or more process wastewater to the POTW (excluding sanitary,

noncontact cooling and boiler blowdown wastewater);
or

- (b) contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
- (c) is designated as such by the Control Authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

- 43. "Slug" shall mean any discharge of water, sewage, or industrial waste in which concentration of any given constituents or in which quality of flows exceed for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty four hour concentration or flow during normal operation.
- 44. "State" shall mean the State of North Dakota.
- 45. "Storm drain (also storm sewer)" shall mean a sewer which carries storm and surface waters and drainage, but which excludes sewage and industrial wastes other than uncontaminated cooling water.
- 46. "Superintendent" shall mean the superintendent of wastewater facilities, and/or wastewater treatment works, and/or of water pollution control plant of the city or his authorized deputy, agent or representative.
- 47. "Suspended solids (SS)" 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.
- 48. "Unpolluted water" shall mean 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.
- 49. "Wastewater (also sewage)" 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.

50. "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.
51. "Wastewater treatment works" shall mean an arrangement of devices and structures for treating wastewater, industrial waste, and sludge. Sometimes used as synonymous with "waste treatment plant" or "water pollution control plant."
52. "Watercourse" shall mean a natural or artificial channel for the passage of water either continuously or intermittently.

Source: Ord. 699, Sec. 2 (2004)

9-0319. SANITARY SEWER, BUILDING SEWERS AND CONNECTIONS. No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Superintendent.

No sewer service connection permit shall be issued by the City Engineer until a fee for each connection shall have been paid for such permit. All of said fees shall be as set by resolution of the City Commission.

Any party desiring sewer service within Block Three (3) of Lepird's Subdivision of a part of the Southeast Quarter (SE $\frac{1}{4}$) of Section Seven (7), lying East of the Sheyenne River and a part of the South Half (S $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Seven (7), Township One Hundred Thirty-nine (139) North, Range Forty-nine (49) West of the Fifth Principal Meridian, Cass County, North Dakota, except Lots One (1) and Two (2) thereof, for premises not heretofore connected with the system shall apply for a connection on a form provided by the municipality. Such application shall be filed with the City Auditor. In the event that the Board of City Commissioners determine that the property connected to the sewer system of the City was not assessed for said improvement in an amount which would be equitable with other assessments, the Board of City Commissioners of the City of West Fargo may charge a hook-up charge in an amount not to exceed the difference between a fair and equitable assessment on the property and the amount actually assessed against said property. Said hook-up charge shall be in addition to any other hook-up charge or permit fee provided by City ordinance.

All costs and expenses 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.

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, but the City does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection aforementioned.

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 ordinance.

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, joints, 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 set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply.

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.

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.

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, or the procedures set forth in appropriate specifications of the A.S.T.M. and the W.P.C.F. Manual of Practice No. 9. All such connections shall be made gas-tight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the Superintendent before installation.

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.

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.

Source: Ord. 1062, Sec. 9 (2016)

9-0319.1. MAINTENANCE OF SEWER LINES FROM SEWER MAIN TO PREMISES. The City shall be responsible for maintenance and repair of leaks or other defects in the sewer main. The property owner shall be responsible for maintenance and repairs of leaks or other defects from the end of the "Y" on the sewer main to the premises. If there is a leak and it cannot be determined as to whether the leak is in that part of the line for which the City or the owner has responsibility for repair and maintenance, the City may make the necessary excavation, and if such leak is found to be in the service line on the owner's property, the owner shall immediately repair such leak, refill such excavation, and pay the City for the cost of making the excavation. The City may shut off the water service on any owner who fails or neglects to repair a leak for which they are responsible for maintenance or who fails to pay the cost of the City in making the excavation to determine the location of the leak if the leak is on the property of the owner.

Source: Ord. 517, Sec. 4 (1997); Ord. 1062, Sec. 10 (2016)

9-0320. USE OF PUBLIC SEWERS.

1. Materials prohibited in sewers. No person shall discharge or cause to be discharged to any public sewer any materials which may cause interference with the operation or performance of the wastewater facilities, or which may pass through such wastewater facilities so as to cause the wastewater facilities to violate the terms of its discharge permit or provisions of Federal, State or local laws. No person shall discharge or Cause to be discharged any of the following-described waters or wastes to any public sewers.

(a) Any waters or wastes containing toxic or poisonous solids, liquors gasses in sufficient quantity (either singly or in interaction with other wastes), to contaminate the sludge of any municipal wastewater system, to injure or interfere with any wastewater treatment process, constitute a hazard

to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the wastewater facilities; including, but not limited to the following:

Pollutant	Concentration (mg/L)
Copper (Cu)	0.60
Zinc (Zn)	4.33
Chromium VI	0.075
Mercury (Hg)	< 0.0002
Nickel (Ni)	2.85
Lead (Pb)	0.171
Cadmium (Cd)	0.01
Silver	0.27
Arsenic	0.96
Benzene	0.05
BTEX*	0.75

*BTEX is the sum of Benzene, toluene, ethylbenzene and xylenes.

Where an industrial user is subject to Categorical Pretreatment Standard(s) that control pollutants not enumerated above, or contain limitations that are more stringent than indicated above, the industrial user is subject to the requirements of the Categorical Pretreatment Standard(s). Under no circumstances shall the industrial user achieve compliance with the above limitations or Categorical Pretreatment Standards by diluting its industrial waste with tap water, unpolluted water, sanitary sewage, or any other liquid diluent. In addition, the City reserves the right to revise the limits set out in this section by amendment of this ordinance.

Source: Ord. 411, Sec. 2 (1991); Ord. 458, Sec. 1 (1994); Ord. 563, Sec. 1 (1999); Ord. 699, Sec. 3 (2004)

2. Industrial Waste Permit.

- (a) No significant industrial user, whether located within or without the city limits of the city, shall discharge wastewater to the public sewers or wastewater facilities without having a valid industrial waste permit issued by the director. A permit may be required for any industrial user as deemed necessary by the director.

Source: Ord. 411, Sec. 2 (1991)

- (b) Industrial users shall comply fully with the terms of their permits in addition to the provisions of this chapter. Violation of a permit condition is deemed a violation of this chapter.
- (c) All significant industrial users shall apply for an industrial waste permit within thirty (30) days after the effective date of this provision. Other persons proposing to connect to the sewer system and determined by the director as requiring an industrial waste permit shall apply at least sixty (60) days prior to commencing discharges to the public sewer. All permittees shall reapply for a new permit between 60 and 180 days prior to the expiration of the old permit.

Source: Ord. 411, Sec. 2 (1991); Ord. 699, Sec. 4 (2004)

- (d) All applications shall be in the form prescribed by the director. The application shall submit, in units and terms suitable for evaluation, all information requested in the application form, and any relevant supplemental information requested by the director.
- (e) An applicant or permittee shall notify the director prior to any new or increased contribution of pollutants or changes in the nature of pollutants not indicated in the permit application, and obtain approval for such increased or new contribution prior to the increased or new discharges.
- (f) Pretreatment permits shall include such conditions as are reasonably deemed necessary by the superintendent to prevent pass through or interference, protect the quality of the water body receiving the POTW's effluent, protect worker health and safety, facilitate POTW sludge management and disposal, protect ambient air quality, and protect against damage to the POTW collection system or plant. Permits may contain, but need not be limited to, the following:
 - (1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.
 - (2) Limits on the average and/or maximum concentration, mass, or other measure of identified wastewater constituents or properties.

- (3) Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.
- (4) Development and implementation of spill control plans or other special conditions including additional management practices necessary to adequately prevent accidental, unanticipated, or routine discharges.
- (5) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW.
- (6) Requirements for installation and maintenance of inspection and sampling facilities.
- (7) Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
- (8) Compliance schedules.
- (9) Requirements for submission of technical reports or discharge reports.
- (10) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the Superintendent and affording the Superintendent, or his representatives, access thereto.
- (11) Requirements for notification of any new introduction of wastewater constituents or of any substantial change in the volume or character of the wastewater being introduced into the POTW.
- (12) Requirements for the notification of any change in the manufacturing and/or pretreatment process used by the permittee.
- (13) Requirements for notification of excessive, accidental, or slug discharges.
- (14) Other conditions as deemed appropriate by the Superintendent to ensure compliance with this ordinance, and State and Federal laws, rules, and regulations.

- (15) A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable Federal pretreatment standards, including those which become effective during the term of the permit.

Source: Ord. 411, Sec. 2 (1991)

- (g) Permits are valid for three years from date of issuance or permit modification, whichever is later, unless revoked.
- (h) Permits may be reassigned or transferred to a new owner and/or operator with prior approval of the Superintendent:
- (1) The permittee must give at least thirty (30) days advance notice to the Superintendent.
 - (2) The notice must include a written certification by the new owner which:
 - (i) States that the new owner has no immediate intent to change the facility's operations and processes.
 - (ii) Identifies the specific date on which the transfer is to occur.
 - (iii) Acknowledges full responsibility for complying with the existing permit.

Source: Ord. 411, Sec. 2 (1991)

- (i) The director may modify the permit for good cause, including, but not limited to, the following:
- (1) To incorporate any new or revised Federal, State, or local pretreatment standards or requirements.
 - (2) Material or substantial alterations or additions to the discharger's operation processes, or discharge volume or character which were not considered in drafting the effective permit.
 - (3) A change in any condition in either the industrial user or the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge.

- (4) Information indicating that the permitted discharge poses a threat to the Control Authority's collection and treatment systems, POTW personnel or the receiving waters.
- (5) Violation of any terms or conditions of the permit.
- (6) Misrepresentation or failure to disclose fully all relevant facts in the permit application or in any required reporting.
- (7) Revision of or a grant of variance from such categorical standards pursuant to 40 CFR 403.13; or
- (8) To correct typographical or other errors in the permit.
- (9) To reflect transfer of the facility ownership and/or operation to a new owner/operator.
- (10) Upon request of the permittee, provided such request does not create a violation of any applicable requirements, standards, laws, or rules and regulations.

Source: Ord. 411, Sec. 2 (1991)

- (j) Permits may be terminated for the following reasons:
 - (1) Falsifying self-monitoring reports.
 - (2) Tampering with monitoring equipment.
 - (3) Refusing to allow timely access to the facility premises and records.
 - (4) Failure to meet effluent limitations.
 - (5) Failure to pay fines.
 - (6) Failure to pay sewer charges.
 - (7) Failure to meet compliance schedules.

Source: Ord. 411, Sec. 2 (1991)

3. Authority to require compliance with Federal Categorical Pretreatment Standards. Upon promulgation of the Federal Categorical Pretreatment Standards (authorized by Section 307 of the Clean Water Act) for a particular industrial subcategory, the Federal Standard, if more stringent than

the limitations imposed under this ordinance, or in the absence of the applicable pretreatment limitations in this ordinance, shall become applicable. The director shall promptly notify all affected industrial users of the reporting requirements contained in 40 CFR 403.12 and shall require that such reports be signed by a duly authorized representative of the industrial user pursuant to the signatory requirements of Section 403.12(1) who certifies as to the completeness of the report in the form required by 40 CFR 403.6(a)2) (ii).

4. State requirements and limitations on discharges shall apply in any case where they are more stringent than national requirements and limitations or those in this chapter.
5. The City reserves the right to establish more stringent limitations or requirements on discharges to the wastewater disposal system, if deemed necessary, to comply with the objectives presented in this chapter, in the manner provided by law.

Source: Ord. 528, Sec. 4 (1998).

6. Authority to require monitoring, sampling, record keeping and related requirements. The director shall have the authority to place all affected industrial users on monitoring, sampling, record keeping, and compliance schedules; to require industrial users to install structures, such as manholes, and sampling equipment needed for monitoring discharges; to receive and analyze reports on progress toward compliance; and insure that all applicable industrial users install the technology necessary to achieve the required levels of treatment specified by the Categorical Pretreatment Standard on or before the deadline specified in the Standard, and other standards and requirements of this chapter. This authority shall be applicable to industries subject to federal categorical pretreatment standards, significant industrial users, and any industrial users who discharge substances identified as prohibited discharges.

Source: Ord. 411, Sec. 2 (1991)

7. Notice of discharges. All industrial users shall notify the superintendent of the wastewater treatment works immediately of all discharges that could cause problems to the wastewater facilities, including any slug loadings. In addition, the director shall evaluate, at least once every two years, whether each such Significant Industrial User needs a plan to control slug discharges. For purposes of this subsection, a slug discharge is any non-routine, episodic nature, including but not limited

to an accidental spill or a non-customary batch discharge. The results of such activities shall be available to the Approval Authority upon request. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

- (a) Description of discharge practices, including non-routine batch discharges;
- (b) Description of stored chemicals;
- (c) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under 40 CFR 403.5(b), with procedures for follow-up written notification within five days;
- (d) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant-site run-off, worker training, building of containment structure or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

Source: Ord. 411, Sec. 2 (1991)

9-0321. PROHIBITIONS AND LIMITATIONS ON WASTEWATER DISCHARGES.

1. Prohibitions on wastewater discharge. No person shall discharge or deposit or cause or allow to be discharged or deposited into the wastewater treatment system any wastewater which contains the following:
 - (a) Oils and grease. (1) Oil and grease concentrations or amounts in excess of 100 milligrams per liter. (2) Wastewater from industrial facilities containing floatable fats, wax, grease or oils; or petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.
 - (b) Explosive mixtures. Pollutants which create a fire or explosion hazard in the publicly owned treatment works (POTW), including, but not limited to, wastestreams with a closed cup flashpoint of less than sixty (60) degrees Centigrade (140 degrees Fahrenheit) using the test methods specified in 40 CFR 261.21.

- (c) Noxious material. Noxious or malodorous solids, liquids or gases, which, either singly or by interaction with other wastes, are capable of creating a public nuisance or hazard to life, or are or may be sufficient to prevent entry into a sewer for its maintenance and repair, or pollutants which result in the presence of toxic gasses, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
- (d) Improperly shredded garbage. Garbage that has not been ground or comminuted to such a degree that all particles will be carried freely in suspension under flow conditions normally prevailing in the public sewers, with no particle greater than one half inch in any dimension.
- (e) Radioactive wastes. Radioactive wastes or isotopes of such half life or concentration that they do not comply with regulations or orders issued by the appropriate authority having control over their use and which will or may cause damage or hazards to the wastewater facilities or personnel operating the system.
- (f) Solid or viscous wastes. Solid or viscous wastes which will or may cause obstruction to the flow in a sewer, or otherwise interfere with the proper operation of the wastewater treatment system. Prohibited materials include, but are not limited to, grease, uncomminuted garbage, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastic, tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, and similar substances.
- (g) Excessive discharge rate. Wastewaters at a flow rate or containing such concentrations or quantities of pollutants that exceed for any time period longer than fifteen minutes more than five times the average twenty-four hour concentration, quantities or flow during normal operation and that would cause a wastewater facilities process upset and subsequent loss of treatment efficiency.
- (h) Toxic substances. Any toxic substances in amounts exceeding standards promulgated by the administrator of the United States Environmental Protection Agency pursuant to Section 307(a) of the

Act, and chemical elements or compounds, phenols or other taste or odor-producing substances, or any other substances which are not susceptible to treatment or which may interfere with the biological processes or efficiency of the wastewater facilities system, or that will pass through the system.

- (i) Unpolluted waters. Any unpolluted water including, but not limited to, water from cooling systems or of stormwater origin, which will increase the hydraulic load on the wastewater facilities system unless such discharge or connection is approved by the superintendent and the North Dakota State Department of Health.
- (j) Discolored material. Wastes with objectionable color not removable by the treatment process.
- (k) Corrosive wastes. Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works are specifically designed to accommodate such discharges. Prohibited materials include, but are not limited to, acids, sulfides, concentrated chloride and fluoride compounds and substances which will react with water to form acidic products.
- (l) Heat. Heat in amounts which will inhibit biological activity in the POTW resulting in interference but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds forty (40) degrees Centigrade (104 degrees Fahrenheit).
- (m) Pollutants. Any pollutant, including oxygen demanding pollutants (e.g., BOD), released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW.
- (n) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

Source: Ord. 411, Sec. 3 (1991)

9-0322. TESTING METHODS. All sampling and analysis activities required by this chapter or any permits issued hereunder shall conform with the procedures set out in 40 CFR part 136.

9-0323. ENFORCEMENT PROCEDURES.

1. Notification of violation. Whenever the director finds that any person has violated or is violating any provisions of this chapter, or any prohibition, limitation or requirement contained herein, he may serve upon such person a written notice stating the nature of the violation which may provide a reasonable time, not to exceed thirty days, for the satisfactory correction thereof.
2. Show Cause Hearing.
 - (a) If there is a violation, or the violation is not corrected by timely compliance as provided for in the notice, the director may order any person who causes or allows an unauthorized discharge to show cause before the Board of City Commissioners why service should not be terminated or suspended. A notice shall be served on the offending party, specifying the time and place of a hearing to be held by the Board of City Commissioners regarding the violation, and directing the offending party to show cause before said Board of City Commissioners why an order should not be made directing the termination of service. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten days before the hearing. Service may be made on any agent or officer of a corporation.
 - (b) The Board of City Commissioners may itself conduct the hearing and take the evidence, or may designate any of its members or any officer or employee of the water and sewer department to:
 - (i) Issue in the name of the Board of City Commissioners notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in any such hearings.
 - (ii) Take the evidence.
 - (iii) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the Board of City Commissioners for action thereon.
 - (c) At any public hearing, testimony taken before the hearing authority or any person designated by it, must be under oath and recorded stenographically. The transcript so recorded, or any part of the

hearing, will be made available to any member of the public upon payment of the usual charges therefor.

- (d) After the Board of City Commissioners has reviewed the evidence, it may issue an order to the party responsible for the discharge directing that, following a specified time period, the sewer service be discontinued unless adequate treatment facilities, devices or other related appurtenances shall have been installed or existing treatment facilities, devices or other related appurtenances are properly operated. In addition, the City Commission may levy administrative penalties not to exceed \$1,000 for each unauthorized discharge or noncompliance for each day such violation continues. The City Commission may issue such other and further orders and directives as are necessary and appropriate.

Source: Ord. 528, Sec. 5 (1998).

3. Legal action. Any violation of the substantive provisions of this chapter or any permit or order of the Board of City Commissioners shall be considered a nuisance, and the City Attorney may commence an action for appropriate legal and/or equitable relief in the District Court of Cass County.
4. Prevention of discharge. Notwithstanding the provisions of Sections 1 through 3 of Section 9-0323, the Director shall have authority to immediately halt or prevent any discharge of any pollutants to the City's wastewater facilities which reasonably appears to present an imminent endangerment to the health or welfare of persons. Prior to exercising this authority, the Director shall notify the President of the Board of City Commissioners, the City Auditor, or any City Commissioner, and shall also orally inform the discharger. The notice to the discharger shall, if possible, be made to an officer of the discharger, or the local manager of the plant. In the absence of those persons, notice may be given to any employee of the discharger. If any discharge to the wastewater facilities presents or may present an endangerment to the environment or which threatens to interfere with the operations of the wastewater facilities, the Director shall seek immediate injunctive relief in the District Court of Cass County.

9-0324. PROTECTION FROM DAMAGE.

1. Prosecution for damage to system. No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is part of the wastewater facilities.

9-0325. POWER AND AUTHORITY OF INSPECTORS.

1. Inspection of premises. The director and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling and testing to determine compliance with the provisions of this chapter or any permits issued thereunder. The director or his duly authorized representative shall have the authority to examine and copy any and all records required to be maintained by industrial users for the purpose of determining compliance with Pretreatment Standards and Requirements. The director or his representatives shall have authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other processes.
2. Public access to information. Any records, reports or information obtained under this article (1) shall, in the case of industrial user effluent data, be related to any applicable discharge limitation or prohibition, or permit condition, and (2) shall be available to the public except upon a showing satisfactory to the director by any person that such records, reports, or information, or particular part thereof, (other than effluent data) to which the director has access under this article, if made public would divulge methods or procedures entitled to protection as trade secrets of such person. The industrial user is responsible for stamping or marking each page "confidential" that the user is designating as confidential. Effluent data are considered nonconfidential. The director shall consider such record, report, or information, or particular portion thereof confidential in accordance with the purposes of this chapter, except that such record, report, or information may be disclosed to the State of North Dakota or the United States concerned with carrying out the provisions of the Clean Water Act or when relevant in any proceeding under this chapter or other applicable laws.

Source: Ord. 699, Sec. 5 (2004)

3. Published reports. The Director, annually, shall publish in the official newspaper of the city, a notification of industrial users which, at any time during the previous

twelve (12) months, were in significant noncompliance with applicable pretreatment requirements. In addition, the director will publish in the official newspaper of the city a notice of intent to issue a pretreatment permit, at least fourteen (14) days prior to issuance. The notice will indicate a location where the draft permit may be reviewed and an address where written comments may be submitted. The director will provide all interested persons with notice of final permit decisions. Upon notice of the director, any person, including the industrial user, may petition to appeal the terms of the permit within thirty (30) days of the notice.

- (a) Failure to submit a timely petition for review shall be deemed to be a waiver of the appeal.
- (b) In its petition, the appealing party must indicate the permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to be placed in the permit.
- (c) The effectiveness of the permit shall not be stayed pending a reconsideration by the City Commission. If, after considering the petition and any argument put forth by the director, the City Commission determines that reconsideration is proper, it shall remand the permit back to the director for reissuance. Those permit provisions being reconsidered by the director shall be stayed pending reissuance.
- (d) The City Commission's decision not to reconsider a final permit shall be considered the final administrative action for purposes of judicial review.

Source: Ord. 411, Sec. 4 (1991)

9-0326. PENALTIES.

1. Any person found to be violating any provision of this chapter shall be served by the city with written notice stating the nature of the violation which may provide 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. Violation a misdemeanor. Any person violating the provisions of this chapter, or who continues the violation beyond any time limit provided for in the above notice, shall be guilty of a misdemeanor, punishable by a fine of \$1,500 and a maximum jail sentence of sixty (60) days or, the maximum allowed by state law if less

than that set out above. Each day in which any such violation shall continue shall be deemed as a separate offense. The City, at its option, may pursue criminal penalties, administrative penalties, or both.

3. Damages. In addition to any civil and criminal liability, any person violating any of the provisions of this chapter or permit, or causing damage to or otherwise inhibiting the city wastewater disposal system, shall become liable to the city for any expense, loss or damage caused by such violation or discharge. The city shall bill the permittee or person for the costs incurred by the city for any cleaning, repair or replacement work caused by the violation or discharge. Refusal to pay the assessed costs shall constitute a separate violation of this chapter.
4. Costs. In addition to any administrative or criminal penalty provided in this Chapter, the City may recover reasonable attorney fees, court costs, court reporter fees, and other expenses incurred by the City in any civil or criminal litigation, or incurred in conducting an order to show cause hearing. In a civil or criminal action the court hearing the action shall determine such costs. In an administrative order to show cause hearing before the City Commission, the Commission shall determine the costs. Refusal to pay the assessed costs shall constitute a separate violation of this chapter.

Source: Ord. 411, Sec. 5 (1991); Ord. 528, Sec. 6 (1998); Ord. 961, Sec. 2 (2013)

9-0327. SAVINGS CLAUSE -- CONFLICT. In the event that any provision, paragraph, word, section or chapter of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections and chapters shall not be affected and shall continue in full force and effect; all ordinances and parts of ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of such inconsistency or conflict.

9-0328. INSPECTION AND SURCHARGE AUTHORITY REGARDING IMPROPER CONNECTION TO SEWER SYSTEM.

1. Section 9-0319 and Section 9-0321(1)(i) of the Revised Ordinances of 1990 of the City of West Fargo prohibit any person from discharging or causing to be discharged any storm water, groundwater, roof runoff, yard drainage, yard fountain or pond overflow into the sanitary collection system. Any disconnects or openings in the sanitary sewer shall be closed or repaired in an effective, workmanlike manner, as approved by the City Engineer.

2. All West Fargo properties discharging a sump pump into the sanitary sewer must apply for a seasonal sump pump waiver. Once the seasonal waiver has been granted, an annual fee will be imposed and billed out monthly. The annual fee is set by resolution of the City Commission. All seasonal sump pump waivers granted after adoption of this ordinance will be automatically renewed annually. A property may be removed from the automatic renewal process by filling out a certification form and sending it to West Fargo Public Works. Properties with a connection to the sanitary sewer may discharge the sump pump into the sanitary sewer from October 15 through April 15. From April 16 through October 14, the sump pump must be discharged outside.
 - a. The certification form may be found on the City's website or obtained from the Public Works' office. This form must be filled out and returned to Public Works to remove the seasonal waiver charge from a property.
 - b. For all new houses, buildings or structures built after the date this ordinance is adopted, a monthly charge for the sump pump waiver will be automatically added to the utility bill for the property. If a bypass connection to the sewer system does not exist, the builder or property owner may send in a certification form and have the fee removed.
 - c. All sump pump fees will be waived once it is verified that there is no longer a sump pump connection to the sanitary sewer.
 - d. Any property found in violation of these regulations may be subject to a \$100 monthly fine until the violation is resolved and/or verified through a City of West Fargo employee that there is no longer a sump pump connection to the City's sanitary sewer system. For a second or subsequent violation, the monthly fine will be increased to \$500.
 - e. If a dispute regarding a property's sump pump connection should arise, a West Fargo employee will have the right to inspect in accordance with the certification form.
 - f. West Fargo Public Works may conduct random inspections of compliance.

3. When a structure is being constructed in the City of West Fargo, if at or prior to final inspection City staff determines that the sump pump connection has been illegally connected to the City's sanitary sewer system, or that there is another connection or device or lack of a plug which allows surface runoff or groundwater to enter into the sanitary sewer system, either permanently or temporarily, there shall be levied an administrative fine against the general contractor for the structure found to be in violation. If after 24 hours after written notice from the City the general contractor has not remedied the situation so that no surface runoff or groundwater can enter into the City's sanitary sewer system, there shall be an additional administrative fine for each day such a violation exists. Said administrative fines shall be set by resolution of the City Commission. In addition, the Building Inspector shall not issue another building permit within the jurisdiction of the Building Inspector of the City of West Fargo for that contractor until the violation has been remedied and any administrative fine has been fully paid to the City. The procedure for handling the administrative penalty as far as notice, right to appeal, and hearing shall be the same procedure as set out in Section 9-0311.

Source: Ord. 426, Sec. 1 (1992); Ord. 546, Sec. 1 (1998); Ord. 1062, Sec. 11 (2016);
Ord. 1160, Sec. 1 (2020)

CHAPTER 9-04

STORM WATER MANAGEMENT

(Source: Ord. 743, Sec. 1 [2006])

SECTIONS:

- 9-0401. General Provisions.
 - 9-0402. Storm Water Management Plan - Application and Review.
 - 9-0403. Storm Water Management Plan - Approval Standards.
 - 9-0404. Storm Water Management Permits.
 - 9-0405. Suspension, Revocation and Stop Work Orders.
 - 9-0406. Violations and Enforcement.
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9-0401. GENERAL PROVISIONS.

A. Purpose. This chapter sets forth uniform requirements for storm water management systems within the City of West Fargo. In the event of any conflict between the provisions of this chapter or other regulations adopted by the City of West Fargo, State or Federal authorities, the more restrictive standard prevails. The objectives of this chapter are as follows:

1. To promote, preserve, and enhance the natural resources within the City of West Fargo from adverse or undesirable impacts occasioned by development or other activities;
2. To protect and promote the health, safety, and welfare of the people and property through effective storm water quantity and quality management practices.
3. To regulate land development activity, land disturbing activity, or other activities that may have an adverse and/or potentially irreversible impact on storm water quantity, water quality and/or environmentally sensitive lands and to encourage compatibility between such uses;
4. To establish detailed review standards and procedures for land development activities throughout the City of West Fargo, thereby achieving a balance between urban growth and development and the protection of water quality; and
5. To provide for adequate storm water system analysis and design as necessary to protect public and

private property, water quality and existing natural resources.

This Chapter applies in the City of West Fargo, North Dakota, and to persons outside the City who are, by contract or agreement with the City, users of the City storm water management system. Except as otherwise provided herein, the City Public Works Director shall administer, implement, and enforce the provisions of this Chapter.

- B. Definitions. For the purpose of this chapter, the following terms, phrases, and words, and their derivatives, shall have the meaning as stated in this section. When inconsistent with the context, words used in the present tense include the future tense. Words in plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and the word "may" is always permissive.
1. "Applicant" shall mean any person or group that applies for a building permit, subdivision approval, zoning change, approach, excavation or special use permit, storm water plan approval, storm water management permit or any other permit which allows land disturbing activities. Applicant also means that person's agents, employees, and others acting under this person's or group's direction. The term "applicant" also refers to the permit holder or holders and the permit holder's agents, employees, and others acting under this person's or group's direction.
 2. "Base Flood," "Regional Flood," or "100 Year Flood" shall mean the flood having a one percent chance or probability of being equaled or exceeded in any given year (i.e., 100-year flood) - also referred to as the regional flood or 100-year flood.
 3. "Best Management Practices (BMP)" shall mean erosion and sediment control and water quality management practices that are the most effective and practicable means of controlling, preventing, and minimizing the degradation of surface water, including construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, and other management practices published by federal, state, or designated area-wide planning agencies or included in the City of West Fargo Storm Water Standards.

4. "BMP's" shall mean measures designed to 1) prevent pollutants from leaving a specific area; 2) reduce/eliminate the introduction of pollutants; 3) protect sensitive areas or 4) prevent the interaction between precipitation and pollutants.
5. "Buffer" shall mean a protective vegetated zone located adjacent to a natural resource, such as a water of the state that is subject to direct or indirect human alteration. Such a buffer strip is an integral part of protecting an aquatic ecosystem through trapping sheet erosion, filtering pollutants, reducing channel erosion and providing adjacent habitat.

The buffer strip begins at the "ordinary high water mark" for wetlands and the top of the bank of the channel for rivers and streams.

6. "City" shall mean the City of West Fargo or the City Commission of the City of West Fargo.
7. "City Public Works Director" shall mean the City Public Works Director of the City of West Fargo or authorized agent.
8. "Commission" shall mean the City Commission of the City of West Fargo.
9. "Common Plan of Development or Sale" shall mean a contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, or on different schedules, but under one proposed plan. This item is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land disturbing activities may occur.
10. "Control Measure" shall mean a practice or combination of practices to control erosion and attendant pollution, see also Best Management Practices.
11. "Detention facility" shall mean a natural or manmade structure, including wetlands used for the temporary storage of runoff and which may contain a permanent pool of water, or may be dry during times of no runoff.
12. "Development" shall mean any land disturbance activity that changes the site's runoff characteristics in conjunction with residential,

commercial, industrial or institutional construction or alteration.

13. "Developer" shall mean a person, firm, corporation, sole proprietorship, partnership, federal or state agency, or political subdivision thereof engaged in a land disturbance and/or land development activity.
14. "Discharge" shall mean the release, conveyance, channeling, runoff, or drainage, of storm water, including snow melt.
15. "Drainage Easement" shall mean a right to use the land of another for a specific purpose, such as a right-of-way for the movement of water across or under the land surface or the storage of water.
16. "Erosion" shall mean removing the surface of the land by the action of water, wind, ice, or gravity. Erosion can be accelerated by the activities of man and nature.
17. "Erosion Control" refers to methods employed to prevent erosion. Examples include soil stabilization practices, horizontal slope grading, temporary or permanent cover, and construction phasing.
18. "Erosion & Sediment Control Plan (E&S Control Plan)" shall mean a written description and/or plan indicating the number, locations, sizes, and other pertinent information about best management practice methods designed to reduce erosion of the land surface and the deposition of sediment within a waterway. An E&S Control Plan is required as part of a Storm Water Management Plan. Both the Storm Water Management Plan and E&S Control Plans are used in developing the State mandated Storm Water Pollution Prevention Plan (SWPPP). An E&S Control Plan may be required for certain projects not requiring a full Storm Water Management Plan, as outlined in this ordinance or determined necessary by the City Public Works Director.
19. "Exposed Soil Areas" shall mean all areas of the construction site where the vegetation (trees, shrubs, brush, grasses, etc.) or impervious surface has been removed, thus rendering the soil more prone to erosion. This includes topsoil stockpile areas, borrow areas and disposal areas within the construction site. It does not include temporary stockpiles or surcharge areas of clean sand,

gravel, concrete or bituminous, which have less stringent protection. Once soil is exposed, it is considered "exposed soil," until it meets the definition of "final stabilization."

20. "Final Stabilization" means that all soil disturbing activities at the site have been completed, and that a uniform (evenly distributed, e.g., without large bare areas) perennial vegetative cover with a density of seventy (70) percent of the cover, as determined by the City or City representatives for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures have been employed. Simply sowing grass seed is not considered final stabilization. Where agricultural land is involved, such as when pipelines are built on crop or rangeland, final stabilization constitutes returning the land to its preconstruction agricultural use or as required by the West Fargo Storm Water Standards.
21. "Floodway" shall mean the channel of the watercourse and those portions of the adjoining flood plains which are reasonably required to carry and discharge the regional flood determined by the use of the 100-year flood profile and other supporting technical data in the Flood Insurance Study.
22. "Hydric Soils" shall mean soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part of the soil profile.
23. "Hydrophytic Vegetation" shall mean Macrophytic (large enough to be observed by the naked eye) plant life growing in water, soil, or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.
24. "Impervious Area" shall mean a constructed hard surface that either prevents or retards the entry of water into the soil, and causes water to run off the surface in greater quantities and at an increased rate of flow than existed prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas; and concrete, asphalt, or gravel parking lots and roads.
25. "Land Development Activity" shall mean the act of subdivision or platting properties for personal

use, adding value or for the purposes of resale. This includes the construction and/or demolition of buildings, structures, roads, parking lots, paved storage areas, and similar facilities.

26. "Land Disturbing Activity" shall mean any land change that may result in soil erosion from water or wind and the movement of sediments into or upon waters or lands within the City's jurisdiction, including construction, clearing & grubbing, grading, excavating, transporting and filling of land. Within the context of this ordinance, land disturbance activity does not mean:

- (a) Minor land disturbance activities such as home gardens and an individual's home landscaping, repairs, and maintenance work, which will not result in sediments entering the storm water system.
- (b) Additions or modifications to existing single family structures that result in creating under five thousand (5,000) square feet of exposed soil or impervious surface and will not result in sediments entering the storm water system.
- (c) Construction, installation, and maintenance of trees, fences, signs, posts, poles, and electric, telephone, cable television, utility lines or individual service connections to these utilities, which result in creating under five thousand (5,000) square feet of exposed soil or impervious surface and will not result in sediments entering the storm water system.
- (d) Tilling, planting, or harvesting of agricultural, horticultural, or silvicultural (forestry) crops.
- (e) Emergency work to protect life, limb, or property and emergency repairs, unless the land disturbing activity would have otherwise required an approved erosion and sediment control plan, except for the emergency. If such a plan would have been required, then the disturbed land area shall be shaped and stabilized in accordance with the City's requirements as soon as possible.

27. "Landowner" shall mean any person holding title to or having a divided or undivided interest in land.

28. "Local Detention" shall mean detention intended to serve only the developing area in question and no areas outside of the development boundaries. As such it is under the control of one owner or group of owners. This is also known as on-site detention.
29. "Local Drainage System" shall mean the storm drainage system which transports the minor and major storm water runoff to the major storm water system and serving only the property within the development boundaries, under the control of one owner or group of owners. This is also known as the on-site drainage system.
30. "Management Practice" shall mean a practice or combination of practices to control erosion and water quality degradation.
31. "National Pollution Discharge Elimination System (NPDES) Permit" shall mean any permit or requirement enforced pursuant to the Clean Water Act as amended for the purposes of regulating Storm Water discharge.
32. "Natural Water" shall mean a river, stream, pond, channel or ditch.
33. "Noncompliance Fee" shall mean the administrative penalty, or fee, which may be assessed to a Permittee, Land Owner, Developer or their Contractor(s) for noncompliance with the provisions and/or conditions of an approved storm water plan and/or permit or the violation of any other provisions contained in this storm water ordinance.
34. "On-site Detention" a.k.a Local Detention System.
35. "On-site Drainage System" a.k.a Local Drainage System.
36. "Outlet" shall mean any discharge point, including storm sewers, into a watercourse, pond, ditch, lake or other body of surface or groundwater.
37. "Owner or Occupant" shall mean any person owning or using a lot, parcel of land, or premises connected to and discharging Storm Water into the storm water system of the City, and who pays for and is legally responsible for the payment of storm water rates or charges made against the lot, parcel of land, building or premises, if connected to the Storm Water system or who would pay or be legally responsible for such payment.

38. "Permanent Cover" means "final stabilization." Examples include grass, gravel, asphalt, and concrete. See also the definition of "final stabilization."
39. "Permanent Development" shall mean any buildings, structures, landscaping and related features constructed as part of a development project approved for construction or constructed prior to the passage of this ordinance.
40. "Permanent Facilities" shall mean those features of a storm water management plan which are part of any natural or constructed storm water system that requires periodic maintenance to retain their operational capabilities. This includes but is not limited to storm sewers, infiltration areas, detention areas, channels, streets, etc.
41. "Permit" shall mean within the context of this rule a "permit" is a written warrant or license granted for construction, subdivision approval, or to allow land disturbing activities.
42. "Permittee" shall mean any person who applies for and receives approval of storm water plan and/or permit from the City.
43. "Person" shall mean any developer, individual, firm, corporation, partnership, franchise, association, owner, occupant of property, or agency, either public or private.
44. "Prohibited Discharge" shall mean a non-storm water discharge into the storm water system or a natural water, including but not limited to;
- (a) Debris or other materials such as grass clippings, vegetative materials, tree branches, earth fill, rocks, concrete chunks, metal, other demolition or construction materials, or structures.
 - (b) The disposal or misuse of chemicals or any other materials that would degrade the quality of waters within the system, including, but not limited to chemicals (fertilizers, herbicides, pesticides, etc.) or petroleum based products (gasoline, oil, fuels, solvents, paints, etc.).
 - (c) Erosion and sediment originating from a property and deposited onto City streets,

private properties or into the storm water conveyance system, including those areas not specifically covered under an approved Storm Water Management Plan or Storm Water Permit.

(d) Failure to remove sediments transported or tracked onto City streets by vehicles or construction traffic immediately after it is deposited on the street.

(e) For the purposes of this ordinance, Prohibited Discharges do not include the following, unless information is available to indicate otherwise:

- Water line flushing
- Landscape irrigation
- Diverted stream flows
- Rising ground water
- Uncontaminated ground water infiltration
- Uncontaminated pumped ground water
- Discharges from potable water sources
- Foundation drains
- Air conditioning condensate
- Irrigation water
- Springs
- Water from crawl space pumps
- Footing drains
- Lawn watering
- Individual residential car washing
- Flows from riparian habitats and wetlands
- De-chlorinated swimming pool discharges
- Street wash water

45. "Public Storm Sewer" shall mean a storm sewer located entirely within publicly owned land or easements.

46. "Regional Detention" shall mean detention facilities provided to serve an area outside the development boundaries. A regional detention site generally receives runoff from multiple storm water sources and serves an area of approximately one quarter section.

47. "Regional Flood" a.k.a. Base Flood or 100-year flood.

48. "Retention Facility" shall mean a natural or manmade structure that provides for the storage of all or a portion of storm water runoff, which includes a permanent pool of water.

49. "Runoff" shall mean the rainfall, snowmelt, dewatering, or irrigation water flowing over the ground surface and into open channels, underground storm sewers, and detention or retention ponds.
50. "Sediment" shall mean solid material or organic material that, in suspension, is being transported or has been moved by air, water, gravity, or ice, and deposited at another location.
51. "Sediment Control" shall mean the methods employed to prevent sediment from leaving the development site. Examples of sediment control practices include, but are not limited to silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection, and temporary or permanent sedimentation basins.
52. "Significant Redevelopment" shall mean alterations of a property that changes the "footprint" of a site or building in such a way that results in the disturbance of over one (1) acre of land. This term is not intended to include activities, which would not be expected to cause adverse storm water quality impacts and offer no new opportunity for storm water controls, such as exterior remodeling.
53. "Site" shall mean the entire area included in the legal description of the parcel or other land division on which the land development or land disturbing activity is proposed in the storm water plan or permit application.
54. "Stabilize" shall mean to make the site steadfast or firm, minimizing soil movement by mulching and seeding, sodding, landscaping, placing concrete, gravel, or other measures.
55. "Stabilized" shall mean the exposed ground surface after it has been covered by sod, erosion control blanket, riprap, pavement or other material that prevents erosion. Simply sowing grass seed is not considered stabilization. Ground surfaces may be temporarily or permanently stabilized (also see Final Stabilization).
56. "State" shall mean the State of North Dakota.
57. "Storm Sewer" shall mean a pipe or conduit for carrying storm waters, surface runoff, and drainage, excluding sewage and industrial wastes.

58. "Storm Water" means precipitation runoff, storm water runoff, snow melt runoff, and any other surface runoff and drainage. Storm water does not include construction site dewatering.
59. "Storm Water Detention" shall mean temporary storage of storm water runoff in ponds, parking lots, depressed grassy areas, rooftops, buried underground tanks, etc., for future or controlled release. Used to delay and attenuate flow.
60. "Storm Water Management" shall mean the planned set of public policies and activities undertaken to regulate runoff and reduce erosion, and maintain or improve water quality under various specified conditions within various portions of the drainage system. It may establish criteria for controlling peak flows and/or runoff volumes, for runoff detention and retention, or for pollution control, and may specify criteria for the relative elevations among various elements of the drainage system. Storm water management is primarily concerned with limiting future flood damages and environmental impacts due to development, whereas flood control aims at reducing the extent of flooding that occurs under current conditions.
61. "Storm Water Management Criteria" shall mean specific guidance to carry out drainage and storm water management policies. An example might be the specification of local design hydrology and use of the design storm.
62. "Storm Water Management Permit" shall mean a permit issued by the City in accordance with Title 9, Chapter 4. Permits are generally issued after the approval and acceptance of the Storm Water Management Plan. A permit must be acquired prior to initiating land development, land disturbing, or other activities which result in an increase in storm water quantities, degradation of storm water quality, or restriction of flow in any storm sewer system, open ditch or natural channel, storm water easement, water body or wetland outlet within the City's jurisdiction.
63. "Storm Water Management Plan" shall mean a document containing the requirements identified by the City in Section 9-0402, that when implemented will provide solutions to storm water management problems that may occur as a result of the proposed development or land disturbing activity. A Storm Water Management Permit is not required as part of,

but may be included in a Storm Water Management Plan. The plan that a designer formulates to manage urban storm water runoff for a particular project or drainage area. It typically addresses such subjects as characterization of the existing and future site development, land use, and grading plan, peak rates of runoff, flow duration, runoff volumes for various return frequencies, locations, criteria and sizes of detention or retention ponds and conveyances; runoff control features; land parcels, easement locations, opinions of probable costs, measures to enhance runoff quality, salient regulations, and how the plan addresses them, and consistency with secondary objectives such as public recreation, aesthetics, public safety, and groundwater recharge. It is may be submitted to regulatory officials for their review for adoption.

64. "Storm Water Management System" shall mean physical facilities that collect, store, convey, and treat storm water runoff in urban areas. These facilities normally include detention and retention facilities, streets, storm sewers, inlets, open channels, and special structures, such as inlets, manholes, and energy dissipaters.
65. "Storm Water Pollution Prevention Plan (SWPPP)" shall mean a joint storm water and erosion and sediment control plan that is written as a prerequisite to obtaining a NPDES Storm Water Permit for Construction Activity, that when implemented will decrease soil erosion on a parcel of land and off-site non-point pollution. It involves both temporary and permanent controls. The SWPPP, which draws its information from a Storm Water Management Plan and is typically condensed, must be incorporated into the construction grading plans for the project.
66. "Storm Water Retention" shall mean storage designed to eliminate or reduce the frequency of subsequent surface discharge. Wet ponds are the most common type of retention storage (though wet ponds may also be used for detention storage).
67. "Structure" shall mean anything manufactured, constructed, or erected which is normally attached to or positioned on land, including portable structures, earthen structures, roads, parking lots, and paved storage areas.
68. "Subdivision" shall mean any tract of land divided into building lots for private, public, commercial,

industrial, etc. development for the purpose of sale, rent, or lease, including planned unit development.

69. "System Charge or Assessment" shall mean a charge for connecting an outlet to a regional storm water management facility, typically a pond. The charge is normally assessed to recover the proportional cost of constructing a regional pond or storm water treatment facility.
70. "Temporary Protection" shall mean a short-term methods employed to prevent erosion. Examples of such protection are straw, mulch, erosion control blankets, wood chips, and erosion netting.
71. "Undeveloped Land" shall mean land that in its current state has not been impacted by significant land disturbance activities, annexed into the City or subdivided into multiple ownership lots and is typically zoned agricultural.
72. "Urban Area" shall mean land associated with, or part of, a defined city or town. This title of the City Code applies to urban or urbanizing, rather than rural areas.
73. "User" shall mean any person who discharges, causes, or permits the discharge of storm water into the City's Storm Water management system.
74. "Violation" shall mean the willful or negligent act of noncompliance with the conditions attached to an approved storm water plan and/or permit, or any other provisions contained in this ordinance, subject to enforcement and penalty or noncompliance fees.
75. "Waters of the State" shall mean all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.
76. "Watercourse" shall mean the natural path for the flow of water where there is sufficient natural and accustomed runoff to form and maintain a distinct and defined channel or an open channel facility that has been constructed for such purpose. This

shall include any easements obtained for the purposes of runoff conveyance.

77. "Wet Pond a.k.a. Wet Detention Facility" shall mean a Retention Facility which includes a permanent pool of water used for the purposes of providing for the treatment of storm water runoff.
78. "Wetlands" shall mean lands transitional between terrestrial and aquatic systems (excluding drainage ditch bottoms) where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:
 - a. A predominance of hydric soils;
 - b. Are inundated or saturated by the surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
 - c. Under normal circumstances support the prevalence of such vegetation.

C. Scope.

1. Prohibited Discharges. It shall be considered an offense for any person to cause or allow a Prohibited Discharge into Waters of the State, including the City storm water system, or any natural water.
2. Land Disturbing Activity Requiring A Storm Water Management Plan. Any person, firm, sole proprietorship, partnership, corporation, state agency, or political subdivision proposing subdivision or plat approval, a building permit or any land disturbance activity within the City must submit a Storm Water Management Plan and/or a Storm Water Management Permit application to the City Public Works Director unless a waiver is provided in accordance with this Section.

No subdivision or plat approval shall be issued until a Storm Water Management Plan or a waiver of the approval requirements has been obtained in strict conformance with the provisions of this chapter. No building permit, shall be issued until approval of a Storm Water Management Permit or a waiver of the permit requirements has been obtained in strict conformance with the provisions of this

chapter. No land shall be disturbed until the permit is approved by the City and conforms to the standards set forth herein.

A Storm Water Management Plan may also be required in some situations as determined by the City Public Works Director, [i.e., development within an existing subdivision with documented flooding problems associated with storm water runoff, or development occurring on a large lot within a subdivision where a Storm Water Management Plan was previously developed].

3. Land disturbing activity involving the construction of a single-family or two-family dwelling. Construction of single family or two family dwellings must comply with in place BMPs and any existing permitted SWPPP for the subdivision, including NPDES/SDS Permit requirements and Subdivision Registration. A Storm Water Management Permit and compliance with the Storm Water Standards is also required.
4. Installation and repair of utility service lines.
 - a. At project sites that require permit coverage where a utility contractor is not the site owner or operator, each utility contractor must comply with the provisions of the storm water pollution prevention plan (SWPPP) for the project their construction activities will impact. Each utility contractor must ensure that their activities do not render ineffective, the erosion prevention and sediment control best management practices (BMPs) for the site. Should a utility contractor damage or render ineffective any BMPs for the site, the utility contractor must repair or replace such BMPs immediately.
 - b. At project sites where a utility contractor is the site owner or operator, and the utility company disturbs one or more acres of soil for the purpose of installation of utility service lines, including but not limited to residential electric, gas, telephone and cable lines, the utility company must apply for permit coverage from the City and state prior to commencement of construction.
 - c. Utility contractors working in a street right-of-way to repair existing or install new utilities and disturbing less than one acre

shall obtain a Storm Water Management permit and an Excavation permit before commencing work. The utility contractor is required to provide appropriate inlet protection and sediment control during the course of the work so as to ensure the storm sewer system is protected from pollution. The utility contractor is also required to provide street sweeping as necessary to insure that sediments resulting from their activity do not enter the storm water. All disturbed vegetation shall be replaced with seed or sod within seven (7) days of completion of utility installation on the site. The City will provide guidance regarding acceptable temporary protection BMPs for inlets and methods to stabilize the exposed soil areas until they meet the definition of final stabilization. Any failure shall result in administrative penalties and revocation of excavation or building permits.

5. Waivers. The City Public Works Director may waive any requirement of this chapter upon making a finding that compliance with the requirement and the waiver of such requirement is not contrary to the objectives in Section 9-0401. The City Public Works Director may require as a condition of the waiver, such dedication or construction, or agreement to dedicate or construct, as may be necessary to adequately meet the said standards and requirements.

- D. Management of Site Vegetation. Any Landowner shall provide for the installation and maintenance of vegetation on their property in accordance with the following criteria, regardless as to whether or not a Storm Water Management Plan, Storm Water Management Permit has been approved or is necessary under this Chapter:

1. Use of Impervious Surfaces. No person shall apply items included in the definition of "Prohibited Discharge" on impervious surfaces or within storm water drainage systems with impervious liners or conduits.
2. Unimproved Land Areas. Except for driveways, sidewalks, patios, areas occupied by structures, landscaped areas, or areas that have been otherwise improved, all areas shall be covered by plants or vegetative growth.

3. Use of Pervious Surfaces. No person shall deposit grass clippings, leaves, or other vegetative materials, with the exception of normal mowing or weed control, within natural or manmade Watercourses, Wetlands, or within Wetland Buffer areas. No person shall deposit items included in the definition of "Prohibited Discharge" except as noted above.

E. Penalties for Noncompliance

1. Failure to comply with this section of the Chapter shall constitute a violation and subject the Landowner to the enforcement provisions, penalties and noncompliance fees outlined in 9-0406.

9-0402. STORM WATER MANAGEMENT PLAN - APPLICATION AND REVIEW.

- A. Application. A written Storm Water Management Plan Application shall be filed with the City Public Works Director as required by this Chapter. The application shall include a statement indicating the grounds upon which the approval is requested, that the proposed use is permitted in the underlying zoning district, and adequate evidence showing the proposed use will conform to the standards set forth in this chapter and the City per the West Fargo Storm Water Standards. Prior to applying for approval of a Storm Water Management Plan, it is recommended that the applicant have the Storm Water Management Plan reviewed by any affected public agencies. While it is not necessary it is desirable in some cases to combine the Storm Water Management Plan and Storm Water Permit submittals in a single application.

Two sets of legible copies of the drawings and required information shall be submitted to the City Public Works Director and shall be accompanied by a receipt from the City to document the payment of all required fees for processing and approval as set forth in Section 9-0402.B. Plans shall be prepared to a scale appropriate to the site of the project and suitable for performing the review.

At a minimum, the Storm Water Management Plan shall contain the information outlined in the Standards. A written Storm Water Management Report discussing the pre and post development hydrologic and hydraulic analysis, erosion and sedimentation control during and after construction, protective measures for proposed and existing structures, timelines for implementation and water quality concerns shall also be provided. The contents of this report shall be in accordance with the

recommended format in the Standards. For additional information refer to Section 9-0403.

- B. Application Fee. A processing and approval fee adopted by the City Commission shall accompany all applications for Storm Water Management Plan approval.
- C. Process. A Storm Water Management Plan meeting the requirements of this Section shall be submitted to the City Public Works Director for review and to determine its compliance with the standards as outlined in Section 9-0403. The City Public Works Director shall approve, approve with conditions, or deny the Storm Water Management Plan. If a particular storm water management plan involves a complex application or has the potential for significant controversy, the City Public Works Director may bring the proposed Storm Water Management Plan before the City Commission for consideration and public comment. Prior to initiating construction as outlined in the Storm Water Management Plan, the applicant must also obtain a Storm Water Management Permit. Additional processing and approval fees may be considered for more than one resubmittal.
- D. Duration. Approval of any plan submitted under the provisions of this Chapter shall expire one year after the date of approval unless construction has commenced in accordance with the plan. However, if prior to the expiration of approval, the applicant makes a written request to the City Public Works Director for an extension of time to commence construction setting forth the reasons for the requested extension, the City Public Works Director may grant one extension of not greater than one year. The City Public Works Director shall acknowledge receipt of any request for an extension within fifteen (15) days. The City Public Works Director shall make a decision on the extension within thirty (30) days of receipt. Any plan may be revised following the same procedure for an original approval. Provided, the City Public Works Director may waive all or part of the application fee if the revision is minor. Any denied or expired application may be resubmitted with additional information addressing the concerns contained within the denial or the reason why the original plan was allowed to expire. The resubmitted application shall be subject to all applicable fees and review time lines as if it were a new application.
- E. Conditions. A Storm Water Management Plan may be approved subject to compliance with conditions reasonable and necessary to insure that the requirements contained in this chapter are met. Such conditions may, among other matters, limit the size, kind or character of the

proposed development, require the construction of structures, drainage facilities, storage basins and other facilities, require replacement of vegetation, establish required monitoring procedures, stage the work over time, require alteration of the site design to insure proper buffering, require the acquisition or dedication of certain lands or easements, and require the conveyance to the City of West Fargo or other public entity of certain lands or interests therein for storm water system facilities. The City Public Works Director may specify special requirements or conditions for specific major or minor watersheds within the City and its extraterritorial jurisdiction. The nature of these requirements will be subject to the unique environmental and natural resource environment of each subwatershed. Approval of a plan shall bind the applicant to perform and comply with all the requirements and conditions of the plan prior to commencing or concurrent with any land disturbing activities.

9-0403. STORM WATER MANAGEMENT PLAN - APPROVAL STANDARDS.

- A. General. This section describes the approval standards used to evaluate a proposed Storm Water Management Plan. The City Public Works Director shall not approve a Storm Water Management Plan, which fails to meet these standards. Other applicable standards, such as state and federal standards, shall also apply. If the standards of different agencies conflict, the more restrictive standards shall apply.

It shall be the Applicant's responsibility to obtain any required permits from other governmental agencies having any jurisdictional authority over the work to be performed. The City may choose to obtain some of the required permits. The Applicant will be notified which permits are to be obtained by the City.

- B. Storm Water Standards . The Storm Water Standards, contains the principal standards and design criteria for developing an effective and acceptable Storm Water Management Plan. The Standards contain an overview of the City's Storm Water Management Policy and design objectives as well as a detailed discussion of the required contents for Storm Water Management Plans submitted to the City Public Works Director for approval. The Standards contain detailed criteria for hydrologic evaluations, the design of storm water management system facility components, water quality protection standards, instructions for the development of an erosion and sedimentation control plan, and requirements for easements and right-of-way. The Standards also contain a discussion of operation and maintenance requirements,

standard forms to be used, and standard construction details approved by the City.

C. Models/Methodologies/Computations. Other than those outlined in the Standards, any hydrologic models and/or design methodologies used to determine runoff conditions and to analyze storm water management structures and facilities, shall be approved in advance by the City Public Works Director. All Storm Water Management Plans, drawings, specifications, and computations for storm water management facilities submitted for review shall contain a validated seal and shall be signed by a Professional Engineer registered in the State of North Dakota. This requirement will be met as part of a properly completed Storm Water Management Plan Report, as described in the Standards.

D. Storm Water Management Criteria for Permanent Facilities. Storm water control facilities included as part of the final design for a Permanent Development shall be addressed in the Storm Water Management Plan and shall meet the following criteria:

1. Pre Versus Post Hydrological Response of Site. An applicant shall install or construct, on or for the proposed land disturbing activity or development activity, all storm water management facilities necessary to manage runoff such that increases in flow under the design conditions will not occur that could exceed the capacity of the Outlet, or the Storm Water Management System, into which the site discharges or that would cause the Storm Water Management System to be overloaded or accelerate channel erosion as a result of the proposed land disturbing activity or development activity. Under no circumstances shall the 2, 10, or 100-year developed peak flow exceed the 2, 10, or 100-year existing peak flow without prior written approval by the City Public Works Director. For Regional Detention or Storm Water Management System, the City Public Works Director shall recommend a proposed System Charge or Assessment to be approved by the City Commission based upon an approved Storm Water Management Plan and an analysis of required drainage systems, projected costs and flood protection benefits provided to those properties directly or indirectly impacted by the Regional Detention or Storm Water Management System. Any design shall follow the criteria set forth in the Standards.

2. Natural Features of the Site. The applicant shall give consideration to reducing the need for Storm

Water Management System facilities by incorporating the use of natural topography and land cover such as wetlands, ponds, natural swales and depressions as they exist before development to the degree that they can accommodate the additional water flow without compromising the integrity or quality of these natural features.

3. Storm Water Management Strategies. The following Storm Water Management practices shall be investigated when developing a Storm Water Management Plan:
 - (a) Natural infiltration of precipitation and runoff on-site, if suitable soil profiles can be created during site grading. The purpose of this strategy is to encourage the development of a Storm Water Management Plan that encourages natural infiltration. This includes providing as much natural or vegetated area on the site as possible, minimizing impervious surfaces, and directing runoff to vegetated areas rather than onto adjoining streets, storm sewers and ditches;
 - (b) Flow attenuation by use of open vegetated swales and natural depressions;
 - (c) Storm Water Detention facilities; and
 - (d) Storm Water Retention facilities (on a case by case basis).
 - (e) Other facilities requested by the City Public Works Director.

A combination of successive practices may be used to achieve the applicable minimum control requirements specified. Justification shall be provided by the applicant for the method selected.

4. Adequacy of Outlets. The adequacy of any Outlet used as a discharge point for proposed Storm Water Management System must be assessed and documented to the satisfaction of the City Public Works Director. To the extent practicable, hydraulic capacities of downstream natural channels, storm sewer systems, or streets shall be evaluated to determine if they have sufficient conveyance capacity to receive and accommodate post-development runoff discharges and volumes without causing increased property damages or any increase in the established base flood elevation.

If a flood plain or floodway has not been established by the Federal Emergency Management Agency, the applicant shall provide a documented analysis and estimate of the base flood elevation as certified by a Professional Engineer registered in the State of North Dakota. In addition, projected velocities in downstream natural or manmade channels shall not exceed that which is reasonably anticipated to cause erosion unless protective measures acceptable to the City Public Works Director are approved and installed as part of the Storm Water Management Plan. The assessment of Outlet adequacy shall be included in the Storm Water Management Plan.

5. Storm Water Detention/Retention Facilities. Storm Water Detention or Retention facilities proposed to be constructed in the Storm Water Management Plan shall be designed according to the most current technology as reflected in the Standards.

- E. Operation, Maintenance and Inspection. All Storm Water Management Systems shall be designed to minimize the need for maintenance, to provide easy vehicle and personnel access for maintenance purposes, and to be structurally sound (per the Standards). All Storm Water Management Systems shall have a plan of operation and maintenance that assures continued effective removal of pollutants carried in Storm Water Runoff. The City Public Works Director may inspect all public and private Storm Water Management Systems at any time. Inspection records will be kept on file at the City Public Works Director's Office. It shall be the responsibility of the applicant to obtain any necessary easements or other property interests to allow access to the Storm Water Management System for inspection and maintenance purposes. The City Public Works Director shall retain enforcement powers for assuring adequate operation and maintenance activities through permit conditions, penalties, noncompliance orders and fees.

The Public Works Director may inspect all public and private storm water management systems at any time. Inspection records will be kept on file at the Public Works office. It shall be the responsibility of the applicant to obtain any necessary easements or other property interests to allow access to the storm water management system for inspection and maintenance purposes for the city.

- F. Easements. Easements may be required as conditions to the issuance of a Storm Water Management Plan and/or Permit approval. If a Storm Water Management Plan

involves directing some or all of the site's runoff to a drainage easement, the applicant or his designated representative shall obtain from the property owners any necessary easements or other property interests concerning the flowing of such water.

- G. Plan Applicability. A Storm Water Management Plan approval issued under this chapter runs with the land and is a condition of plat or development approval. Any Landowner or subsequent Landowner of any parcel within the plat or development area must comply with the plan or any approval, condition, revision or modification of the Plan. Failure to comply with this Plan shall constitute a violation and subject the Permittee, Developer, and/or Landowner to the enforcement provisions, penalties and noncompliance fees.
- H. Plan Amendment. Storm Water Management Plans may be amended only by a written request submitted to the City Public Works Director. This request shall contain the reason for the change and documentation related to any additional change in projected impacts, which may result from amendment approval. Amendment requests submitted prior to final approval of a plan application shall be considered part of the original submittal. Amendment requests filed after Plan approval shall be considered following the same procedures as if it were a new application and subject to all applicable fees and review periods. Provided, the City Public Works Director may waive all or part of the fees if the amendment is minor.
- I. Record Drawings. The owner shall provide the Public Works Director, in writing, any changes or material modifications to the original permitted design in the form of as-built, or record, drawings. The record drawings shall contain the final configuration for all improvements as constructed. A professional engineer registered in the state shall certify the record drawings. If no significant or material changes occurred between the approved plan and final construction, the record drawings need not be submitted to the Public Works Director. The owner, however, is responsible to retain copies of said drawings and provide them to the Public Works Director upon request. Failure to provide these drawings upon written request constitutes a violation of this chapter.

9-0404. STORM WATER MANGEMENT PERMITS.

- A. Storm Water Management Permits. It is unlawful to initiate any land development activity, land disturbing activity, or other activities which may result in an increase in storm water quantities, degradation of storm

water quality, or restriction of flow in any storm sewer system, open ditch or natural channel, storm water easement, water body, or wetland outlet within the jurisdiction of the City, without having first complied with the terms of this chapter. Other activities include those outlined in Section 9-0401.C.

1. Permit Application for Areas Greater than 5000 Square Feet of Land Disturbance. All persons subject to meeting the requirements and needing to obtain a Storm Water Management Permit shall complete and file with the City Public Works Director an application in the form prescribed by the City Public Works Director and accompanied by a fee established by the City Commission. The permit application may need to be accompanied by a Storm Water Management Plan as prescribed under Section 9-0402 of this chapter, if such a plan has not been previously approved with separate application fee. Permit applications may be denied if the applicant is not in compliance on another Storm Water Management permit currently in effect.

2. Permit Application for Areas Less than 5000 Square Feet of Land Disturbance. A Storm Water Management Permit may be issued from the City Public Works Director for projects disturbing under 5,000 square feet and that do not require a detailed engineering assessment for preliminary site work, or for a project site that is located within a previously approved Storm Water Management Plan development area. The Storm Water Management permit does not preclude the requirements for a Storm Water Management Plan. A Storm Water Management permit application does not require certification by a Professional Engineer registered in the State of North Dakota, but will only be issued at the discretion of the City Public Works Director. Commencing earthwork on a project prior to plan or permit approval is considered a violation of this chapter. There will be an application fee for this type of permit.

3. Permit Delays/Revocation. The City Public Works Director may withhold granting approval of a Storm Water Management Permit or revoke an existing permit until all issues associated with the site are resolved to the satisfaction of the City Public Works Director. Permits may be conditioned with delays such that work cannot begin until a specified date or until after the site is inspected.

4. Permit Conditions. Permits are issued subject to all provisions of this chapter and all other applicable regulations, user charges and fees established by the City Commission. Permits may contain, but are not limited to, any of the following conditions:
 - (a) A System Charge or Assessment for a Storm Water Outlet utilizing a regional Storm Water Management System in accordance with a cost determined by the City Public Works Director and approved by the City Commission for said Outlet;
 - (b) Limits on the maximum rate of allowable storm water discharge;
 - (c) Requirements for water quality of storm water discharge;
 - (d) Requirements for the installation, operation and maintenance of storm water facilities including detention/retention or other treatment facilities;
 - (e) Requirements for erosion and sediment control, including measures to be implemented and other procedures necessary to protect the storm water system;
 - (f) Compliance schedule;
 - (g) Requirements for notification to and acceptance by the City Public Works Director of any land disturbing activities which have the potential for increasing the rate of storm water discharge resulting in degradation of storm water quality; and
 - (h) Easements as outlined in Section 9-0403.F.
 - (i) Other conditions as deemed appropriate by the City Public Works Director to insure compliance with this chapter.
5. Permit Duration. Permits must be issued for a time period specified by the City Public Works Director. The applicant, if necessary, shall apply for permit renewal a minimum of thirty (30) days prior to the expiration of the applicant's existing permit. The terms and conditions of a permit are subject to modification by the City Public Works Director during the term of the permit as set forth in

Section 9-0404.A.6. Any denied or expired application may be resubmitted with additional information addressing the concerns contained within the denial or the reason why the original permit was allowed to expire. The resubmitted application shall be subject to all applicable fees and review time lines as if it were a new application.

6. Permit Modification. The City Public Works Director for just cause upon 30-day notice may modify Storm Water Management Permits. Just cause shall include but not be limited to:
 - a. Promulgation of new federal, state or local regulatory requirements;
 - b. Changes in the requirements of this Chapter;
 - c. Changes in the process used by the Permittee or changes in discharge rate, volume, or character; and
 - d. Changes in the design or capability of receiving Storm Water Systems.

The applicant must be informed of any proposed changes in the permit at least thirty (30) days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

7. Permit Amendments. Storm Water Permits may be amended (by applicant) only by a written request submitted by the Permittee to the City Public Works Director. This request shall contain the reason for the change and documentation related to any additional impacts, which may result from amendment approval. Amendment requests submitted prior to issuance of a Storm Water Permit shall be considered part of the original submittal. Amendment requests filed after permit approval shall be considered and reviewed under the same procedures and guidelines used for the Storm Water Permit Applications under this Section. Depending on the extent of the amendment, the City Public Works Director may waive any additional fees for a permit amendment review.

8. Permit Transfer. A permit runs with the property it covers, until the permitted activities are completed, and is transferable to new Landowners in its entirety or by parcel, with each parcel being

subject to the permit and any conditions, which apply to that parcel. Land transfers must be reported to the City Public Works Director within seven (7) days of the transfer. This section refers to City issued permits and does not release the applicant or owner from transfer requirements of a NPDES/SDS permit including but not limited to permit transfers or subdivision registration.

9. Monitoring Facilities. The City Public Works Director may require the Applicant to provide and operate at the applicant's expense a monitoring facility to allow inspection, sampling, and flow measurements of each Storm Water System component. Where at all possible, the monitoring facility shall be located on the Applicant's property as opposed to being located on public rights-of-way. Ample room must be allowed for accurate flow measuring and sampling and the facility shall be kept in a safe and proper operating condition.

10. Inspection. The City Public Works Director may inspect the Storm Water Management System of any Permittee to determine compliance with the requirements of this chapter. The applicant shall promptly allow the City and their authorized representatives, upon presentation of credentials to:
 - a. Enter upon the permitted site for the purpose of obtaining information, examination of records, conducting investigations, inspections or surveys.
 - b. Bring such equipment upon the permitted site as is necessary to conduct such inspections, surveys and investigations.
 - c. Examine and copy any books, papers, records, or memoranda pertaining to activities or records required to be kept under the terms and conditions of this permitted site.
 - d. Inspect the storm water pollution control measures.
 - e. Sample and monitor any items or activities pertaining to storm water pollution control measures.

Any temporary or permanent obstruction to the safe and easy access of such an inspection shall be promptly removed upon the inspector's request. The

cost of providing such access shall be born by the Permittee.

11. Inspections of the Storm Water Pollution Prevention Plan's Measures. At a minimum, such inspections shall be done weekly by the Permittee (general contractor, developer or the developer's designated representative), and within twenty-four (24) hours after every storm or snow melt event large enough to result in runoff from the site (approximately 0.5 inches or more in twenty-four (24) hours, as determined by Public Works). At a minimum, these inspections shall be done during active construction.

B. Construction Plans and Specifications. The plans and specifications prepared for the construction of the Storm Water Management System must be:

1. Consistent with the Storm Water Management Plan approved by the City Public Works Director, including any special provisions or conditions.
2. In conformance with the requirements of the City of West Fargo's construction standards, Storm Water Standards and any other necessary permits required by the Public Works Director.
3. Sealed and signed by a Professional Engineer registered in the State of North Dakota.
4. Submitted to the City Public Works Director for approval.
5. Approved by the City Public Works Director **PRIOR TO** commencing construction.

The erosion/sediment control plans, in a format acceptable to the City Public Works Director, shall contain a drawing or drawings delineating the features incorporated into the Storm Water Pollution Prevention Plan (SWPPP) including details of perimeter protection, construction phasing, storm drain inlet protection, erosion control measures, temporary and final stabilization measures, including all BMP's. In addition the construction specifications shall contain technical provisions describing erosion, sedimentation, and water control measures to be utilized during and after construction as well as to define the entities responsible for the installation and maintenance of the BMP's. The project SWPPP must be incorporated into the construction specification documents.

- C. Construction Activities. Construction operations must at a minimum comply with any applicable federal or state permit and SWPPP in addition to the following Best Management Practices:
1. Site Dewatering. Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, upflow chambers, hydro-cyclones, soil concentrators or other appropriate controls as deemed necessary. Water may not be discharged in a manner that causes erosion, sedimentation, or flooding on the site, on downstream properties, in the receiving channels, or in any wetland.
 2. Waste and Material Disposal. All waste and unused building materials (including garbage, debris, cleaning wastes, wastewater, petroleum based products, paints, toxic materials, or other hazardous materials) shall be properly disposed of off-site and shall not be allowed to be carried by Runoff into a receiving channel, storm sewer system, or Wetland.
 3. Tracking Management. Each site shall have roads, access drives and parking areas of sufficient width, length and surfacing to minimize sediment from being tracked onto public or private roadways. Any material deposited by vehicles or other construction equipment onto a public or private road shall be removed immediately (not by flushing).
 4. Water Quality Protection. The construction contractor, including the general contractor and all subcontractors, shall be required to control oil and fuel spills and chemical discharges to prevent such spills or discharges from entering any watercourse, sump, sewer system, water body, or wetland.
 5. Site Erosion and Sedimentation Control. Construction operations must include erosion and sedimentation control measures meeting accepted design criteria, standards and specifications contained in the Storm Water Standards or other standards determined by the City Public Works Director.
- D. Final Storm Water Management Plan. Upon completion of all required construction activities, the Permittee shall submit to the City Public Works Director a Final Storm Water Management Plan (record plan) to document any

changes or material modifications to the original Storm Water Management Plan concept. The Final Storm Water Management Plan shall contain Record Drawings showing the final configuration for all improvements as constructed. A Professional Engineer registered in the State of North Dakota shall certify the Final Storm Water Management Plan and Record Drawings. If no significant or material changes occurred between the approved plan and final construction, the Record Drawings need not be submitted to the City Public Works Director. The Permittee, however, is responsible to retain copies of said drawings and provide them to the City Public Works Director upon request. Failure to provide these drawings upon written request constitutes a violation of this chapter.

9-0405. SUSPENSIONS, REVOCATIONS AND STOP WORK ORDERS.

A. Storm Water Violations and Reporting. Storm Water Management Plan, Storm Water Management Permit and non-permit related Storm Water violations include, but are not limited to:

1. Commencing site grading or preparation work without first having obtained an NPDES Storm Water Permit for Construction Activity, Storm Water Management Permit.
2. Noncompliance with the requirements or conditions attached to an approved SWPPP of an NPDES Storm Water Permit For Construction Activity, Storm Water Management Plan, Storm Water Management Permit or other standards established by the City Public Works Director, under authority of the City.
3. The causing or allowing of a Prohibited Discharge in the City storm water system, a natural watercourse, storm water easement, stream or river.
4. Failure to remove sediments transported or tracked onto City streets by vehicles or construction traffic immediately after it is deposited on the street.
5. Failure to install and maintain the erosion control measures (BMP's) on a construction site as outlined in the approved Storm Water Management Permit, SWPPP and its amendments or other standards established by the City Public Works Director, under authority of the City Public Works Director.
6. Other violations or issues as noted or described throughout this chapter.

The City Public Works Director shall document the reporting of a violation in writing. Such violations may be obtained via a site inspection or a public complaint followed by a site inspection. At a minimum the complaint file shall contain the name and address of the owner, date, time and nature of the violation as well as other information as deemed necessary to document site conditions, including photos and personal conversation records. In the case of a public complaint the file shall also, if voluntarily provided, contain the name address and phone number of the individual filing the complaint. In addition the complaint file shall contain records documenting subsequent site inspections, compliance actions and a memo outlining the determination of the City Public Works Director and any enforcement action taken and/or any noncompliance fees levied.

- B. Emergency Suspension. The City Public Works Director may for cause order the suspension of a Storm Water Management Plan, Storm Water Management Permit when the City Public Works Director determines that an actual or threatened discharge presents or may present an imminent or substantial danger to the health or welfare of persons downstream, or substantial danger to the environment. If such permits are suspended, all work in the area covered by the permit shall cease immediately. If any person is notified of such suspension and then fails to comply voluntarily with the suspension order, the City shall commence whatever steps are necessary to obtain compliance. The City Public Works Director may reinstate the Storm Water Management Plan, Storm Water Management Permit upon proof of compliance with all plan or permit conditions. The City Public Works Director may also order the immediate suspension of all work if a person or entity is conducting an activity for which a permit is needed without first obtaining the appropriate permit. The suspension shall remain in effect until the required permit(s) are obtained.

Whenever the City Public Works Director orders the suspension of a plan or permit and/or orders all work to stop pursuant to the emergency provisions of this section, the City Public Works Director shall serve notice on the Landowner and/or Permittee personally, or by registered or certified mail. The Landowner and/or Permittee has the right to an informal hearing before the City Public Works Director upon request made in writing and filed with the City Public Works Director. The informal hearing must be held within five (5) days of the request. Following the hearing, the City Public Works Director may affirm, modify or rescind the order.

Any person dissatisfied with an order the City Public Works Director issued pursuant to this section may request a hearing, pursuant to Section 9-0405.E, by filing a written request for a hearing with the City Public Works Director, within fifteen (15) days of receipt of the order. The hearing must be held within ten (10) days of receipt of the request. A request for a hearing filed pursuant to this section does not stay the order while the hearing is pending.

- C. Non-Emergency Revocation of a Permit. A Storm Water Management Plan, Storm Water Management Permit may be revoked following notice. An opportunity for a hearing in accordance with Sections 9-0405.D and 9-0404.E will be provided. The City Public Works Director may revoke a plan or permit for cause, including but not limited to:
1. Violation of any terms or conditions of the applicable plan or permit;
 2. False statements on any required reports or applications;
 3. Obtaining a plan or permit by misrepresentation or failure to disclose fully all relevant facts; or
 4. Any other violation of this chapter or related ordinance.

The City Public Works Director may revoke a Storm Water Management Plan, Storm Water Management Permit and order a temporary work stoppage to bring a project into compliance. Notice of such an order shall be given and a hearing opportunity provided in accordance with Sections 9-0404.D and 9-0404.E. Under a revoked plan or permit no additional permit approvals (i.e., building, excavation, etc.) shall be issued for any properties within the area included within the plan or permit boundaries until approved by the City Public Works Director. In addition the City may deny new permits (i.e., storm water, building, excavation, etc.) to the Permittee or Landowner in violation for projects in other locations until current permits are brought into compliance

- D. Notification. Whenever the City Public Works Director finds that any person has violated or is violating this chapter, Storm Water Management Plan, Storm Water Management Permit and/or its conditions, or any prohibition, limitation or requirement contained herein, the City Public Works Director shall serve upon such person a written notice stating the nature of the violation. Within seven (7) days of the date of the

notice, unless a shorter time frame is set by the City Public Works Director due to the nature of the violation, a plan satisfactory to the Public Works Director for correction thereof must be submitted to the City Public Works Director. If a satisfactory plan is not submitted in a timely manner, or the terms of such plan are not followed, the City Public Works Director may order all work in the affected area to cease until submittal of such a plan and compliance with the plan is happening. If a person disagrees with the determination of the City Public Works Director, that person may, within 15 days of the order of the City Public Works Director, request a hearing as provided in Section 9-0405.E.

- E. Hearing. If a person requests a hearing to contest the order of the City Public Works Director, a notice of hearing must be served on the person appealing the order, specifying the time and place of the hearing to be held regarding the order of the City Public Works Director, and directing the person appealing to show cause why the order of the City Public Works Director should not be upheld. Unless the Public Works Director has suspended the permit or ordered work to stop pursuant to Section 9-0405.B, any order stopping all work shall be stayed until after the hearing. The notice must be served personally or by registered or certified mail at least five (5) days before the hearing. The evidence submitted at the hearing shall be considered by the City Auditor, or his/her designee, who shall then shall either, uphold, modify or rescind the order of the City Public Works Director. An appeal of the decision may be taken to the District Court according to law. Provided, that if the City Auditor or his/her designee upholds an order stopping work, such work suspension shall not be stayed as a result of the appeal to the District Court.
- F. Legal Action. The discharge of deposited or eroded materials onto public rights-of-way or public storm sewer systems within the City of West Fargo shall be considered an offense and may result in an order to remove such materials. Removal of such materials shall be at the Landowner's and/or Permittee expense based on the properties from which they originated. The Landowner and/or Permittee shall have twelve (12) hours after receiving the notice to remove these materials. If such materials are not removed, others may remove them under the City Public Works Director's direction and any associated costs shall be the responsibility of the Landowner or Permittee and, if unpaid within 90 days, may be recommended for assessment action by the City Commission against property of the violator.

If any person commences any land disturbing activities which result in increased Storm Water quantity or Storm Water quality degradation into the City's Storm Water Management System contrary to the provisions of this chapter, federal or state requirements or any order of the City Public Works Director, the City Attorney may, commence action for appropriate legal and/or equitable relief including administrative or criminal penalties.

9-0406. VIOLATIONS AND ENFORCEMENT.

A. Definitions. The following definitions apply to this article:

1. Notice of violation - A notice of violation is a written notice of the violation of an ordinance in this article which identifies the nature of the violation, the section or ordinance allegedly violated and the time of occurrence of the violation, if known.
2. Administrative compliance order - An administrative order is an order issued by the Public Works Director which identifies the nature of the violation, the section or ordinance allegedly violated, the time of occurrence of the violation, if known, the corrective steps necessary and the nature of subsequent penalties and enforcement actions should the situation not be corrected and ordering that the alleged violator come into compliance with the section or ordinance allegedly violated. The administrative order may provide a time period within which compliance must occur.
3. Administrative compliance order with fine - An administrative order with fine is an administrative order that also provides that the city will impose a civil fine if compliance does not occur within the time provided in the order.
4. Order to show cause - An order issued by the Public Works Director issued when there is reason to believe that the violation identified in the administrative order has not ceased or been corrected as required, and directing the alleged violator to appear before the City Commission to show cause why further enforcement measures should not be taken or ordered or fees imposed, or both.

B. Responsibility for Enforcement. The Public Works Director is authorized to enforce this article.

C. Violations. All of the following represent violations of this chapter and of law and will be subject to the remedies and penalties provided in this article, the West Fargo Municipal Code and state law, where applicable. The city includes the extraterritorial zoning jurisdiction of the city.

1. Land Disturbing activity without required permit or approval - No person shall initiate within the city any land development activity, land disturbing activity, or other activity resulting in an increase in storm water quantities, degradation of storm water quality, or restriction of flow in any storm sewer system, open ditch or natural channel, storm water easement, water body, or wetland outlet, without having first complied with the terms of this chapter.
2. Authorities inconsistent with requirements - No person shall engage in land disturbing activities on an owner's land in contravention of the plans set forth in an approved SWPPP, a storm water management permit, any conditions for such plan or permit, any provision of this chapter or any other term, condition, or qualification imposed by the Public Works Director, or other decision-making body, imposed or stated as part of a permit, certificate, or other form of authorization. This section applies to all persons including owners, their contractors and any utility companies or their contractors engaging in land disturbing activities.
3. Permanent facilities inconsistent with requirements - It is a violation of this article to erect, construct, reconstruct, remodel, alter, maintain, move, or use any permanent storm water management or control facility in violation or contravention of this chapter or of an approved plan as provided in this chapter.
4. No person shall cause a prohibited discharge within the city.
5. The owner or applicant shall remove sediments transported or tracked from owner's/applicants land onto city streets by vehicles or construction traffic immediately and failure to do so shall be a violation of this chapter.
6. As to construction activities on owner's/applicants land, the owner/applicant shall comply with the requirements of the storm water management permit,

and with the following and failure to do so shall be a violation of this chapter:

- a. Site dewatering. Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, up flow chambers, hydro-cyclones, soil concentrators, sediment bags or other appropriate controls as approved by the Public Works Director. Water may not be discharged in a manner that causes erosion, sedimentation, or flooding on the site, on downstream properties, in the receiving channels, or in any wetland.
 - b. Waste and material disposal. All waste and unused building materials (including garbage, debris, cleaning wastes, wastewater, petroleum based products, paints, concrete or concrete wash water, toxic materials, or other hazardous materials) shall be properly disposed of off-site and shall not be allowed to be carried by runoff into a receiving channel, storm sewer system, or wetland.
 - c. Tracking management. The use of clay or other cohesive soils to construct access roads or ramps over curbs or onto paved streets shall not be allowed.
 - d. Water quality protection. The construction contractor, including the general contractor and all subcontractors, shall be required to control oil and fuel spills and chemical discharges to prevent such spills or discharges from entering any watercourse, sump, sewer system, water body, or wetland.
7. One or two dwelling unit building - Construction of a one or two dwelling unit building must comply with in-place BMP's and any existing permitted SWPPP for the subdivision, including NPDES permit requirements and failure to do so shall be a violation of this chapter.
 8. Utility service lines - Utility companies or contractors working in a street right-of-way to repair existing or install new utilities that involve land disturbing activities shall obtain an excavation permit from the Public Works Director, in accordance with Chapter 18 of the West Fargo Municipal Code. With respect to utility companies that are working in a street right-of-way and are engaging in land disturbing activities, in addition

to the requirements of Chapter 18, including the obligation of obtaining an excavation permit, the excavation permittee shall implement storm water protection measures and utilize construction methods to minimize the potential for sediment or other contaminants to enter the city's storm sewer system. The utility company or contractor shall provide street sweeping as necessary to prevent sediments from their activities from entering the storm sewer system. All sediments or other materials shall be removed from the site immediately after it is deposited. All disturbed vegetation shall be replaced with seed or sod within seven (7) days of completion of utility installation on the site or other appropriate means of erosion and sediment control shall be implemented and maintained until the restoration is complete. All seeded or sodded areas shall be maintained by the utility company or contractor until vegetation is established except in the case of a utility repair for a private residence. For utility repairs to private residence the homeowner shall be responsible for the maintenance of vegetation until it is established. The contractor shall provide the homeowner with a "Sediment and Erosion Control for New Homeowners" fact sheet from the ND State Health Department.

9. Illicit connections - Storm water systems are designed to carry uncontaminated storm water. Legal connection to the city's storm water system includes sump pumps lawfully connected to the storm sewer system under Chapter 9.03 of the Ordinances of West Fargo, and uncontaminated storm water conveyances (such as roof drains). All other connections shall be considered illicit connections and therefore constitute a prohibited discharge and a violation of this chapter.
10. Illicit dumping - The dumping or disposal of debris materials such as grass clippings, vegetative material, tree branches, stumps, earth fill, rocks, concrete chunks, metal, other demolition or construction materials, or structures, any chemicals, or other materials that could degrade the quality of waters within the system by dumping in a manner that allows them to come into contact with storm water is prohibited. It is a violation of this chapter to allow such a discharge to occur.

C. Management of Site Vegetation. All landowners shall provide for the installation and maintenance of vegetation on their property as follows regardless as to

whether or not a storm water management permit has been approved or is necessary under this chapter and failure to do so shall be a violation of this chapter. All unimproved areas shall be covered by either plants or vegetative growth or, in the alternative, by other means of storm water protection approved by the Public Works Director. The term unimproved area means all areas other than driveways, sidewalks, patios, areas occupied by structures and landscaped areas.

D. Enforcement Procedures. The following enforcement procedures shall apply to violations of this article:

1. Non-Emergency matters - In the case of violations of this article that do not constitute an emergency, the Public Works Director may:

- a. Issue a notice of violation
- b. Issue an administrative order; or
- c. Issue an administrative order with fine;

All notices and orders shall be issued to the property owner and to any other person who is alleged to be in violation of this article or of the terms of any permit or condition granted and to any applicant for any relevant permit.

2. Emergency matters - In the case of violations of this article that do constitute an emergency situation, the city shall use all remedies, penalties and enforcement powers available under this article without prior notice, but the Public Works Director must send notice simultaneously with beginning enforcement action to the property owner, to any other person who is party to the agreement and to applicants for any relevant permit and must advise persons affected by the action taken that a hearing will be held within seven days from the date of such action. At the hearing, the City Commission will determine whether there were appropriate grounds for the action taken, and whether the action taken should continue.

3. Administrative compliance orders - procedure - Persons receiving an administrative order or an administrative order with fee shall have 12 hours, or such longer period as the Public Works Director allows, to correct the violation. If the violation is not corrected within the required time-frame, the Public Works Director and city attorney shall use all penalties, remedies and enforcement powers available under this article. Any notice or order issued by the Public Works Director must be given

in the manner required by the administrative enforcement ordinance, Article 1-04 of the West Fargo Municipal Code.

4. Administrative compliance order with fee/administrative complaint or citation - procedure - The Public Works Director shall include in the administrative complaint the amount of administrative fee to be paid by the person against whom the citation or complaint is issued. The authorized city employee or representative issuing the administrative citation need not issue an administrative order before issuing an administrative complaint.
5. Order to show cause - hearing - In the event the Public Works Director has issued an administrative order or an administrative order with fee, if the violation is not corrected by timely compliance, the Public Works Director may order any person who causes or allows an unauthorized discharge to show cause before the City Commission why sewer service should not be shut off. A notice shall be served on the offending party, specifying the time and place of a hearing to be held by the City Commission regarding the violation, and directing the offending party to show cause before said board why an order should not be made directing the shut off service. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least 10 days before the hearing in accordance with the provisions of Article 1-04. The hearing before the City Commission shall be held in the same manner, and under the same rules and procedures as provided in Article 1-04.

E. Remedies and Enforcement Powers. The city shall have the following remedies and enforcement powers:

1. Withhold permits - The city may deny or withhold all permits, certificates or other forms of authorization as to any applicant for a permit. Instead of withholding or denying an authorization, the city may grant such authorization subject to the condition that the violation be corrected. This enforcement provision applies regardless of whether the current owner or applicant is responsible for the violation in question. The city may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements owned by a person who owns, developed or otherwise caused an uncorrected violation of a

provision of this article or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by a decision-making body. This provision applies regardless of whether the property for which the permit or other approval is sought is the property in violation.

2. Revoke permits - A permit may be revoked when the Public Works Director determines that:
 - a. There is departure from the plans, specifications, or conditions as required under terms of a permit or approved plan;
 - b. The plans, specifications, or conditions were obtained by false representation or was issued by mistake; or
 - c. Any of the provisions of this chapter are being violated as to the project under the permit.
3. Revoke plan or other approval - When a violation of this article involves a failure to comply with approved plans or conditions to which the approval of such plans was made subject, the Public Works Director or City Commission charged with enforcement of the provisions of this article may, upon notice to the applicant and other known parties in interest (including any holders of building or other permits affected) and after a public hearing, revoke the plan or other approval or condition its continuance on strict compliance, the provision of security or such other conditions as the Public Works Director or City Commission may reasonably impose.
4. Injunctive relief - The city may seek an injunction or other equitable relief in court to stop any violation of this article or of a permit, certificate or other form of authorization granted hereunder.
5. Abatement - The city may seek a court order in the nature of mandamus, abatement, injunction or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed prior to the violation.
6. Restitution - The city may seek an order requiring restitution as a condition to be met by a person

before the person's permit is restored, before the person is allowed to lawfully discharge into the sewer system, or before other action may be taken by the person as determined by an appropriate order.

7. Costs of damage - Any person violating any of the provisions of this chapter or who initiates an activity causes a deposit, obstruction, or damage or other impairment to the city's storm water management system is liable to the city for any expense, loss, or damage caused by the violation or the discharge. The city may bill the person violating this chapter the costs of any cleaning, repair or replacement work caused by the violation of storm water discharge, and if unpaid within ninety (90) days may result in assessment of such costs against the violator's property.
 8. City attorney's fees and costs - In addition to the fees and penalties provided herein, the city may recover reasonable attorney's fees, court costs, court reporter's fees, and other expenses of litigation by appropriate action against the person found to have violated this chapter or the orders, rules, regulations and permits issued hereunder.
 9. Other remedies - The city shall have such other remedies as are and as may be from time to time provided by North Dakota law and municipal codes for the violation of this article or related provisions.
 10. Remedies cumulative - The remedies and enforcement powers established in this article are cumulative. The City Commission may hold a single hearing to consider evidence and render decisions on appeals from administrative citations or complaints, orders to show cause or other administrative proceedings involving one or more alleged violators stemming from the same occurrence or series of occurrences.
- F. Enforcement - non-compliance and re-inspection fees. Any person who is found to have violated an order of the Public Works Director made in accordance with this chapter, or who has failed to comply with any provision of this chapter and the orders, rules, regulations and permits issued hereunder, is guilty of an offense. Each day on which a violation occurs or continues to exist shall be deemed a separate and distinct offense. A schedule for noncompliance and re-inspection fees, which may be imposed for violation of this chapter, may be approved by the board of city commissioners.

- G. Other Powers. In addition to the enforcement powers specified in this article, the city may exercise any and all enforcement powers granted to them by North Dakota law.
- H. Continuation. Nothing in this article shall prohibit the continuation of previous enforcement actions undertaken by the city pursuant to previous and valid ordinances and laws.
- I. Power and Authority of Inspectors - Right of Entry. Where it is necessary to make an inspection to enforce the provisions of this code, or where the engineers or inspections officer has reasonable cause to believe that there exists in a structure or upon a premises a condition which is contrary to or in violation of this code which makes the structure or premises unsafe, dangerous or hazardous, the engineer or inspections officer is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this code, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises is unoccupied, the engineer or inspections officer shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the engineer shall have recourse to the remedies provided by law to secure entry.
- J. Savings Clause - conflict. In the event that any provision, paragraph, word, section or article of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections and articles shall not be affected and shall continue in full force and effect; all ordinances and parts of ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of such inconsistency or conflict.

CHAPTER 9-05

DROUGHT AND WATER SYSTEM RESPONSE MEASURES

(Source: Ord. 1191, Sec. 1 (2021))

SECTIONS:

- 9-0501. Procedural Definitions.
- 9-0502. Declaration of Policy.
- 9-0503. Drought and Water System Management Regulations.
- 9-0504. Drought Severity Phases - Declaration.
- 9-0505. Waivers.
- 9-0506. Responsibility for Enforcement.
- 9-0507. Enforcement Procedures.
- 9-0508. Remedies and Enforcement Powers.
- 9-0509. Enforcement - Non-Compliance and Re-Inspection Fees.
- 9-0510. Other Powers.
- 9-0511. Continuation.
- 9-0512. Power and Authority of Inspection - Right of Entry.
- 9-0513. Savings Clause - Conflict.

9-0501. PROCEDURAL DEFINITIONS. The following procedural definitions apply to this chapter:

1. "Notice of violation." A notice of violation is a written notice of the violation of an ordinance in this chapter which identifies the nature of the violation, the section or ordinance allegedly violated and the time of occurrence of the violation, if known.
2. "Administrative compliance order." An administrative order is an order issued by the City Administrator or his/her designee which identifies the nature of the violation, the section or ordinance allegedly violated, the time of occurrence of the violation, if known, the corrective steps necessary and the nature of subsequent penalties and enforcement actions should the situation not be corrected and ordering that the alleged violator come into compliance with the section or ordinance allegedly violated. The administrative order may provide a time period within which compliance must occur.
3. "Administrative compliance order with fine." An administrative order with fine is an administrative order that also provides that the City will impose a civil fine if compliance does not occur within the time provided in the order.
4. "Order to show cause." An order issued by the City Administrator or his/her designee issued when there is

reason to believe that the violation identified in the administrative order has not ceased or been corrected as required, and directing the alleged violator to appear before the City Commission to show cause why further enforcement measures should not be taken or ordered or fees imposed, or both.

9-0502. DECLARATION OF POLICY. It is hereby declared that, because of the conditions prevailing in the City of West Fargo, the health, safety and general welfare of the City requires that the water resources available to the City be put to the maximum beneficial use of the water resources, that unreasonable use of water and unreasonable methods of use of water be prevented, that waste of water be prevented, that water be conserved to the extent possible and that the reasonable and beneficial uses of water is all in the best interests of the people of the City of West Fargo.

9-0503. DROUGHT AND WATER SYSTEM MANAGEMENT REGULATIONS. The City Administrator or his/her designee is authorized to promulgate regulations describing restrictions and limitations on the use of water as well as affirmative action to be required by persons using water for one or more of the four drought severity phases, approved by a resolution of the Board of City Commissioners. The regulations may also include a schedule for irrigation or watering of gardens, residential, commercial and industrial lawns, and so forth. The regulations may also establish special water usage rates and surcharges for use of water by activity or by industry. The regulations approved by the Board of City Commissioners shall take effect upon a single publication of the regulations in a newspaper of general circulation in the City.

9-0504. DROUGHT SEVERITY PHASES - DECLARATION. The level of drought severity, established by the Board of City Commissioners from time to time, shall be one of the following four phases, listed in increasing order of severity: Phase I - Normal, Phase II - Advisory, Phase III - Warning, Phase IV - Emergency. Phase I, Normal, drought severity phase shall be deemed to be in effect unless another drought severity phase has been declared by the Board of City Commissioners: The Board of City Commissioners may declare the particular drought severity phase to be in effect and may identify the effective date for implementation of the restrictions for such phase, as set forth in this article. In establishing the drought severity phase in effect, the Board of City Commissioners may rely upon the recommendation of the City Administrator or his/her designee. To initiate a particular drought response, the Board of City Commissioners shall declare a drought severity phase and the effective date for implementation of applicable restrictions for such phase. The Board of City Commissioners may determine that the declaration of drought severity phase is to take effect immediately. The declaration of the drought severity phase in effect shall be published in a newspaper of general circulation and shall take effect upon such

publication of said declaration or the effective date in the declaration. In the case of an emergency declared by the Board of City Commissioners, the declaration may be deemed to take effect immediately upon passage, in which case the declaration shall be published in a newspaper of general circulation promptly after the declaration is declared by the Board of City Commissioners.

The Board of City Commissioners may revise the declared drought severity phase, from time to time, as conditions change.

Once a declaration has been made by the Board of City Commissioners as to the drought severity phase in effect, all persons shall comply with the regulations approved by a resolution of the Board of City Commissioners.

9-0505. WAIVERS. The City Administrator or his/her designee shall be authorized to waive any requirements within the approved drought management regulations upon making a finding that compliance with the requirement will involve an unnecessary hardship, and that waiver of such requirement is not contrary to the objectives of this chapter. All waivers must be in writing to be valid.

9-0506. RESPONSIBILITY FOR ENFORCEMENT. The City Administrator or his/her designee is authorized to enforce this chapter and any regulations approved by the Board of City Commissioners pursuant to this chapter.

9-0507. ENFORCEMENT PROCEDURES. The following enforcement procedures shall apply to violations of this chapter.

1. Non-emergency matters. In the case of violations of this chapter that do not constitute an emergency, the City Administrator or his/her designee may:
 - a. Issue a notice of violation;
 - b. Issue an administrative order; or,
 - c. Issue an administrative order with fine;

All notices and orders shall be issued to any person who is alleged to be in violation of this chapter.

2. Emergency matters. In the case of violations of this chapter that constitute an emergency situation. the City shall use all remedies, penalties and enforcement powers available under this chapter without prior notice, but the City Administrator or his/her designee must send notice simultaneously with beginning enforcement action to the person who is alleged to be in violation of this chapter and advise other persons who the City

Administrator or his/her designee determines may be affected by the action taken that a hearing will be held within seven days from the date of such action. At the hearing, the City Commission will determine whether there were appropriate grounds for the action taken, and whether the action taken should continue.

3. Administrative compliance orders - Procedure. Persons receiving an administrative order or an administrative order with fee shall have ten (10) days, or such longer period as the City Administrator or his/her designee allows, to correct the violation. If the violation is not corrected within the required time frame, the City Administrator or his/her designee shall use all penalties, remedies and enforcement powers available under this chapter.
4. Administrative compliance order with fee/administrative complaint or citation - Procedure. The City Administrator or his/her designee shall include in the administrative complaint the amount of administrative fee to be paid by the person against whom the citation or complaint is issued. The authorized City employee or representative issuing the administrative citation need not issue an administrative order before issuing an administrative complaint.
5. Order to show cause - Hearing. In the event the City Administrator or his/her designee has issued an administrative order or an administrative order with fee, if the violation is not corrected by timely compliance, the City Administrator or his/her designee may order any person who causes or allows an unauthorized discharge to show cause before the City Commission why water service should not be shut off. A notice shall be served on the offending party, specifying the time and place of a hearing to be held by the City Commission regarding the violation, and directing the offending party to show cause before said board why an order should not be made directing the shut off of water service. The notice of the hearing shall be served personally or by certified mail (return receipt requested) at least ten (10) days before the hearing.

9-0508. REMEDIES AND ENFORCEMENT POWERS. The City shall have the following remedies and enforcement powers.

1. Water shut off. The City Administrator or his/her designee or the Board of City Commissioners may order the shut off of the supply of water to the violator, subject to the procedure as set forth in this chapter.

2. Withhold permits. The City may deny or withhold all permits, certificates or other forms of authorization as to any applicant for any permit that is issued by the City. Instead of withholding or denying an authorization, the City may grant such authorization subject to the condition that the violation be corrected. The City may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements owned by a person who owns, developed or otherwise caused an uncorrected violation of a provision of this chapter or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by a decision-making body. This provision applies regardless of whether the property for which the permit or other approval is sought is the property where the violation occurred.
3. Injunctive relief. The City may seek an injunction or other equitable relief in court to stop any violation of this chapter or of a permit, certificate or other form of authorization granted hereunder.
4. City attorney's fees and costs. In addition to the fees and penalties provided herein, the City may recover reasonable attorney's fees, court costs, court reporter's fees, and other expenses of litigation by appropriate action against the person found to have violated this chapter or the orders, rules, regulations and permits issued hereunder.
5. Other remedies. The City shall have such other remedies as are and as may be from time to time provided by North Dakota law and municipal codes for the violation of this chapter or related provisions.

9-0509. ENFORCEMENT - NON-COMPLIANCE AND RE-INSPECTION FEES. Any person who is found to have violated an order of the City Administrator or his/her designee made in accordance with this chapter, or who has failed to comply with any provision of this chapter and the orders, rules, regulations and permits issued hereunder, is guilty of an offense. Each day on which a violation occurs or continues to exist shall be deemed a separate offense. A schedule for noncompliance and re-inspection fees to defray the administrative and other costs of monitoring and enforcement of this ordinance may be approved by the Board of City Commissioners.

9-0510. OTHER POWERS. In addition to the enforcement powers specified in this chapter, the City may exercise any and all enforcement powers granted to them by North Dakota law.

9-0511. CONTINUATION. Nothing in this chapter shall prohibit the continuation of previous enforcement actions undertaken by the City pursuant to previous and valid ordinances and laws.

9-0512. POWER AND AUTHORITY OF INSPECTORS - RIGHT OF ENTRY. Where it is necessary to make an inspection to enforce the provisions of this ordinance, or where the City Administrator or his/her designee has reasonable cause to believe that there exists in a structure or upon a premises a condition which is contrary to or in violation of this chapter, the City Administrator or his/her designee or appointed designee is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this ordinance, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises is unoccupied, the City Administrator or his/her designee or appointed designee shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the City Administrator or his/her designee shall have recourse to the remedies provided by law to secure entry.

9-0513. SAVINGS CLAUSE - CONFLICT. In the event that any provision, paragraph, word, section or chapter of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections and chapters shall not be affected and shall continue in full force and effect.